



REPUBLIC OF KENYA



In re Estate of the Late Njambi King'ori (Deceased) (Succession Cause 333 of 2004) [2025] KEHC 8812 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 333 OF 2004
HI ONG'UDI, J
JUNE 19, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE NJAMBI KING'ORI (DECEASED)

BETWEEN

MERCY NJAMBI KARARI APPLICANT

AND

MUSTAFA MUNYI RESPONDENT

RULING

1. This ruling is in respect of three applications. Two of the applications are dated 23rd June, 2023 while the other one is dated 19th February, 2025.
2. In the first application the orders sought are as follows;
 - i. That the firm of Mucheru Law LLP Advocates be granted leave to cease from further acting for the administrator.
 - ii. That the costs of the application herein be in the cause.
3. The application is premised on the grounds on its face as well as the affidavit of Gad Gathu an advocate. He deponed that the administrator John Karari King'ori passed away on the 17th February 2023 and therefore the firm of Mucheru Law LLP Advocates should be allowed to cease acting for the administrator since it had no instructions.
4. In the second application the applicant herein prays for the following orders;
 - i. The Grant of Letters of Administration herein issued to John Karari Kingori on 18th November 2005 be revoked.



- ii. That Simon Maina King'ori, Emmanuel Wanjohi, Esther Wambui King'ori And Mercy Njambi Karari be appointed respectively as the administrators and administratrix de bonis non of the estate of the late Njambi King' ori.
 - iii. Any other orders be made as this court may deem just.
5. The application is premised on the grounds on its face as well as the affidavit of the applicant sworn on even date. She deponed that her father (John Karani King'ori) was deceased and that the grant of letters of administration issued to him had become inoperative and otherwise useless through subsequent circumstances under section 76 (e) of the *Law of Succession Act*. She stated that there was need to have the grandchildren of the deceased represented in the administration especially where their parents were also deceased.
6. She further deponed that the respondent was not suited to be a co-administrator despite being a child of the deceased. That he forcefully took title documents belonging to the deceased's estate from the late John Karari King'ori and refused to return them in spite of all efforts even involving the provincial administration. Thus, it was only fair and just that the said grant issued to the late John Karari King'ori be revoked.
7. The respondent filed a replying affidavit sworn on 2nd October, 2024 where he admitted the contents of paragraphs 1, 2, 6 and 7 which relates to the law applicable in this application and the survivors of the deceased. He disputed the contents of paragraphs 5, 8, 9, 10, 11 and 22 and averred that the deceased's children were the only ones entitled to inherit from the estate. That the grandchildren of the deceased were at a lower rank in the degree of consanguinity compared to the surviving children of the deceased.
8. He further averred that on 15th June 2023, him together with Esther Wambui Kimani and Simon Maina King'ori held a meeting and agreed that he would be appointed as administrator of the deceased's estate together with Simon. He added that he did not forcefully take title documents from the late administrator John Karari King'ori and that the title documents for L.R No. Mahiga Munyange/223 and allotment letter for Plot No. 260 New Pangani Phase 11 were in his custody.
9. The applicant filed a supplementary affidavit sworn on 20th December 2024 where she reiterated the contents of her affidavit in support of her application.
10. The respondent responded by filing a further affidavit sworn on 13th February 2025 where he denied the contents of the applicant's supplementary affidavit. He also averred that he doubted the identity of the deponent Mercy Njambi King'ori since the affidavit sworn in support of the application was deponed by Mercy Njambi Karari. He stated that the deponent of the supplementary affidavit was a stranger in the present application.
11. In the 3rd application dated 19th February, 2025 the applicant herein prays for the following orders;
 - i. Spent.
 - ii. That Mustafa Munyi be cited for contempt of this court and jailed for at least six months or such further period as the court may determine for blatant and willful disobedience of the court order issued herein on 17th December, 2024 and served upon him.
 - iii. Any other orders be made as the court may deem just.
12. The application is premised on the grounds on its face as well as the affidavit of the applicant sworn on even date.



13. The respondent filed a replying affidavit sworn on 6th March, 2025, denying the contents of paragraphs 3, 4, 5, 6 and 7 of the supporting affidavit and averred that he had complied with the order of 17th December, 2024. He stated that on 18th February, 2025 he handed over to the court, the original title deed for L.R No.Mahiga/Munyange 223 through his advocates’ letter of even date. Further, that on 3rd March, 2025, he also gave a Municipal Council of Nakuru allocation letter dated 20th January 1988 through his advocates’ letter of even date. He added that he had made all efforts necessary to timeously comply with the orders of 17th December 2024. He urged the court to find the summons dated 19 February, 2025 to be bereft of merit and dismiss the same with costs in his favour.
14. The applications were canvassed by way of written submissions.

Applicant’s submissions in respect to the summons de bonis non dated 23rd June 2023.

15. These were filed Mucheru Law LLP advocates and are dated 21st January, 2025. Counsel gave brief facts of the case and identified one issue for determination which is whether the respondent is suitable to be appointed as an administrator. She submitted in the affirmative and added that the court has the discretion to appoint an administrator pursuant to the provisions of section 66 of the [Law of Succession Act](#) which provides as follows;

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion emphasis is, accept as a general guide the following order of preference:

- a. surviving spouse or spouses, with or without association of the other beneficiaries;
- b. other beneficiaries entitled to intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c. the Public Trustee and
- d. creditors,”

Applicant’s submissions on the application dated 19th February 2025

16. These were filed by Mucheru Law LLP Advocates and are dated 20th March, 2025. Counsel gave brief facts of the case and identified two (2) issues for determination.
17. On the first issue on whether this court can punish the wilful disobedience of its orders, counsel placed reliance on the decision in Republic v Kajiado County & 2 others Ex-parte Kilimanjaro Safari Club Limited [2019] KEHC 4749 (KLR) where the court stated thus:

“The applicable law as regards contempt of court existing before the enactment of the [Contempt of Court Act](#) was restated by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the [Judicature Act](#) which provided that:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of



Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts. This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that to apply. In addition, the substance of the common law is still applicable under section 3 of the *Judicature Act*. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders to contempt of court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

See also;

Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] KECA 840 (KLR)

18. On the second issue whether the respondent should be jailed for contempt of court, counsel submitted that the applicant had proved service of the court orders. Thus, there was wilful disobedience of the said court orders by the respondent. He urged the court to punish the respondent for disobeying its orders. He placed reliance on the decision in Republic v Mwaura & 12 others; Obura & another (Exparte) (Application 126 of 2020) KEHC 44 (KLR) (Judicial Review) (15 January 2024) (Ruling) where the court stated as follows;

“Service is just one of the conditions that an applicant has to meet in contempt of court proceedings. One other condition is a warning to the alleged contemnor of the penal consequences that may ensue if the order is not complied with. In this regard, there has to permanently displayed on the front copy of the judgment or order served a warning to the person required to do or not to do the act in question that disobedience of the order would be contempt of court punishable by imprisonment, a fine or sequestration of assets (in case of a company). It has been held that without this display, the judgment or order may not be enforced unless it is an undertaking contained in a judgment or order.”

see also;

MNN V JMM [2022] eKLR

Respondent’s submissions on the application dated 23rd June 2023

19. These were filed Elizabeth Wangari & Co. Advocates and are dated 25th October, 2024. Counsel gave brief facts of the case and identified three (3) issues for determination.
20. On the first issue whether the grant of letters of administration issued to John Karari King’ori on 18th November, 2005 should be revoked, counsel submitted that it was undisputed that the sole administrator passed on 17th February 2023. She placed reliance on the decision in Re Estate Of Geoffrey Kimandu Gitau (Deceased) 2023 KEHC 18582 KLR where M.A Odero, J held as follows:

“Section 76 (e) provides or revocation of grant if the same has become useless and inoperative. A grant of administration is issued to a particular individual in his personal capacity and cannot be transferred to another individual. Upon the death of the person/persons to whom the grant was issued the said grant becomes useless and inoperative and is or revocation.”
See also:



21. The second issue is whether Simon Maina King'ori, Emmanuel Wanjohi, Esther Wambui King'ori and Mercy Njambi King'ori should be appointed respectively as the administrators and administratrix de bonis non of the estate of the late Njambi King'ori. Counsel submitted that appointment of administrators to the estate is dependent on the priority of beneficiaries of a deceased's estate as well as the court's discretion on the same. She placed reliance on the decision in John Kipkorir Ronoh V Mary Chepkemei Rugut [2017] KEHC 521 KLR where Mumbi Ngugi, J (as she then was) expressed herself as follows:

“Section 66 gives the court a final discretion as to the person or persons to whom a grant of letters of administration should be made in the best interests of all concerned. It however provides that as a general guide priority shall be given to the widow (or widower) of a deceased person followed by children of the deceased. A grant may be made to other relatives of a deceased person, or to the public trustee or creditors but there would need to be good reason or this. In the present case three children of the deceased were alive and able; one applied and two consented to the issue of the grant.”

22. Lastly, on who should bear the costs of this application, counsel urged the court to be guided by the provisions of Rule 69 of the Probate and Administration Rules, to exercise its discretion and make an order as to costs in favour of respondent.
23. The respondent filed supplementary submissions dated 18th February 2025 where he placed reliance on the above submissions dated 25th October 2024.

Respondent's submissions on the application dated 19th February 2025

24. These were filed by Elizabeth Wangari & company advocates and are dated 1st April, 2025. Counsel gave brief background of the case and identified two (2) issues for determination.
25. The first issue is whether the beneficiary/respondent is in contempt of the orders of 17th December 2024 and as such liable to punishment as prayed by the applicant. Counsel submitted that the applicant had not met the threshold for finding the respondent in contempt of this court's orders of 17th February 2024 by proving all the requisite elements of contempt of court beyond reasonable doubt.
26. She placed reliance on the decision in Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party); Authority & Another (Exparte); Mwangemi (Contemnor) [2021] KEHC 301 (KLR) where the court held as follows;

“It is impermissible to find an alleged contemnor guilty of contempt in the absence of conclusive proof of the essential elements. As I have repeatedly stated in previous rulings the requisite elements must be established beyond reasonable doubt. In such a prosecution the alleged contemnor is plainly an ‘accused person’. Third, accidental or unintentional disobedience is not sufficient to justify one for holding guilty of contempt. It is relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy would amount to a contempt in theory only and does not render the contemnor liable to punishment.”



27. Lastly, on who should bear the costs of this application, counsel submitted that pursuant to the provisions of Rule 69 of the Probate and Administration Rules the award of costs ordinarily follows the event. She urged the court to award the same to the respondent.

Analysis and determination

28. I have considered the three (3) applications, the affidavits and the submissions by the respective parties. I opine that the issue for determination by this court is whether the all the applications or either of them is merited.
29. I will first deal with application seeking to have the grant of letters of administration issued to John Karari Kingori on 18th November 2005 be revoked.
30. Section 76(e) of the *Law of Succession Act* which provides as follows:
- “A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-
- (e) That the grant has become useless and inoperative through subsequent circumstances.”
31. In the matter of the estate of Mary Wairimu Ngware (deceased) Nairobi High court Succession Cause No. 2018 of 2001, the court held as follows;
- “There was no provision in the *law of succession Act* for substitution of dead administrators. The proper procedure ought to be an application under Section 76 (e) of the *Law of Succession Act*, not Section 71 which is on confirmation of grants asking the court to revoke the grant because ‘it has become useless and inoperative through subsequent circumstances.’”
32. In the instant case there is no doubt that the administrator John Karari Kingori passed away on 17th February, 2023. He was a single administrator, thus the grant issued to him has been rendered inoperative and useless since the estate had not been fully administered. In light of the provision of the law and the persuasive authority cited above, there is no other option but to revoke the Grant issued to John Karari Kingori on 18th November 2005 and have the grant re-issued to another person.
33. The next question to be addressed is who should be appointed Administrator to replace the deceased Administrator? The applicant has sought to be appointed as an Administrator together with three other individuals. The respondent is opposed to having the applicant as an Administrator. He does not see any reason why as a son he should not be substituted as the Administrator of the deceased’s estate. He averred that the deceased’s surviving children are: Esther Wambui Kimani, Simon Maina King’ori, Mustafa Munyi (applicant) and another. Further that they had in a meeting of the 3 agreed that he be appointed as the Administrator. From the list provided by the applicant the other surviving child of the deceased is Alice Muthoni King’ori, who did not attend the said meeting.
34. A perusal of the material before the court reveals that the deceased herein was not survived by a spouse. She was survived by several children including the respondent. As stated above more than half of the children have died leaving only four (4) surviving her.
35. It is the deceased’s children who rank in priority to obtain Grant of letters of Administration to her estate. The applicant herein is not one of the surviving children of the deceased. She is a grand child and so is Emmanuel Wanjohi whom she has proposed as one of the Administrators.



36. In the cases of: (i) Wahome Njoki Wakagoto [2013] eKLR and (ii) Cleopa Amutala Namayi V Judith Were Succession cause No. 457 of 2005 [2015] eKLR – the two courts made it clear that under part V of the *Law of Succession Act* grandchildren have no automatic right to inherit their grandparents. Such children should inherit from their own parents, unless they were proved to have been dependants of their grand parent.
37. I therefore find that the applicant cannot claim a right in priority over the estate of the deceased as long as the biological children of the deceased are still alive. Same to Emmanuel Wanjohi. Their deceased parents shares will be dealt with according to the Law within the estate.
38. For the above reasons I find and hold that the applicant and Emmanuel Wanjohi do not qualify to be issued with a Grant of Representation in respect of the estate of the late Njambi King'ori (deceased). The surviving children are directed to meet and forward to the court the name or names of the person or persons to be appointed as Administrator or administrators to replace John Karari King'ori.
39. Regarding the application seeking the firm of Mucheru Law LLP Advocates to be granted leave to cease from further acting for the administrator, I note that the same is unopposed. The grant of letters of administration issued to its client who is deceased has been revoked. Therefore, this court sees no reason why it should deny the applicant therein leave to cease acting for the administrator. For the said reasons the chamber summons dated 23rd June is allowed as prayed.
40. Finally, is the application dated 19th February 2025 seeking for the respondent to be cited for contempt of this court and jailed for at least six months or such further period as the court may determine for blatant and wilful disobedience of the court order issued herein on 17th December, 2024. It is not in dispute that this court issued directions on the said date. It directed that the respondent delivers in court through the deputy registrar the title deed for L.R Mahiga Munyange/223 and allotment letter for plot no. 260 new Pangani phase 11. The said documents were to be delivered on or before 21st January 2025.
41. Contempt of court is that conduct or action that defies or disrespects the authority of the court. Black's Law Dictionary 9th Edition, defines contempt as:
- The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
42. Additionally, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
43. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:
- “It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate



disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis)”

44. The applicant argued that it had proved service of the court orders, and that there was wilful disobedience of the said orders by the respondent. On his part the respondent argued that he had complied with the orders of 17th December, 2024 and handed over to court the original title deed for L.R No. Mahiga/Munyange/223 on 18th February, 2025. Further, on 3rd March 2025, he also handed over the Municipal Council of Nakuru allocation letter dated 20th January 1988.
45. Having carefully perused the court records, I note that this court on 20th February 2025 confirmed that the title deed for L.R No. Mahiga/Munyange/223 had been surrendered in court. Further, on 29th April 2025 counsel for the respondent confirmed that they had complied with the orders of 17th December 2024 vide the letter dated 3rd March 2025. The applicant did not adduce any evidence to the contrary. Clearly, there was delay on the part of the respondent in complying with the court orders issued on 17th December 2024. However, as stated in the authority cited herein above, the applicant must demonstrate that there was wilful disobedience of the said orders for the respondent to be held in contempt which in this case she has not.
46. Consequently, this court finds the application dated 19th February 2025 to be devoid of merit and the same is hereby dismissed with no orders as to costs.
47. In view of the above findings this court issues the following orders.
 - i. The grant issued to John Karari King’ori on 18th November, 2005 is hereby revoked.
 - ii. The firm of Mucheru Law LLP Advocates is granted leave to cease from further acting for the former Administrator (now deceased).
 - iii. The four (4) surviving children of the deceased (Njambi King’ori) to meet and agree within 30 days on who among them will replace the late John Karari King’ori as the Administrator or Administrators. The name or names to be forwarded to the court by 31/7/2025.
 - iv. The respondent Mustafa Munyi is not guilty of contempt of court.
 - v. Mention on 16th August, 2025 before the DR to confirm filing of the proposed Administrator or Administrators.
 - vi. Costs to be in the cause.
48. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 19TH DAY OF JUNE, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI
JUDGE

