



In re Estate of the Late of Lucy Gathoni Wainaina alias Gathoni Wainaina (Succession Cause 371 of 2008) [2025] KEHC 15952 (KLR) (3 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 371 OF 2008**

JM NANG'EA, J

NOVEMBER 3, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE OF LUCY
GATHONI WAINAINA ALIAS GATHONI WAINAINA**

IN THE MATTER OF

SCHOLAR WAMBUI WAINAINA APPLICANT

AND

JOHN KAMAU WAINAINA ADMINISTRATOR

RULING

1. For determination is a Notice of Motion dated 30th April 2024 brought by one of the Beneficiaries of the Estate, Scholar Wambui Wainaina. She prays for relief as hereunder;-
 - a. Spent.
 - b. That each of the beneficiaries of the Estate of the Late Lucy Gathoni Wainaina alias Gathoni Wainaina be ordered to file an Affidavit of their purported manner of distribution of the estate of the deceased herein.
 - c. That John Kamau Wainaina, the Administrator of the deceased's estate be directed to render within fourteen (14) days an account of the completed administration inventory of the assets and an accurate account of all dealings including the deceased's NSSF contributions, Bank Accounts, Insurances as well as the collection of rental income in respect of the Assets of the estate of Lucy Gathoni to date.
 - d. That alternatively, an independent auditor be appointed to prepare a detailed account of all the assets of the deceased, including the rental proceeds within twenty one (21) days of the Order.
 - e. That the court be pleased to direct that the total income unilaterally collected by John Kamau Wainaina, the Administrator of the deceased's estate to the exclusion of the Applicant and the



other beneficiaries from the deceased's estate following the demise of the deceased to be taken into account in determining beneficiaries' shares during distribution of the deceased's estate.

- f. That this Honourable Court be pleased to issue an order directing the Respondent to immediately take out summons for confirmation of the grant herein.
 - g. That the costs of the Application be provided for.
2. The Applicant swore affidavit in support of the motion. She laments that the Administrator has excluded her and other beneficiaries of the Estate from management of the Estate. She believes that the Administrator is unilaterally enjoying the deceased's Estate and benefits he has already accorded to himself should be taken into account in the final transmission of the Estate.
 3. In particular, it is contended that the Administrator does not want to be asked about the deceased's bank accounts, NSSF contributions, insurance policies and other properties. It is further averred that conclusion of this matter has taken an unreasonably long period.
 4. For the stated reasons inter alia the Applicant craves reliefs as hereinabove.
 5. The Administrator opposes the Application through an affidavit in reply sworn on 20th August 2024. He avers inter alia that the Applicant is to blame for delay in conclusion of this Cause. She is said to have been out of the country for the last 10 (ten) years. The Applicant further frequently changes advocates, contributing to continued delay to confirm the Grant herein.
 6. The Administrator denies the allegation of failure to account for his administration of the Estate. He asserts that he has rendered accounts for the period between 2015 and 2023 which are exhibited. Regarding the bank accounts, National Social Security and (NSSF) contributions and Insurance policies alluded to by the Applicant, it is contended that the same are strange and do not form part of the deceased's Estate. He also denies fraud regarding a Kisumu Property known as Kisumu/ Municipality Block 12/42 as vindicated in the Judgement of Ouko J (As he then was).
 7. According to the Administrator, all the Beneficiaries of the Estate are being involved in the process. He therefore terms the Applicant's allegations as malicious and without evidentiary basis.
 8. The deceased's sister (Wanjeri Moses) fully associates herself with the Administrator's evidence in her affidavit in reply.
 9. Vincent Mbogoro Wainaina is one of the Beneficiaries of the Estate. He too swore an affidavit in reply to the Application. While supporting the Application, he faults the Administrator for inaction to recover the above stated Kisumu property belonging to the Estate. He also complains of failure to account for a sum of Kshs. 3,000,000/= belonging to the Estate contrary to the earlier Judgement referred to above.
 10. Furthermore, Mr. Wainaina thinks that the Administrator's affidavit is defective as the place of its purported notarization is not shown.
 11. The Applicant put in a supplementary affidavit in rejoinder. She generally underscores her averments.
 12. On 3/3/2025 the Administrator's Advocate (Mr. Ochieng) sought to cross examine the Applicant and her brother, the said Vincent Mbogoro Wainaina, on their affidavit evidence herein. That cross-examination took place on 12/3/2025 with the two deponents generally maintaining their positions on the dispute. The Applicant stated that she did not have particulars of the bank accounts and other properties of the deceased the administrator has allegedly failed to account for. She also conceded that the Kisumu property alluded to hereinabove has actually been secured and is part of the



- Estate. According to the Applicant, however, the Administrator has not generally been transparent in his administration of the Estate.
13. Mr. Wainaina told the court that part of the Estate's Funds were applied towards clearance of his mother's medical expenses. According to him, his now deceased mother gave him Kshs. 2,000,000 to cater for her medical costs. He denied receiving a further sum of Kshs. 1,000,000 from the Estate.
 14. Mr. Wainaina agrees with the Administrator that there have been correspondences among the Beneficiaries over affairs of the Estate but continues to accuse the Administrator of poor management of the Estate.
 15. It would appear that only the Administrator and the Applicant filed submissions which I have perused against the rival affidavit evidence and the record. The main issue to determine is whether the Application is merited.
 16. As pointed out by the Applicant, the matter has been pending for too long, for 17 years or thereabouts. It seems that the Estate is intact, given that the Kisumu property that had been transferred to third parties was recovered. It is conceded that the Administrator has been involving his relatives in the administration of the Estate. Somehow, however, the Applicant and her brother, Mr. Wainaina, continue to be disgruntled.
 17. It is the court's opinion that this Application was unnecessary in the circumstances. The concerns the Applicant raises may be considered in any objection to confirmation of the Grant herein.
 18. In the result, the Application is dismissed with no order as to costs. The Administrator is directed to file and serve an Application for Confirmation of the Grant upon all the Beneficiaries within 14 days from the date hereof. If no agreement is reached on transmission of the Estate, any objection (s) shall be filed for directions on a date to be fixed hereafter.
 19. Ruling accordingly.

J. M. NANG'EA

JUDGE.

RULING DATED, SIGNED AND DELIVERED AT NAKURU THIS 3RD DAY OF NOVEMBER, 2025.

In the presence of:

Mr. Ochieng Advocate for the Administrator

Ms Kwoba Advocate for Mr. Mukiri Advocate for the Applicant

Ms Mbugua Advocate for V. Mbogori

Mr. Kimanzi Advocate for Wanjeri Moses - Beneficiary

Court Assistant (Jeniffer)

J. M. NANG'EA

JUDGE.

