



REPUBLIC OF KENYA



In re Estate of Priscilla Wambui Gathungu (Deceased) (Succession Cause E100 of 2025) [2025] KEHC 16177 (KLR) (Family) (10 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E100 OF 2025
CJ KENDAGOR, J
NOVEMBER 10, 2025**

BETWEEN

JOHN KURIA GATHUNGU PETITIONER

AND

MARY AGNES NJERI GITHINJI 1ST RESPONDENT

JOYCE WANENGI MWAURA 2ND RESPONDENT

MINNEH WANJIKU MUNGAI 3RD RESPONDENT

SENIOR CHIEF, WAITHAKA LOCATION 4TH RESPONDENT

HON. ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The deceased, Priscilla Wambui Gathungu alias Philisila Wambui w/o Gathungu died on 17th February 2024. She is survived by the following dependants;
 - i. John Kuria Gathungu – son
 - ii. Christine Martha Wanjiru Mwangi – daughter
 - iii. Jane Waithera Gathungu – daughter
 - iv. Mary Agnes Njeri Githinji – daughter
 - v. Joyce Wanengi Mwaura – daughter
 - vi. Minneh Wanjiku Mungai – daughter
 - vii. Leonard Kamau Gathungu (deceased son)



2. John (Applicant) petitioned the Court for a Grant of Letters of Administration intestate and the same has not been issued because his siblings Mary, Joyce and Minneh did not sign the consent to the petition and he also had not obtained the introductory letter from the chief.
3. As a result, the Applicant filed the summons application dated 9th February, 2025 that seeks the following orders;
 - a. That a special citation does issue to Mary Agnes Njeri Githinji, Joyce Wanengi Mwaura and Minneh Wanjiku Mungai who being beneficiaries of the aforesaid estate have failed and/or refused to consent to the Applicant's petition for Letters of Administration intestate of the estate of Priscilla Wambui Gathungu alias Philisila Wambui w/o Gathungu (Deceased);
 - b. That summons do issue to the Senior Chief, Waithaka Location to show cause why the introductory letter in the estate of the deceased cannot issue;
 - c. That in the alternative, the petition for the said Letters of Administration by John Kuria Gathungu be deemed as duly filed notwithstanding the absence of the aforesaid consents;
 - d. That costs of this application be borne by the respondents.
4. The 1st to 3rd Respondents filed a response to the application. Meanwhile, the Chief of Waithaka Location and the Attorney General, also Respondents, did not take part in the proceedings.
5. The application was canvassed by way of written submissions.

Applicant's case

6. The Applicant argues that the deceased's estate remains un-administered to the detriment of the beneficiaries. He argues that whereas he has initiated the administration through filing of the petition, the 1st to 3rd Respondents have refused to issue consents to the Applicant.
7. He further argues that, despite making a personal request to the Senior Chief of Waithaka Location and issuing a demand through his Advocates on record to the said Chief, the Chief has refused to provide an introductory letter for the estate of the Deceased.
8. According to the Applicant, the Respondents aim to frustrate the administration of the Estate to the disadvantage of the other beneficiaries for no apparent reason.

Respondents' case

9. The Respondents argue that the Applicant is not entitled to obtain the Letters of Administration, alleging that he is intermeddling with the estate. They further argue that the Applicant is intentionally attempting to exclude them from the process of administering the estate.
10. The Respondents claim that the Applicant, in collusion with two other siblings and the family of their deceased sibling, is intent on exploiting the estate for their personal benefit at the expense of the other beneficiaries.
11. I have considered the application and the affidavits filed, the issue for determination are;
 - i. Whether the Court should admit the petition without the consents and the Chief's letter; and
 - ii. What orders the Court should make regarding the administration of the deceased's estate.



12. The administrative process upon the filing of a petition in probate matters is that the Court, through the Deputy Registrar, peruses the pleadings to ascertain that all the necessary documents have been filed. In this matter, the Applicant filed the following documents;
 - i. Form 80 - Petition for letters of administration intestate
 - ii. Form 5 – Affidavit in support of the Petition
 - iii. Form 11 – Affidavit of justification of proposed surety
 - iv. Form 12 – Affidavit of justification of proposed administrator
 - v. Form 57 – Guarantee of personal surety (two)
 - vi. Form 38 – Consent to the making of a grant of administration intestate to a person of equal priority signed by John (applicant), Christine and Jane
 - vii. Proof of assets
 - viii. Copy of identification cards
13. As a standard practice and to ensure due diligence, the Courts require that an introductory letter from the Chief of the area where the deceased resided be filed. This letter outlines the estate’s beneficiaries and is important because the Chief may be familiar with the deceased and may have insights or information to assist the Court in identifying the rightful beneficiaries. The Chief’s information, whether through personal acquaintance or inquiry, helps clarify who should administer and inherit the estate.
14. Rule 29 (1) of the Probate and Administration Rules provide that Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the Applicant.
15. The purpose of obtaining consent is to guarantee that all individuals entitled to participate in the administration of the estate or to receive benefits from it are informed about the ongoing proceedings. The consent also confirms that the beneficiaries formally approve the filing of the petition and the appointment of the petitioner as the administrator of the estate.
16. Succession is meant to be a collaborative process, but the law also anticipates instances where disputes may arise on the administration and distribution of the estate. Sometimes, all parties cannot sign the consent due to potential disagreements.
17. What happens when all parties have not given their consents or if the Chief’s letter has not been issued or there are any other missing documents? An inquiry may be made into the matter by the Court or through the Deputy Registrar or the Petitioner may move the Court, and directions may be issued as may be necessary under the jurisdiction vested by Section 47 of the [Law of Succession Act](#) regarding the authority to make such orders as are expedient, as well as Rule 73 of the Probate and Administration Rules concerning the Court’s inherent power to issue necessary orders to achieve justice or to prevent abuse of the Court process.
18. Section 68 of the [Law of Succession Act](#) and Rule 17 of the Probate and Administration Rules make provisions for notice of any objection to an application for a grant of representation.
19. From the replying affidavit, the Respondents acknowledge that they have not given their consent to the petition. There are no other succession proceedings concerning the deceased herein. All the children of the deceased are also aware of the current proceedings. The three Respondents, who are the daughters



of the deceased and whose entitlement to apply for Letters of Administration in the estate of the deceased ranks equally with the Applicant's entitlement. The law of succession includes provisions, as previously outlined, that address objections to the making of a grant.

20. It is imperative that the succession process is conducted swiftly and efficiently. This urgency is essential to prevent the potential deterioration of the estate and to guarantee that the rightful heirs receive their due entitlements without unnecessary delay.
21. I find merit in the application. To avoid stalling the succession process, I make the following orders;
- i. The Chief of Waithaka Location is directed to provide this Court with the introductory letter in the Estate of Priscilla Wambui Gathungu alias Philisila Wambui w/o Gathungu (Deceased) within 14 days of being served with this ruling or order and provide copies to the parties herein. The Applicant is to effect service of the ruling or order within three days of the delivery of the ruling.
 - ii. The Petition for Letters of Administration Intestate dated 9th February, 2025 is approved for publication in the Kenya Gazette, notwithstanding that the Chief's Letter has not been presently filed.
 - iii. Any party opposed to the issuance of the grant may lodge an objection and submit an answer, a cross-petition for the grant as provided by the Probate and Administration Rules.
 - iv. Upon publication and after the 30-day period has elapsed, if no objection is filed, the grant will be issued to the Petitioner.
 - v. Since all parties are siblings, if any objections and responses are filed, the Deputy Registrar of the Court may assess the case's suitability for referral to Court Annexed Mediation.
 - vi. Costs of the application shall be in the cause.
 - vii. Mention date to be fixed before the Deputy Registrar to confirm compliance.
22. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10TH DAY OF NOVEMBER, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Administrator – Beryl

Mr. Oduol – Advocate for Petitioner/Applicant

