



REPUBLIC OF KENYA



In re Estate of Gerald Muturi Maina (Deceased) (Succession Cause 949 of 2011) [2025] KEHC 9514 (KLR) (Family) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 949 OF 2011
HK CHEMITEI, J
JULY 3, 2025**

BETWEEN

**EUNICE WAIRIMU MUTURI 1ST APPLICANT
WASHINGTON MUCHIRI MUTURI 2ND APPLICANT
GRACE WAITHERA MUTURI 3RD APPLICANT
ANTONY MURATHI MUTURI 4TH APPLICANT
ELIZABETH WANJIKU MUTURI 5TH APPLICANT**

AND

**NICKSON MWANGI MUTURI 1ST RESPONDENT
CATHERINE NYAMBURA MUTURI 2ND RESPONDENT**

RULING

1. This ruling relates to the summons for review dated 29th August, 2024 filed by Washington Muchiri Muturi seeking for orders that:
 - 1) The honourable court be pleased to review, vary and/or set aside its ruling and order made on 17th February, 2023.
 - 2) The honourable court do make such orders as it may deem fit in the circumstances and in the interest of justice.
 - 3) The costs of this application be in the cause.
2. The application is based on the grounds on the face thereof and supported by affidavit sworn by Washington Muchiri Muturi on 29th August, 2024.



3. He avers inter alia that on 17th February, 2023, the court issued a ruling on their application dated 30th June, 2022. Dissatisfied with the outcome, they filed a notice of appeal. They subsequently applied for a stay of execution, which was dismissed on 6th May, 2024. A further stay application was lodged in the Court of Appeal on 15th May, 2024 but was later withdrawn on 27th August, 2024.
4. The Applicants argue that the ruling contains clear and correctable errors which fall within the court's review jurisdiction under Section 80 of the Civil Procedure Act, as well as its inherent powers under the Succession Act. Acting on legal advice, they have filed the present application to avoid being held in contempt for failing to comply with orders they view as legally defective.
5. They are seeking a review of the court's orders issued on 17th February, 2023, citing an apparent error on the face of the record. Specifically, the order requires them to render accounts from 1st April 2014, whereas the Respondents had only sought accounts from 14th October, 2011 up to the date of the order. The Applicants argue that the period post 1st April, 2014 falls outside the estate's administration, which had already been completed by 31st March, 2014. Thus, the court ordered an accounting for a period during which their roles as administrators had ceased.
6. They maintain that their obligation to account only extends from 14th October, 2011 to 31st March, 2014, during which time the estate was under administration. They are unable to comply with the court's order regarding the period after 1st April, 2014, as the deceased's properties had by then been distributed to the beneficiaries.
7. That following confirmation of the grant, the 1st Applicant ceased managing the distributed properties and businesses. In accordance with the rectified certificate of confirmation, all funds in the deceased's accounts were distributed. A company named Gatana Investments Limited was incorporated, with the 2nd, 3rd, 4th, and 5th Applicants and the Respondent as equal shareholders and directors, in line with the confirmed grant.
8. He deponed further that from 1st April, 2014, the 1st Applicant managed the distributed assets with the authority of the beneficiaries - not as an estate administrator. Decisions made regarding the properties and businesses were by mutual agreement through regular virtual meetings, and he reported to the beneficiaries, not the court. The Applicants, along with the respondent, have since maintained cordial relations and jointly made decisions, including purchasing L.R. No. 209/2820/16, Park Road Estate, Nairobi, which was registered under Gatana Investments Limited.
9. The Applicants, he swore fully understand their legal duty to account for the estate's administration between 14th October, 2011 and 31st March, 2014. However, that is not what the High Court ordered. The estate was distributed on 1st April, 2014, with only pending court cases and trust-held properties remaining, as detailed in the rectified certificate of confirmation.
10. They argue that the court erred by issuing an order not sought by the Respondents and contrary to succession law. Without intervention by the court, they risk being cited for contempt for failing to comply with orders beyond their legal mandate. They also face prejudice, particularly the 1st applicant, who stopped managing the distributed properties after 1st April, 2014.
11. The application is opposed vide replying affidavit sworn by Nickson Mwangi Muturi and Catherine Nyambura Muturi on 22nd September, 2024.
12. They aver inter alia that following the delivery of the ruling by Lady Justice Maureen Odera on 17th February, 2023 - now the subject of the present review application - the Applicants sought a stay of



- execution through an application dated 2nd March, 2023, pending their intended appeal. However, on 6th May, 2024, the same judge dismissed the application with costs.
13. In that application, the Applicants had raised objections to being compelled to render accounts from 1st April, 2014 onwards, arguing that their role as administrators had ended upon confirmation of the grant. These same issues form the basis of the current application for review.
 14. Further that after their stay application was dismissed, the Applicants moved to the Court of Appeal via Civil Application No. E226 of 2024. That application was dismissed on 27th August 2024 by Justices Musinga, M’Inoti and Gachoka, who found that the Applicants had failed to obtain leave to appeal the ruling of 17th February, 2023. Subsequently, the Applicants withdrew their notice of appeal, which was otherwise liable to be struck out for lack of leave. They have now returned to this court, raising the same arguments, under the guise of review based on an alleged error apparent on the face of the record.
 15. The issues now raised were fully ventilated and decided upon in the earlier stay application, culminating in the ruling of 6th May, 2024. Accordingly, this matter is res judicata and must be dismissed for that reason alone.
 16. Moreover, there is no error apparent on the face of the record in the ruling of 17th February, 2023. The Applicants raise two main arguments:
 - (1) that the court granted prayer 3 of their application dated 30th June, 2022, but issued a different order than that sought, and
 - (2) that their administrative duties ended on 1st April, 2014, and thus they cannot be compelled to render accounts beyond that date.
 17. They deponed that on the first point, prayer 3 of their application sought accounts from 14th October, 2011 to the present. In their own submissions, the Applicants acknowledged they had received their share of the estate funds in 2014. The judge, therefore, ordered accounts from 2014 onwards. If the Applicants now claim this was an error, it would, if anything, be to their benefit to be ordered to account from 2011 rather than 2014. Thus, there is no prejudicial error - let alone one apparent on the face of the record.
 18. On the second point regarding the termination of their mandate on 1st April, 2014, there is likewise no error. The certificate of confirmation of grant dated 1st April, 2014 (rectified on 28th January, 2015) stipulates those 21 properties were to be transferred into a company jointly owned by named beneficiaries. Additional properties were to be held in trust by the 1st Applicant and proceeds from several court cases were to be shared equally among the deceased’s children.
 19. Despite this, 10 years later, none of the 21 properties have been transferred and remain in the deceased’s name. The 1st and 2nd Applicants continue to manage and control these properties as administrators.
 20. That the 2nd Applicant has admitted in multiple affidavits (including those dated 18th July, 2022 and those filed in the Court of Appeal) that he remains in charge of the properties and businesses, with assistance from the 3rd applicant. Further admissions include that he supervised the construction of a commercial building using funds generated from these properties.
 21. The company, Gatana Investments Limited, was incorporated in 2014 for purposes of transferring these properties to the beneficiaries. The 1st and 2nd Applicants, however, have failed to effect the transfers as required under the grant. This fact is also acknowledged in the 1st Applicant’s affidavit dated 18th July, 2022.



22. Thus, the claim that their administrative duties ended in April 2014 is directly contradicted by their own actions and affidavits. Administration continues until the actual transfer of estate assets to the beneficiaries is completed. The issuance of a certificate of confirmation of grant alone does not signify distribution; it merely authorizes specific transfers, which must then be executed by the administrators. Only upon completion of those transfers can the estate be deemed fully distributed, and the administrators discharged.
23. The Applicants have also filed a summons dated 23rd June, 2022 seeking a major variation of the original distribution plan, which contradicts their claim that distribution was completed in 2014.
24. That the Applicants' arguments do not amount to errors apparent on the face of the record which ought to be clear and self-evident, requiring no elaborate argument to establish. If the Applicants disagree with the ruling, the appropriate course is an appeal, not review.
25. The Applicant has filed written submissions dated 16th December, 2024 placing reliance among others on the following:
- a. *Uhuru Highway Development Limited vs Central Bank of Kenya & 2 others* [1996] eKLR where the court stated that res judicata exists in the following circumstances:
- i. A previous suit in which the matter was an issue;
 - ii. The parties were the same or litigating under the same title;
 - iii. A competent court heard the matter in issue; and iv. The issue has been raised once again in a fresh suit.”
- b. *Njue Ngai & Anor* [2016] eKLR where the court pronounced itself as follows:-
- “ 16. An issue may then arise from that section as to whether interlocutory proceedings, appeals or civil proceedings other than suits commenced by Plaintiff are covered under the section or under the general principle of res judicata. The Uhuru Highway Development vs Central Bank of Kenya & 2 others [1996] eKLR (supra) which is relied on by the appellant, extensively discussed the issue and particularly whether the principle of res judicata applied to an application heard and determined in the same suit. In other words, whether a matter of interlocutory nature decided in one suit can be subject of another similar application in the same suit. This court held that the principle was applicable and that Section 7 was an aspect of the general principle, stating thus: ... there must be an end to applications of similar nature; that is to say further, wider principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation.”
26. The Respondents have filed written submissions dated 17th January, 2025 placing reliance on the following:-



- a. In *re Estate of Francis Omuzee Khasindu (Deceased)* (Succession Cause No. 15 of 2010) [2024] (KLR) (22 March 2024) (Ruling) where the court pronounced itself as follows: “Let me start by considering confirmation of administrators. It is handled in section 71 (2) (a) (b) of the [Law of Succession Act](#). Under these provisions, the court has to confirm the administrators, to pave way for them to go on and distribute the estate, following confirmation of the proposals that they would have placed before the court.”

Analysis And Determination

27. I have gone through the application, responses thereto and the rival submissions filed by the parties and the cited authorities.
28. I think and based on the issues advanced by the Applicant the first port of call is the question of whether or not the parties had raised these issues in the earlier applications and therefore as suggested by the Respondent the issue was res judicata
29. The principle of res judicata was well articulated in [John Florence Maritime Services Limited & Another V Cabinet Secretary For Transport And Infrastructure & 3 Others](#) [2021] eKLR where the court stated:-
- “ 81. We reaffirm our position as in the Muiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.
- (82) If we were to find that the doctrine does not apply to constitutional litigation, the doctrine may very well lose much of its legitimacy and validity. We say this in light of the fact that constitutional tenets permeate all litigation starting with the application of Article 159 of the [Constitution](#) in both civil and criminal litigation, and its application now embedded in all procedural statutes. Further Article 50 on right to fair hearing and Article 48 on access to justice are fundamental rights which every litigant is entitled to. Such a holding may very well lead to parties, that whenever they need to circumscribe the doctrine of res judicata, they only need to invoke some constitutional provision or other.
- (86) We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. For res judicata to be invoked in a civil matter the following elements must be demonstrated:
- a) There is a former Judgment or order which was final;
 - b) The Judgment or order was on merit;
 - c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
 - d) There must be between the first and the second action identical parties, subject matter and cause of action.”



30. Based on the above decided authority I find that the Applicants have not raised anything new. The decisions by Odero J of 6th May 2024 in my view dwelt largely on the issues the Applicants are seeking to review.
31. I respectfully do not find any reason why they should not comply with the orders of the court for the period they were directed to. Even for argument's sake they are unable to comply with the period they claim is outside their mandate then the least they can do is to comply with the period they think they are comfortable with.
32. As deponed by the Respondents there is so much which the Applicants have not done in compliance with the grant. For example, they have not transmitted the properties to the joint company they agreed to incorporate. This alone does not permit them to suggest that they have completed their mandate.
33. In any event they are required to file final accounts to this court before the file is closed indicating that they have fully discharged their mandate.
34. I think and find truly so that the Applicants have continued to litigate in this court and the Court of Appeal probably to waste much time in the estate and for reasons best known to them. This cannot continue and they must as a matter of priority conclude the estate or pave way for other administrators to be appointed so as to complete the exercise.
35. Judge Odero in her ruling of 6th May 2024 was categorical on this when she stated that:

“The estate property does not belong to the administrators for them to utilize as they wish. The administrators are but trustees and their relationship with the beneficiaries is fiduciary in nature. They are accountable to the court and to the beneficiaries regarding their administration of the estate...”
36. This court has nothing much to add. The application is otherwise dismissed with costs to the respondent and to be met by the Applicants.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 3RD DAY OF JULY 2025.

H K CHEMITEI

JUDGE

