



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**SUCCESSION CAUSE NO. 201 OF 2013**  
**IN THE MATTER OF THE ESTATE OF SICILY MUTHONI GACHOKI**

JANE WANGATWE  
 GACHENGE.....APPLICANT/PROTESTOR  
**VERSUS**  
 BONIFACE S.P KARANJA.....PETITIONER/RESPONDENT

**RULING**

[1] By Summons under certificate of urgency dated 22/4/2025 pursuant to Section 76 of the Laws of Succession Act and all other enabling provisions of the Law, the Applicant seeks that:

1. *Spent*
2. ***This honourable court be pleased to grant stay of execution of the grant letters of administration and amended certificate of confirmation of grant issued to the Respondent.***
3. ***This honourable court be pleased to issue letters of administration and amended certificate of confirmation of grant in the name of the Applicant and respondent as co-administrators.***
4. *Costs of this application be provided for.*
5. *This honourable court be pleased to grant any other and further orders as it deems fit to grant.*

[2] The application is premised on the grounds on the face of it and supporting affidavit of Jane Wangatwe Gachenge, the Applicant herein sworn on even date. She avers that she is the daughter of Selina Wagatwe Mwathi, the deceased administrator to the estate of the deceased herein and the Respondent herein is her cousin. The Respondent's quest to be substituted as the administrator of the estate of the deceased herein, was allowed without their involvement, and they risk being disinherited their mother's property. The court, by its ruling delivered on 23/11/2023 directed that the estate herein be distributed equally between her mother and the Respondent herein, and if the amended certificate of confirmation of grant is issued to the Respondent only, she stands to be disinherited.

[3] The Respondent swore a replying affidavit on 30/5/2025 in opposition to the application. He avers that he is the brother to the Applicant's mother namely Selina Wagatwe Mwathi (now deceased) and the Applicant's uncle. He is advised by advocates that the Applicant

lacks the locus to bring the present application as she is not the legal representative of the estate of Selina Wagatwe Mwathi. He is opposed to the prayer for the grant of letters of administration jointly to him and the Applicant, because he as the only surviving child of the deceased herein, he ranks higher in the degree of consanguinity than the Applicant. The Applicant and her mother have never occupied the estate property and the application ought to be dismissed with costs.

### **Submissions**

- [4] The Applicant urges that she stands to be disinherited unless she is enjoined in these proceedings as a co-administrator, and cites **In the Matter of the Estate of John Mutio Mutua (Deceased) [2021] KEHC 3356 (KLR) and Francis Karioko Muruatetu & Another v R & 5 Others [2016] eKLR.**
- [5] The Respondent urges that the Applicant neither has the locus to bring an application for appointment as co-administrator nor inherit from the estate of the deceased, and cites **Cleopa Amutala Namayi v Judith Were [2015] eKLR and In re Estate of Johana Murage (Deceased) [2025] KEHC 3076 (KLR).** He urges that the death of one of the administrators does not render the grant inoperative as the powers of administration vest on the surviving administrator by virtue of section 81 of the Law of Succession Act, as was reiterated in **Re Estate Of Elijah Oktah Mikah Tsimbwele (Deceased) [2021] eKLR.**

### **Analysis and Determination**

- [6] The issue for determination is whether the application is merited.
- [7] With respect, **the Applicant has not appealed against the distribution as ordered by the court on 23/11/2023 and therefore, there is no legal basis upon which stay of execution can issue in terms of Order 42 Rule 6 of the Civil Procedure Rules.**
- [8] On the appointment of the Applicant as a co-administrator, the Respondent successfully applied to be appointed as an administrator of the estate upon the death of the initial administrator, Selina Wagatwe Mwathi. The court is minded that such appointment was done after the confirmation of the grant on 23/11/2023. The Respondent's sole obligation as the administrator of the estate is to complete the transmission process, in accordance with the confirmed grant.
- [9] This court, therefore, finds that the prayer for appointment of the Applicant as a co-administrator is superfluous and a futility, which will result in unreasonable delays in the conclusion of this matter.
- [10] The Court concurs with the Respondent that the Applicant lacked the requisite *locus standi* to file the application, as she is neither the legal representative of the estate of Selina Wagatwe Mwathi nor a beneficiary herein. This is not an application under section 41 of the Law of Succession Act where a child of a deceased parent child of a deceased may seek to step in the shoes of her deceased parent to inherit her grandfather by provisions for *“for all or any of the issue of any child of the intestate who predecease him.”*

[11] The Estate has already been distributed by the order of confirmation of Letters of Grant and the surviving administrator's duty is to finalize distribution in accordance with the confirmed grant. The applicant's case may only be valid if the surviving administrator sought to effect a different regime of distribution of the estate save as was confirmed by the order of the Court on confirmation of Grant.

[12] Even if the Applicant had been duly appointed as the legal representative of the estate of her deceased mother, the application would still be incurably defective and unsustainable, because the law must be that where a beneficiary dies after the confirmation of the grant, as in this case, the heirs thereto ought to pursue the deceased beneficiary's entitlement through distinct succession proceedings.

**ORDERS**

[13] Accordingly, for the reasons set out above, the Court finds the application dated 22/4/2025 to be an abuse of its process, and it is dismissed.

[14] The respondent Administrator shall distribute the estate in accordance with the Certificate of Confirmation of Grant of 23/11/2023.

[15] There shall be no order as to costs.

*Order accordingly.*

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Ms. Muthoni for the Applicant.

Ms. Mukami for the Administrator Respondent.