



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 345 OF 2006
IN THE MATTER OF THE ESTATE OF AMOS CHEGE NGETHE
(DECEASED)

DAVID KARUNGU CHEGEAPPLICANT

VERSUS

ESTER NJERI CHEGERESPONDENT

RULING

- i. The Summons Application dated 11th June, 2025 brought under **Section 47 of the Law of Succession Act** and **Rule 73 of the Probate and Administration Rules**, seeking the following reliefs;
 - i. **SPENT**
 - ii. That, the Court be pleased to order the District Land Registrar Naivasha to avail the Applicant and to the Court the green cards for the following parcels of land.
 - a) Kiambogo / Miroreni Block 1/398 (Itherero).
 - b) Kiambogo / Miroreni Block 1/2398 (Itherero)
 - c) Kiambogo / Miroreni Block 1/2399 (Itherero)
 - d) Kiambogo / Miroreni Block 1 /2400 (Itherero)
 - e) Kiambogo / Miroreni Block 1/ 2401 (Itherero)

- iii. **That the Court be pleased to reverse, revoke and or set-aside any transfer of the said property to any beneficiary and or third party effected without a lawful order issued by this Court.**
 - iv. **That, the cost of this application be provided for**
2. The Application was premised on the grounds on its face and the Supporting Affidavit of **David Karungu** sworn on even date together with a Supplementary Affidavit dated 16th July 2025.
 3. That the parcels of land mentioned in this application form part of the estate of the deceased.
 4. That the grant has not been confirmed by this Court.
 5. That the Applicant has information to the effect that the subject parcels of land have since been transferred to third parties without an order from this Court.
 6. That the District Land Registrar, Naivasha has declined and or refused to avail the necessary records to the Applicant herein.
 7. He deponed that, he is a beneficiary of the estate of the deceased and this succession cause has been pending on the issue of confirmation of grant.
 8. That on 13th February, 2017 the Respondent/administration filed in Court a schedule of assets and proposed mode of distribution.

9. That he relies on his further affidavit sworn on 14th April, 2022 and filed in Court on the same date in support of this application.
10. That he has information that before the grant of letters of administration is confirmed, the Respondent has proceeded to transfer to third parties the following parcels of land:-
 - i. Kiambogo / Miroreni Block 1 / 398 (Itherero).
 - ii. Kiambogo / Miroreni Block 1/2398 (Itherero)
 - iii. Kiambogo / Miroreni Block 1/2399 (Itherero)
 - iv. Kiambogo / Miroreni Block 1 / 2400 (Itherero)
 - v. Kiambogo / Miroreni Block 1 / 2401 (Itherero)
11. That he received the initial information on the intended transfer of the said parcels of land in March, 2024 and upon becoming aware of the Applicant's intention he prepared cautions by the District Land Registrar Naivasha.
12. That he has since learnt that the District Land Registrar Naivasha did not register the said caution for reasons only known to him.
13. That later he received further information that the said parcels of land have been transferred to a third party by the Respondent.
14. That, on 27th May, 2024 he instructed his advocates to request the District Land Registrar, Naivasha to provide him with certified copies of the green cards and personally proceeded to the District Land Registrar's Naivasha office and the request was assessed for payment.

15. That on the same date he was required to pay Kshs. 5,050/= for the green cards.
16. That he was kept waiting in the office of the District Land Registrar, Naivasha until past 6 pm when he was informed that he could not get the said green cards without a Court order.
17. That he verily believes that, the District Land Registrar, Naivasha is acting in bad faith and he is deliberately denying him documents intended to show that the Applicant has acted illegally in transferring the deceased assets without authority from this Court.
18. The Applicant prays that the District Land Registrar, Naivasha be ordered to provide him and the Court with green card for the subject parcels of land.
19. That, further to the foregoing, the Applicant prays that the Court be pleased to revoke and or cancel any illegal transfers on the said parcels of land and revert the same in the name of the deceased until confirmation of the grant is granted.
20. The Applicant further contends that, it is not true that his application dated 11th June, 2024 consists of falsehoods or that it is intended to mislead the Court.
21. That the Respondent holds the estate of the deceased in trust for herself and the children of the deceased and it is not true that this matter is finalized as claimed by the Respondent.

22. That, on 2nd February, 2023 the Court delivered a ruling which addressed all the issues the Respondent has raised in the replying affidavit.
23. That, among other orders, the Court specifically ordered the Respondent to produce for the Court an account as provided for by **Section 83(e)** of the Law of Succession Act within 45 days thereof but she refused to do so.
24. That, following the Respondent's refusal to comply with the said order, the Respondent should be denied audience by this Court.
25. That, it is clear from the ruling of this Court delivered on 2nd February, 2023 that the Respondent does not have absolute ownership of the property forming the estate and she requires the consent of the adult children of the deceased and the Court before dealing with such property.
26. That, the Respondent did not seek my consent before selling and or disposing part- of the assets of the estate.
27. The Application is opposed by the Respondent in her replying Affidavit dated 24th June 2025 and grounds of opposition dated 4th April 2025 contending as follows;
 - i. That, the application by the Applicant is misconceived, bad in law, defective and an abuse of the Court process.*

- ii. *That, the application was served upon the Respondent' advocates on 13th March, 2025, one year after the filing of the same.*
- iii. *That, it has come to the attention of the Respondent that the application up for hearing on 25th February, 2025 without notice to the Respondent.*
- iv. *That, upon a cursory look at the CTS portal, it has also come to the knowledge of the Respondent that directions on the application were issued without a notice to the Respondent and without a response from the Respondent.*
- v. *That, the application is also set for ruling on 29th April, 2025 yet the Applicant That, it is unfair and unjust to the Respondent for the above fore.*
- vi. *That, the Respondent has a right to be heard and be served with all Court process as regards to this matter more so considering she is the administrator of the estate and also has an advocate on record.*
- vii. *That, this Honorable Court should frown against such sharp practice as demonstrated by the Applicant as the same is against the Respondent's constitutional rights.*
- viii. *That, the Applicant has approached this Court with unclean hands and the application has not been made in good faith.*
- ix. *That, the Administrator of the estate finalized the distribution of the estate herein and was issued with a certificate of confirmation of grant on 22nd July, 1986*

- x. *That, the Respondent being the wife of the deceased has administered estate and transferred all the properties to her name as per the Certificate of*
- xi. *Confirmation of grant.*
- xii. *That, this matter should be put to rest as distribution was finalized by the Respondent.*
- xiii. *That, the Administrator complied with the orders of the Court as regards distribution of the estate.*
- xiv. *That, it is in the interests of justice and fairness that this application be dismissed with costs to the Respondent.*

28. The Court had directed parties to file written submissions of which the Applicant complied and filed his written submissions dated 23rd April 2025

Applicants Submissions

29. The Applicant submits that, **Section 47** of the Law of Succession Act grants this Court the jurisdiction to entertain any application brought before it and the said provision of the law states: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

30. That, the said Section is also supported by **Rule 73** of the Probate and Administration Rules which provides thus:-

“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.”

31. That, the Applicant contends that he became aware that there was the intention to have the suit properties transferred to a third party by the Respondent herein. He took efforts to have a caution registered on the said parcel of land and attached copies of the cautions which despite payment were never registered.
32. That, the Applicant also sought to obtain copies of the green cards for the aid parcels of land and despite paying for the same and even waiting for them, the same was not availed in return the Applicant was sent aware and directed to move the Court for a Court Order to get access for them.
33. That, it is evident that there is some form of collusion between the Land Registrar-Naivasha and the Respondent and or her agents herein as the facts outlined in the affidavit demonstrate suspicion.
34. That, the Respondent is the administrator of the estate of the deceased and a trustee and her duties are well articulated under **Section 83** of the **Law of Succession Act** which provides as follows:-

Personal representatives shall have the following duties-

- a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;**
- b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**
- c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**
- d) to ascertain and pay, out of the estate of the deceased, all his debts;**
- 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;

i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the Court, either of its own motion or on the application of any interested party in the estate, to produce to the Court a full and accurate account of the completed administration.

35. That, the main role of the Respondent as an administrator is to maintain the assets of the deceased until the distribution is done and transfer the same to the rightful beneficiaries.
36. That, the Respondent herein was ordered to produce full and accurate accounts of the estate and she failed to do so.
37. That, the properties herein are properties that belong to the deceased and the same is even confirmed by the documents filed by the Respondent herein including the proposed mode of distribution of the estate.

38. That, the distribution of the estate in this matter is yet to be concluded and before the same is done, there is a need to ascertain that the said properties are still in the name of the deceased.
39. The Applicant herein has demonstrated the great lengths he has gone to confirm that the properties are still in the name of the deceased and the apprehension that the same have since been transferred to third parties is not true.
40. That, the Respondent herein has also failed to respond to the application and or produce evidence to show that she has not caused any transfer of the said properties to third parties.
41. That, the Land Registrar-Naivasha informed the Applicant that the only way that the record of the properties in question would be provided is through a Court order.
42. The Applicant urges the Court to issue an order to the Land Registrar- Naivasha to avail to the Applicant and the Court of the green cards for the parcels of land known as Kiambogo/Miroreni Block 1/398 (Itherero), Kiambogo / Miroreni Block 1/ 2398 (Itherero), Kiambogo/ Miroreni Block 1 / 2399 (Itherero), Kiambogo / Miroreni Block 1 / 2400 (Itherero) and Kiambogo / Miroreni Block 1 / 2401 (Itherero).

43. With regards prayer 3 of the application, **Section 45** of the **Law of Succession Act** prohibits intermeddling with the estate of the deceased, and the same provides thus:-

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall:-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

44. The Applicant submit that if the records provided by the Land Registrar confirm that the suit properties have been transferred to third parties, then the said act will amount to intermeddling and the only recourse will be to revert the properties to the estate for distribution to the proper beneficiaries of the estate.

45. That, given the foregoing, the Applicant urges the Court to find favor and allow the Application.

Determination

46. Having considered the Application, pleadings for and in opposition, the Court recalls that by this Court's Ruling dated 2nd February 2023 the question of annulment/revocation of grant was pegged on and was to await compliance by the Administrator and she is yet comply.
47. This Court views the Administrators action of forestalling distribution of the deceased estate for over thirty-eight (38) years to an extent that the rightful heirs might never enjoy their entitlements is bizarre, selfish and distasteful; the Administrator deserves no equitable reliefs from this Court.
48. The Motion before Court seeks to preserve assets constituting the estate of the deceased and it is public interest that the Courts furthers the protection envisioned in law.
49. The Court shall reserve its ruling on cancellations of titles until the relevant records are availed before Court.
50. The Court shall find favor with the Application and allow the same on the following terms;

- i. An order to the District Land Registrar Naivasha forthwith present to the Court the green cards for the following parcels of land:**
 - a) Kiambogo / Miroreni Block 1/398 (Itherero).**
 - b) Kiambogo / Miroreni Block 1/2398 (Itherero)**
 - c) Kiambogo / Miroreni Block 1/2399 (Itherero)**
 - d) Kiambogo / Miroreni Block 1 /2400 (Itherero)**
 - e) Kiambogo / Miroreni Block 1/ 2401 (Itherero)**
- ii. Any party aggrieved of this decision has leave to Appeal within the next thirty (30) days.**
- iii. Parties shall bear their own costs.**

It is so Ordered.

Dated, Signed and Delivered Via Teams Platform at Nakuru

On this day of 18th Day of November, 2025.

**S. Mohochi
Judge**