



**In re Estate of James Peter Gicharu Mbote alias James P Gicharu Mbote  
alias James Mbote alias James P Mbote (Deceased) (Succession Cause  
E594 of 2021) [2023] KEHC 17938 (KLR) (Family) (15 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17938 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE E594 OF 2021**

**MA ODERO, J**

**MAY 15, 2023**

**BETWEEN**

**JANE WANGECHI GICHARU ..... 1<sup>ST</sup> APPLICANT**

**MICHAEL MUCHUGIA GICHARU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FRANCIS KARIUKI NJIBU ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion application dated September 15, 2022 by which Jane Wangechi Gicharu and Michael Muchugia Gicharu seek the following orders:-
  - “1. Spent.
  2. That pending the hearing and determination of the objection to the confirmation of the grant of letters of administration to the estate of the deceased, the applicants be granted access to the deceased’s bank accounts, that is A/C No 0630191815409 at Equity Bank, A/C No 01109802090000042 Cooperative Bank, and A/C No 0001050006075 Post Office Savings bank.
  3. That any suitable orders be made.”
2. The Application which was premised upon Section 3A of the *Civil Procedure Act* Rules 45 and 47 of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the Affidavit of even date sworn by each Applicant. The other beneficiaries to the estate signed a consent dated September 16, 2022 to the application.



3. The Objector/Respondent Francis Kariuki Njibu, (the 1<sup>st</sup> Objector) opposed the application vide his Replying Affidavit. The 2<sup>nd</sup> and 3<sup>rd</sup> Objectors Margaret Njambi Mbote and Joyce Isabel Wambui (who are the sisters of the Deceased) also opposed the application through the Replying Affidavit dated December 29, 2022 Sworn by the 2<sup>nd</sup> Objector.
4. The matter canvassed by way of written submissions. The Applicants filed the written submissions dated January 16, 2023.
5. The 1<sup>st</sup> Objector relied upon her written submissions dated 1<sup>st</sup> February, 2023 whilst the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors relied upon their written submissions dated January 25, 2023.

## **Background**

6. The succession cause relates to the estate of the late James Peter Gicharu Mbote (hereinafter the ‘the Deceased’) who died intestate on August 16, 2020. A copy of the Death Certificate Serial Number 1015218 is annexed to the Petition for Grant of letter of Administration intestate dated March 29, 2021.
7. The Deceased was survived by the following persons:-
  - i. Jane Wangechi Gicharu - Widow
  - ii. Elizabeth Wairimu Gicharu - Daughter
  - iii. Martin Mbote Gicharu - Son
  - iv. James GM - Grandchild (Minor)
  - v. Charles Gichimu Gicharu - Son
  - vi. Michael Muchugia Gicharu - Son
8. The estate of the Deceased is as said to comprise of the following assets.
  - a. Dagoretti/Mutuini/1228
  - b. Dagoretti/Mutuini/1229
  - c. Dagoretti/Mutuini/1230
  - d. Dagoretti/Mutuini/1232
  - e. Shares in Oyster Bloom Limited
  - f. Equity Bank Account No0630191815409
  - g. Co-operative Bank Account No011098020900000042
  - h. Post Office Account No0001050006075
9. Following the demise of the Deceased Grants of letters of Administration was on September 29, 2021 made to Michael Muchugia Gicharu and Jane Wangechi Gicharu the Applicants herein/in their capacities as the son and widow of the Deceased.
10. On January 4, 2023 the 1<sup>st</sup> Objector Francis Kariuki Njibu (a nephew of the Deceased) filed a summons seeking revocation of the Grants which had been issued to the Applicants alleging that said Grants had been obtained through fraudulent concealments and non-disclosure by the Applicants of material facts. That Summons for revocation of Grant is yet to be heard and determined.



11. The 2<sup>nd</sup> Administrator/Applicant who is the widow of the Deceased herein then filed the application dated September 15, 2022 seeking to be granted access to the various Bank Accounts held in the name of the Deceased. The widow averred that she is ailing and in need of funds to cater for her medical care.
12. The Applicants depone that the objectors who are not beneficiaries to the estate have no valid claim against the estate of the Deceased. That their claim is in respect of their alleged share of the property known as LR No Dagoretti/Mutuini/326. The Applicants urge that the medical needs of the widow are pressing and cannot await determination of the Summons for revocation of Grant.
13. Opposing the application the Objectors assert that no evidence of any outstanding medical bills have been annexed to the application and neither have the Applicants indicated precisely how much money they wish to withdraw from the Deceased's Bank Accounts.
14. The objectors insist that LR No Dagoretti/Mutuini/326 was registered in the name of the Deceased to hold in trust for all his siblings.
15. That in the year 2008 the Government compulsorily acquired a portion of the suit land for the construction of a road. That the compensation was paid to the Deceased who failed to share the said compensation with his siblings. The objectors state that they have written to the National Lands Commission to find out how much money was paid to the Deceased as compensation.
16. The objector's position is that if the widow is granted access to the Bank Accounts held in the name of the Deceased then she is likely to withdraw the funds paid to the Deceased by the National Lands Commission which will cause irreparable loss to the objectors. However, the objectors are agreeable to an amount of Kshs 100,000/= being released to the widow to help her cater for her medical needs.

### **Analysis and Determination**

17. I have carefully considered the application before this court, the replies filed thereto as well as the written submissions filed by the parties. The Applicants have sought permission to access funds held in the Bank Account of the Deceased in order to withdraw funds to cater for the medical costs of the widow.
18. Rule 36 of the *Probate and Administration Rules* provide as follows:-
  - “(1) where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.
  - (2) ...
  - (3) Application for such a grant shall be by petition in Form 85 signed by the Applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Kakamega, Meru, Machakos, Eldoret and Bungoma registries”.
19. Therefore, the Applicants ought to have applied for a Grant Ad Colligenda Bona in under the terms of Rule 36. However, their application cannot be dismissed on that ground alone as the court is



very mindful of Article 159(d) of the *Constitution of Kenya 2010* which exhorts courts to administer substantive justice “without undue regard to procedural technicalities”.

20. It is claimed that the widow requires funds to pay medical bills and to cater for her medical treatment. Annexed to the application is a letter dated May 10, 2021 written by Dr Inkindi Maina of St Mary’s Mission Hospital indicating that the widow suffers from chronic illness and Hypertension. There is no invoice or medical bill attached indicating how much the patient is required to pay to St Mary’s Hospital or indeed to any other medical provider.
21. The Applicants have not in their applications specified how much they wish to withdraw from the Bank Account of the Deceased.
22. The Applicants cannot expect to be granted full carte blanche to access and run the accounts of the Deceased as they wish. If a specific amount is required for medical expenses then the amount must be specified and supporting documents tendered to the court.
23. The Bank Accounts of the Deceased now form part of the estate of the Deceased. The funds in those accounts cannot be withdrawn until the grant is confirmed and a mode of distribution agreed upon. It is only in very special circumstances that a party will be allowed to access funds held in the bank account of a Deceased person and even then, such access will only be granted where proper supporting documents are annexed. A letter merely stating that the widow suffers chronic illness will not suffice.
24. For the above reasons I find no merit in the present application. The same is hereby dismissed in its entirety.
25. This being a family matter each side will bear their own costs.

**DATED IN NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

