

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT FAMILY CAUSE NO. 742 OF 2013

IN THE MATTER OF THE ESTATE OF KANYUA GATHANGU

Alias PAUL WAKANYUA (DECEASED)

AND

PHILIP GATHANGU WAKANYUA

JOHN GICHIRA WAKANYUA.....

PETITIONERS

RULING

1. Before this Court is the Summons dated **20th November 2024** by which the Applicants **PAUL GATHANGU WAKANYUA** and **JOHN GICHIRA WAKANYUA** seek the following orders:-

“1. SPENT.

2. SPENT.

3. THAT this Honourable Court be pleased to set aside the orders dated 18th July 2024 and

order that the application dated 4th August 2023 be heard afresh.

4. THAT the costs of this application be borne in the cause.”

2. The application which was premised upon **Rule 73** of the **Probate and Administration Rules** was supported by the affidavit of even date sworn by the 1st Applicant.
3. The Respondents **JANE WAMBUI GATHANGU** and **MARGARET WANGARI MBOGO** opposed the application through the Replying Affidavit dated **27th January 2025** sworn by the 1st Respondent.
4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated **28th May 2025** whilst the Respondents counsel indicated to court that they would not be filing any submissions.

BACKGROUND

5. This succession cause relates to the estate of the late **KANYUA GATHANGU** alias **PAUL WANYUA** (hereinafter ‘**the Deceased**’) who died intestate on **25th November 2003**.

6. Following the judgment delivered on **28th September 2018** Grant of letters of Administration were issued to the Applicants. The Grant was duly confirmed and the certificate of confirmed Grant indicated how the estate was to be distributed.
7. On **4th August 2023** the Applicants filed a Summons seeking to have the transmission documents in respect of the estate signed by the Deputy Registrar of the High Court.
8. On **22nd January 2024**, the matter came up before the court. Counsel for the Applicants indicated that the Respondents had been served but had failed to file a reply. The court noting that the application was unopposed proceeded to allow the application.
9. The Applicants now seek orders to set aside the orders of **22nd January, 2024** and seek to have the application dated **4th October 2023** heard on merit.
10. The Applicants seek the setting aside of orders. The application in Prayer (iii) seeks to have orders dated **18th July 2024** set aside. A close examination of the file reveals that there do not exist any orders dated **18th July 2024**. I

conclude that this is a typographical error and the order being referred to is the one dated **22nd January 2024**. The question would be whether the Applicants have demonstrated sufficient cause to have the said orders set aside.

11. Firstly I note that the impugned orders were made in **January 2024**. This application seeking the setting aside of said orders was made **ten (10) months** later in **November 2024**. The Applicants have not explained this delay in challenging the order.
12. The Applicants blame their advocate for not informing them of the court's decision. However it must be remembered that a suit belongs to the litigants not to their advocates. Therefore having filed the application the Applicants had an obligation to continually check on the progress of their application. I find that the Applicants were indolent regarding follow up of their matter. The delay in filing this application is not justified.
13. The record indicates that the Applicants were properly served with a hearing notice vide the Affidavit of service

dated **4th October 2021**. Service was effected upon their lawyer on record. On the hearing date there was no appearance for the Applicants and no reply to the application had been filed. In the circumstances the court proceeded to allow the application as prayed.

14. Finally this application for setting aside has been overtaken by events as distribution of the estate has already been perfected and the estate has been transmitted as evidenced by the annexure to the Replying Affidavit dated **27th January 2025**. Annexure **J3** is the letter of consent for subdivision of **LR No. Othaya/Thuti/361** duly signed by the chairman of the Othaya Land Control Board. An official search dated **16th September 2024** shows that the said parcel of land has already been transmitted into the names of the beneficiaries.
15. This application has come too late in the day. However the Applicants are at liberty to move the **Environment and Land Court [ELC]** to seek for cancellation of those Titles.

16. Finally I find no merit in this application. The same is hereby dismissed in its entirety. This being a family matter I make no orders on costs.

Dated in Nyeri this 7th day of November 2025.

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MAUREEN A. ODERO
JUDGE