



In re Estate of Priscilla Njeri Gachinga (Deceased) (Succession Cause E799 of 2024) [2025] KEHC 8290 (KLR) (Family) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E799 OF 2024
PM NYAUNDI, J
JUNE 13, 2025
IN THE MATTER OF THE ESTATE OF PRISCILLA NJERI GACHINGA (DECEASED)**

BETWEEN

CATHERINE WANGARI GACHINGA APPLICANT

AND

GACHINGA NDUNI NGONGU RESPONDENT

RULING

1. Before this Court is the Petition for grant of letters of administration ad litem dated 23rd September 2024 filed by Catherine Wangari Gachinga (the applicant).
2. The application is supported by the affidavit sworn by the applicant of even date and a supplementary affidavit sworn on 24th November 2024. The applicant avers that the deceased died intestate on 16th February 2016. The deceased was married to her father, Gachinga Nduni Ngongu. They were blessed with four children. The deceased and Gachinga Nduni Ngongu were registered owners of Title Number Dagoretti/Riruta/1527 now known as Nairobi/Block 66 /1527 situated in in Riruta, Dagoretti Sub-County, Nairobi. Gachinga Nduni Ngongu transferred the property to the deceased through a deed executed on 22nd June 2009. This meant that he surrendered his share to the deceased and was only a trustee of the estate after the deceased's death.
3. That the respondent is prohibited by law from claiming the parcel of land on the ground of survivorship. The deceased singlehandedly developed the property by putting up rental houses which has been their source of income. This was also the deceased's matrimonial home. They lived in the estate property till 2022 when Loice Wamburi Gachinga moved in as a legal wife of the deceased. She has since then evicted the John Wamburi Gachinga who is her brother. She also removed his roof, disconnected water and electricity and removed the adjacent housed. The incident was reported to Riruta Police



Station on 26th August 2024. She averred that Loice's actions have rendered the deceased's children and grandchildren destitute. They have also been denied access to the property to collect rent. That the respondent has not petitioned for letters of administration in regards to the estate of the deceased. Since a full grant has not been issued, she opted to file this application in order to file a suit against the Respondent and Loice (the respondent's third wife) who have since interfered with the property.

4. The application was opposed. Gachinga Nduni Ngongu filed a replying affidavit sworn on 14th November 2024. He also filed the following grounds of opposition;
 - i. That, the Application dated 23rd September 2024 offends the provisions of Rule 12 of the Probate and administration rules which provides that application for limited grants shall be by way of Petition.
 - ii. That, the consents by other beneficiaries of the estate have not been obtained for the issuance of the grant in favour of the applicant.
 - iii. That, the parcel of land being the subject matter of the applicant's application does not form part of the estate of the late Priscilla Njeri Gachinga.
 - iv. That this Honorable court be pleased to dismiss the summons application with costs.
5. He averred that the deceased was his second wife. He married her after his 1st wife died. He bought land known as Dagoretti/Riruta/1527 now known as Nairobi/Block 66 /1527 in 1980. The land was registered in his name but later, he voluntarily had the land registered in his name and that of the deceased. He bequeathed Ngong/Ngong/49608 to the 1st houses and Dagoretti/Riruta/6184 to the second house where the applicant comes from. He married Loice in 2010 through customary marriage and moved in with her to Dagoretti/Riruta/1527 now known as Nairobi/Block 66 /1527. He later married her on 29th September 2021 under the *marriage Act*.
6. He visited the lands office to have the name of the deceased removed from the title and be registered as the sole owner. He was issued with a new title in his name. He built a house for his late son, John Maina Gachinga on the suit property where he lived with his children until 2023 when they vacated. He demolished the house and put up rental houses to give him income. That the applicant and his grandchildren did not approve his marriage to Loice and they invaded his property and demolished the structures he had put up. That he reported the applicant and his grandsons severally to the Police. That although he signed an agreement to transfer the land to the deceased, the transfer was incomplete because he did not sign a transfer form.
7. He averred that since the property is registered in his name, this court should not issue the applicant with letters of administration ad-litem. He argued that he has made bulk development on the property and put strict proof on the applicant. That in any case, he ranks in priority by virtue of Section 66 of the Law of Succession if letters of administration intestate were to be issued. He urged the court to dismiss the applicant's application with costs to him.

Applicant's Submissions.

8. The Applicant filed written submissions dated 7th January 2025. It was her submission that the Respondent donated the property in issue to the deceased in expectation of death also commonly known gift causa mortis. She relied on the decision of Aphaxard Nyaga & 2 others vs Robert Njue & 2 others [2021] eKLR, which defines gift causa mortis as a gift is settled by deed or an instrument in writing by delivery, by way of declaration of trust by the donor or by a resulting trust or transfer and registration. That such gift must have passed to the recipient and is now property of the estate



available for distribution. She submitted that the Respondent indeed transferred ownership rights to the deceased vide a deed dated 22nd June 2009.

9. She further submitted that the Respondent has not come to court with clean hands by stating in his replying affidavit that he gifted the deceased Dagoretti/Riruta/6184 and not Dagoretti Riruta/1527 also known as Nairobi/Block/66/1527.
10. Lastly, it was her submission that although the respondent ranks higher in priority to petition for letters of administration intestate, he has refused or ignored to apply for the same and allowed a non-beneficiary to intermeddle with the estate. That this court should issue grant ad litem to the applicant to prevent further wastage or intermeddling by the respondent's third wife.

Respondents Submissions.

11. The Respondent's submissions are dated 11th March 2025. He submitted that the applicant has not proved the existence of a legal right or liability as to why she should be issued with a limited grant. Further, that she has not proved that there exists a threat to the deceased's estate. It was the respondent's submission that the applicant relied on a document which according to law, does not qualify as transfer of property. Although he had the property registered in the joint names of the deceased and him, where one person dies, the surviving person becomes the sole proprietor of the property as was held in the decision of Micheni Aphaxard Nyaga & 2 others vs Robert Njue & 2 others [2021] eKLR.
12. He submitted that the allegation by the applicant that the respondent had gifted the deceased the property does not meet the threshold of gift *inter vivos*.
He relied on the decision of *In re Estate of the late Gedion Manthi Nzioka (Deceased)* [2015] eKLR. According to him, the purported gift was incomplete as the transfer had not been completed.
13. The respondent submitted that the application by the applicant is in contravention to Rule 12 of the Probate and Administration Rules which provides that such applications should be by way of petition. Lastly, he argued that he ranks in priority if the grant was to be issued and therefore, the applicant should not be issued with the grant.

Analysis and Determination.

14. I have considered this petition. The Succession Act allows granting of limited grants for various purposes. These are provided for under Section 54 of the Act which provides that:

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

15. The Fifth Schedule of the Act gives details of various limited grants and the correct format to use in petitioning the court. Limited Grants Ad Litem fall under paragraph 14 of the Fifth Schedule of the *Law of Succession Act*. The paragraph is specific that the grant of administration ad litem is limited to filing of suit. It states that:

When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other



parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.

16. The court in the case of *In re Estate of Henry Kithia Mwitari (Deceased)* [2021] eKLR stated:-

“Therefore, it is clear that a grant ad litem is issued for a specific, limited, and finite purpose. Once the purpose for which such a Grant is issued is achieved, the Grant is exhausted and becomes obsolete. More pertinently, a grant ad litem cannot be used to collect, preserve, or distribute the estate of the Deceased.”
17. Further, the court in the case of *Karega & 2 others v Kiama & 2 others (Succession Cause 6 of 2019)* [2022] KEHC 9880 (KLR) (8 July 2022) (Ruling) stated:-

“However I did find the case of *Winrose Emmah Ndinda Kiamba vs Agnes Nthambi Kasyoka* illuminating as it dealt with an almost similar issue. The court was of the view that consent with regard to special limited grants of representation need not be mandatory...The court opined that that such a grant was normally issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way; that it was also without prejudice to the right of any other person to apply for full grant of representation to the estate of the deceased and as such, limited grant may not be subjected to full and strict compliance with the requirements meant for a full grant of representation. That again, the person to whom the grant is so made undertakes to administer the estate according to the law but limited for the purpose for which the grant was issued until a further grant of representation is made by the court. In the aspect of consent of the other beneficiaries, the court stated that *Law of Succession Act* explicitly provides that, a court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act. The aforementioned, clearly depicted that the aspect of consent with regard to special limited grants of representation need not be mandatory.”
18. The Respondent mainly has argued that the court cannot issue a limited grant to the applicant because he is the sole registered owner of the property that the applicant alleges is estate property. In his replying affidavit and submissions, he states that he solely bought the property in 1980 and had it registered in his sole name. On 17th January 2005, he had the property registered in his name and that of the deceased. After the deceased’s death, he followed due procedure and applied that the property be issued in his name. A new title deed was indeed issued in his name on 19th April 2024.
19. The Applicant on the other hand argues that the property was registered in the names of the respondent and the deceased. She argues that the Respondent gifted the deceased the property vide a deed executed on 22nd June 2009. The Respondent denies that he gifted the deceased with Dagoretti/Riruta/1527 now known as Nairobi/Block/66/1527. He stated that he settled the children of the 1st and 2nd house in Ngong/Ngong/49608 and Dagoretti/Riruta/6184 and therefore, Nairobi/Block/66/1527 is not estate property.
 - a. At this stage all the Court is required to determine whether the applicant should. be granted the grant to enable her lodge a claim on Title Number Dagoretti/ Riruta/1527 Now Known as Nairobi/ Block 66/1527. The merits of her claim will be determined by a court of competent jurisdiction.
20. I will therefore allow the application on the following terms



a. The Grant of letters of Administration ad litem will issue to Catherine Wangari Gachinga limited for purposes of filing suit, prosecuting, defence and pursuing the legal related interests of the estate in relation to the property known as Title Number Dagoretti/ Riruta/1527 Now Known as Nairobi/ Block 66/1527

b. Each party to bear their own costs

21. File closed

It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 13th DAY OF JUNE, 2025.

P. M. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Otieno Owanda for Applicant (Wangari)

Ndambuki for Respondent

Fardosa Court Assistant

