



In re Estate of Chomba Wahome Gichuki (Deceased) (Succession Cause 236 of 2017) [2025] KEHC 14133 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 236 OF 2017**

JM NANG'EA, J

OCTOBER 3, 2025

IN THE MATTER OF THE ESTATE OF CHOMBA WAHOME GICHUKI (DECEASED)

IN THE MATTER OF

WANGOMBE CHOMBA APPLICANT

RULING

1. The Applicant who is one of the Administrators of the deceased's Estate brings a Summons dated 20th March 2024 praying for orders as hereunder:-
 1. That Grant of Letters of Administration intestate issued herein be revoked/annulled on account of discovery of a valid Will dated 5th March 2000.
 2. That Executors of the Will be appointed to administer the Estate as per the Written Will dated 5th March 2000.
 3. That Grant of Probate be filed within 30 days by the Executors. (sic)
 4. That the costs of the Application be provided for.
2. The Application is supported by the Applicant's affidavit purportedly sworn on 20th March 2024.
3. An Administratrix of the Estate (Grace Wangari Chomba) swore and filed an affidavit in reply opposing the Application.
4. On 24/4/2024 the court directed that the Application would be disposed of by viva voce evidence. The Applicant inter alia told the court that he is the 3rd Administrator of the Estate. He relies on his affidavit filed in support of the Application in which he states that Grant of Letters of Administration Intestate was issued to him and the other Administrators on 16th May 2018. He and other beneficiaries of the Estate were however, aware that the deceased had made his last Will and testament in the year 2000. The Will got lost but was later traced to one of the Beneficiaries (Mr. Joseph Wahome).



5. The Applicant further deposes that the deceased made the Will in the presence of several Beneficiaries he has named. The Will was said to have been orally explained to the Beneficiaries present.
6. The said Joseph Wahome is the 2nd Administrator of the Estate. He confirmed the Applicant's evidence that the deceased did make the Will. His mother was directed to transfer title to land given to him in his name. The 2nd Administrator, however, urges the court to ignore the Will for the reason that it unfairly distributes the deceased's property. According to him, all the heirs should have been bequeathed equal shares.
7. The above named Grace Wangari Chomba who is an Administratrix of the Estate questions validity of the document as a Will. She claims that the deceased did not share out his properties but only indicated how his land would be tilled. On advice of his advocates, she avers that the document does not pass as a valid Will as the wishes therein are not represented to take effect after the deceased's death.
8. The Applicant and Grace Wangari Chomba (Administratrix) filed Submissions which I have perused together with the evidence on record. Learned Counsel for the Applicant submit that existence of the Will is not in dispute and so transmission of the deceased's Estate should be governed by the legal instrument.
9. Learned Counsel for the 1st Administrator, however, argues that the purported Will is invalid for the reason that it is not expressed to take effect after the deceased's death.
10. I have perused the contents of the purported Will. It does not state that the purported transfers of the deceased's property shall take effect after his death. The deceased appears to have no more than gifted his heirs inter vivos. Section 1(3) of the *Law of Succession Act* defines a Will thus;

“ the legal declaration by a person of his wishes or intention regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II, and includes a codicil.”

Case Law including Re Estate of Kimani Kagia (2017) KEHC 3242 (KLR) cited in the 1st Administrator's Submissions underscores this legal position.
11. A valid Will is therefore contingent upon the death of the testator. To the extent that the purported Will does not instruct that the gifting of the deceased's property would take effect after his death, the document in question does not qualify as a valid Will. The Estate of the deceased will therefore continue to be administered intestate.
12. Consequently, the Summons dated 20th March 2024 is dismissed. As this is a family matter, no order is made as to costs.

J. M. NANG'EA, JUDGE.

RULING DELIVERED VIRTUALLY AT NAKURU THIS 3RD DAY OCTOBER, 2025.

In the presence of:-

1st Administratrix's Advocate, Mr. Mutonyi

2nd Administrator's Advocate, Ms Koimett for Mr. Maina

3rd Administrator's/Applicant's Advocate, Mr. Oumo

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

