



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 983 OF 1999
IN THE MATTER OF THE ESTATE OF HANNIEL MBURU
KIMANI ALIAS HANIEL K. MBURU AIAS HANNIE MBURU
(DECEASED)

JENNIFER WAMBUI
APPLICANT

VERSUS

EVANSON MUNGAI MBURU
RESPONDENT

RULING

INTRODUCTION

1. Before the court for determination is the Applicant's Summons dated 8th April 2025. The Applicant seeks the following orders;

1. **THAT the Administrator over the Deceased's estate EVANSON MUNGAI MBURU complete administration of the Deceased's estate pursuant to the Certificate of Confirmation of Grant issued in this cause within six (6) months.**
2. **THAT the administrator thereafter produce to the court a full and accurate account of the completed administration.**
3. **THAT the costs of this application be paid out of the estate.**

2. The Application is premised under Sections 47 and 83 of the Law of Succession Act and Rules 49 and 59 of the Probate and Administration Rules, and all other enabling provisions of the law and is supported by Applicant's affidavit of even date. She avers that she is the deceased's daughter whereas the Respondent is her brother and son of the deceased.

The Applicant's case is that the Respondent was appointed as Administrator of the estate of the deceased on 8th July 1999.

3. The grant was confirmed on 8th June 2009 and the court directed that property known as Title No. Makuyu/Kimorori 111/1123 be transmitted to her. The property has never been transferred to her despite demands by her advocate for the same to be transferred to her. That the delay to have the property transferred to her has deprived her from using and enjoying the property to sustain herself. The delay to fully administer the deceased's estate is inordinate, inexcusable and unjustifiable.

4. The Respondent did not file a response to the application but has instead filed Summons for rectification of grant dated 14th October 2025. The summons is supported by the annexed affidavit of Joseph Ndungu Mburu sworn on even date. James

Ndungu Mburu presents the application as the donee of a power of attorney by the administrator. There is no evidence of service of that application on the applicant

5. The Respondent seeks to rectify the grant, so as to; correctly describe an asset, include assets that were discovered post the confirmation and make provision for their distribution to the beneficiaries and make provision for the sale of assets to cater for the cost of administration.

ANALYSIS AND DETERMINATION

6. The issue for determination is
 - a. **Whether the Application dated 8th April 2025 is merited and the Administrator should be directed to finalise distribution of the estate and produce to Court a full and accurate account of the completed administration?**
 - b. **Who should pay costs of the application?**
7. In presenting this application, the applicant is seeking to compel the respondent to comply with a statutory duty. Section 83 (g) of the Law of Succession Act is framed in mandatory terms. It is not a suggestion, it is a requirement. –

83. Duties of personal representatives

a)....

b)...

c)...

d)...

e)...

f)...

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).....

8. **In re Estate of David Kyuli Kaindi (Deceased) [2015]**

eKLR Musyoka, J. had this to say on the obligation of personal representatives to render account:

The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the Trustee Act, Cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others - beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others - they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.

9. By virtue of the statutory schedule administration herein should have been finalised on or before 8th December 2009. The

Administrator is 16 years behind schedule!!! The summons for rectification is his rejoinder.

10. Unfortunately, that application is dead on arrival. It is presented by an individual who is not the administrator. The vehicle he arrives in is a power of attorney. Delegation of responsibilities of an administrator's duties is unknown in law. One acts as an administrator on the authority of appointment by the Court. It is not a baton that can be passed on as one would in a relay.

11. In **THE MATTER OF THE ESTATE OF GERALD WACHIRA 2012 KEHC 56 (KLR) (3)** the Court was faced with a similar situation where an administrator purported to delegate to a donee under a power of attorney the duties of an administrator, the Court pronounced as follows-

[4.] In view of the existence of the clear provisions of law that the only person who has authority and power to deal in and with the property forming an intestate estate is the person who is a holder of a grant of representation to that estate. It therefore follows that the deceased widows' action and or conduct of purporting to donate a power of Attorney to her daughter the late Josephine Wangare with power to deal with the estate property on behalf of the deceased widow as if the said Josephine Wangare was the widow executing the said mandate was nothing but a nullity because the holder of a power of Attorney on behalf

of a grant holder is not recognized under the law of succession Act. It therefore follows that whatever actions that the late Josephine Wangare may have done in relation to the deceased property inclusive of the signing of any transfer in favour of either the beneficiaries or of 3rd parties were and still are all null and void and cannot be protected by law

12. To save on judicial time, I will strike out the application dated 14th October 2025. The channel open under the law when an administrator is unable to continue with administration of a grant post confirmation is to apply for revocation of the grant under Section 76 (d) of the Law of Succession Act and issuance of a fresh grant to the new administrator (s).
13. The orders sought by the applicant are not discretionary as they are couched in mandatory terms. The law intends that once a deceased person exits life's stage his estate is transmitted to the rightful beneficiaries expeditiously, hence the six-month time frame from the time the grant is confirmed.
14. Having said this, I am cognisant of the fact that Article 159 of the Constitution of Kenya requires that the Court's focus should be on delivery of substantive justice. This is why Sections 47 of the Law of Succession Act and rule 73 of the Probate and

Administration rules vest in the Court inherent powers to make orders for the ends of justice.

15. It is evident that majority of the beneficiaries are agreed that there are some preliminary issues that need to be addressed prior to the final transmission and this includes the rectification of the grant to; include an additional beneficiary; additional assets of the deceased of the estate and correct the distribution of an asset. I will therefore allow the administrator to present a compliant application within 30 days.

16. The applicant herein is 72 years old. She reached out to the administrator *vide* letter dated 28th January 2025, calling on the administrator to transmit the assets to her. The respondent responded on 29th January 2025 raising some of the issues that are in the summons for rectification. The applicant then responded *vide* her letter of 31st January 2025. There appears to have been no action on the part of the administrator/ respondent necessitating the application dated 8th April 2025.

17. When this application was filed, the respondent did not file a response but instead he filed the summons for rectification dated 14th October 2025. It is the indolent actions of the

respondent that have necessitated this application. This is an appropriate case for the respondent to pay costs. (See the Supreme Court decision in **Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR)**)

18. The costs are assessed at Kshs 10,000 and shall be paid by the administrator within 30 days.
19. In the end these are the orders-
 - a. The Application of 14th October 2025 is struck out for being incompetent and defective
 - b. The respondent (Administrator) to file a compliant application to allow for rectification of the grant within 30 days.
 - c. The respondent will pay the applicant costs of Kshs 10,000 within 30 days.
 - d. Mention on 20th January 2026 to confirm compliance and take further directions.
 - e. Leave granted to appeal, any party exercising their right of appeal to do so, within 30 days.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 7th DAY OF NOVEMBER, 2025.

**P. M. NYAUNDI
JUDGE**

In the presence of:-

Fardosa Court Assistant
Mr. Mbugua Njoroge for Applicant
G. Kamau for Administrator