



**In re Estate of Gabriel Mithamo Ndunyu (Deceased) (Succession Cause
718 of 2017) [2025] KEHC 16194 (KLR) (Family) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 718 OF 2017
HK CHEMITEI, J
NOVEMBER 6, 2025
IN THE MATTER THE ESTATE OF GABRIEL MITHAMO NDUNYU (DECEASED)**

BETWEEN

**MARTIN MITHAMO NDUNYU 1ST RESPONDENT
ANDREW THUKU NDUNYU 2ND RESPONDENT
LYDIA KABUCHI NDUNYU 3RD RESPONDENT**

AND

**RICHARD NGURU NDUNYU 1ST OBJECTOR
AGNES WANJIRU MWANGI 2ND OBJECTOR**

RULING

1. This ruling relates to the application dated 20th March, 2025 and amended on 28th March, 2025 filed by the Applicants, Richard Nguru Ndunyu and Agnes Wanjiru Mwangi; seeking for orders that:
 1. Spent.
 2. Spent.
 3. The court be pleased to stay proceedings and execution of any orders issued in Nairobi RRT 1900/2023 and Mombasa BPRT 091/25 pending the hearing and determination of the application for revocation and distribution of the estate herein.
 4. All the rental income be deposited in this court as requested by Respondents in prayer 5 of the application dated 3rd November, 2021 herein pending the distribution of the estate.



5. The Applicant's earlier application for stay dated 6th August, 2024 herein be considered together with this application.
6. The order be enforced by OCS Dandora Police Station.
7. Costs be provided for.
2. The application is based on the grounds on its face and supported by affidavit sworn by Agnes Wanjiru Mwangi on 20th March, 2025.
3. She avers inter alia that she is the sole widow of the deceased. The Respondents are her stepchildren, being the offsprings of the deceased's second wife, from whom he divorced in 1994. Following the divorce, the children's mother obtained custody. Consequently, by the time she, the Applicant, married the deceased in 2005 as his third wife, he was living alone. Their matrimonial home is situated on Plot No. 40720, Dandora Phase IV, where the deceased settled her and their two children and where they continue to reside to date.
4. That the property also contains three additional rental units, which serve as her sole source of income. Through an application under certificate of urgency in Rent Restriction Tribunal Case No. RRC E1900 of 2023, the Respondents sought the following orders: "That the Honourable Court be pleased to grant vacant possession with the assistance of a licensed auctioneer pending the hearing and determination of this application; and that the OCS Dandora Police Station ensures compliance with these orders."
5. The Respondents have approached the Tribunal purporting to act as administrators of the estate on the strength of a grant that was issued irregularly - a fact confirmed by the Deputy Registrar via her email dated 8th August, 2023.
6. The Applicant had previously sought stay orders in this file through an application dated 6th August, 2024, but the same was not heard on three occasions: twice because the application had not been downloaded and placed in the court file, and once because the presiding judge, who was sitting virtually, did not have access to the physical file kept in the Deputy Registrar's strong room.
7. Further and while awaiting the hearing of her application for revocation, her advocate filed an application for stay before the Nairobi Rent Restriction Tribunal (RRC E1900 of 2023) dated 28th December, 2023. That application was dismissed, prompting her to file an appeal, which is yet to proceed as her advocate has not received the typed proceedings to compile the record.
8. On their part, the Respondents had earlier filed an application dated 3rd November, 2021, seeking to have all rental income from the estate deposited in court. In prayer 5 (ii) of that application, they specifically referred to the matrimonial home, being Nairobi/Dandora Phase IV Plot No. 40720, which is the same property forming the subject matter of the Rent Restriction Tribunal case.
9. All pending applications in this matter - namely, the revocation, stay, ascertainment of estate and the Respondents' application - were scheduled for hearing on 18th March, 2025. When the parties appeared before the court, Justice Ogolla recused himself after the first Applicant produced the Deputy Registrar's letter confirming that the grant had been issued in error and apologizing to the parties.
10. The Judge noted the irregularity and encouraged the parties to consent to the revocation of the grant and appointment of joint administrators, but the Respondents declined, insisting that the matter proceed to hearing. Justice Ogolla thereafter recused himself on the ground that the Deputy Registrar who had issued the apology was his immediate deputy and he directed that the matter be placed before another judge.



11. The Applicant had hoped to secure stay orders on 18th March, 2025, however, following the Judge's recusal, no orders were issued. As a result, she now faces imminent eviction the following Tuesday should the Rent Restriction Tribunal grant the Respondents' application. It would be extremely prejudicial and unjust to allow the tribunal proceedings to continue, considering that, as the deceased's lawful spouse, she is entitled by law to occupy, manage, control, renovate and repair the estate property. It would be even more inequitable to vest those rights in the children of a divorced wife who were not in the deceased's custody at the time of his death.
12. Moreover, compelling her to defend the same issue in two different courts is an unfair practice. The Respondents' earlier application dated 3rd November, 2021 already sought to have all rent from the estate deposited in this Court. This duplication offends her constitutional right to a fair hearing. Unless this Court intervenes by staying the proceedings before the Rent Restriction Tribunal, she fears that she will be evicted on 18th March, 2025, once the Respondents prosecute their application there, as there is currently no subsisting stay order.
13. The application is opposed vide replying affidavit sworn by Lydia Kabuchi Ndunyu on 11th October, 2023.
14. She avers inter alia that she is one of the administrators of the estate and a daughter of the deceased, duly authorized by her co-administrators, Martin Mithamo Ndunyu and Andrew Thuku Ndunyu, to swear this affidavit.
15. Following the issuance of the Grant of Letters of Administration Intestate on 14th December 2022, the petitioners in this matter - namely Martin Mithamo Ndunyu, Andrew Thuku Ndunyu and Lydia Kabuchi Ndunyu - are the biological children of the deceased. The deceased was also survived by his wife, Tabitha Waruguru Ndunyu, and her mother. The firm of Meritad Law Africa LLP took over conduct of the matter from Khaminwa & Khaminwa Advocates in November 2022 and duly filed a Notice of Change of Advocates.
16. Upon assuming representation, the advocates for the 1st and 2nd Objectors informed the Court that the 2nd Objector had filed an application dated 26th January, 2023, which she was unable to prosecute due to the issuance of the above grant. A Gazette Notice had earlier been published on 8th February, 2019, and upon receiving instructions, the firm of Meritad Law Africa LLP pursued the grant of 14th December, 2022 on behalf of the petitioners. She states that she was unaware of any pending objection proceedings, particularly the one alleged to have been filed on 8th March, 2019.
17. She averred that the process of obtaining the grant was lawful, procedurally proper and not tainted by fraud, false statements, or misrepresentation, as the administrators are bona fide children of the deceased. They have acted diligently in administering the estate, but their efforts have been consistently frustrated by the 1st and 2nd Objectors. The 2nd Objector, who claims to be the deceased's wife, is unknown to the administrators and to the deceased's lawful wife. Her claim is misleading, legally untenable and made in bad faith. She has no locus standi and her allegation of marriage lacks evidentiary support.
18. The claim is therefore frivolous and her objection must fail. The affidavit of Agnes Wanjiru Mwangi is malicious, having been filed in collusion with the 1st Objector in a deliberate scheme to dispossess the rightful heirs of their father's estate. The administrators maintain that the Grant issued on 14th December, 2022 was properly obtained and that the contents of Annexure "A" are materially false.



19. The 2nd Objector is put to strict proof regarding her allegations, including the authenticity of the purported judgment of 12th July, 1993 and the claim that she or her mother ever had custody, residence or marriage with the deceased. The deceased passed away on 20th February, 2017, not 2018, as alleged.
20. Further the 2nd Objector has never resided in, owned, or shared any matrimonial home with the deceased. The deceased and his wife resided in Ihwagi Village, in a home constructed between 1978 and 1979. The 2nd Objector's allegations about being locked out of the premises are false. She further has unclean hands, having diverted rental income from the deceased's estate to one Alice Lubisia through National Bank Account No. XXXXXXXXXXXX0.
21. Neither she nor her mother has ever participated in the lawful administration of the estate. It is further deponed that Richard Nguru Ndunyu, the deceased's brother, fraudulently filed a separate petition for letters of administration at Karatina, despite lacking locus, and falsely claimed to be a beneficiary.
22. The alleged objection dated 8th March, 2019 was never served upon the administrators or their former advocates. Claims of joint administration and assertions that the deceased left no property are false. The deceased's assets are clearly listed in paragraph 9 of this affidavit. Prior to confirmation, the 1st and 2nd Objectors unlawfully seized and withheld vital estate documents and have been collecting rental income from estate properties, prompting the administrators to seek the current grant to safeguard the assets. The matter is under police investigation.
23. She deponed further that if indeed the Objectors were genuinely interested in prosecuting their application of 26th January, 2023, they should have pursued their alleged objection of 8th March 2019 - which raises the question of which application takes priority. The administrators deny any wrongdoing on the part of Meritad Law Africa LLP.
24. The 1st Objector has a history of violence, fraud and intermeddling. He has conspired with Venansio Muriuki Kanyana, the deceased's maternal uncle, to unlawfully alienate the estate. He was convicted for creating disturbance and issuing death threats to the deponent and her mother, contrary to Section 95(1) of the Penal Code, in Shanzu Criminal Case No. 1016 of 2018. He also obtained a fake death certificate, reported under OB No. 36/20/09/2017, and maliciously obstructed the deceased's burial until a court order dated 3rd May, 2017 in Milimani Civil Case No. 4 of 2017 was obtained.
25. The 1st Objector further committed multiple acts of malicious damage to property and interference with estate assets, which were reported at various police stations: OB No. 30/29/07/2018 (Nyali) – property damage; OB No. 27/4/5/2021 (Karatina) – threats to kill stone masons; OB No. 52/13/05/2021 (Ihwagi) – destruction of the deceased's monument; OB No. 02/03/03/2023 (Ihwagi) – malicious damage to estate property.
26. He has unlawfully sold or wasted the deceased's properties in Umoja Phase 1 (House J269) and Buru Buru Phase 2 (House 960) and diverted rental income from known estate accounts to unknown accounts, as reported under OB No. 2/2/5/2017 (CID Kisauni Dog Section). He and his accomplices continue to intermeddle with the Mombasa property, the subject of Mombasa ELC No. 182 of 2018, despite subsisting stay orders extended on 15th October, 2019.
27. In light of these grave acts, the court should not vest the administration of the estate in the 1st and 2nd Objectors. The Power of Attorney dated 22nd April, 2002 held by Venansio Muriuki Kanyana lapsed upon the deceased's death and cannot be relied upon to transact or dispose of estate assets.
28. Under Sections 35, 37, 38 and 39 of the *Law of Succession Act*, a surviving spouse and children rank in priority both in administration and beneficial entitlement. The purported grant pursued by the 1st



and 2nd Objectors in Karatina Succession Cause is void for lack of consent from the lawful heirs, who had prior right to apply for the grant.

29. Accordingly, the issues for determination are: Whether the proceedings leading to the grant were defective in substance; Whether the grant was obtained fraudulently or through concealment of material facts; and whether the objection is valid ab initio.
30. The administrators affirm that they lawfully obtained the grant, have acted in good faith and have a statutory obligation to safeguard the estate. The 1st and 2nd Objectors should therefore be ordered to render a full and accurate account of all dealings with the estate since the issuance of the grant.
31. Pending determination of the revocation application, this Honourable Court should order that: All tenants of the estate properties shall henceforth remit rent payments directly to the Registrar, High Court of Kenya; and the administrators shall compile and file a detailed account of all income received from the estate properties since the deceased's death.
32. The parties have not filed written submissions.
33. Prayer 5 of the amended application dated 28th March, 2025 seeks those the Applicants' earlier application for stay dated 6th August, 2024 herein be considered together with this application.
34. The application dated 6th August, 2024 filed by Agnes Wanjiru Mwangi and Richard Nguru Ndunyu, seeks for ORDERS THAT:-
 1. Spent.
 2. Spent.
 3. The honourable court be pleased to stay proceedings in Mombasa Rent Restriction 120/2023 and Nairobi Rent Restriction 1900/2023 and all consequential orders thereto be stayed pending the hearing and determination of this application interpartes.
 4. The honourable court be pleased to stay proceedings in Mombasa Rent Restriction 120/2023 and Nairobi Rent Restriction 1900/2023 and all consequential orders thereto be stayed pending the hearing and determination of application for revocation of grant dated 20th March, 2023 and application to ascertain the estate dated 26th January, 2023 both fixed for hearing on 17th October, 2024 and distribution of the deceased's estate herein.
 5. The above orders be enforced by OCS Ka Dzandani Mombasa and OCS Dandora police station in Nairobi.
 6. Each party to bear its costs.
35. The application is unopposed.

Analysis And Determination

36. I have read the applications before this court and the responses thereto.
37. The following applications are pending determination by this court:-
 1. Notice of motion dated 3rd November, 2021.
 2. Notice of motion dated 26th January, 2023.
 3. Summon for revocation of grant dated 20th March, 2023.



4. Notice of motion dated 10th August, 2023.
5. Notice to produce dated 1st November, 2023.
6. Notice of motion dated 6th August, 2024.
7. Affidavit in protest sworn on 24th May, 2023 against confirmation of grant.
38. On 15th May, 2025, this court allowed prayer 3 of the amended application dated 28th March, 2025 to wit THAT the court be pleased to stay proceedings and execution of any orders issued in Nairobi RRT 1900/2023 and Mombasa BPRT 091/ 25 pending the hearing and determination of the application for revocation and distribution of the estate herein. This order is still in place.
39. The substratum of this case and all the above applications has to do with the grant issued in favour of the Respondents. The Applicants contend that they are the deceased widow and children respectively.
40. On the other hand, it is the Respondent's case that they are not.
41. At the same time there are various suits pending in various courts including the business premises rent tribunal. All have in one way or another to do with the estate. There is also a suit in Karatina court which has to do with this estate.
42. I find that the main and germane issue to determine is the question of whether the Applicants and other interested parties including the maternal uncle have any relationship with the deceased. In other words, are they beneficiaries to the estate?
43. Secondly if they are what is their entitlement in the estate?
44. The issue of rent from the properties in Nairobi and Mombasa is a thorny issue between the parties. The same goes with some alleged properties which have been disposed by some of the parties or have been intermeddled with.
45. The court cannot arrive with clear precision at a reasonable answer to all these issues unless the parties are subjected to viva voce evidence. The affidavit evidence alone cannot suffice considering the competing interests herein.
46. There is also so much bad blood between the parties so that any interim orders prayed by the parties will still cause much interference to the parties and the estate. The best approach in my view is to maintain the status quo and have the matter expeditiously proceed taking care that the estate in the meantime is not wasted and the parties are as well safeguarded.
47. Consequently, I direct as hereunder:-
 - (a) All the pending applications herein are held in abeyance pending the hearing and determination of objection proceedings.
 - (b) Status quo be maintained in the estate and in particular the Applicants use and occupation of land parcel number Nairobi/Dandora Phase IV Plot No. 40720 pending the hearing and determination of the objection proceedings herein.
 - (c) All matters pending before the Business Premises Rent Tribunal namely Nairobi Bprt Case No. 1900 Of 2023 And Mombasa Bprt Case No 091 OF 2025 are hereby stayed pending the determination of the objection proceedings herein.
 - (d) The parties within 30 days from the date herein are directed to file and serve each other any further affidavits and or witness statements they intend to rely on during hearing.



(e) The objection proceedings shall be heard by way of oral evidence.

(f) Costs of all the applications shall await the outcome of the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

H K CHEMITEI

JUDGE

