



REPUBLIC OF KENYA



In re Estate of the Late Joseph Njoroge Kibunja (Deceased) (Succession Cause 1456 of 2009) [2025] KEHC 14215 (KLR) (Family) (9 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1456 OF 2009
HK CHEMITEI, J
OCTOBER 9, 2025
IN THE MATTER OF THE ESTATE OF THE
LATE JOSEPH NJOROGE KIBUNJA (DECEASED)**

BETWEEN

**NANCY KABURA MBURU 1ST APPLICANT
JOSEPH NJOROGE MBURU 2ND APPLICANT
SERAH WAMBUI MBURU 3RD APPLICANT**

AND

**ESTHER WAMBUI NJOROGE 1ST RESPONDENT
CHARLES NJOROGE KIARII 2ND RESPONDENT**

RULING

1. There are two sets of applications herein which the court shall deal with them sequentially. The first application herein dated 15th August 2023 by the three Applicants prays for the following orders:-
 - (a) That the Respondents jointly and or severally be ordered to render an account of the sum of Kenya shillings two hundred and eighty million (Ksh.280,000,000) being proceeds of sale of estate property known as LR NO. 209/2563 Nairobi.
 - (b) That in the alternative to prayer 1 this court be pleased to order a comprehensive audit of the sum of Kenya shillings two hundred and eighty million (Kshs.280,000,000) by an independent auditor agreed upon by the parties or appointed by the court being the sale proceeds of the estate property known as LR NO. 209/2563 Nairobi.



- (c) That upon such audit the Respondents jointly or severally or any person found be ordered to pay back all monies found to be due to the Applicants.
- (d) Costs be borne by the Respondents.
2. The application is premised on the grounds thereof and the sworn affidavit of Joseph Njoroge Mburu dated 15th August 2023.
 3. Basically, the Applicants are arguing that they are the wife and the children of the late David Njoroge Mburu who was the son to the deceased. They therefore bring this application in respect to his rightful shares as per the grant issued on 29th October 2013.
 4. The Respondent has raised a preliminary objection dated 9th July 2024 arguing among others that the Applicants did not have locus to bring this application as they did not have letters of administration in respect to the estate of the late David Njoroge Mburu.
 5. The Respondent has equally filed a replying affidavit sworn on 14th November 2024.
 6. The parties were thereafter directed to file written submissions which they complied.
 7. I have perused the pleadings herein and I think it is worthwhile to deal with the preliminary objection first.
 8. It has been submitted by the Respondent that in the absence of the letters of administration of the estate of their husband and father the Applicants cannot bring this application.
 9. I have perused the grant issued on 29th October 2013 attached to the supporting affidavit and I find that the court directed that:-

“Nancy Kabura to hold in trust for Serah Mburu and Joseph Mburu,”
 10. This being the case then they need not have filed for any letters of administration over the estate of the late David Mburu Njoroge as they were already recognised in the grant.
 11. Neither do I find it res judicata as the Respondent attempts to persuade me. There is no evidence that the Respondents have executed the grant to its finality. There is no evidence even from the replying affidavit of the respondent Esther Wambui Njoroge sworn on 14th November 2024 that she had provided accounts.
 12. She deponed that what the Applicants were doing was a “fishing expedition” yet they had disclosed everything to each beneficiary.
 13. She said that she rendered accounts during the mediation exercise yet my reading of the mediation report dated 5th April 2023 states on the sale of LR NO. 209/2963, which I supposed meant 2563 that:-

“On the aspect of sale amount of the property for Kshs. 280 million the family okayed this sale amount but as for the accountability of the allocation and subsequent disbursement of the same the family decided to have a further seating within a time frame of 60 days. Failure to come to an amicable agreement the family members will seek reprove back to the courts on individual basis.” (Underlining mine).
 14. I therefore find that in the absence of an amicable accounting the Applicants as a unit have every right to demand accountability from the Respondents.



15. I also note that Charles Njoroge Kiarri the second Respondent vide his replying affidavit sworn on 20th December 2023 exonerated himself and blamed the 1st Respondent for the failure to provide the relevant accounts.
16. I find that although he may be having a reason to blame the co administrator he still remains an administrator to the estate. He is required to that extent to account for his duties as demanded by the Act. He cannot therefore run away and blame the 1st Respondent.
17. The honorable thing to do is to simply resign or renounce his position and permit the 1st Respondent to administer alone and or seek further directions from the court.
18. Going back to the application I find that the reasons given by the 1st Respondent are too flimsy in the circumstances. Although the Applicants received the Kshs. 15 million, their entitlement was Kshs. 30 million. The balance of Kshs. 15 million is what they are asking for.
19. The 1st Respondent cannot simply wish it away by asserting that the same went to taxes, rates and other statutory outgoings without any meaningful documentary evidence. She must be reminded that the amount is not hers but the estates. She is a beneficiary just like the Applicants.
20. The fiduciary duty bestowed upon her by the rest of the family members and the court in particular does not entitle her to wish away the Applicants demands. She must account for every cent received on behalf of the estate.
21. Other than the question of accounting for the sum of Kshs. 280 million she must also together with the co administrator execute and complete the process of transmitting the estate to the beneficiaries. The period from 2013 to date is too long in the circumstances.
22. In the premises I do find merit in the application and shall make final deposition below together with the next application.
23. The second application dated 12th August 2024 by one Bernard Mungai Njoroge against the Respondents herein seeks orders that:-
 - (a) That pending the hearing of the summons herein this file be transferred to Thika High Court for disposal of the pending issues.
 - (b) That the Respondents jointly and severally be ordered to produce to this court and render a full and accurate accounts of all dealings therewith of the completed administration.
 - (c) That the grant of letters of administration intestate issued on 13th August 2010 and confirmed to Charles Kiarri Njoroge and Esther Wambui Njoroge on 29th October 2013 be revoked.
 - (d) The resultant registration and or any other dealing, subdivision and transfer after registration of certificate of confirmation of grant as a transmission in favour of the respondent on LR NO 209/2563 be cancelled or revoked.
24. The application is supported by the grounds thereof as well as the Applicant's affidavit sworn on 12th August 2024.
25. The application has not been opposed by the Respondents. The gist of the application is that ever since the grant was confirmed on 29th October 2013 the Respondents have failed to complete the transmission in line with Section 83 of the Succession Act.
26. That it was imperative that they render accounts of all the dealings over the estate and further the court revokes the grant since they have delayed deliberately in bringing this estate to finality.



27. The Applicant has equally prayed that since most of the estate's properties are situated in Thika sub county it would be prudent to have this matter transferred to the high court at Thika.
28. I have perused the application and I do indeed find merit. The duties of an administrator are spelt out under section 83 (e), (f), (g) and (h) of the Act which states as follows:-

“Duties of personal representatives

Personal representatives shall have the following duties—

- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
 - (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;”
29. To date the Respondents have not in any manner attempted to bring to foreclosure the estate. Instead, it appears from the record that they went into a lull and almost 13 years later the estate beneficiaries are begging them to conclude by transmitting to them their rights.
30. The sale of LR NO. 209/2563 is still a thorny issue. The Applicant to date is claiming that he has not received his rights. Being a beneficiary as per the grant on record he ought to receive his share of the sale.
31. It will not be efficacious at this juncture to revoke the grant without granting the Respondents chance to conclude the estate and present accounts to this court.
32. Secondly transferring the file to Thika High Court at this penultimate time is not reasonable in the circumstances. The appropriate way is to finally direct the matter to be concluded and the parties can thereafter move to Thika lands office as the case might be to effect transmission if necessary.
33. In the premises and taking note of this application and the one above dated 15th August 2023, I direct that within 30 days from the date herein:-
- (a) The Respondents jointly and severally shall provide to this court the accounts of the entire estate including the extent to which they have executed the confirmed grant.
 - (b) Provide accounts specifically of the proceeds of sale of LR NO. 209/2563 and how they utilized the purchase consideration of Kshs. 280,000,000.



- (c) In default the Applicants or any other beneficiary in the estate shall be at liberty to apply to be administrator of the estate herein.
- (d) This matter shall be mentioned before the Deputy Registrar of this court to confirm compliance.

SUBPARA (d)

Costs shall be in the cause.

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

H K CHEMITEI

JUDGE

