



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Wilson Njiri Gikonyo (Deceased) (Succession Cause  
9 of 2015) [2024] KEHC 16351 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16351 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 9 OF 2015  
JM NANG'EA, J  
DECEMBER 16, 2024**

**RULING**

1. The administratrix of the deceased's estate (Mary Wanjiku Njiiri) and a son of the deceased (David Gkonyo Njiiri) brought a Summons dated 12<sup>th</sup> November, 2024 seeking partial confirmation of Grant of Letters of Administration intestate issued to the Administratrix on 18<sup>th</sup> March 2015. The two aver in their joint affidavit in support of the Application that the said David Gikonyo Njiiri has also obtained Grant of Letters of Administrated Ad Litem in respect of the same estate in a separate file being Nakuru High Court Succession Casue Number 88 of 2013 to pursue two (2) suits No. 153 of 212 (O.S.) and 569 of 1998 in which the deceased was the claimant.
2. The court is further told that an earlier Application dated 15<sup>th</sup> August 2023, also for Partial Confirmation of the Grant herein, has been determined. The applicants state that one of the defendants in the cited suits against whom judgment was entered has expressed interest in purchasing the deceased's property subject of the suit. The applicants accept the offer and seek the court's consent to sell the deceased's property known as Dundori/Miroreni Block 2/1074 (Ndimu) to one Peter Njuguna Mbugua who was one of the defendants in the cited civil suits, hence the application for Partial Confirmation of the Grant.
3. The Administratrix avers that she is the deceased's widow entitled to a life long interest in the deceased's estate subject to the interests of her children. The said David Gikonyo Njiiri is one of the deceased's children.
4. As stated by the Applicants, my brother Justice H. M. Nyaga on 19<sup>th</sup> February, 2024 partially confirmed the grant with the result that the deceased's parcels of land Nos. Dundori/Miroreni Block 2/1081 (Ndimu) and Dundori/Miroreni Block 2/1070 (Ndimu) were transmitted to Agnes Wangari Macharia and Paul Waithaka Meru respectively being purchasers thereof in terms of Certificate of Partial Confirmation of Grant dated 19<sup>th</sup> February 2024. These parcels of land were not affected by the litigation then pending determination. The court directed that the rest of the estate subject to litigation would await conclusion thereof. The court is informed that the litigation in relation to the intended purchaser has since been concluded in favour of the deceased's estate and that the proceedings



are at execution stage. The said intended purchaser, Peter Njuguna Mbugua, is said to have reached an agreement with the applicants and other beneficiaries of the estate to purchase the deceased's parcel of land No. Dundori/Miroreni/Block 2/1074 (Ndimu) of which he is in occupation.

5. Section 55 of the *Law of Succession Act* prohibits distribution of capital assets of the deceased's estate until Grant of Letters of Administration have been confirmed. Income arising wholly from the estate received after the deceased's death or partly before the death is, however, exempted.
6. Section 71(3) of the Act, allows for Confirmation of the Grant before expiry of the statutory period provided for under Subsection (1) if the court is satisfied that there is no dependant of the deceased, or that the only dependants are of full age and consent to the application.
7. The applicants' affidavit evidence shows that there is still pending litigation over some property claimed to be part of the estate before the Court of Appeal at Nakuru and the Chief Magistrate's Court at Nakuru. The issue for determination is whether the applicants are deserving of the court's discretion to confirm the Grant before all the capital assets of the estate alleged to have been unlawfully appropriated have been recovered. It is trite law that such discretion is exercised in a judicious and not capricious manner.
8. The status of the pending litigation and the number and particulars of the assets involved have not been given to the court. The prospective purchaser has not sworn an affidavit confirming his agreement with the applicants on sale of the stated property to him. No urgency has therefore been demonstrated to warrant review of the order of 19/2/2024 that final confirmation does await conclusion of the stated litigation.
9. As observed on 19/2/2014, it is imperative to transmit the deceased's estate at once after all the assets and liabilities have been identified. Piece meal confirmation does not serve the wider interests of justice. The application for further partial confirmation of the grant is therefore rejected.

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

**JUDGE.**

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

Applicant/Administrator, present

All beneficiaries, present

Court Assistant, Mr. Lepikas

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

**JUDGE**

