



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 361 OF 2001

IN THE MATTER THE ESTATE OF SAMUEL MAINA GATONGA

alias MAINA GATONGA (DECEASED)

BETWEEN

DORCAS WANGUI MAINA
APPLICANT/BENEFICIARY

AND

LLOYD MASIKA LTD **INTERESTED**
PARTY

RULING

1. This ruling relates to the application dated **1st April, 2025** filed by the Applicant, Dorcas Wangui Maina, seeking for **ORDERS THAT:-**

1. ***Spent.***

2. **This honourable court do instruct M/s Lloyd Masika to pay the applicant/beneficiary a sum of Kenya shillings one hundred and seven million, eight hundred thousand (Kshs. 107,800,000/=) together with interest at the rate of 18% per annum being her share of the rental income which is being withheld by the said agent.**

3. **The said agent be commanded to render accounts of all rental income it has collected to date.**
4. **Costs of this application be provided for.**
2. The application is based on the grounds thereof and supported by affidavit sworn by Dorcas Wangui Maina on **1st April, 2025.**
3. She avers *inter alia* that she is a beneficiary of the estate of the deceased, who passed away on **3rd January, 2001.** The deceased was survived by the following beneficiaries: From the first house: Bilha Njoki Maina, Charles Kanyuga Maina, John Kaguma Maina, Stanley Kariuki Maina (senior), Francis Chege Maina, Joseph Macharia Maina, James Kihara Maina, Dedan Muthaiga Maina, Veronica Wangari Maina (deceased) and Dorcas Wangui Maina (herself). From the second house: Joanina Wanjiku Maina, James Gatonga Maina, Nancy Wangari Maina, Rose Warau Maina, Grace Nyambura Maina, Gerald Muthui Maina, Stanley Kariuki Maina (junior), Daniel Mwangi Maina and Alice Njoki Maina.
4. A grant of representation for the estate was issued on **24th April, 2001** and later rectified on **15th September, 2009.** Pursuant to a court order in **Nairobi HCCC No. 394 of 2011 - Francis Chege Maina & 4 others v John Kaguma Maina & 2 others**, the firm of Lloyd Masika was appointed as agent to collect rental income from properties owned under Ambassadeur Investment (K) Limited on behalf of the first family, effective **1st June, 2012.**

5. Since then, the court-appointed agent has been collecting and distributing monthly rental income of **Kshs. 700,000/=** to the entitled beneficiaries - except her. Despite the clear terms of the court order, she has never received her rightful payments, and as a result, the agent now owes her **Kshs. 107,800,000/=**.
6. She therefore prays that this Honourable Court orders the said agent to remit the outstanding amount together with interest at **18%** per annum, and to render a full account of all rent collected since the court order was issued. She contends that the agent's conduct amounts to unjustly denying her rightful entitlement and it is only fair and just that the accounts be taken and her dues paid.
7. The application is opposed vide replying affidavit sworn by D.K. Machua and John Kaguma Maina on **16th May, 2025** and **10th July, 2025**, respectively.
8. **D.K. Machua** avers inter alia that he is a director of the interested party and has authority to swear this affidavit. He confirms that the interested party agrees with the contents of paragraphs **5** to **10** of Dorcas Wangui Maina's affidavit, to the extent that they are factual and consistent with the succession proceedings in this matter.
9. By an order made on **29th May, 2012** and issued on **4th June, 2012**, the court appointed the interested party as managers of the properties registered under Ambassadeur Investment (K) Ltd, effective **1st June, 2012**. The appointment arose from **Nairobi HCCC No. 394 of 2011:**

Francis Chege Maina & 4 Others v John Kaguma Maina & 2 Others, a dispute among siblings of Dorcas Wangui Maina, who was not a party to the proceedings despite being aware of them.

10. He states that Dorcas was aware of the ongoing case and that its outcome would affect her present application, since the interested party's management authority emanates from the said suit. After their appointment, several meetings were held to implement the court order. The first meeting on **5th June, 2012** confirmed the handover process and identified assets for management. Further meetings were convened on **19th June, 2012, 28th June, 2012, 4th July, 2012** and **11th December, 2012**, and in January, May, July, August, and October 2013, as well as February 2014, to address handovers, rental valuations, bank account signatories and leasing arrangements for the Ambassadeur, Batis and Bilmas Hotels.
11. By consensus, the parties agreed on monthly allowances of **Kshs. 700,000/=** each, based on projected income, and partial management of properties by the beneficiaries themselves. He explains that Dorcas first appeared in the matter on **24th August, 2016** through Mureithi Kireria & Co. Advocates, requesting to be accommodated like the other siblings, which request was noted for consideration.
12. Since taking over management in 2012, the interested party has filed annual statements of accounts with the court (up to 2023, with 2024 under preparation) and no objections have

ever been raised. He denies that the interested party owes Dorcas any sums, clarifying that no court order exists directing such payment and that it is incorrect to suggest that other beneficiaries receive **Kshs. 700, 000/=** monthly while she does not. He emphasizes that Dorcas was aware of all proceedings but chose not to participate, and her claim for arrears of **Kshs. 107,800,000/=** is therefore unfounded and an afterthought.

13. The interested party remains willing to present all statements of accounts to Dorcas and her co-beneficiaries for verification. He prays that the court directs that her application be served upon all other beneficiaries and that they file responses, as the matter cannot be determined in isolation. Finally, he notes that by a letter dated **28th March, 2025**, the interested party had already advised Dorcas to convene a meeting with her siblings to address her concerns - copies of which were sent to their respective advocates on record.
- 14. John Kaguma Maina** avers *inter alia* that he is a beneficiary of the deceased's estate and a director of Ambassadeur Investments Company Limited, duly authorized by his co-directors to swear this affidavit.
15. He confirms that a court order dated **4th June, 2012** appointed M/s Lloyd Masika Limited as property managers with effect from **1st June, 2012**. He emphasizes that the said order was issued in an entirely different matter - **Civil Suit No. 394 of 2011: Francis Chege Maina & 4 others**

v John Kaguma Maina & 2 others - which is distinct from the present succession cause.

16. The order clearly and expressly confined the role of the appointed agent to managing the properties registered under Ambassadeur Investment (K) Limited. Therefore, the assertion made at paragraph 3 of both the certificate of urgency and the summons - that the agent was directed to distribute **Kshs. 700,000/=** per month to the beneficiaries - is inaccurate and misleading.
17. In compliance with the court order, Lloyd Masika Limited has only been collecting rent on behalf of Ambassadeur Investment (K) Limited, and no payments have ever been made to any party or beneficiary at the alleged rate of **Kshs. 700,000/=** per month.
18. Furthermore, the applicant was not a party to the said civil suit and did not participate in its proceedings, making the assertions in her application misconceived and misplaced. He contends that the present application is premature, as the succession proceedings are still ongoing and the distribution of the estate is yet to be finalized.
19. It is therefore in the interest of justice that the parties first conclude the succession process before any distribution is undertaken. He concludes that the application dated **1st April, 2025** is frivolous, misconceived and devoid of merit; and should be dismissed with costs, noting that the applicant will not suffer any irreparable harm if the orders sought are not granted.

20. The parties have not filed written submissions.

ANALYSIS AND DETERMINATION

21. I have read the applications before this court and the responses thereto.
22. The court order that the Applicant relies on which appointed Lloyd Masika Limited, the interested party herein, to be the manager of the properties registered under the umbrella of Ambassadeur Investments (K) Limited with effect from **1st June, 2012**; is dated **29th May, 2012**.
23. This order was issued in the proceedings relating to **Milimani Commercial Civil Suit No. 394 of 2011: Francis Chege Maina, Joseph Macharia Maina, James Kihara Maina, Dedan Muthaiga Maina and Ambassadeur Investment (K) Limited vs John Kaguma Maina, Charles Kanyuga Maina and Stanley Kariuki Maina**.
24. Judgment in the commercial suit aforementioned was delivered on **25th April, 2025** in favour of the plaintiffs. Being dissatisfied with the decision, John Kaguma Maina, Charles Kanyuga Maina and Stanley Kariuki Maina have filed a notice of appeal dated **30th April, 2025**.
25. The judgment delivered on **25th April, 2025** was entered for the plaintiffs against the defendants as follows:-
- 1) Special damages assessed at Kshs. 485,812,539.40/= with interest at court rates from the date of filing this suit till payment in full.

2) The defendants are hereby ordered to render accounts to the plaintiffs as pertains to the following accounts for the period between 25th May, 2001 to 31st May, 2012 (both dates inclusive) in:

a) Standard Chartered Bank Kenya Limited, Moi Avenue Branch Nairobi Account No. 015088*****8700.

b) Commercial Bank of Africa Limited, International House Branch, Nairobi Account No. 51*****009.

c) Bank of India Kenya Limited, Nairobi Branch Account No. 5***61.

d) Equity Bank Limited Kimathi Street Branch, Nairobi Account No. 029*****32.

3) The Defendants Counterclaim is dismissed in its entirety.

4) Costs of this suit are awarded to the Plaintiffs.

26. From what I have read in the voluminous file before this court it is evident that the interested party was granted the opportunity to manage the deceased properties herein. The order emanated from the commercial division cited above.

27. There is no evidence that this court gave such a directive and therefore in the absence of such order it is not possible to grant the prayers. Perhaps the best approach was or is for the Applicant to bring herself under the purview of the above matter at the commercial division and agitate her rights.

28. Otherwise, what is before this court is the amended grant dated 16th September 2009 and no further orders on mode of

payments of any collections of rent made by the interested party.

29. That aside I do not find any reasons why this estate has not been distributed according to the amended grant issued on 16th September 2009. Unless the court is mistaken there is no other grant in this cause and neither is the one of 16th September 2009 nullified.
30. All that is on record are applications upon applications by various parties which in my view has inhibited a smooth execution of the grant. It is saddening that 25 years now this cause is still here and the beneficiaries are still arguing over accounts, managements etc.
31. Respectfully the administrators ought to transmit the estate to the beneficiaries without any conditions unless the grant is invalidated. If this is done then the beneficiaries including the Applicant will be able to have their bequest and do whatever they want to do with them.
32. A lot of the applications which the court has been forced to deal with are to do with accounts. Although that ought to be priority I hold that it is a secondary action which need not prohibit the transmission of the properties as contained in the grant. Accounts in other words could still be undertaken even after transmission has been effected and if there is any sanctions to be issued, then it can be done post transmission.
33. **This court in exercising its jurisdiction and ensuring that the ends of justice are met direct as follows:-**

- (a) The application dated 1st April 2025 is disallowed with no orders as to costs.**
- (b) The administrators are hereby directed within 45 days from the date herein to effect the amended grant dated 16th September 2009.**
- (c) No other application shall be filed herein without the leave of the court.**
- (d) This matter shall be mentioned on 16th March 2026 to confirm compliance.**

**Dated signed and delivered at Nairobi via video link
this
6th day of November 2025.**

**H K CHEMITEI
JUDGE**