

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 815 OF 2012

IN THE MATTER OF THE ESTATE OF KARIITHI GAITHO

GACHAU (DECEASED)

PAULO

WANJOHI

KAREITHI

.....**APPLICANT**

VERSUS

ELIZABETH

NGUNJU

KARIITHI.....PETITIONER

RULING

1. Before this Court is the application dated **10th February 2025** by which the Applicant **PAULO WANJOHI KAREITHI** seeks the following orders;-

“(A) SPENT

(B) THAT this Honourable Court be pleased to set aside Summons General dated 21st day of July 2022, filed by the Applicant James Maina

Kariithi and the same be dismissed for want of prosecution.

(C) THAT the Honourable Court be pleased to issue orders as prayed in paragraph 1-6 of the Summons General dated 25th September 2023 filed in this Honourable Court on 26th September 2023 by the Applicant/Beneficiary Paulo Wanjohi Kareithi in this matter.

(D) THAT the costs of this application be costs in the cause.”

2. The application was supported by the affidavit of even date sworn by the Applicant.
3. Despite having been served with the application the Respondents did not file any reply to the application.
4. The court directed that the application be canvassed by way of written submissions. The Applicant filed the written submissions dated **2nd April 2025** whilst the Respondent did not file and submissions.

BACKGROUND

5. This succession cause relates to the estate of the late **KARIITHI GAITHO GACHAU** (hereinafter the Deceased) who passed away on **4th May 1992**. Grant of letters of Administration Intestate were issued to the widow **Elizabeth Ngunju Kariithi** on **22nd January 2013**. The Grant was duly confirmed on **16th January 2014**. However to date the estate has not been fully distributed. The Respondent **JAMES MAINA KARIITHI** had filed an application dated **21st July 2022** seeking to review the mode of distribution of the estate.
6. On **22nd April 2024** this court ordered the Respondent to deposit in Court the Title Document for the Property known as LR **NaroMoru/Kiamathege/BLK 1/193** in order to facilitate survey and transmission of the estate. Later the Respondent filed an application dated **17th May 2024** seeking to stay the orders of **22nd April 2024** on grounds that he has made tremendous developments on the suit land he stood to be greatly prejudiced if distribution of the estate proceeded.

7. On **28th May 2024** the Court granted the stay orders prayed for and gave directions that the Respondents application dated **21st July 2022** be canvassed by way of written submissions.
8. No steps were taken by the Respondent to prosecute the said application. Parties were directed to file and exchange written submissions and the matter was to be mentioned on **28th November 2024**. On said date the Court was away on official duties. To date the Respondent has never filed submissions sought another hearing date for his application.
9. As a result the Applicant filed this present application dated **10th February 2025** seeking to have the Respondents application dismissed and the stay orders set aside.
10. As noted earlier the Respondent filed no reply to this application.

ANALYSIS AND DETERMINATION

11. I have carefully considered the application before this court as well as the submissions filed by the applicant.
12. It is clear that having obtained orders to stay the distribution of the estate the Respondent went to sleep. He clearly has

no intention of prosecuting the application dated **21st July 2022**. It has been over **two (2) years** since the application was filed and the Respondent has not bothered to prosecute the same. He is obviously very comfortable with the status quo.

13. I note that the Deceased herein died in **May 1992**. The Grant was confirmed in **January 2013** yet to date almost **twenty six (26) years** since the Deceased passed away, his estate is yet to be distributed.

14. I do agree with the applicant that the Respondent is a stumbling block to the finalization of this matter. The inexplicable and inordinate delay in prosecuting the application dated **21st July 2022** can no longer be countenanced by the court. As it is said all litigation must come to an end.

15. Accordingly this court makes the following orders;-

- (i) The application dated **21st July 2022** is hereby dismissed for want of prosecution.
- (ii) The stay orders issued on **11th October, 2024** are hereby lifted. The Respondent is directed to

deposit in Court the Title Document for **LR No.**

NAROMORU/KIAMATHAGE

/BLK 1/193 within seven (7) days of the date of this Ruling.

- (iii) The application dated **25th September 2023** is to be listed for expedited hearing.
- (iv) Each party to meet its own costs.

Dated in Nyeri this 21st day of November 2025

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MAUREEN A. ODERO
JUDGE