



In re Estate of the Late Clement Kiarie Gachie (Deceased) (Succession Cause 804 of 2012) [2025] KEHC 17723 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEHC 17723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 804 OF 2012
JM NANG'EA, J
DECEMBER 1, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE CLEMENT KIARIE GACHIE (DECEASED)

BETWEEN

MARGARET WANJIKU GACHIE APPLICANT

AND

MARCUS GACHIE KIARIE 1ST ADMINISTRATOR

BEATRICE NDUTA KIARIE 2ND ADMINISTRATOR

RULING

1. For determination is a Summons 25th July, 2024, one Margaret Wanjiku Gachie brings for the following orders:
 1. That Margaret Wanjiku Gachie Be Substituted For Beatrice Nduta Kiarie in respect to whom the grant of representation to the estate of the late Clement Kiarie Gachie had been issued jointly with Marcus Gachie Kiarie.(sic)
 2. That a fresh grant of representation to the estate of the late Clement Kiarie Gachie be issued to Marcus Gachie Kiarie And Margaret Wanjiku Gachie.
 3. That the costs of this application be in the cause.
2. By affidavit in support of the Summons, the Applicant avers that she is a beneficiary of the deceased's Estate by virtue of being the deceased's daughter. Whilst exhibiting a copy of Grant of Letters of Administration herein issued on 31st May, 2013 to Marcus Gachie Kiarie and Beatrice Nduta Kiarie, the Applicant laments that the latter has failed to discharge her duty as an Administratrix thereby frustrating final transmission of the Estate to identified beneficiaries.



3. The Applicant in the circumstances craves appointment as an Administratrix in place of the said Beatrice Nduta Kiarie (“the Respondent”). The court is told that all the other Beneficiaries of the Estate and/or dependants of the deceased have given their consent to the Application which consent is also exhibited.
4. The court is therefore urged to allow the Application to avoid alleged wasting and mismanagement of the Estate.
5. The Respondent opposes the Application vide her affidavit purportedly sworn on 22nd October, 2024.. On advice of her legal Counsel she attacks the Application as frivolous and one which ought to be dismissed. Contrary to the Applicant’s averments, she denies absconding from her duty as an Administratrix of the Estate or causing wastage and mismanagement of the Estate. The Respondent asserts that in fact the bulk of the Estate has already been distributed to lawful heirs.
6. Explaining the delay to complete transmission of the Estate, the Respondent alludes to litigation challenges including a legal challenge mounted by a grandson of the deceased. Upon resolution of the dispute, she obtained the services of a Property Valuer as directed by the court. The Valuer is said to have undertaken the task after which the Respondent filed the Valuation Report.
7. According to the Respondent, the contentious properties are L. R. Number 6585/160 Nyahururu and L.R. Number 6585/186 Nyahururu rented out for use as shops and offices. She continues to state that in 2023, the Beneficiaries agreed to share rent accruing therefrom and that the Applicant and one Clara Wangui Magaito were to ensure that any applicable land rent and rates were paid from the rent proceeds. This understanding is said to have been relayed to the court through accounts of the Estate filed on 30th November, 2023. The Applicant and the said Ms. Magaito allegedly failed to carry out the responsibility entrusted on them and instead appropriated revenue from the properties to the exclusion of other beneficiaries.
8. The Respondent therefore wants the Application to be dismissed noting that, in any event, other beneficiaries have not consented or properly consented to her removal as an Administratrix.
9. The Applicant put in a rejoinder by means of a further affidavit expressed to have been sworn on 28th February, 2025. Whilst reiterating her position, she charges that the Respondent’s affidavit evidence is riddled with falsehoods. The Applicant complains that despite confirmation of the Grant of Letters of Administration herein about 10 years ago on 27th November, 2025, transmission of the Estate is still incomplete. She blames the delay on the Respondent’s inaction, unavailability and frustration of the process. The Applicant counters the Respondent’s claim of non-payment of the Estate’s land rent and rates, insisting on payment thereof having been made as per receipts annexed to her further affidavit. The Applicant makes other averments in the further affidavit that the court will not consider since the matters raised were not adverted to in the Respondent’s replying affidavit.
10. Only learned Counsel for the Respondent appear to have filed submissions which I have considered alongside the rival affidavit evidence and the records. The record shows that Grant of Letters of Administration herein was issued to Marcus Gachie Kiarie and the Respondent on 31st May 2013. The Grant was confirmed on 27th November, 2015 as per Certificate of Confirmation of Grant on record, around 10 years ago.
11. A Summons dated 21st March 2017 for revocation of grant was subsequently filed by one Clement Kiarie, the deceased’s grandson. After some hiccups the Application was dismissed by ruling of the court given on the 2nd October 2019. Applications dated 31st October 2019, 3rd June 2020 and 20th November 2020 amongst other legal actions followed.



12. The issue for determination in this Application is whether the Applicant has made a valid legal basis for removal of the Respondent as Administratrix and her substitution with the Applicant. Counsel for the Respondent argue that the Applicant has not satisfied the provision of Section 76 of the Law of Succession Act. The case of Re Estate of Mwangi Ng'ang'a (Deceased) 2005 eKLR is also cited inter alia for the proposition that there has to be concrete evidence of failure of an Administrator/Administratrix to fulfill fiduciary duties for an application for substitution to be approved.
13. Section 76 of the Law of Succession Act states the following grounds for revocation or annulment of a grant of legal representation:
 - a. Substantive defectiveness of proceedings to obtain the grant.
 - b. Obtaining of the grant fraudulently.
 - c. Obtaining of the grant on the basis of an untrue allegation of a fact, whether the allegation was made out of ignorance or inadvertently.
 - d. Administrators/Administratrix failure to seek confirmation of the grant within a given period; or to proceed diligently with administration of the Estate; or to produce accounts of the Estate; or producing false accounts thereof.
 - e. Where the grant has become useless and inoperative through subsequent circumstances.
14. The Applicant herein makes generalized claims of the Respondent's dereliction of duty. She ought to have specified instances of such failure to perform administration duties on the part of the Respondent. It should be noted that the Respondent was appointed jointly with another Administrator with whom she is required to work towards the management and eventual transmission of the Estate. The Applicant has not appraised performance of the other Administrator, negatively or positively, yet this is a shared role.
15. I agree with the Respondent that litigation over the Estate caused part of the delay to finalize the process. Of note is that the Grant has been confirmed and what remains is sale of some properties for sharing of proceeds among beneficiaries as directed by the court.
16. In the premises, the Application is dismissed with no order as to costs. The Respondent and her Co-Administrator are, however, given 60 days to complete transmission of the Estate and render final accounts pursuant to Section 83 of the Law of Succession Act.

JUDGEMENT DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF DECEMBER, 2025.

J. M. NANG'EA, JUDGE

In the presence of :

Applicant's Advocate, Mr. Mwangi

Respondent's Advocate, Ms. Muthoga

Court Assistant - Justine

