



REPUBLIC OF KENYA



**In re Estate of Ephantus Wanjohi Ruhara (Deceased) (Family Cause
796 of 2013) [2025] KEHC 14909 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY CAUSE 796 OF 2013
MA ODERO, J
OCTOBER 24, 2025**

IN THE MATTER OF THE ESTATE OF EPHANTUS WANJOHI RUHARA (DECEASED)

RULING

1. Before this Court is the Summons dated 2nd August 2022 by which the Applicants George Ruhara Wanjohi And Francis Gichuki Wanjohi seek the following orders:-

- “ 1. Spent
2. That the Respondents be ordered to disclose the whereabouts of the under mentioned documents and the court do order that the same be deposited in a neutral entity or custody to be agreed upon and or as the court may direct if the parties fail to agree as they relate to the assets of the deceased.
- a) Title Deed
Lr. Iriani/kaguyu/206
Lr. Iriani/kairia/285
Lr. Gaturi/githimu/1567
Lr. Nyeri/waraza/219
Lr. Iriani/kairia/2111
- b) BANK PLATES
Barclays Bank - A/C NO. XXXXXXXXXXXX (Absa)
Co-operative Bank A/C No. XXXXXXXXXXXX
Post Bank A/C No. XXXXXXXXXXXX
- c) Log Book



M/V Registration No. KAD 944H Land Rover.”

2. The application was premised upon Rules 49, 59, 73 of the Probate and Administration Rules and Rules 3 of the High Court (Practice and Procedure) Rules Cap 8 Laws of Kenya and was supported by the Affidavit of even date sworn by the 1st Applicant.
3. The Respondents opposed the application through the Replying Affidavit dated 13th October 2022 sworn by Agnes Wathiegeni Wachira.
4. This succession cause relates to the estate of the Ephantus Wanjohi Ruhara (hereinafter the Deceased) who died intestate on 7th May 2013. A copy of the Death Certificate Serial No. 0009816 was filed in Court on 7th November 2013.
5. The Applicant who is a son to the Deceased states that at the time the Deceased passed away the Respondent took possession of the various documents set out in the application and has refused to disclose to the Administrators of the estate the whereabouts of the said documents. The Applicant seeks orders to compel the Respondent to produce the said documents and to deposit the same in court for safekeeping.
6. The Applicants further pray that the motor vehicle Registration No. KAD 944H Land Rover be stored in a garage or with some other neutral person to be agreed upon.
7. The 1st Respondent who is a widow to the Deceased in her Replying Affidavit conceded that she did have the said documents in her possession but avers that the documents got lost and that she is no longer able to trace them.
8. The 1st Respondent also concedes that she does have in her possession the motor vehicle Registration No. KAD 944H but states that the log book is amongst the documents which are lost. She however avers that the motor vehicle is safe in her possession.
9. The 1st Respondent stated that she has reported the loss of the documents in question at Karatina Police Station vide OB Number 24 of 27th September 2022. The 1st Respondent undertakes to produce the documents in court if and when she traces them.
10. The only issue for determination is whether the Applicants prayer for orders to compel the Respondents to produce the missing documents is merited.
11. Basically this application is a Notice to produce which is a proceeding under the *Civil Procedure Act* Cap Laws of Kenya. This court is sitting as a Probate Court handling a succession dispute. However Rule 16 of the Probate and Administration Rules imports into Succession proceedings certain provisions of *Civil Procedure Act* including Order 16 Rule 7 which provides as follows:-

“ Any person present in court may be required by the court to give evidence or to produce any document there and then in his possession or power.”
12. Therefore under Rule 63, this Court sitting as a Probate Court does have the power to direct any party to produce documents as required by court.
13. The 1st Respondent readily admits that she did have possession of the required documents but states that the documents got lost and she is not able to trace them. That she has reported the loss of the documents to the police.



14. I must say that it is very surprising that the widow of the Deceased would casually 'lose' critical documents like title Deeds and log-books. These are the types of documents that are often kept in the safe custody.
15. I further note that the Deceased died in May 2013. The Applicant made this application to produce documents in August 2022 and it was not until 27th September 2022 (after the documents had been demanded) that the 1st Respondent reported the loss to police.
16. I do not for one minute believe that it is only nine (9) years after the demise of Deceased that the 1st Respondent realized that crucial documents relating to his estate were missing. The 1st Respondent is not being candid at all regarding the whereabouts of the documents.
17. Having said that it would serve no purpose to order the 1st Respondent to produce documents which she insists are lost. Courts do not make orders in vain.
18. Given the assertion by the 1st Respondent that the documents are lost and given that the loss had been reported to the police the best course of action would be to approach the lands Registry or other relevant authority to issue a duplicate copy of the document.
19. Regarding the motor vehicle no tangible reason has been advanced to have the same removed from the custody/possession of the 1st Respondent. There is no evidence of any misuse and/or serious deterioration of the said vehicle. The 1st Respondents has readily admitted that the said vehicle is in her possession and I find no reason to disturb the status quo pending final orders of the court.
20. Finally in order to move this matter forward I hereby make the following orders:-
 - (1) The 1st Respondents is directed to within fourteen (14) days approach the lands Registry and NTSA to obtain duplicate copies of the Title Deeds and log-books.
 - (2) No orders will be made at this stage with respect to the land Rover Registration No. KAD 944H.
 - (3) Each party to bear their own costs of the application.

DATED IN NYERI THIS 24TH DAY OF OCTOBER 2025

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MAUREEN A. ODERO

JUDGE

