



**In re Estate of Joseph Githae Ngatia (Deceased) (Succession Cause
240 of 1990) [2025] KEHC 9632 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 240 OF 1990
SM MOHOCHI, J
JULY 3, 2025**

IN THE MATTER OF THE ESTATE OF JOSEPH GITHAE NGATIA (DECEASED)

BETWEEN

CATHERINE WAMBUI GICHURU 1ST APPLICANT

MARY WANGARE GICHURU 2ND APPLICANT

AND

MARTHA WANJIRA GITHAE EXECUTOR

RULING

1. On the 26th January 2024, this court rendered a ruling paving way on the conclusion of this probate that had been pending for thirty-four (34) years. In the Ruling this court observed that the share of David Gichuru Githae shall be held by the executor in trust for the beneficiaries. The observation stem from the fact that David Gichuru Githae was polygamous and since his demise no personal representative had been appointed.
2. The late David Gichuru left behind two widows and twenty-three (23) beneficiaries who according to the Applicants are all adults.
3. The undated Notice of Motion in essence seeks two things, that the Applicants now be registered as the trustees of the late David Gichuru share of his inheritance and secondly that the distribution be reopened as the same was unfair.

Respondent's Case

4. Martha Wanjira Githae the surviving widow/administratrix did not file written submissions but filed grounds of opposition and further deponed that, the application is a backdoor attempt to review prayer 3 of the ruling of this court delivered on 26th January, 2024.



5. That, the application is prematurely brought as the Respondent's life interest in the said property is not extinct
6. That, the prayers 3 is untenable since the Respondent has no power to break a trust created by this Court in accordance with the deceased's wishes.
7. That the applicants have not made a case for cancellation of title as provided under Section 80 of the [Land Registration Act](#) to warrant granting the orders sought.
8. That, the court has not been properly approached by the Applicants and the said application should be dismissed forthwith.
9. That the Court orders made herein were as per the Will of the deceased and granting the orders sought in the application will be akin to the court sitting on appeal on its own decision since no application for review of that decision has been brought forth.
10. That, the title that she hold in trust for the 1st house was not acquired by fraud or mistake but issued pursuant to an order of the court vide certificate of rectification of grant dated 21 October, 2022.
11. That, the prayer for cancellation of title cannot be granted in the circumstances and the applicants have improperly approached court.
12. That, as such it is only fair that the application be dismissed.

Analysis & Determination

13. I have considered the Application, and submissions filed and the grounds of opposition. There is no dispute that the Respondent, a widow (the Executor) retains her life interest.
14. Martha Wanjira Githae formally indicates that she is holding the share of the deceased David Gichuru Githae in trust and in fulfilment of the last wishes of the deceased.
15. Section 81 of the [Law of Succession Act](#) provides for Powers and duties of personal representatives to vest in survivor on death of one of them

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him”.

16. Section 83(i) Provides the duties of Executors to include;

“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”.

17. This court has the inherent power under Rule 73 of the [Probate and administration Rules](#), to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.



18. The Grounds of opposition dated 17th March 2025 are hereby dismissed on the basis that the law of succession is intended to facilitate a smooth conclusion of the affairs of the deceased and that the court cannot be hamstrung without a solution.
19. The Deceased Bequeathed in his will, the share to the 1st House to the executor David Gichuru Githae (deceased) and the widow was to have a life-interest and thereafter the property was to be registered in the name of the executor David Gichuru Githae (deceased).
20. I now note that, the Applicants the two widows of David Gichuru Githae (deceased) are now duly appointed as personal representatives of the estate of the deceased executor David Gichuru Githae (deceased) in SPM's Court Olkalau Succession cause No E065 of 2024 in a letters of Administration dated 22nd October 2024.
21. The Court recalls the Respondent deponing earlier that once a Title deed is issued and all the beneficiaries of the 1st house come to agreement on who their share shall devolve to then she shall have no issue/objection to transfer the land to them.
22. David Gichuru Githae (deceased). Left behind the Two Applicant(s) widows and over twenty-two (22) Listed beneficiaries most of whom are all adults agitating for their share.
23. Now that there is clarity as to who the personal representatives of David Gichuru Githae (deceased) are, I am of the considered opinion that no prejudice shall be occasioned is the said property was to be registered in the joint names of Martha Wanjira Githae, Catherine Wambui Gichuru and Mary Wangare Gichuru to be distributed to the dependants of David Gichuru Githae (deceased) upon the demise of Martha Wanjira Githae.
24. It thus follows that share of 6½ acre land Bequeathed to David Gichuru Githae (deceased) shall be available for distribution upon the extinction of the life-interest of the Executor.
25. The Attempt by the Applicants to reopen distribution of the deceased estate is dismissed and parties are reminded that this is a probate under a written will.
26. To assuage the concerns that the Respondent shall appropriate their share I accordingly, in furtherance to the conclusion of the probate I hereby direct as follows;
 - i. The Application dated January 28, 2025 is partially found to be of merit.
 - ii. The Property Known as Nyandarwa/sabugo/9394 shall be registered in trust in the joint names of Martha Wanjira Githae, Catherine Wambui Gichuru and Mary Wangare Gichuru to be distributed to the dependants of David Gichuru Githae (deceased) upon the demise of Martha Wanjira Githae.
 - iii. The Executor shall cause the execution of the necessary transfer and registration forms for Nyandarwa/sabugo/9394 within the next ninety (90) days from the date of this decision.
 - iv. That the Applicant shall bear the Costs of the Transfer and registration.
 - v. Parties shall bear their own costs, this being a family matter.
27. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 3RD DAY OF JULY 2025.

S. MOHOCHI

JUDGE

