



REPUBLIC OF KENYA



**In re Estate of Francis Kimani Waweru (Deceased) (Succession Cause
152 of 2008) [2025] KEHC 14247 (KLR) (Family) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14247 (KLR)

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

FAMILY

SUCCESSION CAUSE 152 OF 2008

HK CHEMITEI, J

OCTOBER 9, 2025

**IN THE MATTER OF THE ESTATE OF THE
LATE FRANCIS KIMANI WAWERU (DECEASED)**

BETWEEN

RUTH WAMBUI WANJA 1ST APPLICANT

ZIPPORAH NJERI WANJA 2ND APPLICANT

AND

NANCY NJOKI KIGUTA 1ST RESPONDENT

LUCY WANJIRU KIGUTA 2ND RESPONDENT

JUDGMENT

1. The Applicants vide the application dated 20th January 2025 seeks the following orders:-
 - (a) That the grant of letters of administration made dated 5th February 2009 to the Respondents and confirmed on 9th July, 2010 be revoked or annulled.
 - (b) That there be stay of execution of the orders issued in the certificate of confirmation of grant issued on 6th July, 2010 in favour of the Respondents pending the hearing and determination of the application.
 - (c) That the orders made in the certificate of confirmation of grant issued on 6th July 2010 be set aside.
2. The Applicants prayed for costs as well.



3. The application is based on the grounds thereof and the affidavits of the Applicants and those of one David Gitu Waweru dated 20th January 2025 and 5th March 2025 respectively.
4. The Applicants claim that they are the deceased daughters born out of his marriage with the late Grace Wanja. They claim that they were not involved or notified when the Respondents sought out letters of administration in the estate.
5. They further deponed that the 1st Respondent is their step mother whereas the 2nd Respondent is the 1st Respondent sister.
6. It is their case that the Respondents obtained the grant fraudulently by failing to disclose to the court that the deceased had other beneficiaries.
7. The affidavits by David Gitu Waweru in support on the other hand avers that the deceased was his brother and that he was not aware that the Respondents had sought out letters of administration over the estate.
8. That the Applicants were indeed the deceased children and he exhibited some burial ceremony photographs as well as baptismal card. He went on to depon that he has been taking care of the Applicants after the demise of their father.
9. He also deponed that the deceased had sold to him land parcel number 457/444 Kiganjo Ranch Co. Ltd prior to his death.
10. According to him therefore it was imperative that the Applicants be included as part and parcel of the deceased estate as they are beneficiaries and every right of inheriting their father's estate.
11. The Respondent Nancy Njoki Kiguta on the other hand has opposed the application vide her replying affidavit sworn on 12th February 2025 on the ground among others that the same was long overdue and basically an afterthought as it is brought 15 years after the grant had been confirmed and 18 years after the death of the deceased who was her husband.
12. That the court was functus officio having confirmed the grant and the estate distributed.
13. She went on to attach a copy of a letter dated 31st January 2011 addressed to David Gitu Waweru warning him to desist from occupying land parcel number 1460,457/444 and 3476 Kiganjo. The same letter demanded that he vacates the said deceased property. The letter was delivered to him personally.
14. The Respondent therefore prayed that the application be disallowed as the same lacked legal and factual basis.
15. The court directed the parties to file written submissions which they complied.
16. The Applicants submitted that the deceased had two houses. The first house was that of Grace Wanja Njenga and who were blessed with the two children, the Applicants herein.
17. The second house is that of the 1st Respondent who were blessed with two children as well namely Michael Waweru and Michelle Wambui.
18. It is their submissions that the Respondents failed to disclose to the court that the deceased had another family and therefore the applications ought to be allowed as per the grounds stipulated under Section 76 of Cap 160.
19. The Respondents on the other hand submitted that the application was brought inordinately late and that all along the Applicants knew the existence of the cause.



20. They submitted that David Gitu Waweru who claimed to have been a guardian of the Applicants was well aware of the existence of the matter.
21. At the same time the Applicants have not exhibited any evidence to show that the deceased was their father. The baptismal cards were not sufficient evidence to support paternity.
22. Further that the estate has long been distributed and this court was therefore *functus officio*. The application cannot therefore stand. The same in essence had been overtaken by events and the limitation period.

Analysis and determination.

23. The court has perused the record herein, the application as well as the submissions and the cited authorities extensively.
24. The application in my view and as clearly submitted by the Respondents has been brought inordinately late. Fifteen years is not yesterday. I doubt whether the Applicants and one David Gitu Waweru was unaware of the existence of this suit.
25. I state so because the letter dated 31st January 2011 was hand delivered to him and he has not opposed receiving it. The details of the said letter include the fact that the Respondents whose names are on the said letter were the legal administrators of the estate. The certificate of grant was attached to the letter.
26. From the date of the letter, he did not file any objection to the grant issued to the Respondents till this application filed 15 years later. If he minded the business of the Applicants as he claimed then he ought to have immediately sought the courts intervention.
27. Neither have the Applicants proved their whereabouts for all that period. There is nothing to suggest that they were minors and therefore had no capacity to challenge this cause.
28. Further the Applicants have not laid any evidence of the marriage between the deceased and the said Grace Njenga nor any evidence of her demise and if at all she was buried by the deceased husband or in her husband's property.
29. At the same time there is nothing substantial to suggest that the Applicants are deceased children from his marriage with their late mother Grace Njenga. The photos as well as baptismal cards are not official documents to prove paternity. They should have gone ahead to seek perhaps a DNA analysis.
30. Obviously, anybody can obtain a baptismal card and the one exhibited has been opposed vehemently by the Respondents which I agree with them.
31. There must be some end to litigation. The parties herein cannot sleep on their rights, assuming there was, which I do not respectfully find, and wake up fifteen years later to demand a share in the estate. David Gitu Waweru in particular who is probably the architect in this matter ought to shoulder the responsibility. At any rate if he has intermeddled with the deceased estate then the next recourse is the Environment and Land Court.
32. The grounds for allowing such an application if it is merited is hinge on section 76 of the [act](#) which states:-

“ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;



- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;”

33. There is no evidence that the cause was conducted fraudulently or that there was any material concealed by the Applicants or at all.

34. Having stated so I do not find any merit in the application and I dismiss it with costs to the Respondents.

DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 9TH DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE

