



REPUBLIC OF KENYA



**In re Estate of Des Raj Gandhi (Deceased) (Succession Cause 769 of 1988)
[2025] KEHC 13181 (KLR) (Family) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13181 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 769 OF 1988

HK CHEMITEI, J

SEPTEMBER 25, 2025

IN THE MATTER THE ESTATE OF DES RAJ GANDHI (DECEASED)

BETWEEN

SATYA BHAMA GANDHI 1ST APPLICANT

ROHIT KUMARI GANDHI 2ND APPLICANT

AND

SANJAY GANDHI 1ST ADMINISTRATOR

NEELA GANDHI 2ND ADMINISTRATOR

REENA MANOJ KUMAR SONI 3RD ADMINISTRATOR

**AS CO-ADMINISTRATORS AD LITEM FOR THE ESTATE OF THE LATE
TRILOK NATH GANDHI (DECEASED)**

AND

ABSA BANK KENYA PLC GARNISHEE

MIDDLE EAST BANK KENYA LIMITED GARNISHEE

BANK OF INDIA (KENYA) LIMITED GARNISHEE

AND

BRIJ GANDHI INTERESTED PARTY

PRAMILA GANDHI INTERESTED PARTY

KIRAN GANDHI INTERESTED PARTY

ARJUN GANDHI INTERESTED PARTY

MANOHAR LATA GULATI INTERESTED PARTY



SAROJ WASON INTERESTED PARTY
CHAMPA KHANNA INTERESTED PARTY

RULING

1. This ruling relates to the application dated 23rd April, 2025 filed by the Applicants, Satya Bhama Gandhi and Rohit Kumari Gandhi, seeking for orders that:
 1. Spent.
 2. Pending hearing and determination of this application and further directions of the Court, an interim stay of execution be ordered limited with respect to the 1st Garnishee ABSA Bank Kenya PLC.
 3. The honourable court be pleased to issue clarification on the consent order that was adopted on 3rd April, 2025, and give appropriate final directions in the court's discretion over the garnishee proceedings in light of material intervening changes in the earmarked ABSA account No. 0451xxxxxx.
 4. The 1st Garnishee ABSA Bank Kenya PLC be awarded the costs of this application and of the garnishee proceedings.
2. The application is based on the grounds thereof and supported by affidavit sworn by Milkah Maina on 23rd April, 2025 the Applicant's legal counsel.
3. She avers that on 19th December 2024, this Honourable Court issued a garnishee order nisi in the present matter, attaching, among others, account number 0451xxxxxx held in the name of the Judgment Debtor with the 1st Garnishee, Absa Bank Kenya PLC. The court further scheduled the garnishee application for inter partes hearing on 25th January, 2025. In compliance with the garnishee order nisi, Absa earmarked funds in the said account and subsequently filed and served a replying affidavit sworn by Michael Waswa on 16th January, 2025. The affidavit annexed a statement showing the account balance stood at Kshs. 152,327.85 as at 19th December 2024, when the order nisi was issued. This amount was insufficient to satisfy the decretal sum and interest then claimed at Kshs. 253,680,236.87.
4. Further at the hearing on 25th January, 2025, all parties and garnishees appeared before the court, which gave directions and timelines for the exchange of responses and filing of written submissions on the pending applications, including the garnishee application. The matter was fixed for mention on 23rd June, 2025 for highlighting and to set a ruling date.
5. Meanwhile and in the intervening period, the Judgment Debtor and Decree Holder negotiated and reached a consent 20th March, 2025, which was adopted ex parte by this Honourable Court on 3rd April, 2025. Absa neither participated in nor was made aware of these negotiations or the adoption of the consent.
6. Subsequently, counsel for the estate of the Judgment Debtor threatened execution against Absa, necessitating urgent judicial intervention for the reasons that on 7th April, 2025, shortly after the adoption of the consent, a sum of Kshs.78,973,904.05 was credited into the earmarked account. As of the date of filing the instant application, the account balance was Kshs.79,123,731.90.



7. On 22nd April 2025, counsel for the estate of the deceased Judgment Debtor visited Absa's Hurlingham Branch and threatened contempt proceedings to compel payment of the decretal sums under the consent order.
8. The consent order did not designate Absa as the obligor responsible for settling the decretal sum. The advocates only presented limited letters of administration ad litem to the bank, and later a substantive grant of representation, to support their demand for payment from the deceased's estate account. However, no garnishee order absolute has been issued following the consent, and Absa remains legally bound to preserve the estate's assets in strict compliance with the Law of Succession Act and subject only to this Honourable Court's directions.
9. She went on to state that Absa has no beneficial interest in the funds held in the earmarked account save for its claim of Kshs.50,000/= in costs assessed under Order 23 Rule 10 of the Civil Procedure Rules for its participation in these proceedings.
10. Accordingly, Absa respectfully seeks clarity and appropriate directions from this Honourable Court in light of the threats of contempt, the absence of any garnishee order absolute, and the lack of a substantive grant of representation. Absa undertakes to comply fully with any further orders or directions issued by the court.
11. The application is opposed vide replying affidavits sworn by Sanjay Gandhi and Satya Bhamu Gandhi on 17th June, 2025 and 19th June, 2025 respectively.
12. Satya Gandhi avers inter alia that contrary to the averments in the Applicant's affidavit, this Honourable Court did not issue an order nisi. Instead, the Applicants and Respondents reached a compromise, thereby rendering the garnishee applications previously filed moot. This fact alone undermines the very foundation of the present application.
13. More critically he went on, the Applicant now seeks a stay of execution yet the Civil Procedure Rules, and specifically Order 42 Rule 6, a stay of execution may only be granted where there is a pending appeal. These provisions do not apply to probate and administration matters, which are governed by their own distinct rules and procedures. On this ground alone, the Applicant's application is fundamentally flawed, incompetent and should be dismissed.
14. On seeking clarification of the consent order he deponed that the same was not necessary as the Applicant would have simply sought a review of the same if indeed it was ambiguous.
15. Satya Bhamu Gandhi on the other hand and in opposition to the application avers inter alia that he is a duly appointed co-administrator of the Estate of the late Des Raj Gandhi, together with Rohit Kumar Gandhi, pursuant to a consent order and letters of administration issued on 19th January, 2023 in place of the late Trilok Nath.
16. That from the outset, the dispute relates to an admitted debt owed by the Respondents, as executors of the deceased's estate, to the present estate. Under Section 86 of the Law of Succession Act (Cap 160), debts owed by an estate must be paid before any legacies. In garnishee proceedings, a garnishee's sole duty is to admit or deny liability for a debt owed to the judgment debtor and to pay such debt if admitted.
17. A consent resolving the entire dispute can only be entered between the principal parties - in this case, the administrators and the respondents. Once the first consent dated 20th March, 2025 was adopted as an order of the court on 3rd April, 2025, the Respondents were at liberty to designate any of the



garnishees to settle the consent sum of Kshs. 52,164,379. Absa had no right to refuse payment if it held sufficient funds to satisfy the consent.

18. Further in its replying affidavit of 16th January, 2025, sworn in response to the garnishee application dated 18th December, 2024, Absa admitted holding Kshs.152,327.85 in the deceased's account but failed to disclose or produce statements for related fixed deposit accounts as expressly required by Prayer 2 of the application, despite requests by counsel. Absa has now admitted to holding Kshs.79,123,731.90 following the maturity and crediting of a fixed deposit into the deceased's current account. This concealment amounts to perjury and contempt of the clear orders of 19th December, 2024, which is a criminal offence.
19. Without the first consent compelling disclosure, Absa would not have revealed the true position of the funds. He deponed that he reserves the right to institute contempt proceedings against Absa for its conduct, noting this is not the first occasion on which ABSA has attempted to circumvent lawful court orders in this matter. Among the four garnishees, only ABSA holds sufficient funds to satisfy the entire consent amount in a single payment, rendering it unnecessary to pursue partial payments from the other banks.
20. Further he deponed that contrary to Absa's position that a garnishee order absolute was required, the administrators maintain that no such order was necessary once the first consent was adopted as an order of the court, as compliance would have discharged all garnishees. Absa has frustrated efforts by both administrators and respondents, through their advocates, to ensure compliance.
21. Without prejudice to the foregoing, and given Absa's claims that the first consent neither expressly named it as the paying entity nor referred to the grant of probate, the principal parties executed a second consent dated 12th May, 2025. This expressly names Absa as the bank to pay the consent sum and notes the date of grant of probate. It is therefore just and expedient that the second consent be adopted as an order of the court, and that Absa be directed to comply.
22. The second consent further provides for the lifting of garnishee nisi orders issued on 19th December, 2024 against Absa immediately upon its adoption, eliminating the need for a garnishee order absolute. It also discharges the garnishee nisi orders issued on 28th September, 2023 and 19th December, 2024 against the other three garnishees - Standard Chartered Bank, Middle East Bank Kenya Limited and Bank of India (Kenya) Limited.
23. As Absa has already liquidated the fixed deposit and holds Kshs.79,123,731.90 in the deceased's current account, it should be compelled to pay the consent amount within seven days of adoption of the second consent. Any further delay by Absa is highly prejudicial to the principal parties, who have worked diligently to reach an amicable settlement and bring this long-standing matter to conclusion.
24. The present application is therefore an abuse of process, intended to frustrate the compromise reached by the principal parties and delay payment of funds rightfully belonging to the beneficiaries of the estate. He therefore prays that the application be dismissed with costs, and that the second consent be adopted as an order of the court to enable expeditious conclusion of this matter.
25. Both parties have not filed written submissions to all the applications.

Analysis and Determination

26. I have read the application carefully and the responses thereto. I think the fundamental issue is whether it is necessary for this court to clarify the consent entered by the parties herein.



27. I have read the same and respectfully it is unambiguous and I do not see any need for any clarification. The big question is whether the Applicant ought to have participated in the consent when the rest of the parties were drafting. The answer is that it was not necessary. The banks including the Applicants came by way of garnishee proceedings. They had no interest in the matter except to answer on whether or not they had the funds claimed by the Respondents.
28. The Applicant answered that as at the time of issuing the decree it had a sum in the account amounting to Kshs.152,327.85 and after the consent the sum rose to Kshs.79,123,731.90. It also admitted that it had no interest in the said account save for its legal fees.
29. If that is the case, I agree with the Respondents that the application to the extent that the consent was validly endorsed by the affected parties does not concern the Applicant or at all. It has to simply comply. The funds in the account belongs to the parties and so whether the decree is nisi or absolute is not for the Applicant to question but for the real protagonist to evaluate and question if necessary.
30. Much has been said about reviewing or setting aside consent judgement or orders by various courts and it is worth citing some of them here.
31. In *Hirani v. Kassam* [1952] 19 EACA 131, the Court of Appeal held:

“It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court on *J. M. Mwakio v Kenya Commercial Bank Limited Civ Apps 28 of 1982 and 69 of 1983*. In *Purcell v F. C. Trigell Ltd* [1970] 3 All ER 671, Winn LJ said at 676:

“It seems to me that, if a consent order is to be set aside, it can only be set aside on grounds which would justify the setting aside of a contract entered into with the knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

32. Further, the Court of Appeal in *Intercountries Importers and Exporters Limited v Teleposta Pension Scheme Registered Trustees & 5 others* [2019] eKLR observed that, “... The principles that appertain to setting aside of a consent order are well established in a line of cases including *Brooke Bond Liebigs vs Mallya* (1975) EA where Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances e.g. on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.” And in the case of *Flora N. Wasike vs Destino Wamboko* [1988] eKLR Hancox JA cited Setton on Judgments and orders (7th Edition) vol 1 page 124, and reiterated that;

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them... and cannot be carried or discharged unless obtained by fraud or collusion or by an agreement



contrary to the policy of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a court set aside an agreement.”

The Judge A. K. Murgor thus concluded that, “... Essentially, the above cited authorities are clear that a consent order will only be set aside if it can be demonstrated that it was procured through fraud, non – disclosure of material facts or mistake or disclosure of material facts or mistake or for a reason which would enable a court set it aside.”

33. In light of the foregoing, I find that the application is simply a time-wasting exercise in this long-protracted matter spanning almost 37 years. I also note that the adoption of the consent will settle other pending applications which would have delayed the conclusion of this matter.
34. In the premises the court orders that:
 - (a) The application is unmeritorious and it is hereby dismissed with costs to the Respondents.
 - (b) The consent order dated 12th May 2025 is hereby adopted as the order of the court.
 - (c) The applicant ABSA Bank Kenya PLC is hereby directed to comply with the said order within seven (7) days from the date herein.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE

