



**Antony Karukenya Njeru v Njeru & another (Miscellaneous Succession Cause E001 of 2022) [2025] KEHC 16355 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16355 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE E001 OF 2022**

**RL KORIR, J  
NOVEMBER 11, 2025**

**BETWEEN**

**ANTONY KARUKENYA NJERU ..... ADMINISTRATOR**

**AND**

**THOMAS NJERU ..... ADMINISTRATOR**

**AND**

**LUCY K NJERU ..... INTERESTED PARTY**

**RULING**

1. The Application dated 7<sup>th</sup> January 2025 seeks the following orders: -
  - i. That the court be pleased to mark the summons for confirmation of grant intestate dated 16<sup>th</sup> May 2023 as withdrawn.
  - ii. That once prayer (1) is granted the court be pleased to grant leave to the 1<sup>st</sup> Administrator/Applicant to file a fresh summons for confirmation of grant intestate.
  - iii. That the court be pleased to order Thomas Njeru the 2<sup>nd</sup> administrator Respondent on behalf of the 1<sup>st</sup> house and Lucy K Njeru interested party 2<sup>nd</sup> Respondent on behalf of 3<sup>rd</sup> house to render within 3 months an account of the following in respect of the estate of the deceased: -
    - a. All rent collected from Plot No. Mitunguu Market, Plot No. 27 Tunyai Market, Plot No. 39 Tunyai Market, Plot No. 17 Chiakariga Market, Plot No. 2 Chiakariga Market, Plot No. 1050 A Nkarini Market, Plot No. 18 Tunyai Market, Plot No. 1618 Slaughter house Chiakariga Market from 26<sup>th</sup> July 2000 to 31<sup>st</sup> December 2024.
    - b. Proceeds from the sale of motor vehicle registration number KSM lorry and motor vehicle registration no. KVE 549 land rover.



- iv. That all rents collected from Plot No. 27 Tunyai Market, Plot No. 39 Tunyai Market, Plot No.17 Chiakariga Market, Plot No. 2 Chiakariga Market, Plot No. 1050 A Nkarini Market, Plot No. 18 Tunyai Market, Plot No. 1618 Slaughter House Chiakariga Market from 1<sup>st</sup> January 2025 until this cause is heard and determined be deposited in court or in an interest earning account in a commercial bank to be operated by advocates on record for the Applicant and the Respondents.
  - v. Costs of the Application be provided for and the same be borne from the estate of the deceased.
2. The Application is premised on the grounds on its face and on the supporting affidavit of Antony Karukenya Njeru the Applicant.
  3. The Applicant deposed that through his erstwhile advocates Ms. Ojwang Sombe & Co Advocates he filed and served summons for confirmation of grant dated 16<sup>th</sup> May 2023. That his former advocate did not fully explain to him the general import of the summons for confirmation of grant intestate dated 16<sup>th</sup> May 2023, and as such he executed the documents without the full knowledge of its content and import.
  4. That his current counsel on record has since explained to him and he understood the contents in the summons for confirmation of grant intestate and he was surprised that he would surrender his entitlement to the 1<sup>st</sup> house represented by Thomas Njeru after the death of Sabbela A Njeru (now represented by Thomas Njeru) the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> house represented by Lucy K. Njeru without any consideration.
  5. He stated that after learning the actual meaning and extent of the summons for confirmation of grant intestate dated 16<sup>th</sup> May 2023, he instructed the firm of M/s I C Mugo to seek leave to have the said summons withdrawn and file fresh summons for confirmation of grant intestate on grounds that the impugned summons are discriminatory contrary to the provisions of Section 35- 38 of the Law of Succession Act and Article 27 of the Constitution and it is in the interest of justice that the summons be withdrawn and leave granted for fresh summons for confirmation of grant intestate.
  6. The Applicant stated that the deceased was polygamous and the three houses being the 1st, 2nd and 3<sup>rd</sup> houses were represented by Thomas Njeru, the Applicant and Lucy K. Njeru respectively. That the deceased had 8 commercial plots scattered in Tharaka Nithi County which earned rental income. He averred that the 1<sup>st</sup> and the 3<sup>rd</sup> houses have been collecting rent from the 8 plots to wit: - Plot No. 27 Tunyai Market, Plot No. 39 Tunyai Market, Plot No.17 Chiakariga Market, Plot No. 2 Chiakariga Market, Plot No. 1050 A Nkarini Market, Plot No. 18 Tunyai Market, Plot No. 1618 Slaughter House Chiakariga Market with effect from 26<sup>th</sup> July 2000 to date which monies have not been accounted for. That the rent collected by the 1<sup>st</sup> and the 3<sup>rd</sup> house form part of the estate of the deceased and should be distributed to all beneficiaries once accounted for by the 1<sup>st</sup> and the 3<sup>rd</sup> house.
  7. It was also averred that the court should order the 1<sup>st</sup> house and the 3<sup>rd</sup> house to render an account for all the monies collected from the 8 commercial properties from 26<sup>th</sup> July 2000 to 31<sup>st</sup> December 2024. Further, that the deceased had a lorry registration number KSM 411 FSR and a land rover registration number KVE 549 which were disposed by the 1<sup>st</sup> house and the 3<sup>rd</sup> house which amount was not disclose and they should be ordered to render an account of the proceeds of sale the motor vehicles and deposit any amounts owed to the estate with the court or with the bank in the joint names of Thomas Njeru, Anthony Karukenya and Lucy K Njeru. That no prejudice will be suffered if the orders sought are granted.



8. The Interested Party/ 2<sup>nd</sup> Respondent filed a replying affidavit dated 7<sup>th</sup> May 2025. She deposed that she had no problem with the Applicant filing fresh summons for confirmation of grant as she will have an opportunity to present his proposed mode of distribution of the estate. That she does not collect rent from plot No. 22 Chiakariga market which was her home and only collects rent from 2 plots being plot No. 1717 Chiakariga which fetches Kshs. 2,000 per month and Plot no. 1050 A Nkarini Market which fetches Kshs. 1,500 which income she uses to fend for herself as she has no other source of income.
9. She averred that the motor vehicle registration number KVE 549 land rover was sold to her by the family for Kshs. 130,000. That she paid Kshs. 50,000 and the balance of Kshs. 80,000 was used to pay fees for her children who were in school by then. That she has not misappropriated rent from the estate and prays that the distribution of the estate be concluded soonest so all beneficiaries are able to benefit from the estate.
10. The court directed that the issue of withdrawal be dispensed with first on the basis of affidavits alone. Accordingly, that's the sole issue that falls for determination in this ruling.
11. Withdrawal of an Application for grant or of an application for confirmation is a procedural act. The court is granted jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as to ensure justice in the administration of estates in succession matters. The Rule provides:-
 

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
12. Withdrawal may be permitted where the Applicant demonstrates that the summons or consent leading to confirmation was filed under mistake, misunderstanding, or misapprehension of fact or law, and that no fraud, concealment, or mala fides attended the process.
13. Jurisprudence is clear that the probate court's supervisory duty is to ensure a just distribution of an estate and to remedy defective or inequitable processes. Where a summons or consent agreement has been shown to be defective, founded on mistake, misunderstanding, non-disclosure or other material irregularity, the Court will not allow technicalities to defeat substantive justice. Courts have accordingly permitted withdrawal and fresh filing of confirmation summons where the earlier process was not merited.
14. In Re Estate of Gitau (Deceased) [2016] eKLR, Musyoka J. emphasized that:
 

“The confirmation process is the stage at which the Court ensures that the proposed distribution accords with the law and the rights of all dependants. If the process was tainted by mistake or misrepresentation, the Court has discretion to set it aside or permit withdrawal.”
15. The Applicant has explained that the earlier Summons were prepared and filed without his informed consent and that he only later realized their discriminatory effect. His explanation has not been rebutted by the other administrators. The 2nd Respondent has indeed conceded to the withdrawal.
16. I do take note that succession proceedings are inherently equitable and guided by Article 159(2)(d) of *the Constitution*, which enjoins courts to administer justice without undue regard to procedural technicalities. The ultimate goal is to achieve fair and lawful distribution of the estate.
17. I am further guided by Section 71(2) of the *Law of Succession Act*, which empowers the Court, before confirming a grant, to be satisfied that the proposed distribution is equitable and in accordance with



the law. Where the Court has reason to doubt the propriety of the Summons, it is within its power to direct that a fresh and proper one be filed.

18. In the present case, the Applicant's dissatisfaction with the previous Summons is founded on alleged inequality in distribution among the three houses. The deceased having been polygamous, the distribution of the estate would be guided by Section 40 of the Act or equitable distribution consented by the beneficiaries or ordered by the court. Therefore, if the earlier Summons failed to reflect this, allowing the Applicant to withdraw and file a fresh and lawful one serves the ends of justice.
19. I am satisfied that no prejudice will be occasioned to the Respondents, since the estate remains undistributed and all administrators will still participate in the fresh confirmation process.
20. Accordingly, I am persuaded that the prayer for withdrawal and leave to file fresh summons is merited.
21. Consequently, the Summons for Confirmation of Grant dated 16th May 2023 is hereby marked as withdrawn. The Applicant, Antony Karukenya Njeru, is granted leave to file, jointly with the other administrators, fresh Summons for Confirmation of Grant intestate within forty-five (45) days of this date.
22. I make no order on costs.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of Mr. Mugo for the Administrator/Applicant and Ms Kamunchu holding brief for Ms Ndeke for 2<sup>nd</sup> Interested Party/Respondent, N/A Mr. Kabugu for 1<sup>st</sup> Respondent.

Muriuki (Court Assistant).

