



**In re Estate of the Late Wilson Gathungi Macharia (Deceased) (Succession Cause 2357 of 1995) [2024] KEHC 5561 (KLR) (Family) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5561 (KLR)

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

**SUCCESSION CAUSE 2357 OF 1995**

**PM NYAUNDI, J**

**MAY 3, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE  
WILSON GATHUNGI MACHARIA (DECEASED)**

**BETWEEN**

**TITUS WAITHAKA GATHUNGU ..... 1<sup>ST</sup> APPLICANT**

**ISAAC MACHARIA GATHUNGU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PAUL NJUGUNA GATHUNGU ..... 1<sup>ST</sup> RESPONDENT**

**JAMES MUCHIRI GATHUNGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling relates to 2 Applications. The first is the Application dated 17<sup>th</sup> April 2023 and is presented, under Sections 45,47,79,82,83 (e), (g), and (h) of the Law of Section Act and Rules 49 and 73 of the Probate and Administration Rules, by the Applicants herein and seeks the following orders-
  1. Spent
  2. That the Partial Certificate of Confirmation of Grant made on 8<sup>th</sup> June 2009 be rectified by removing the name of Jackson Maina Gathungu who is now deceased and substitute the same with the name of Paul Njuguna Gathungu so as to conform with the further rectified grant of Letters of Administration Intestate issued on 18<sup>th</sup> September 2017.
  3. That an order do issue compelling and/ or directing the Respondents herein, namely Paul Njuguna Gathungu and James Muchiri Gathungu, as the co- administrators of the Estate of the deceased herein to sign and /or execute all the transfer documents of the properties of the



deceased set out in the Partial certificate of Confirmation of Grant made on 8<sup>th</sup> June, 2009 so as to convey the ownership thereof to the beneficiaries and in default, the Deputy Registrar of this Honourable Court be authorised to execute the said transfer documents in place of the Respondents.

4. That an order do issue compelling and/ or directing the Respondents herein who are in possession and control of the deceased commercial / rental properties known as Nakuru/ Municipality/ Block5/117, Nakuru/ Municipality/ Block 2/386 ( 1/3 share) and L.R. No. 377/279/97 to render an account of all rental income/ proceeds from the date of the death of the deceased, to wit, 27<sup>th</sup> July 1995 to date for purposes of distribution of the same to the Beneficiaries in terms of the said Partial Certificate of Confirmation of Grant and/ or as this Honourable Court may direct.
  5. That this Honourable court be pleased to review and / or vary the order that the 2<sup>nd</sup> House compensates the 1<sup>st</sup> house with the equivalent of Kshs 7,585,000/- out of the sale proceeds of the said properties as in the Partial Certificate of Confirmation of the Grant and the same be substituted with an order that the said sum be recovered and/ or deducted from the 50 % share of the 2<sup>nd</sup> House from the said rental income/ proceeds collected by the Respondents from the date of the demise of the deceased and the balance therefore be released to the Applicants.
  6. That M/S Ngotho Commercial Agencies Ltd and/ or M/S Muigai Commercial Agencies be appointed as independent and / or individual selling agents of the properties known as parcel Nos. Nakuru/ Municipality/ Block5/117, Nakuru/ Municipality/ Block 2/386 ( 1/3 share) and L.R. No. 377/279/97 and be given and/ or allowed unhindered access to the same for purposes of conducting the would- be purchasers for viewing and inspection so as to facilitate the sale.
  7. That pending the sale of the said properties, a temporary injunction order do issue restraining the said Respondents, their servants, agents and or any person whomsoever deriving authority from them from interfering in any manner whatsoever with the mandate given to the selling agents herein.
  8. That this Honourable Court be pleased to direct the Respondents herein who are in possession and custody of the Original Title documents of the said properties known as Nakuru/ Municipality/ Block5/117, Nakuru/ Municipality/ Block 2/386 ( 1/3 share) and L.R. No. 377/279/97 to deposit the same with the Deputy Registrar of this Honourable Court or such other party as this Honourable Court may direct, within Fourteen [14] days of issuance of orders hereof so as to facilitate the sale of the same.
  9. That in default of Order ( 8) herein above, this Honourable Court do issue an order directing the Chief Land registrar and/ or the Land registrar as the case may to dispense with the production of the said original title documents of the said properties known as Nakuru/ Municipality/ Block5/117, Nakuru/ Municipality/ Block 2/386 ( 1/3 share) and L.R. No. 377/279/97 and to proceed with the registration of the transfers in respect thereto the purchasers in furtherance of the orders herein.
  10. That costs of this Application be in the Cause.
2. The Respondents oppose the Application vide Replying Affidavit sworn by JAMES MUCHIRI GATHUNGU sworn on 8<sup>th</sup> September 2023. The Respondents concede to the Rectification of the Certificate of the Confirmation of Grant as prayed and state that the delay in administering the estate was occasioned by the death of one of the Administrators and not by any fault on his part as alleged.



3. He states that he is prepared to render accounts for the rental income of the commercial properties known as Nakuru/ Municipality/ Block5/117, Nakuru/ Municipality/ Block 2/386 ( 1/3 share) and L.R. No. 377/279/97 on condition that the Applicants also render a full account of the commercial property known as L.R. No. 209/2820/1 as the rental income of this asset is 3 times that of the assets for which he is called upon to account.
4. The Respondent then proceeds to render ‘accounts’. It is his contention that he has had to meet the liabilities owed by the estate out of his own pocket. These include payment of land rates, payment of medical expenses in respect of outstanding bills to Kenya Revenue Authority and cost of repairs and refurbishments of the assets. It is his averment that the estate should refund him these amounts totalling Kshs 13, 986, 967.
5. In addition it is deponed that the Respondent utilised some of the rental income to pay for the medical expenses of Beth Mugure Gathungu (widow of 1<sup>st</sup> House) between 2006 and 2018 amounting to Kshs 4,689,636.
6. He avers that he does not have custody of the title documents as alleged. He is opposed to the appointment of an agent to manage the properties and in the alternative offers that the Court allow the Administrators to jointly appoint management agencies, if they deem the appointment of one to be necessary.
7. On the sale of the assets he is agreeable to Nakuru/ Municipality/ Block 2/ 386 (1/3 Share) being sold to the joint shareholders and the proceeds be shared equally among the 1<sup>st</sup> and 2<sup>nd</sup> Houses.
8. On the other 2 properties he proposes that Nakuru/ Municipality/ Block5/117 be retained by the 1<sup>st</sup> House in exchange of them relinquishing compensation for the sum of Kshs 7,585,000 and their share in L.R. No. 377/279/97.
9. In addition, the Respondents filed the Application dated 24<sup>th</sup> October 2023 which is the 2nd Application under Consideration. The Application is presented under Sections 47, 79, 80, 82, 83 and 92 of the Law of Succession Act and Rules 63 of the Probate and Administration Rules and seeks the following orders-
  1. Spent
  2. Spent
  3. Spent
  4. That this Honourable Court be pleased to order the Unclaimed Financial Assets Authority to pay to the Nairobi Hospital a sum of Ksh 1,200,511/- being the outstanding hospital bills incurred by Mrs. Beth Mugure Gathungu in furtherance of the court orders made on 20.9.2018 and 29.10.2018
  5. That this Honourable Court be pleased to order that the expenses incurred by James MUCHIRI GATHUNGU being the costs of major renovations and repairs over the Nakuru/ Municipality/Block/117 and Nakuru/ Municipality/ Block 2/ 386(1/3 share) respectively totalling the sums of Kshs. 13, 986,967/- were incurred in his capacity and in the course of performance of his duties as an administrator of the estate towards preservation of the estate of the deceased and thus should be borne by the estate of the deceased
  6. Any other orders that this Honourable Court may deem to be just and expedient
  7. The costs of this application be provided for.



10. In his affidavit sworn on 24<sup>th</sup> October 2023, the 2<sup>nd</sup> Applicant avers that the partial certificate of confirmation made on 8<sup>th</sup> June 2009 the commercial properties known as Nakuru/ Municipality/ Block/117 and Nakuru/ Municipality/ Block 2/ 386(1/3 share) were left by the Court undistributed and the Court ordered that they be managed and administered by the administrators from the 1<sup>st</sup> House.
11. In support of his claim for compensation he avers that he carried out repairs commissioned by the deceased prior to his death valued at Kshs 2, 779, 380 and has presented documentation in support of the expense.
12. He further contends that in 2018, the Nakuru County Government condemned the property on Nakuru/ Municipality/Block/117 that he therefore commissioned work towards rehabilitating the building the total cost being Kshs 12,111,000/-. The total amount owed to him by the estate was therefore Kshs 13,986,967.
13. That this amount is reflected in the accounts that he filed in Court. The Applicant further asserts that the estate should pay to Nairobi Hospital the sum of Kshs 1,200,511 being outstanding medical bills incurred by Mrs. Beth Mugure Gathungu, now deceased.
14. It is therefore his submission that these liabilities ought to be settled before the estate is distributed.
15. The Unclaimed Financial Assets Authority responded to the Application annexing statement of the assets that they hold on account of the deceased and their response setting out the preliminaries that must be complied with to enable them make the payment to the administrators. It is averred by them that once the Administrators comply with their regulations, they will release the money they are holding.
16. The Respondents opposed the Application and filed a replying affidavit and Grounds of Opposition. The Application was opposed by the Respondents on the following grounds-
  1. The Application is fatally defective, incompetent bad in law
  2. The Application amounts to a grave abuse of the process of the Court
  3. The Affidavit sworn in support of the Summons do not make out a case to warrant the orders sought
  4. The Application is intended to circumvent and/ or defeat the Respondent's Summons dated 17<sup>th</sup> April, 2023 in which the respondents are seeking for, inter alia, an for the Applicant(sic) to render accounts in respect of the commercial estate, namely Nakuru/ Municipality/ Block 5/ 117; Nakuru/ Municipality/Block 2/386 (1/3 Share) and L.R. No. 377/279/9
17. The Replying Affidavit further expounds on this and challenges the assertion that the assets in question were left undistributed and asserts that the certificate of partial confirmation is clear that the assets were to be shared equally between the beneficiaries of the 1<sup>st</sup> and 2<sup>nd</sup> Houses and that the 2<sup>nd</sup> House compensate the 1<sup>st</sup> House with the sum of Kshs7,585,000/- .
18. With regard to the claim for compensation the respondents aver that James Muchiri Gathungu had no authority or legal capacity whatsoever to incur any costs on behalf of the estate without first obtaining the consent of the other beneficiaries of the estate and that the Application seeks to sanction his intermeddling with the estate.
19. It is submitted that the Administrators were appointed in 2005 and the Applicant ought not have acted unilaterally to undertake the alleged renovations for which he claims a reimbursement.



20. It is stated that the medical expenses for Beth Mugure Gathungu were the subject of the Court order issued on 20<sup>th</sup> September 2018 and the same is payable out of the share due to the 1<sup>st</sup> House from money held in the bank account.
21. It is stated that it is 14 years since the Confirmation of the Grant and the estate is yet to be distributed.
22. Both parties have complied with the Courts directions that the Application be canvassed by written submissions and have filed their respective submissions.

### **Summary Of The Applicants' Submissions**

23. The Applicant (Application dated 17<sup>th</sup> April 2023) identifies the following as the issues for determination
  - i. Whether the defendants should be compelled to complete the distribution of the Estate as prayed in prayers 1,2,5,6,7,8 and 9 of the Application
  - ii. Whether the Respondents should be compelled to render an account of all rental income/ proceeds from the date of the death of the deceased to date for the purpose of distribution of the same to the beneficiaries as prayed in prayer 3 of the application
  - iii. Whether the Court should vary the order that the 2<sup>nd</sup> House compensate the 1<sup>st</sup> House with the equivalent of Kshs 7, 585, 000/- out of the sale proceeds and the same be recovered and/ or deducted from the share of the 2<sup>nd</sup> House from the said rental income as prayed in prayer 4 of the application
24. On the 1<sup>st</sup> issue it is submitted that the Respondent does not oppose the granting of the prayers. The Applicants contend that the Administrators be compelled to execute the necessary documents for transmission of the estate as their recalcitrance is evidenced by the delay in transmitting the estate and relies on the decision in *Re Estate of George Gikundi (Deceased)* [2021] eKLR.
25. On the 2<sup>nd</sup> issue, it is submitted that Section 83(g) and (h) are couched in mandatory terms, and that contrary to the requirements of the *law of succession Act*, the Respondents have gone on a separate tangent in running the affairs of the estate. Reliance is placed on the decision in *Re Estate of Makokha Idris Khasabuli [Deceased]* [2019] eKLR for the assertion that the Applicant was obligated to work in tandem with the other Administrators.
26. Reference is made to the decision in *re Estate of Mohammed Makau (Deceased)* [2019] eKLR for the submission that the actions of the Applicant amount to intermeddling.
27. On the 3<sup>rd</sup> Issue it is argued that the Court should vary the Consent order requiring that the 2<sup>nd</sup> house compensate the 1<sup>st</sup> House as the 1<sup>st</sup> House has flouted the terms of the Consent, continuing to benefit from the estate to the exclusion of the 2<sup>nd</sup> House and by making irregular withdrawals, including paying the medical expenses of the widow of the 1<sup>st</sup> House from the estate.
28. It is submitted that the actions of the Respondent necessitate the varying of the Consent order.
29. In Response vide his submissions the Respondent argues the Application is for dismissal. It is submitted that the reason given for failure to transmit the estate is plausible and exonerates the Respondent and therefore no need for him to be compelled to execute documents of transmission.
30. On whether they should render accounts, the Respondent submits that he has now submitted accounts except for the property in Ol Kalou township over which he has had no control. He submits



further that the Applicants were required to render full accounts for the rental income deriving from the commercial property known as L.R. No. 209/2820/1.

31. The Respondent submits that it was not possible to act in conjunction to prepare the statements as the relationship between the houses has deteriorated to that level and it is within the knowledge of the Applicants that the Respondents have been managing both the Nakuru/ Municipality/ Block/5/117 and Nakuru/ Municipality/ Block/2/386 (1/3 share).
32. The Applicants submits that he is entitled to reimbursement from the estate as he incurred the renovation and repair costs on behalf of the Estate and in his role as Administrator of the Estate. He relies on the decision in Re Estate of SMM ( deceased) [2021] eKLR.
33. With regards to the medical expenses incurred by Mrs. Beth Mugure Gathungu, it is submitted that the same were settled pursuant to the order of the Court made on 20<sup>th</sup> September 2018 and 20<sup>th</sup> October 2018. It is submitted that the Applicant is not entitled to a review of the orders of the court with regard to the compensation of Kshs 7,585,000. The respondent however makes a counter proposal on the variance of the certificate of partial confirmation of grant as detailed in his replying affidavit.

### **Respondents'/ Applicants' Submissions**

34. The Respondent (Applicant in Application dated 24<sup>th</sup> October 2023) argues that his Application is merited as he has been the manager of the 2 assets from 27<sup>th</sup> July 1995 and after the making of the partial grant. It is submitted that the Accounts submitted are unchallenged. It is submitted that owing to hostilities between the family it was not possible to act in consultation with the 2<sup>nd</sup> House.
35. The Applicant and respondent in this Application identifies 3 issues for determination
  1. Whether the application is incompetent, defective or otherwise an abuse of court process
  2. Whether the actions of the Applicant amount to intermeddling in the affairs of the deceased
  3. Whether the Applicant is entitled to the reliefs sought
36. It is submitted the Application is an abuse of Court process as defined in the Court of Appeal decision in Muchanga Investments Ltd V Safaris Unlimited (africa) Ltd & 2 Others [2009] eKLR. It is submitted that the application is grounded on a blatant falsehood on the interpretation of the Certificate of partial confirmation of Grant. It is argued that the 2<sup>nd</sup> respondent has assumed the role of sole administrator and this is tantamount to intermeddling. The Respondent reiterates his submissions in support of his Application dated 17<sup>th</sup> April 2023 and submits that the Application is for dismissal.

### **Analysis And Determination**

37. The following are the issues I deem for determination
  1. Whether the Certificate of partial Confirmation of 8<sup>th</sup> June 2009 should be rectified
  2. Whether the Administrators should be compelled to finalise Administration of the Estate as per Certificate of Partical Confirmation of Grant
  3. Whether prior to transmitting shares to the beneficiaries as per the Certificate of the Partial Confirmation of Grant the Administrators should
    - a. Consider and compensate the 2<sup>nd</sup> respondents for payments made by him towards the repair and renovation of the properties; Nakuru/ Municipality/ Block/5/117 and Nakuru/ Municipality/ Block/2/386 (1/3 share).



- b. Vary the Certificate of partial confirmation of grant to
    - i. Deduct the sum of Kshs 7,585,000 from the 50% share of the 2<sup>nd</sup> House from the rental income / proceeds collected by the 2<sup>nd</sup> Respondent from the date of the demise of the deceased to date
    - ii. So that the 1<sup>st</sup> House relinquishes its shares in the Ol Kalou property L.R. No. 377/279/97 and the compensation of Kshs 7,585,000 and retains Nakuru/ Municipality/ Block 5/117
  4. Whether the Court should appoint an agent to act as an independent agent to sell the properties listed in Schedule 3 of the consent dated 8<sup>th</sup> June 2009.
  5. Whether the Court should direct that the Administrators render accounts of the rental income of LR No. 209/ 2820/ 1 and Nakuru Municipality Block 5/117.
  6. How should the outstanding bill relating to Mrs Beth Mugure Gathungu be settled.
  7. Who should pay costs
38. On the 1<sup>st</sup> issue, the parties are agreed that the Grant having been rectified following the death of the Administrator and appointment of his replacement, the 1<sup>st</sup> Respondent, the Certificate of Partial Confirmation should be rectified to reflect the same.
39. Accordingly, that limb of the application is allowed.
40. On the 2<sup>nd</sup> Issue, whether the Administrators should be compelled to execute documents for transmission of the Estate, indeed the Court is vested with power by virtue of Section 47 of the Law of Succession Act to make Orders that ensure that the ends of justice are met as it provides
- The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient;...
- The issue is whether those orders are warranted in the instant case. I do not think so, it is evident that without rectifying the Grant as is happening now it was not possible to administer the Estate. The Court record also bears witness that there has been a multiplicity of Applications on the part of both houses. This limb therefore fails.
41. On the 3<sup>rd</sup> Issue, on whether the transmission of the estate and the shares of the respective beneficiaries should factor the claim by the Respondent to be compensated.
42. The answer to this question rests on the duties of a personal representative as set out in Section 83 of the Law of Succession Act to include;
- (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.”
43. It is clear that upon confirmation of Grant the Administrator is obligated to transmit the estate to the beneficiaries as per the certificate of confirmation of Grant. In the matter before me with regard to the assets in question, the Administrators were required to ‘share equally between all the said beneficiaries of the 1<sup>st</sup> house and the 2<sup>nd</sup> House provided that the 1<sup>st</sup> House is to be compensated with the equivalent of Kshs 7,585,000 by the 2<sup>nd</sup> House being the difference between the net assets distributed to the two houses respectively.
44. To fully appreciate this part of the Confirmed Grant reference must be made to the consent that is the basis of the partial confirmation of the grant.
45. The properties of the deceased were clustered into 3 schedules, the properties under Schedule 1 valued at Kshs 26, 045,000 to the 1<sup>st</sup> House. Properties under Schedule 2 valued at Kshs 36,630,000 to the 2<sup>nd</sup> House and properties under Schedule 3 to be shared equally and considering that the assets under Schedule 2 were of a greater value than those in schedule 1, in dividing the properties under schedule 3, the 2<sup>nd</sup> House to compensate the 1<sup>st</sup> house the difference which is Kshs 7,585,000.
46. That is the import of the Certificate of Partial Confirmation of grant. In Keeping with Section 83 (g), the Administrators were expected within 6 months from the date of the confirmation of the grant ‘...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.’
47. A reading of the Certificate it is evident that the 2<sup>nd</sup> Respondent was not to administer the estate without the participation of the co- administrators. The requirement of co administrators to act in consultation is an absolute and has no exceptions. That is why under Section 76, the law allows for revocation of grant where an administrator is not cooperative.
48. An administrator is only protected when he acts in accordance with the law. In this instance instead of proceeding to transmit the estate to the beneficiaries as identified in the Certificate of partial



confirmation the 2<sup>nd</sup> Administrators chose to independently manage the estate and enter into liabilities in respect of an estate that has been distributed without consulting the beneficiaries or the other Administrators. The law cannot provide him shelter.

49. The role of the Administrator post confirmation is limited to transmitting the assets as per the mode of distribution. That is all. The short of it, is that the 2<sup>nd</sup> respondent has no claim against the estate with regards to the repairs that he unilaterally commissioned. His claim, if legitimate lies, against the individual beneficiaries and not to be adjudicated before the Probate Court.
50. The above reasoning will also apply to the proposal to vary the Certificate so as to offset the Kshs 7,585,000 that the 2<sup>nd</sup> House should remit to the 1<sup>st</sup> House against the rental income collected by the 1<sup>st</sup> House. Vide her ruling of 17<sup>th</sup> November 2019, Hon Rawal LJ (as she then was) dismissed an application seeking to vary this Certificate of Partial confirmation and the consent from which it stems, when she observed

In short, I hold that the Partial consent in question does not contravene any provisions of the *Law of Succession Act* under the circumstances of this case, and that the Court is not shown any fraud, mistake or misrepresentation or any other sufficient cause so that it can be persuaded to grant the prayers sought.

51. The Learned Judge has captured it succinctly and the issues framed as b (i) and b (ii) must fail. There is no basis for varying the Order for compensation of the 1<sup>st</sup> house by the 2<sup>nd</sup> House.
52. On the 4<sup>th</sup> issue it is not the place of the Probate Court to appoint agents to sell the properties as proposed by the Applicant, the Administrators have by virtue of Section 83, the requisite tools to ensure that the Certificate of Partial Confirmation of Grant is implemented. The administrators ought to agree on an agent to manage the sale and appoint the agent.
53. The best that the Court can do is set timelines that push the parties forward, especially when they are reluctant to do so, and when pushed to the wire revoke the grant of the uncooperative administrator.
54. The 5<sup>th</sup> issue is whether the Court should direct the Administrators render accounts of the rental income of LR No. 209/2820/1 and Nakuru Municipality Block 5/ 117. The Consent on the partial distribution of the estate entered on 8<sup>th</sup> June 2009 and adopted by the Court on the same day required that

Accounts be taken of the rental income of Nyeri Municipality Block 1/37, L.R No. 209/2820/1 and Nakuru Municipality Block 5/117 be taken and submitted to this Honourable Court within thirty ( 30 ) days for purposes of ascertaining the amount thereof for distribution to the two houses equally

55. It follows therefore that the Court should call for these accounts and determine the share of the rental proceeds that each house is entitled to.
56. Regarding the outstanding medical bill of Mrs Beth Mugure Thande the widow of the 1<sup>st</sup> House. The Order of Muigai J on 20<sup>th</sup> September 2018 directed that this Bill be paid from the 50% share of the 2<sup>nd</sup> House in the money held at Standard Chartered Bank Limited. That money is currently held by the Unclaimed Financial Assets Authority.
57. The Unclaimed Financial Assets Authority have confirmed that they are prepared to release the assets of the deceased they hold upon fulfilment of their regulations by the Administrators, they have set these out.



58. In Conclusion, these will be the final orders of the Court

1. The Certificate of Partial Confirmation of Grant made on 8<sup>th</sup> June 2009 is rectified by removing the name of Jackson Maina Gathungu (now deceased) as Administrator and replacing him with Paul Njuguna Gathungu.
2. The Administrators to finalise transmission of the estate to all the beneficiaries within 120 days.
3. With regards to the Properties  
Nakuru Municipality/ Block 5/117; Nakuru Municipality/ Block 2/ 386 (1/3) Share and L. R. No 377/279/97,
  - i. the Administrators to sell the properties and share the proceeds equally among the beneficiaries (less the balance after the 2<sup>nd</sup> House has compensated the 1<sup>st</sup> House the sum of Kshs 7,585,000 and costs of the sale are met)
  - ii. To facilitate the sale, the Administrators will within 30 days, appoint an agent to manage the sale. In the event they are unable to agree on an agent jointly, the 2<sup>nd</sup> House will appoint an agent within 14 days. The Agent so appointed will initiate the process of selling the assets within 14 days of receiving instructions
  - iii. The surviving joint owners of the property Nakuru Municipality/ Block 2/ 386 shall have the first right of its purchase, provided that that sale must be concluded within 45 days of the offer being made.
  - iv. The 1<sup>st</sup> House shall have the first right to purchase the property Nakuru Municipality/ Block 5/117 provided that they must conclude the sale within 45 days of the offer being made.
  - v. The Administrators shall open a joint estate account to receive the money received from the sale and after meeting the costs related to the sale and paying the 1<sup>st</sup> house the sum of Kshs 7,585,000 shall distribute the balance equally to the beneficiaries as per the certificate of partial confirmation of Grant within 60 days of receipt of the money into the account.
4. In the event any Administrator fails and or declines to execute any document to facilitate the transmission and sale of assets as provided for under order (2) and (3) above within 21 days of delivery of those documents, the Deputy Registrar, Family Division is hereby authorised to execute the documents in the place of the non- responsive Administrator.
5. The Administrators shall submit full and accurate accounts of the rental income with regard to Nyeri Municipality Block 1/37, L.R No. 209/2820/1 and Nakuru Municipality Block 5/117 within 30 days. The matter will be mentioned before the Deputy Registrar Mediation on 15<sup>th</sup> May 2024 for appointment of a mediator who will in terms of the Consent of 8<sup>th</sup> June 2009 work with the parties to ascertain the rental income and define the distribution between the 2 houses equally. The Mediator at the first convening of the parties ensure that the parties have been appraised of the provisions of rules 28 as read with rules 29 of the Civil Procedure (Court Annexed Mediation) Rules, 2022.
6. The Administrators to secure the amounts held the Unclaimed Assets Financial Authority and deposit into the joint Estate Account within 45 days. The same to be shared equally between the parties after agreeing on the liabilities to be paid out of these funds. The Mediator



appointed under 4 above to also facilitate concurrence by the parties of the liabilities to be paid from these monies. The outstanding medical bills in relation of Mrs. Beth Mugure Thande to be paid out of the 50 per cent share due to the 1<sup>st</sup> house after liabilities are paid.

7. That each party will meet their own costs
8. The matter be mentioned on 10<sup>th</sup> September 2024 to confirm compliance and take further directions.

It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF MAY, 2024.**

**P M NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant



~~Succ 2357 OF 1995~~

