



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO 203 OF 2012

IN THE MATTER OF THE ESTATE OF JOSEPH MAINA KANYI (DECEASED)

ANNE WAMBUL..... APPLICANT

VERSUS

FAITH WANGITHI GICHUKI.....RESPONDENT

RULING

[1] The applicant filed Summons dated 9th December, 2020 seeking the following orders:

1. Spent.
2. That the Honourable Court be pleased to order the Respondent to furnish the court with a full and accurate account for all the sums of money (Death Gratuity) from the Pensions Department, Nairobi County received from the account of the deceased from January 2017 to date.
3. That the Respondent be restrained from collecting any gratuity until this application is heard and determined.
4. That the death gratuity be declared and shared equally amongst all the beneficiaries.
5. That the costs of this application be in the cause.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant. The applicant's case is that the grant was confirmed on the 1st October, 2015 and issued on the 12th October, 2015. The confirmed grant was issued in the names of the Respondent alone without the applicant's name yet the grant of letters of administration had been jointly issued to both of them as co-administrators.

- [3] The applicant avers that the Respondent received a lump sum of the money from the death gratuity and she has not accounted for any of that money nor shared with her or her children. The gratuity was never declared and they do not thus know how much has been withdrawn and what's remaining.
- [4] Lastly, the applicant aver that the money should thus be declared and shared equally between all the beneficiaries in their different bank accounts.
- [5] The respondents deposed to a Replying Affidavit dated 1st February, 2021 and avers that it is true that the deceased was an employee of Nairobi City Council. The grant was regularly confirmed by this court on 12th October, 2015. She has not received any gratuity from the account of the deceased from January 2017 since the Applicant herein raised an objection with the Pensions Department.
- [6] The respondent avers that on the diverse days in 2012 she had received a total sum of Kenya Shillings Four Hundred and Five Thousand Eight Hundred and Eighty (Kshs. 405,880/=) from NSSF, the Nairobi City Council and Lap Trust on account of the estate of the deceased. She utilized the said funds towards paying school fees for the children of the deceased.
- [7] **The respondents deposed to a further Replying Affidavit dated 2nd March 2021** that in the replying affidavit dated 1st February, 2021 she indicated that on diverse days in 2012 that she received a sum of Kshs. 405,880/= from NSSF, the Nairobi City Council and Lap Trust on account of the estate of the deceased. She spent the said money towards the education of the children of the deceased.
- [8] The respondent avers that she was paid the said proceeds after she presented the grant of letters of administration issued by this court on 24th July 2012 to her and Francis J. Githinji Gichuki. That her co-administrator Francis J. Githinji Gichuki who was her brother had no claim to the estate of the deceased and he swore an affidavit dated 7th August, 2012 to that effect.
- [9] Lastly, the respondent avers that by the time she was paid the proceeds in 2012 she had not known of the claim by Ann Wambui Wanijiru to the estate of the deceased.
- [10] The respondents deposed to a further Affidavit dated 18th May, 2023 reiterating that on the diverse day in the year 2012 she received a sum of Kshs. 405,880 from NSSF the Nairobi city council and lap trust in form of cheque and an additional of Kshs.

10,000/= in cash as shares from the said Lap trust from the deceased's account into her account.

[11] The respondent avers that at the time the money was being deposited to her Equity Account the Grant of letters of administration intestate and the certificate of confirmed grant had not been issued jointly to her and the Applicant. She used the money in payment of school fees and also upkeep of her children.

[12] The respondent avers that she never received any amount of money from the deceased's account after the issuance of letters of administration and the certificate of confirmed grant.

[13] The applicants deposed to a supplementary affidavit dated 14th July, 2024 that the Respondent asserts that she relied on a grant issued on 24th July, 2012 to collect funds from the estate, yet the confirmed grant was only issued on 12th October, 2015, confirming that she acted prematurely and without lawful authority to fully administer or distribute the estate. The Respondent claims to have received Kshs. 405,880/= in 2012 from NSSF, Nairobi City Council, and Lap Trust on account of the deceased's estate, but she fails to specify exact dates or provide any documentary evidence of receipt or expenditure, referring only vaguely to "diverse dates." She claims that the funds were used to pay school fees for her children but fails to account for the actual amounts spent, nor justify why the other dependants and rightful beneficiaries were excluded from benefiting from the said funds.

[14] Lastly, the applicant avers that the Respondent do provide a full and detailed statement of account for all funds received from the estate, including terminal benefits and direct that the said funds be distributed equally and transparently among all the rightful beneficiaries in accordance with the confirmed grant and the law.

Issue

[15] Whether the Respondent should furnish the court with a full and accurate account for all the sums of money (Death Gratuity) from the Pensions Department, Nairobi County received from the account of the deceased from January 2017 to date.

Analysis

- [16] The Applicant and Respondent were joint administrators of the estate. The Respondent admits having received Kshs. 405,880 from various institutions in 2012. Although she argues that this was before the joint grant, the funds nevertheless formed part of the estate and triggered a fiduciary obligation to account, as held in *re Estate of Julius Kandie (Deceased)* [2019] eKLR – where the court reaffirmed that administrators are trustees to the beneficiaries and must give a transparent account of all estate dealings.
- [17] The respondent avers that she was paid the said proceeds after she presented the grant of letters of administration issued by this court on 24th July 2012 to her and Francis J. Githinji Gichuki.
- [18] The Respondent alleges that she did not receive any funds from the gratuity after January 2017. However, the issue before the Court is not whether she *received* the funds, but whether she should be compelled to *account* for any such funds if received. The law is clear that a personal representative must maintain and provide transparent records of estate transactions, irrespective of whether the funds are disputed.
- [19] The Law of Succession Act, Cap 160, Section 83(e) & (g) – provides for the Duty to Account that personal representatives must produce a full and accurate inventory of the assets and liabilities of the deceased and must render accounts of their administration.
- [20] The Applicant beneficiary is entitled, under **Section 83** of the Act, to demand and receive an account from her co-administrator. The Respondent, being a trustee of the estate, must render accounts to both the court and the beneficiaries.
- [21] Under the Law of Succession Act, Cap 160, Section 95 – Enforcement of Duty to Account, the court retains power to compel administrators to file accounts when necessary.
- [22] The unwillingness of the Respondent to provide documentary proof of receipt and expenditure of earlier funds raises legitimate concerns, warranting court intervention to enforce accountability.
- [23] In *re Estate of G.K.K (Deceased)* [2017] eKLR – The court emphasized that administrators cannot deal with estate property without disclosure, and must justify all expenditures.

ORDERS

[24] The Court finds merit in the application, and makes an orders that the Respondent shall render to the Court and the beneficiaries a full and accurate account of all sums of money, including death gratuity and any terminal benefits, received from the Pensions Department, Nairobi County, or any other institution on account of the deceased from January 2017 to date, together with supporting documents within thirty (30) days.

[25] **Mention for compliance on 21/1/2026.**

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Kemuma for the Appellant.

Ms. Maina for the Respondent.