



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mary Njeri Chege (Decesaed) (Succession Cause
E417 of 2022) [2025] KEHC 8614 (KLR) (Family) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E417 OF 2022
CJ KENDAGOR, J
JUNE 3, 2025
IN THE MATTER OF THE ESTATE OF MARY NJERI CHEGE (DECEASED)**

BETWEEN

JAMES MAINA CHEGE 1ST ADMINISTRATOR

CATHERINE NYAMBURA CHEGE 2ND ADMINISTRATOR

AND

PORTUS CHARLES MACHARIA CHEGE RESPONDENT

RULING

1. The Deceased, Mary Njeri Chege, died on 18th October, 2017. The Court issued Letters of Administration Intestate with respect to her estate to Catherine Nyambura Chege and James Maina Chege (Administrators herein) on 8th November, 2022. The Grant was due for confirmation on 12th June, 2023 but it was not confirmed on the said date because the parties did not show up in Court. The matter came up for a further mention on 3rd July, 2023 but still the parties did not attend Court. The file was closed.
2. The Administrators filed an application dated 11th March, 2024 seeking to have the matter reinstated for hearing and determination. The Court heard the application on 19th March, 2024. It allowed the application and set aside the order of closure.
3. Subsequently, the Administrators filed Summons for Confirmation of Grant dated 11th March, 2024. According to the Supporting Affidavit, all the Deceased's estate would be held entirely by the Administrators in trust for all the beneficiaries of the estate. It also stated that all the beneficiaries had consented to the said distribution of the estate save for Portus Charles Macharia Chege (the Protestor herein). They stated that the Protestor had indicated that he did not wish to have a share in the estate.



4. The Protestor protested to the Confirmation in the format of an application dated 22nd July, 2024 accompanied by an Affidavit in Protest of Confirmation sworn on 17th July, 2024. He stated that he was a son of the Deceased and that the Administrators were his siblings. He stated that the administrators had deliberately attempted to exclude him from his rightful share of the estate. He averred that he is not aware of the consents of confirmation signed on 17th February, 2022 and 12th February, 2024 and that he was not served with the same.
5. He stated that he is opposed to the mode of confirmation contained in the Administrator's Supporting Affidavit dated 12th February, 2024. He stated that where the estate is intestate, the assets should be distributed equally among the children of the Deceased and not by way of seniority or preference. For this reason, he stated that the estate share due to each beneficiary is a 1/7th of the entire estate. He also averred that the Administrators have included strangers as beneficiaries and grossly undervalued the estate. He asked the Court to order a valuation report of the entire estate, including him as a beneficiary, and appoint him as one of the administrators.
6. The Administrators filed a Replying affidavit dated 21st August, 2024 sworn by Catherine with the consent of James (the two administrators). They stated that the Protestor was not included in the list of beneficiaries because he had previously relinquished his share in the estate. However, they stated that since he has changed his mind on the same, they are willing to include his name in the list of beneficiaries captured in the summons for confirmation. They argued that the Protestor has not provided any sufficient reason to be included as a 3rd administrator in this matter.
7. They stated that under the mode of confirmation, the properties belong to all beneficiaries, and they will only hold them in trust. They averred that this will allow an efficient and fast transfer process and does not limit the right of any beneficiary who wishes to dispose of their share. They also stated that the Protestor lacks a clear proposal on distribution and has failed to prove that the proposed method of distribution is unfair or allegedly favours elder siblings. They stated that the name of the stranger alluded to by the Protestor was a technical error made in the scanning process and had no effect on the proceedings. They also denied his claims that they had undervalued the estate.
8. The Application was canvassed by way of written submissions. Both parties filed their submissions. The same has been carefully considered.

Issues for Determination

9. Having carefully considered the application, the several affidavits filed by the parties, and their respective submissions, I find that there are three issues for determination;
 - a. Whether the Protestor should be added as an administrator
 - b. Whether the Court should distribute the estate herein in terms of the mode of distribution proposed in the Administrators' Summons for Confirmation
 - c. Whether the challenges pointed out by the Protestor should be considered or upheld
10. Before I delve into the three issues identified above, I am inclined to address the question of whether the Protestor should be included in the list of beneficiaries. In his Protest, the Protestor had prayed this court to order that he be included in the list of beneficiaries. However, this issue has already been resolved. The Administrators acknowledged that the Protestor is a beneficiary of the estate and stated that they will include him in the list of the beneficiaries.



Whether the Protestor should be added as an administrator

11. On appointment of administrators, the relevant provision is Section 71 (2) (a) (b) of the [Law of Succession Act](#). The Section provides as follows;

“71. Confirmation of grants

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered;”

12. The Court in [In re Estate of Francis Omuzee Khasindu \(Deceased\)](#) (Succession Cause 15 of 2010) [2024] KEHC 3534 (KLR) (22 March 2024) (Ruling) interpreted the above section in the following terms;

18. Let me start by considering confirmation of administrators. It is handled in Section 71(2)(a)(b) of the [Law of Succession Act](#).... Confirmation of administrators is about whether they were properly appointed, that is through a process that was not defective or attended by the ills of fraud, concealment of matter and misrepresentation. I guess that it should also be about whether the administrators had sufficient interest in the estate, to justify their appointment. Where their appointment was proper, the next consideration is whether they administered the estate in accordance with the law. This, no doubt, would require an account, by the administrators, of the steps they took, upon their appointment, with respect to the administration of the estate, leading up to the application for their confirmation and distribution of the assets. The next consideration should be whether, on account of their previous handling of the estate, and their personal circumstances, they would administer the estate in accordance with the law, were they to be appointed.

19. Section 71 (2) (a) (b) gives pointers on how the Court should handle the situation, in case it is satisfied that the appointment was proper, and the administration was in accordance with the law, and the administrators appeared like they would administer the estate in accordance with the law after confirmation, and also where the Court appears not to be satisfied. Section 71 (2) (a) addresses the case where the court is satisfied of the 3 items, it may go ahead and confirm the administrators. Section 71 (2) (b) deals with whether there is no satisfaction, the court would not confirm the administrators.

13. I have looked at the Protestor’s application dated 22nd July, 2024 and his affidavit of Protest dated 17th July, 2024. In both pleadings, he does not question the manner in which the current administrators



were appointed. He does not seek their removal but rather wants to be included as one of them. Nonetheless, I have looked at the pleadings to assure myself that the said administrators were properly appointed. They stated in their replying affidavit that they were appointed through a unanimous endorsement of all the beneficiaries, including the Protestor. The Protestor did not controvert the said averments.

14. Based on the said averments and the fact that they were uncontroverted, I am satisfied that the appointment of the Administrators was proper as per the law. I am also satisfied that the Administrators have so far administered the estate in accordance with the law. I thereby confirm their appointment.
15. The Protestor wants to be added as an administrator. Concerning this request, it was upon the Protestor to justify why he should be added in that capacity. *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR, the Court expounded on the instances where an additional administrator can be appointed. It held as follows;

“(11) There are however situations where an additional administrator should be appointed. For instance, where there is a resulting trust, a sole surviving administrator is required to apply for an additional administrator to be appointed which failing the court will appoint on its own motion. Similarly, where the intestate is polygamous, death of one of the administrator may require a replacement for purposes of the house he represented. Or for a good cause and in the best interest of all persons concerned the court may appoint an additional administrator of an estate. This is in discretion under section 66 of the *Law of Succession Act*. Therefore, there is no complete prohibition of appointing another administrator in addition to a surviving administrator or administrators.”

16. It was upon the Protestor to adduce evidence and prove that the current Administrators were unable to safeguard his interests. He was under an obligation to show that his proposed addition was for a good cause and in the best interest of all persons concerned.
17. In my view, the Protestor did not discharge this burden. He did not provide evidence to show that the administrators had sidelined him in the administration. In addition, the administrators stated in their affidavit that the Protestor is directly involved in the collection of rental proceeds from the estate and that he has been receiving the same as a joint account holder of a family account into which rental proceeds are deposited into. The Protestor did not controvert this.
18. The administrators also stated that the Protestor attended the meeting where the decision on the administration and management of rental proceeds was made. They produced a copy of the minutes taken during the alleged family meeting. The document shows that the Protestor was in attendance. He did not controvert this. The upshot is that this Court rejects his prayer to be added as an administrator. He has neither demonstrated that his proposed addition is for a good cause and in the best interest of all persons concerned, nor has he demonstrated the Administrators’ inability to protect his interests as a beneficiary to the estate.

Whether the Court should distribute the estate herein in terms of the mode of distribution proposed in the Administrators’ Summons for Confirmation

19. Concerning the mode of distribution, the other beneficiaries agreed that both administrators should hold the listed assets in trust for the rest of the beneficiaries. The Protestor is opposed to the proposed mode of distribution. He stated that the assets should be distributed equally among the children of



the Deceased and each beneficiary is entitled to a 1/7th of the entire estate. In other words, he wants his share now and does not want the Administrators to hold it for him. This Court is being invited to determine which of the two modes of distribution should prevail.

20. In determining this question, the Court associates itself with the observations of the Court in *In re Estate of David William Kigumi Kimemia (Deceased)* (Succession Cause 217 of 2003) [2024] KEHC 4069 (KLR), where the Court faced a similar question and stated as follows;

25. The Protester has also challenged the Administrators' proposal, as a mode of distributing the estate, to hold some of the properties in trust for the family. The Protester has deponed that he is the eldest son of the deceased and is over 40 years old and wonders why and how his younger siblings want to hold property in trust for him. I, too, am at a loss on this choice of mode of distribution adopted by the Administrators. The essence of confirmation of a Grant is to fully distribute an estate amongst the beneficiaries and thus bring a Succession Cause to a closure. Unless where the law stipulates, such as where the beneficiaries or some of them, suffer from some kind of incapacity such as being below the majority age (minors) or suffering from mental incapacity, unless the beneficiaries agree by consent, I find no reason why Administrators would insist on holding property in trust for a sane and adult beneficiary against his will. The Administrators have not disclosed the properties are to be held in trust pending what event and for how long. Allowing the Administrators to hold the properties in trust, particularly indefinitely, will mean that the distribution to be made herein will be inconclusive. That would be a clear recipe for eruption of disputes in future and which means that the beneficiaries shall perpetually be before this Court for litigation. I therefore decline that proposal by the Administrators to hold the properties in trust."

21. In the instant case, the Administrators have not disclosed the properties are to be held in trust pending what event and for how long. I agree with the above authority that allowing the Administrators to hold the properties in trust, particularly indefinitely, will mean that the distribution to be made herein will be inconclusive. For these reasons, I decline that proposal by the Administrators to hold the properties in trust. In the circumstances of this case and in view of the orders outlined thereunder, I reserve my comments for the third issue for determination.

Disposition

22. These are the final orders of the court;

a. The determination of the Summons for Confirmation of Grant dated 11th March, 2024 is hereby deferred to enable the Administrators file a fresh proposed mode of distribution. Such fresh mode of distribution shall be guided by the following directions;

1. The Administrators shall obtain Valuation Reports giving the values of the respective properties/assets listed in the Affidavit filed in support of the said Summons for Confirmation. The Administrators shall then rely on the Valuation Reports to prepare and submit a proposed mode of distribution that is based on equality and/or equity in distribution of properties/assets amongst the beneficiaries. Such Valuation and the fresh proposed mode of distribution shall be filed in Court and served upon the Protestor within a period of sixty (60) days.



2. Since the beneficiaries are all adults, and to avoid further protracted litigation or further disputes, no property/asset shall be held in trust by the Administrators for any beneficiary or the family and all the properties/assets shall therefore be fully, conclusively, and finally put forward for distribution.
3. Costs of the Valuation referred to above and/or any other expense arising from or incurred in connection thereto shall be paid from the estate.

23. Each party shall bear own costs of this application.

24. Mention on July 29, 2025 to confirm compliance and for further directions.

25. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 3RD DAY OF JUNE, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Githinji Advocate for the Petitioners

Ms. Mwangi, Advocate holding brief for Mr. Mbugua Advocate for the Protestor

