



**In re Estate of the Late Mary Mwaura also known as Mary Wambui Mwaura (Deceased)
(Succession Cause 181 of 2012) [2024] KEHC 14250 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 181 OF 2012
RN NYAKUNDI, J
NOVEMBER 15, 2024**

**N THE MATTER OF THE ESTATE OF THE LATE MARY MWAURA
ALSO KNOWN AS MARY WAMBUI MWAURA (DECEASED)**

BETWEEN

JUDY WANJIKU MWAURA APPLICANT

AND

ELIZABETH MURUGI MWAURA WEYA RESPONDENT

RULING

1. Before me for determination is originating summons dated 30th September, 2024 expressed to be brought under the provisions of section 47, 49 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and Order 37 of the Civil Procedure Rules. The applicant seeks orders inter alia: -
 - a. Spent
 - b. Pending the hearing and determination of this application, the Respondent be compelled to execute the claim forms for processing of unclaimed Safe Deposit No. SC 13B/16 reported by Absa Bank held at the unclaimed Financial Assets Authority (UFAA).
 - c. In default of prayer 2 above, the Deputy Registrar be directed to execute the claim forms for processing of the Unclaimed Safe Deposit No. SC 13B/16 reported by Absa Bank held at the Unclaimed Financial Assets Authority (UFAA).
 - d. The proceeds of the unclaimed safe deposit no. SC 13B/16 reported by Absa be distributed to all the beneficiaries in accordance with the amended Certificate of Confirmation of Grant dated the 18th April, 2024.
 - e. Costs of this application be provided for.



2. The application is based on grounds:
 - a. That on 23rd June, 2015, a certificate of confirmation of grant was issued and a schedule thereto of the distribution of the estate of the late Mary Mwaura also known as Mary Wambui Mwaura.
 - b. That on the 18th day of April, 2024 an amended certificate of confirmation of Grant was issued to include the unclaimed assets in the Absa Bank safe deposit Box under the deceased's name.
 - c. That the Respondent who is a Co-administrator has refused to execute claim forms for processing of the unclaimed safe deposit box No. 13B/16 reported by Absa Bank held at the Unclaimed Financial Assets Authority (UFAA).
 - d. That the other administrator have executed the Claim forms save for the Respondent who has willingly and intentionally refused/ignored to execute the claim forms despite frequent follow ups from the Applicants, Co-administrators, beneficiaries and UFAA offices.
 - e. That the Respondent continues to occupy and enjoy the benefits of the estate and the proceeds for Nine (9) years to the exclusion of the applicants and beneficiaries.
 - f. That it is in the best interest of justice that the prayers sought herein are allowed to allow distribution of the estate of the deceased in accordance with certificate of confirmation of Grant.
 - g. That the interested party has at all times been in occupation of the said land parcels from the year 1980 to date and have been enjoying quiet occupation thereof.

Analysis and determination

3. The history of this matter stretches back to June 23, 2015, when this court issued a certificate of confirmation of grant, meticulously setting out the distribution framework for the deceased's estate among the rightful beneficiaries. Subsequently, through investigations and disclosures made to the Unclaimed Financial Assets Authority (UFAA), it came to light that additional assets existed in the form of a safe deposit box at Absa Bank, which had not been initially included in the estate's inventory. This discovery necessitated an amendment to the original grant, resulting in the issuance of an amended certificate of confirmation of grant on April 18, 2024. This amendment was specifically executed to incorporate the contents of safe deposit box No. SC 13B/16, ensuring a complete and accurate representation of the deceased's estate.
4. The court has carefully examined the conduct of Elizabeth Murugi Mwaura Weya, who serves as one of the co-administrators of the estate. Despite her fiduciary obligations and the clear requirements of her role, she has persistently and without justification refused to execute the requisite claim forms that would facilitate access to the safe deposit box. This obstructive behaviour has persisted for an unconscionable period of nine years, during which multiple interventions have been attempted. The court notes with concern that various stakeholders, including the applicant, fellow co-administrators, beneficiaries, and officials from the Unclaimed Financial Assets Authority, have made numerous documented attempts to secure her cooperation, all to no avail. Her stubbornness has effectively created an administrative deadlock, preventing the proper execution of the estate's administration.
5. The *Law of Succession Act*, particularly sections 47 and 49, establishes unequivocal duties for administrators in their management of estates. These provisions impose a solemn fiduciary duty on administrators to act with utmost good faith, diligence, and in the best interests of both the estate and its beneficiaries. When examining the conduct of Elizabeth Murugi Mwaura Weya through this legal lens, it becomes manifestly clear that her actions or more precisely, her deliberate inaction stand in



direct contravention of these statutory obligations. Her persistent refusal to execute the claim forms represents not merely an administrative oversight but a fundamental breach of her fiduciary duties as an administrator. This conduct has effectively created an artificial barrier to the estate's proper administration, preventing the rightful distribution of assets among the beneficiaries and frustrating the clear intentions of both the deceased and the court's previous orders.

6. The principles of equity, which form the cornerstone of this court's jurisdiction in succession matters, are fundamentally opposed to allowing such deliberate obstruction to persist indefinitely. These principles, developed over centuries of jurisprudence, emphasize that equity will not suffer a wrong to be without a remedy. In the present case, the court is confronted with a situation where beneficiaries' legitimate expectations and legal rights are being frustrated by the unilateral and unjustified actions of one administrator. The amended Certificate of Confirmation of Grant dated April 18, 2024, which properly includes these newly discovered assets, represents the court's considered determination of the proper distribution of the estate. The continued obstruction of its implementation through administrative intransigence cannot be entertained by this court, as it would effectively render nugatory the court's own orders and undermine the fundamental principles of succession law.
7. Therefore, in the interests of justice and the proper administration of the estate, and having carefully weighed all relevant factors, this court hereby orders:
 - a. Elizabeth Murugi Mwaura Weya shall execute the claim forms for the unclaimed safe deposit box No. SC 13B/16 within fourteen (14) days from the date of this ruling.
 - b. Should she fail to comply with this order within the stipulated period, the Deputy Registrar is hereby authorized and directed to execute these forms on behalf of the estate.
 - c. Upon successful processing of the claim, the contents of the safe deposit box shall be documented in the presence of all co-administrators or their representatives and legal counsels.
 - d. The proceeds from the safe deposit box shall be distributed strictly in accordance with the amended Certificate of Confirmation of Grant dated April 18, 2024.
 - e. Any party seeking to obstruct or interfere with the implementation of these orders shall be liable for contempt of court.
8. On costs, the court notes that this application was necessitated entirely by the conduct of Elizabeth Murugi Mwaura Weya, whose actions have caused unnecessary delay and expense in the administration of this estate. Following the principle that costs follow the event, and considering her conduct has forced the beneficiaries to seek judicial intervention, it is hereby ordered that she shall bear the costs of these proceedings.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 15TH DAY OF NOVEMBER 2024.

In the Presence of:

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Neriko, Advocate for the Applicant

