



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Ndichu Gacheru alias Ndicho Gacheru alias Ndichu Gacheru (Deceased)
(Succession Cause 700 of 2004) [2025] KEHC 9842 (KLR) (Family) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9842 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 700 OF 2004
PM NYAUNDI, J
JULY 4, 2025**

RULING

1. The ruling relates to two Applications. The first is dated 6th June 2023 and is presented under Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and seeks the following orders-
 - a. That the Honourable Court be pleased to terminate the trusteeship created vide the confirmation of grant dated 8th November 2004 and rectified on 9th May 2011
 - b. That this Honourable Court be pleased to order the 1st respondent to immediately transfer to the applicant a portion measuring 1.38 Ha being his share in Nyandarua/ Tulaga/ 132 (6.9 Ha)
 - c. That this Honourable Court be pleased to order the 1st respondent to immediately transfer to the Applicant a portion measuring 0.508 Ha being his share in LR 12930 Naivasha (2.032 Ha)
 - d. That this Honourable Court be pleased to grant the Applicant any other relief as the Court may deem fit
 - e. That the costs of this Application be provided
2. In summary, the Applicant Alex Ndungu Ndichu, wishes that the trusteeship be terminated as he is now an adult and the administrator transmit to him his share of the estate.
3. The second Application is dated 8th March 2024, it is presented by the administrators, Mary Wanjiku Ndichu and Anne Muthoni, they seek the following orders-
 1. That the Grant of Letters Administration issued on 13/5/2004 and an amended certificate of confirmation of grant dated 9/5/2011 issued to Mary Wanjiku Ndichu and Anne Muthoni Ndichu be further amended in the following terms;



- a. That court be pleased to issue an order substituting the name of Anne Muthoni with those of Grace Wairimu Ndichu and John Kamau Ndichu as administrator of the estate.
 - b. That the court be pleased to issue an order that the remaining properties of the estate of the deceased be distributed equally to all the beneficiaries of the estate herein.
 - c. That the costs of this application be in the cause herein.
4. The application was supported by the Affidavit of even date and a supplementary affidavit dated 25th April 2025.
 5. The Respondent did not file a Replying Affidavit, but has filed submissions in response to the application.
 6. The applicants aver that the certificate of confirmation should be amended because the existing administrators were appointed when a majority of the beneficiaries were below eighteen years old. Since they have attained the majority age, there is need to remove Anne Muthoni Ndichu as an administrator and add Grace Wairimu Ndichu and John Kamau Ndichu. They argued that some of the properties were sold off to take care of the children of the deceased. One of the properties was sold and proceeds given to Alex Ndungu Ndichu (the Respondent). That the remaining properties should be distributed equally among the beneficiaries of the estate.
 7. Both Applications were canvassed via written submissions, I have taken note of the respective submissions.
 8. Although the Alex Ndungu Ndichu challenges the application dated 8th March 2024, I note that he is one of the Beneficiaries who has signed the 'Consent to Summons for further amendment of Grant of Letters of Administration intestate and the Amended Certificate of Confirmation of Grant' dated 8th March 2024 accompanying the Summons.
 9. Be that it may, I am obligated to consider the application on its merits. The Law does not require an administrator to give reasons when they decide to step down from administering the estate, the only caveat is to require that they provide an account of their management of the estate up to the moment of their retirement so as to safeguard the estate and the interest of the beneficiaries.
 10. With regards to the proposed alteration to the mode of distribution, the Administrators ask that the estate of the deceased be distributed equally among the beneficiaries. Paragraph 13 of the further affidavit sworn 25th April 2025 sets out the 'current status of the estate'.
 11. In the absence of a proposed mode of distribution that clarifies how the administrators propose to redistribute the estate, I am unable to grant the orders sought. Accordingly, I will defer my ruling on the application dated 8th March 2024 to allow the Administrators provide an account of the management of the estate to date and further to provide a schedule of the proposed administration.
 12. With regard to the application dated 6th June 2023, the Certificate of Confirmation of Grant of 9th May 2011, shows that the 1st Administrator holds the subject property in trust for herself and in trust for the named beneficiaries. This is in accordance with Section 35 of the *Law of Succession Act*, that guarantees to the surviving spouse of a deceased person a life interest that only terminates on the death of the spouse or remarriage (if a widow), Hon. Musyoka J in *Tau Katungi v Margrethe Katungi & another* [2014] eKLR pronounced on it thus,



The effect of section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children's right to the property crystallises upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income, she would be the person entitled exclusively to the income so generated.

Accordingly, since the widow is still alive and has not remarried, her life interest in the property is yet to be terminated.

13. *In re Estate of Samuel Michael Ndirangu (Deceased)* (Succession Cause 65 of 2018) [2022] KEHC 10656 (KLR) (5 August 2022) (Judgment) the Court cited the decision in Tau Katungi (*supra*) and stated that the life interest confers limited rights to the surviving spouse of the intestate estate. The surviving spouse does not enjoy absolute ownership of the property. She cannot dispose of the property without the consent of all the adult children and the court. Where there is rental income due to the estate, the surviving spouse does not need to account for it.
14. On account of the foregoing the application of 6th March 2023 is dismissed, the rights of the applicant to the property will crystallise when the life interest of the 1st Administrator terminates.
15. The matter will be mentioned before the Deputy Registrar on 23rd September 2025 to confirm that
 - a. The Administrators have compiled and submitted report in accordance with Section 83(h) of the *Law of Succession Act*.
 - b. Have filed further affidavit with proposed mode of re-distribution of the estate alongside requisite consents.
16. Owing to relationship between the parties, there shall be no order as to costs.
17. Each party granted leave to appeal within 30 days from the date hereof.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 4th DAY OF JULY, 2025.

P. M. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Macharia holding brief for Mrs. Fundi for Applicants

Nairegi for Respondents

Fardosa Court Assistant

