



REPUBLIC OF KENYA



In re Estate of Gatundu Wanjagi alias Edward Gatundu Wanjagi (Deceased) (Succession Cause 1665 of 2002) [2025] KEHC 11030 (KLR) (Family) (25 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1665 OF 2002
PM NYAUNDI, J
JULY 25, 2025
IN THE MATTER OF THE ESTATE OF GATUNDU WANJAGI
ALIAS EDWARD GATUNDU WANJAGI (DECEASED)**

BETWEEN

JENNIFER WANJIKU GATUNDU 1ST APPLICANT

MARY NYAMBURA GATUNDU 2ND APPLICANT

AND

WANGUI GATUNDU 1ST RESPONDENT

JAMES MWANGI GATUNDU 2ND RESPONDENT

RULING

1. Before Court for determination is summons dated 18th December 2024 filed by Jennifer Wanjiku Gatundu and Mary Nyambura Gatundu (hereinafter referred as the applicants/ beneficiaries) against Wangui Gatundu and James Mwangi Gatundu (hereinafter referred as the respondents/ administrators). They seek the following orders;
 1. Spent.
 2. That this Honourable Court do order for the appointment of an estate agent to be agreed by the parties to collect rent for the Land Title No. L.R No. 36/7/494 Eastleigh and all dividends from Kihumo house in Nairobi where the deceased owned shares and to deposit the same in an account in the joint names of Jennifer Wanjiku Gatundu and James Mwangi Gatundu as joint administrators of the deceased estate pending the Confirmation of the Grant and distribution of the deceased's estate.



3. That the Honourable Court be pleased to compel Mr. James Mwangi Gatundu to produce a full and accurate account of all the dealings in respect of the rental income generated from Land Reference No. 36/7/494 Eastleigh from 1st April 2009 to date and all the dividends from Kihumo House Nairobi.
 4. That costs of this application be in the cause.
 5. The costs of this application be awarded to the applicants.
2. The summons was premised upon Articles 35 and 40 of the Constitution of Kenya, 2010, Section 45 and 83 of the Law of Succession Act, Cap 160 of the Laws of Kenya and Rules 49 and 73 of the Probate and Administration Rules and was supported by the Affidavit of even date sworn by the 1st applicant.
 3. The application is unopposed. The 2nd Respondent did not file a Replying Affidavit or written submissions.
 4. The 1st Applicant avers that she is a co administrator of the estate alongside James Mwangi Gatundu. Their mother Wangui Gatundu who was also an administrator is now deceased. The judgment of 5th February 2019 stated that the administrators and the beneficiaries of the estate were to meet and agree on the mode of distribution however, they have never met. That the 2nd Respondent, James Mwangi Gatundu has been collecting rent from Land L.R No. 36/7/494 Eastleigh and dividends from Kihumo house in Nairobi singlehandedly and does not give an account of the same since April 2009. She argues that the monthly rental income is more than Kshs. 500,000/-. She averred that she asked the 2nd Respondent for a meeting but he declined to meet with her. She argued that if the orders sought are not granted, the estate will continue being wasted.

Background

5. This matter relates to the Estate of Gatundu Wanjagi alias Edward Gatundu Wanjagi who died intestate on 19th October 2001. Wangui Gatundu, John Wanjagi Gatundu and James Mwangi Gatundu in their capacity as wife and sons of the deceased petitioned for grant of letters of administration intestate which was issued to them on 1st April 2009. Subsequently, the grant was confirmed on 26th May 2010. On 5th February 2019 revoked the grant and issued a new fresh Grant to Grace Wangui Gatundu, James Mwangi Gatundu and Jeniffer Wanjiku Gatundu and directed that the administrators present a fresh summons for confirmation and any aggrieved party to file affidavit of protest.
6. The Respondent alongside Wangui Gatundu (now deceased) filed summons for confirmation dated 12th February 2020. The Applicant did not sign a consent and therefore it is deemed she does not support the summons.
7. She has instead filed the application seeking preservation of the estate and presentation of accounts by her co administrator.
8. It is only the applicant who has complied with the directions to file written submissions, her submissions are dated 18th June 2025.

Applicant's Submissions.

9. Relying on the decision of Tabitha Gacheri Kirimi & Others v Pauline Muthoni Laban, Meru High Court Succession No. 22 of 2019, the applicants submitted that this court has the power to preserve and protect the estate of the deceased where there are disputes between the beneficiaries.



10. She further submitted that as an administrator of the estate, the 2nd Respondent has a duty under Section 83 of the Law of Succession Act to give a full and accurate account of the dealings of the estate. She sought to rely the decision in Kiambu High Court Succession Cause No. E008 of 2022 *in the matter of the Estate of Stephen Murathi Muiruri (Deceased)*.

Analysis and Determination

11. Having considered the application, the affidavits and the submissions on record, the issue for determination is whether the application is merited.
12. The 2nd Respondent has been accused of collecting rent singlehandedly and using it for his personal use. He has not filed a replying affidavit or any response to deny the allegation against him.
13. The grant is yet to be confirmed and therefore no one can claim entitlement to the assets of the estate, including the rental income. It is in the interests of the estate that the income be safeguarded and the respondent provide an account of the rental incomes received to date, which will be discounted from his share and any other beneficiary who has benefited, at the point of distribution
14. The powers and duties of personal representations are set out at 83 of the Law of Succession Act as follows:
83. Personal representatives shall have the following duties –
- a. to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - d. to ascertain and pay, out of the estate of the deceased, all his debts;
 - e. within six months from the date of the grant, to produce to the court 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;
 - f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - g. within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
 - h. 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;
 - i. to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any



interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

15. In the end, the application dated 18th December 2024 is merited and is allowed on the following terms;
- i. The Respondent will within 45 days file accounts of his dealings with the estate and rental income from 1st April 2009 to date.
 - ii. The Administrators will open a joint interest account within 14 days, in the event that the respondent fails to cooperate within 14 days of the account opening being deposited with him, the Deputy Registrar will execute the forms on his behalf.
 - iii. The rental income of the Estate to be deposited into the joint account opened under (ii) above, effective rent falling due on 30th July 2025.
 - iv. All tenants will deposit the rent into the account so opened.
 - v. The Applicant will file her affidavit of protest within 14 days to the summons for confirmation. Leave is granted to the Respondent to file further affidavit if necessary within 7 days of service of the affidavit of protest.
 - vi. The matter will be mentioned on 15th October 2025 to confirm compliance and take further directions
 - vii. If the Respondent fails to comply the Applicant at liberty to move the Court for revocation of the grant.
 - viii. Costs of the Application shall be in the Cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NAIROBI
THIS 25TH DAY OF JULY, 2025.**

P. M. NYAUNDI

JUDGE

In the Presence of:

Gachuhi for Applicant

Fardosa Court Assistant

