



**In re Estate of Waithira Maina (Deceased) (Succession Cause  
489 of 1998) [2024] KEHC 15852 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15852 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 489 OF 1998  
JM NANG'EA, J  
DECEMBER 16, 2024**

**BETWEEN**

**JAMES WANYIRI ..... 1<sup>ST</sup> PETITIONER  
HANNAH WANJIRU ..... 2<sup>ND</sup> PETITIONER  
JOHN MWANGI KAHONO ..... 3<sup>RD</sup> PETITIONER  
HENRY NJUGUNA KAHONO ..... 4<sup>TH</sup> PETITIONER**

**AND**

**ANTONY MAINA KIMANI ..... 1<sup>ST</sup> CREDITOR  
EVELINE WARIARA NGUGI ..... 2<sup>ND</sup> CREDITOR  
SAMMY KAMAU CHEGE ..... 3<sup>RD</sup> CREDITOR  
JOSEPH WAWERU WANGUI ..... 4<sup>TH</sup> CREDITOR  
FLORENCE WAMBUI IKUMU ..... 5<sup>TH</sup> CREDITOR**

**RULING**

1. When I became seized of this file on 18<sup>th</sup> November, 2024, learned Counsel for some of the creditors of the deceased's estate (Mr. Mbuthia) brought to the court's attention that on 19<sup>th</sup> June, 2024 the Petitioners/Administrators of the estate were given 60 days to file an application for distribution of the estate in default of which the Grant of Letters of Administration issued to them would be revoked. The Petitioners were said to have failed to comply. Mr. Mbuthia thus urged the court to revoke the Grant.
2. Ms Mukira advocate representing other Creditors of the estate associated herself with Mr. Mbuthia's position. Counsel seemed to say that the Grant actually stood revoked and suggested appointment of one of her clients as among the new administrators.



3. Mr. Chege advocate for the Petitioners pleaded for more time to file the necessary application. Counsel stated that, in any event, the Creditors did not complete payment for the property they claim to have brought.
4. The court declined to grant more time to the Petitioners and intimated that it would give directions after studying the record.
5. Having heard Counsel and upon perusing the record, it is noted that on 19<sup>th</sup> June, 2024 my brother Justice H. M. Nyaga did indeed direct the Petitioners to file the necessary application for distribution of the deceased's estate in accordance with an earlier Judgement dated 16<sup>th</sup> March, 2022 by my sister Justice Rachel Ngetich, within 60 days from the 19<sup>th</sup> June, 2024. The court also revoked the earlier Grant in the names of James Wanyiri, Hannah Wanjiru, John Mwangi Kahono and Henry Njuguna Kahono alias Henry Njuguna to replace the latter who is deceased, with Vivian Jebichii Maina and Kipkorir Keitany.
6. Justice Rachel Ngetich's decision followed the creditors' application dated 24<sup>th</sup> October, 2017 claiming interests as purchasers of part of the estate from some of the beneficiaries. Upon viva voce hearing of the Summons the court first revoked Certificates of Confirmation of Grant dated 16<sup>th</sup> June, 2026 and further ordered as hereunder;
  - b. Bahati/Kabatini" Block 1/2503 be distributed to beneficiaries at two and half acre each save for Teresia whose share is 50 by 100.
  - c. Upon distribution, portions sold to purchasers be transferred to the respective purchasers who completed payment of their portions.
  - d. Each party to bear own costs."
7. The creditors subsequently filed an application dated 8<sup>th</sup> May, 2023 seeking inter alia revocation of the Rectified Certificate of Confirmation of Grant as per the orders of 16<sup>th</sup> March, 2022 and issuance thereof to the creditors. The applicants lamented that the Petitioners had failed to comply with the court's orders. The Petitioners lodged a Preliminary Objection to the Application on a main ground that the court was bereft of jurisdiction. The objection was overruled, paving the way for hearing of the Summons dated 8<sup>th</sup> May, 2023 on merits.
8. With the intervention of the court, this application appears to have been compromised on 29<sup>th</sup> November, 2023 when it transpired that all the payments towards the purchase price in respect of property sold to the creditors had been paid to the sellers. Consequently, Justice H. M. Nyaga ordered as follows;-

"A fresh grant to issue to reflect the distribution to the parties, the beneficiaries and the creditors. The parties to agree on a surveyor (s) and the payment. The administrators are given 90 days to complete the process."

The court further directed the administrators

"To proceed to prepare transmission documents to all beneficiaries and creditors."
9. Unfortunately, differences again thereafter cropped up among the parties with the Petitioners being accused of failing to enforce the court orders that flowed from the parties' consent. The court decided



to revert to the judgment of Justice Rachel Ng'etich of 16<sup>th</sup> March, 2022 earlier set out. I wish to quote my brother Justice H. M. Nyaga for clarity;-

“To bring the matter to an end, I order that the surviving administrators proceed to confirm the grant in compliance with the orders of my sister. Failure to do so will result in the revocation of the grant to them. I grant the administrators 60 days to make the necessary application...”

10. The orders of 16<sup>th</sup> March, 2022 settled transmission of the deceased's estate. The Petitioners'/ Administrators' obligation is to carry out necessary survey and subdivision of the subject property and lodge transfer documents with the concerned Land Registrar's Officer for issuance of titles to the beneficiaries of the estate who will thereafter execute transfers to the creditors in accordance with the sale agreements executed and as per the judgment of 16<sup>th</sup> March, 2022. In the event of non-compliance, the Creditors are at liberty to seek appropriate remedies to enforce the orders.
11. It is directed accordingly.

**J.M NANG'EA , JUDGE.**

**RULING DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF DECEMBER, 2024 IN THE PRESENCE OF:**

Advocate for the Petitioners, Ms Achieng

Advocate for the Creditors/Beneficiaries, Mr. Mbuthia

Advocate for other Creditors, Ms Mukira

