



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Stanley Lumumba Barungu Thikanyi (Deceased) (Succession Cause E003 of 2020) [2025] KEHC 8809 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8809 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE E003 OF 2020  
SM GITHINJI, J  
JUNE 18, 2025**

**BETWEEN**

**ELIZABETH NCABANI THIKANYI ..... PETITIONER**

**AND**

**ROSEMARY THIKANYI ..... APPLICANT**

**AND**

**LUY INOKIBIA THIKANYI ..... 1<sup>ST</sup> OBJECTOR**

**HELLEN KANINI THIKANYI ..... 2<sup>ND</sup> OBJECTOR**

**JOYCE KAULA THIKANYI ..... 3<sup>RD</sup> OBJECTOR**

**PENINA KALOKI THIKANYI ..... 4<sup>TH</sup> OBJECTOR**

**GLORY KAJUJUTHIKANYI ..... 5<sup>TH</sup> OBJECTOR**

**RULING**

1. For determination is the Chamber Summons dated 14/4/2025 pursuant to Section 83 (h) of the [Law of Succession Act](#) and all other enabling provisions of law, seeking orders that:
  1. Spent
  2. The 1<sup>st</sup> petitioner be ordered to give a full and accurate account of all revenue/income generated from properties known as L.R No. Njia/burieruri/3291, 3292 and 3297 and Njia/cia-mwendwa/2223 and Njia/cia-mwendwa/2224.
  3. This Honorable Court does order that all the rental revenue/income generated from properties known as L.R No. Njia/burieruri/3291, 3292 and 3297 and Njia/cia-mwendwa/2223 and Njia/cia-mwendwa/2224 be deposited in a joint account in the names of Elizabeth Ncabani



M'Ikirima and Rosemary Thikanyi or that the same be deposited in court pending hearing and determination of this cause.

4. This Honorable Court be pleased to issue such further orders to meet the ends of justice in this succession cause.
5. Costs of this application be provided for.
  1. The application is supported by the affidavit sworn by the 2<sup>nd</sup> petitioner/applicant on even date. She lamented that the 1<sup>st</sup> petitioner's failure and/or neglect to give a full and accurate account of all the revenue/income generated from the properties known as L.R No. Njia/burieruri/3291, 3292 and 3297 and Njia/cia-mwendwa/2223 and Njia/cia-mwendwa/2224, and appropriating the same as if it were her own property had caused disharmony in the family, thus necessitating the application.
3. In opposing the application, the 1<sup>st</sup> petitioner swore a Replying Affidavit on 28/4/2025 in which she deposed that the application was a nullity because it had been filed by an advocate who was not properly on record. In her view, the instant application and the notice of appointment is new evidence which cannot be introduced after close of pleadings when parties have already been ordered to file their respective written submissions. She deposed that the application was a replica of the application dated 20/11/2020, and thus res-judicata and an abuse of the court process. She verily believed that the court had become functus officio, and urged the court to dismiss the application with costs.
4. The 2<sup>nd</sup> petitioner swore a supplementary affidavit on 13/5/2025 in support of her application.
5. The application was canvassed by way of written submissions which were only filed by counsel for the 2<sup>nd</sup> petitioner.

### **Disposition**

6. I have considered the application, the replying affidavit, the submissions by counsel and the authorities relied on.
7. The sole issue for determination is whether the application is merited.
8. On whether the application is a nullity on account of having been filed by a counsel who was not properly on record for the 2<sup>nd</sup> petitioner, a party has a right to be represented by a counsel of their choice. By filing the Notice of Change of Advocates, the 2<sup>nd</sup> petitioner's current counsel duly complied with the provisions of Order 9 Rule 5 of the Civil Procedure Rules, which require that; "A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal."
9. On whether the application is res judicata, I note that the 1<sup>st</sup> petitioner in her application dated 20/11/2020 principally sought a Limited Grant Ad Colligenda Bona, while the instant application seeks to compel the 1<sup>st</sup> petitioner to account for the rent income she derives from the estate properties. I find that the instant application is neither res-judicata nor is the court functus officio because the orders sought herein are substantially distinct from those in the former application.
10. One of the duties imposed on an administrator under Section 83 (h) of the Law of Succession is; "to produce to the court, if required by the court, either of its own motion or on the application of any



interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

11. In this regard the law requires administrators to be accountable, transparent, and to act in the best interest of all beneficiaries. The administrator must therefore:-
  1. Collect and secure all estate assets.
  2. Pay debts and liabilities.
  3. File an inventory and statement of account.
  4. Keep records of all financial transactions involving estate funds.
  5. Distribute the estate according to the confirmed grant.
  6. Respond to queries from beneficiaries and the court.
12. In the matter of the Estate of M’Marete M’Nthiga (Deceased) [2004] eKLR, the court stated that: “it is the legal duty of an administrator to render an account and failure to do so can result in the revocation of the grant under section 76 of the Act.”
13. From the foregoing it is vivid that the administrator is a fiduciary entrusted by law to manage and account for the deceased’s estate with integrity, transparency, and accountability. Rendering full accounts is not just procedural – it is a core duty, and failure to do so can lead to serious legal consequences, including revocation of the grant.
14. The applicant herein does not specify the period of which the account should be rendered. I therefore order that the 1<sup>st</sup> Petitioner do give a full and accurate account of the income generated from L.R. No. Njia/burieruri/3291, 3292 and 3297 and also Njia/cia-mwendwa/2223 and Njia/cia-mwendwa/2224 from the date she started managing the same, up to the date of this ruling. She should do so within one month from the date hereof. In this regard, the application is merited and granted in terms of prayer 2. Costs be in the cause.
15. Next mention to ascertain compliance on 31/7/2025.

**DATED AND DELIVERED AT MERU THIS 18<sup>TH</sup> JUNE, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

2<sup>nd</sup> Petitioner present.

Others absent – They be notified.

