



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Stephen Marigi Gathigi (Deceased) (Succession Cause
14 of 2020) [2025] KEHC 14999 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE 14 OF 2020
CW MEOLI, J
OCTOBER 23, 2025
IN THE MATTER OF ESTATE OF STEPHEN MARIGI GATHIGI
(DECEASED)**

BETWEEN

ELIZABETH MUMBI GATHIGI 1ST PROTESTOR

ERIC SIRONIK GATHIGI 2ND PROTESTOR

KEVIN SIRONIK MURAYA 3RD PROTESTOR

AND

EDITH WAIRIMU MARIGI ADMINISTRATOR

RULING

1. This cause was initiated by Edith Wairimu Marigi, the Petitioner, in her capacity as the widow of Stephen Marigi Gathigi, deceased. Prior to the issuance of the grant on 2nd March 2021, an objection and cross-petition had been filed by Elizabeth Mumbi Sironik Gathigi, Eric Sironik Gathigi and Kevin Muraya Sironik, the Objectors claiming to be the widow and sons, respectively of the deceased. On 1.02.2021, the parties' advocates appearing before Mwita J intimated agreement on the appointment of Kevin Muraya Sironik and Edith Wairimu Marigi as joint administrators.
2. The matter was reserved for mention on 12.04.2021 for the purpose of inter alia confirming whether the parties could file an application for confirmation of the grant. Before the reserved date, however, a grant was on 2nd March 2021 issued to Edith Wairimu Marigi alone, and by the mention date, the rift between the parties' positions appeared to have so widened that the court directed the petitioner to file the summons for confirmation of grant, and the Objectors if need be, to file a protest, both of which would be heard together via viva voce evidence.



3. Thus, the Petitioner filed the summons to confirm grant dated 26.04.2021, while the Objectors filed a protest dated 25.06.2021 and eventually hearing commenced before Mutuku J on 1.02.2023. Upon the Petitioner closing her case, the Objectors, now Protestors, successfully sought adjournment and an order inter alia for the valuation of all the assets of the estate and procurement of bank statements. This order resulted in a subsequent contempt application dated 3.10.2023 against the Petitioner and brought by the Protestors. Upon hearing the application, the court delivered its ruling on 3.04.2024.
4. Once more, on 15.04.2021, the Protestors moved the court by filing the application dated 15.01.2024. The summons is expressed to be brought under Article 159 of the *Constitution*, Sections 47 and 76 of the *Law of Succession Act*, Rules 44, 49 and 73 of the Probate and Administration Rules, and all other enabling provisions of the law and seeks that:
 - a. Spent.
 - b. That this Honourable Court be pleased to recall and cancel the Grant of Letters of administration made to Edith Wairimu Marigi on 2/3/2021 and I lieu thereof, issue a grant in favour of Edith Wairimu Marigi and Kevin Sironik Muraya as per the consent made in court on 1/2/2021.
 - c. That upon issuing the grant in the names of Edith Wairimu Marigi and Kevin Sironik Muraya this honourable court be pleased to direct that all rental income of the estate henceforth deposited in a bank account of the two administrators for preservation and Edith Wairimu Marigi to tender accounts of the income so far collected by her.
 - d. That in the alternative this Honourable court be pleased to revoke and/or annul the Grant of Letters of Administration made to Edith Wairimu Marigi on 2/3/2021.
 - e. That this Honourable court be pleased to grant any other orders/directions as it may deem fit and proper in the circumstances of the case and in the interest of justice.
 - f.”.
5. This summons was supported by the affidavit sworn by Kevin Sironik Muraya on his own behalf and on behalf of his co-Protestors. The gist thereof was that despite a consent recorded on 1.02.2021 by which the parties agreed that the Protestor and the deponent be appointed as joint administrators of the estate of the deceased herein, the court registry had inadvertently issued the grant in the name of the Petitioner alone. Further, that attempts to draw the attention of the court to this error was futile, while the Petitioner had continued to misuse the grant erroneously issued in her favour, to the prejudice of other family members. And that the said Petitioner was receiving monthly rental income of Kes.150,000/- for which no accounts had been rendered.
6. The deponent cited an instance where the Petitioner had been substituted in Kajiado High Court P & A No. 75 of 2018 In the Matter of the Estate of Gathigi Githuka (hereafter the earlier succession cause) to represent the estate of the deceased herein, without informing other beneficiaries of his estate. That the said estate includes assets to which the two families of the deceased herein are entitled to benefit , and that the Petitioner had been hostile and had also frustrated valuation of the property described as Kajiado/Olchoro-Onyore/143. Hence, the deponent contended that it was in the interest of justice that the court grants the prayers sought.
7. By her replying affidavit dated 8.07.2024, the Petitioner reiterating her capacity as the widow of the deceased herein contested the alleged consent orders for issuance of a joint grant to herself and Kevin Sironik Muraya and asserted that on the contrary, on 1.03.2021, the court appointed her as an administrator of the estate herein, upon gazettment of her petition, hence the grant issued to her was



not erroneous; that she has faithfully executed her duties in her capacity as administrator by collecting rental income and managing the estate assets the acquisition of some of which she had contributed; that the application to be substituted to represent the deceased's estate in the earlier succession cause was matter in the knowledge of Kevin Sironik Muraya who supported her as shown in text messages he sent her between October 2023 and January 2024 and annexed as EWM 1; that in any case, the assets in contention in the earlier succession cause are also listed herein for the benefit of the beneficiaries of the deceased herein; that she did not thwart the valuation ordered by the court; and that no basis has been laid for the revocation of her grant and the court ought to refuse further applications to facilitate the conclusion of the hearing

8. In their further affidavit dated 24.9.2024 the Protestors repeated their assertions regarding the alleged consent, citing the proceedings of 14.4. 2021 and that a letter dated 24.01.2024 to the Deputy Registrar had sought to resolve the erroneous issuance of the grant. They refuted claims by the Petitioner that the income generating properties were acquired through contribution by the Respondent, stating that these properties were acquired before the Respondent was married as second wife to the deceased.
9. The summons was canvassed by way of written submissions. In their submissions, the Protestors rehashed their affidavit material and argued that the Respondent, as a personal representative, is legally obligated under Section 83(e) of the Law of Succession Act to provide a full and accurate inventory of the deceased's estate and a detailed account of all dealings therewith. Citing the case of In Re Estate of Julius Mimano (Deceased) [2019] eKLR, where the court emphasized that administrators hold estate property in trust for beneficiaries and creditors and under their fiduciary duties must render accounts, a responsibility reinforced by the definition of administrators as trustees under Trustee Act.
10. They submitted that the Respondent's continued non-disclosure undermines proper estate administration and that to safeguard future income and ensure equitable distribution, the court ought to direct that the rental proceeds be preserved in a joint account managed by both administrators once appointed. They called to aid the case of Re Estate of G.K.K (Deceased) [2017] eKLR.
11. On her part, the Petitioner equally reiterated her depositions and restated her version of the history of the matter in supporting the issuance of the grant to her. And citing Section 76 of the Law of Succession Act and the case of Re Estate of Isaac Wambugu [2016] eKLR, the Petitioner contended that no valid grounds have been raised to warrant revocation of the grant. Further asserting her legal capacity to apply for the grant as the surviving spouse under Section 66(a), and that no concealment or fraud occurred, as all beneficiaries, including children from the prior union were included. It is her view that the summons by the Protestors does not rise up to the legal threshold to justify revocation of the grant, while protracted litigation has caused unnecessary delays in the distribution of the estate. .
12. She further dismisses the prayer for rendering of accounts in respect of rental income as vague for failing to identify the income generating assets or to substantiate the stated sum of monthly rental income and timeframe for which accounts are sought. Besides, that, no concrete evidence of mismanagement has been presented. In her view the prayer is premature as the Summons for Confirmation of Grant is currently part-heard, whereas Section 83 of the Law of Succession Act, requires accounting only after confirmation of the grant.

Analysis and Determination

13. Having considered the summons, and the material canvassed by the parties the court is of the considered view that two key issues arise for determination. Namely, whether valid grounds have been demonstrated by the Protestors to justify the revocation of the grant issued to the Petitioner, and whether the Petitioner should be compelled to render accounts.



14. Section 76 of the *Law of Succession Act* provides that :-

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;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

15. The Protestors appear to rely on Section 76 (a), and (d) (ii) of the *Law of Succession Act*, in asserting that the grant herein was erroneously issued to the Petitioner despite the parties’ consent and court directions and that the Petitioner had misused the grant to the detriment of the interest of other beneficiaries of the estate.

16. As the court earlier outlined in the background to this application, a perusal of the record of proceedings on 1.02.2021 and 2.04.2021 before Mwita J does not bear out the assertions by the Protestors. While indeed counsel appearing intimated agreement that two administrators be appointed from the two houses, no such consent was recorded, the court stating in its final order that:

Court

Directions on 12.04.2021 to enable the court issue grant in terms of the agreement of the parties and to confirm whether they can file summons for confirmation.”

17. The above direction cannot be construed, despite the intimations of counsel before the court, to be an adoption of the consent alluded to by the parties. No consent was recorded on that date, and, prior to the reserved mention date, a grant was issued to the Petitioner upon gazettelement of the petition. Indeed, the proceedings of 12.04.2021 indicate that no consent had been recorded as the court directed the Petitioner to file the summons for confirmation to which the Protestors, if so inclined, could file a protest.

18. The annexure KSM1 to the further affidavit of the Protestors purported to be a copy of the letter to the Deputy Registrar raising the matter of the alleged consent and erroneous grant is dated 24.01.2024, some 3 years since the issuance of the grant to the Protestor. While there was no evidence that this letter was indeed delivered to the court, it is strange that during subsequent appearances made by parties, including to receive directions for and during the hearing of the protest and the summons for



confirmation, which spanned the period between 2.04.2021 to 29.11.2023, the alleged consent and erroneous grant had never been raised before the court.

19. The record of the court reflects that the grant issued on 2.03.2021 was pursuant to requisite procedural steps including gazettment. There is no evidence to show that the Petitioner as a surviving spouse, was not entitled under Section 66(a) of the Law of Succession Act to petition for the grant. No evidence has been presented to demonstrate a procedural defect.
20. Equally, no evidence has been tendered to demonstrate the alleged misuse of the grant by the Petitioner. The assertions that the Petitioner had surreptitiously sought to represent the estate in the earlier succession cause appear doubtful in light of the undisputed messages from Kevin Muraya Sironik to the Petitioner annexed as EWM 1 to the replying affidavit of the Petitioner. The messages speak for themselves, demonstrating that the sender was aware of and in support of the application by the Petitioner to represent the deceased's estate in the earlier succession cause.
21. The issue of delayed valuation of the estate has already been addressed in the court's ruling on the earlier application by the Protestor, and this court cannot revisit it here. In short, the material brought forth by the Protestors does not amount to proof of misuse of the grant by the Petitioner. Accordingly, the court is not persuaded that the threshold for revocation of grant under Section 76 has been met.
22. Concerning the question of accounts, Section 83(e) and (g) of the Law of succession provides as follows concerning the duties of personal representatives :
 - (d)
 - (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;
 - (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.
 - (g)
23. While the duty to account is a statutory obligation, and the court is empowered by virtue of the above Section to make an order for accounts against an administrator at any time before or after confirmation of a grant, it is the court's view that a person seeking accounts ought to apply within reasonable time, while providing sufficient pertinent details and not give an impression that he is on a fishing expedition.
24. The grant herein was issued on 2.03.2021, and whereas Section 83 (e) of the Law of Succession Act requires an administrator within six months from the date of issuance 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, the Protestors have waited over five years to seek accounts. There is no explanation for the delay, more so when the main trial had been pending for a year at the time of the making of this application.
25. The timing of the instant application, coming over five years since the cause was filed, and the grant issued, appears to suggest that the prayer for accounts, indeed the entire application by the Protestors, is an afterthought, perhaps brought for a collateral purpose. Certain matters tending to pre-empt issues that properly fall within the part-heard summons for confirmation and protest have been raised in canvassing the present summons. This is both inappropriate and amounts to an unfortunate



dissipation of the court's time, while resulting in delay to the conclusion of the trial. The pending trial must be given priority, as interlocutory applications cannot settle the core issue in this cause and will only result in delay and increased costs to the parties. Not to mention the needless dissipation of the court's time.

26. In the result, the court finds no merit in the summons dated 17.04.2024 and will dismiss it, but given the nature of the dispute, orders that the parties will bear their own costs. In order to expedite the conclusion of the trial, the court will hereafter issue directions on the resumption of the pending trial.

DELIVERED AND SIGNED AT KAJIADO ON THIS 23Rd DAY OF OCTOBER 2025.

C.MEOLI

JUDGE

In the presence of:

Protestors: Absent

Ms. Wambua for the Petitioner/ Administrator

C/ A: Lepatei

