



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**SUCCESSION CAUSE NO. E574 OF 2023**  
**IN THE MATTER OF THE ESTATE OF THE LATE STANLEY**  
**MUNGA GITHUNGURI (DECEASED)**

**LILIAN WANJIRU GITHUNGURI .....**  
**APPLICANT**

**VERSES**

**CLARE NJERI GITHUNGURI ..... 1<sup>ST</sup>**  
**RESPONDENT/EXECUTRIX**

**LILIAN JOY NYAGAKI GITHUNGURI ..... 2<sup>ND</sup>**  
**RESPONDENT/**

**EXECUTRIX**

**RULING**

1. In her application dated 16<sup>th</sup> September 2025 the Applicant prays for orders that:-

**(A) The consent order issued and or made and recorded on the 3<sup>rd</sup> December 2024 be varied and or reviewed as follows:-**

**(i) That pending the hearing and determination of the petition for grant of probate of will and or the objection to**

**making of grant a reasonable provision for the Applicant as dependant/ beneficiary and or dependants/beneficiaries be made on terms that;**

- (a) The administrators of the estate do pay all school fees and any outstanding school fees and all related expenses to M/s Braeburn school Arusha being school fees for Arika Githae, Jumai Afrika, Lali Abdalla and Masoud Githunguri all being grandchildren of and dependants/beneficiaries to the estate of the deceased.**
- (b) All future school fees and school related expenses as and when they fall due and payable be paid to M/s Braeburn school Arusha on account of Arika Githae, Jumai Afrika, Lali Abdalla and Masoud Githunguri.**
- (c) University or college fees for Siaka Munga be paid from the estate.**
- (d) A monthly maintenance and upkeep of Kshs 600,000 to be paid to Lilian Wanjiru Githunguri on her behalf and capacity as daughter and dependant/beneficiary and or on behalf of Arika Githae, Jumai Afrika, Lali Abdalla, Masoud Githunguri, Siaka**

**Munga and Janade Noni being grandchildren of and dependants/beneficiaries to the estate of the deceased.**

**(B) Any other or further order the court may deem fit to grant.**

2. The application is based on the grounds thereof and the supporting affidavits by the Applicant sworn on 13<sup>th</sup> September 2025 as well as the supplementary affidavit sworn on 30<sup>th</sup> October 2025.
3. The application has been opposed by the Respondent through the sworn affidavit of Lilian Joy Nyagaki Githunguri dated 8<sup>th</sup> October 2025 and that of Francis Wanjihia Githunguri sworn on 8<sup>th</sup> October 2025.
4. The parties though granted opportunity to file written submissions did not comply except the Applicant.
5. The issues before this court are not hard to discern. The Applicant and the Respondents are the deceased children. There is a Will on record which the parties are contesting and the same is yet to be finalised.
6. The parties on 4<sup>th</sup> of December recorded the following consent:-

***“(1). The administrators of the estate of Stanley Githunguri do continue paying school fees towards the education of the children of Lilian Wanjiru Githunguri and to continue paying allowances to the deceased children.*”**

**(2) For avoidance of doubt the school fees payment in respect to the children of Lilian be pegged at an amount equivalent to the school fees that was being paid at Kivukoni school.**

**(3) The parties be at liberty to apply.**

**(4) The allowances payable to the beneficiaries to be at the same amount paid by the deceased prior to his death.”**

7. The above consent was endorsed by all the parties present and represented in court.
8. The application before this court is therefore a review of the above consent based on the grounds that the Applicant was not in any meaningful employment and has no regular source of income like the rest of the dependants/beneficiaries.
9. That the estate is huge and as per the will generating much income capable of sustaining her and the children the way the deceased did prior to her demise. She went on ahead to enumerate the entire estate as contained in the Will.
10. She further deponed that she conceded to the above consent as her children were almost being sent away from school.
11. The Applicant has further tabulated the amount totaling Kshs.1,015,000 being her monthly expenditure which she prays that it be settled by the estate.

12. She has also prayed that the estate buys her a house worth Kshs.45 million as well as a motor vehicle worth Kshs. 8 million.
13. She also deponed that the estate pays school fees at Braeburn school Arusha where she enrolled the children after leaving Kivukoni school. She said that the children risk being sent away from school as a result of the none payment of fees by the Respondents.
14. As indicated above Lilian Joy Nyagaki Githunguri the second respondent opposed the application among others on the grounds that the consent entered between the parties cannot be varied unless it was done through fraud and or misrepresentation.
15. That the Respondents have continued to meet their end of the bargain by paying all that the Applicant and her children were entitled to including the necessary school fees for the colleges and Braeburn school in Arusha.
16. She accused the Applicant of transferring the children from Kivukoni school unilaterally and without notifying them.
17. She deponed that what the Applicant was asking was impracticable for the reason that the Will was yet to be actualized because of the objection proceedings herein.
18. She further raised objection to the college fees for Siaka Munga who was yet to join and learning institution yet the Applicant was asking for some unknown amount in form of fees.

19. She denied that the estate was such endowed with money as suggested by the Applicant and that most of the assets were not income generating. In any event the entire estate including the proposed trust had to await the determination of the objection proceedings.
20. The affidavit by Francis Wanjihia Githunguri essentially mirrored and supported the position taken by the Respondents and I see no reason to reproduce the same here.

### **ANALYSIS AND DETERMINATION**

21. As indicated above, I have perused the submissions by the Applicant dated 12<sup>th</sup> November 2025 and I agree with her that the proper consent is the one recorded in court on 3<sup>rd</sup> December 2024 and the one extracted by the Respondents did not contain all the elements.
22. The main issue is whether in light of the said consent this court can interfere and make some reviews as prayed by the Applicant.
23. It is trite law and common knowledge based on myriad authorities that a consent can only be set aside based on the grounds that the same was obtained by fraud, collusion, non-disclosure of material facts, misapprehension contrary to courts policy or such other reason which would enable the court set aside a contract or agreement.

24. I have looked at the consent and none of the above facts or elements are available to have it set aside and or reviewed.
25. However, the last 4<sup>th</sup> paragraph permits the parties to apply if need be. My understanding of the said element is that any party could move the court to seek a further explanation or additional issues surrounding the consent in question. It is not open for the parties to apply an issue outside the consent. In other words, and by way of example the parties may apply to clarify an issue within the consent itself.
26. The Applicant has sought to expand the terms of the consent in my view so that the court can clearly spell out what is payable to the beneficiaries/dependants in terms of fees and other related benefits from the estate as far as the consent was concerned. I find it to be a legitimate application as the consent related to the above headings.
27. The headings here related to the deceased children's allowances as well as the Applicant's children school fees.
28. The school fees were pegged on the amount the deceased used to pay at Kivukoni school.
29. The circumstances it seems have since changed and the Applicant transferred them to Braeburn school Arusha. According to her the amount was way beyond her means and thus the reason for the application.
30. The Respondents argued that it was out of her own volition that she transferred the children and herself to

Arusha. They asserted that the estate shall meet only what was agreed in the consent and anything beyond that was to be met by the Applicant.

31. Besides they deponed that the other prayers cannot be dealt with until the objection proceedings are exhausted and the issue of the will determined.
32. I agree that the substantive issue herein is the objection proceedings and that until the same is determined much of the Applicant's prayers cannot be dealt with.
33. Nevertheless, the issue of allowances and the fees due to her children can be dealt with by virtue of the above consent. It is worthy to note that the yardstick for the payment of the said fees was Kivukoni schools' charges. That is why the consent indicated, "**...at an amount equivalent to the amount which the administrators used to pay at Kivukoni school**"
34. Now that the Applicant has transferred the children to Braeburn school in Arusha is it therefore permissible to conclude that whatever is payable must be within the amount that was paid at Kivukoni school and anything beyond that the Applicant would meet?
35. I think my conclusion is that the Applicant's application to "**apply**" is valid and that the only rider is for the parties to seat down and mathematically agree on how much Kivukoni school fees costs at the level at which the children are at Braeburn school Arusha and in the event of anything beyond that the Applicant shall settle.

36. From the rival affidavits as well as the Applicant's submissions it appears that Braeburn school fees are above that of Kivukoni. If that is the case then I see no reason why it be an issue. I believe there are official paper trails from those reputable schools which if well presented the said children ought to comfortably enjoy their studies.
37. The prayer concerning Siaka Munga, who was now college going is speculative. There was no evidence that he was already enrolled in any college or university and it is premature for this court to allow any prayer on that account.
38. As regards the Applicants' allowances, the same is well captured under item two, namely, that the deceased children shall continue enjoying the allowances they have been getting. It is her argument that the amount of Kshs 50,000 was too little considering her circumstances.
39. The consent did not indicate how much each of them had been getting as an allowance per month. I cannot therefore dictate how much each of them and in particular the Applicant is entitled to.
40. The same goes with the issue of holiday allowances, car etc. as enumerated under paragraph 22 of her supporting affidavit.
41. These in my view has to be litigated differently taking into consideration the overallly the entire estate. Evidence will have to be taken for instance on whether the deceased provided for the Applicant's items under paragraph 22 above *vis a vis* other beneficiary of the estate.

42. Against this is the entire accounts of the estate and whether it is true as stated by the Respondents that the estate cannot sponsor such monthly sum as prayed by the Applicant.
43. In short, the parties need to come up with a fresh consent detailing the amount under every item referred in the consent as “allowances” for the court to reach a meaningful conclusion. The court cannot simply presume or it will be rewriting the consent for the parties.
44. There were submissions from the Applicant that she was not economically engaged and was therefore relying on the estate for her support. She said that she was turning 52 years old and therefore heading to retirement and could not get any meaningful employment. She said that she was willing to work in any of her father’s estate if permitted by the Respondents.
45. She also stated that if allowed to go back to the house which she lived in Langata then she could forego her demand for house allowance.
46. I think these are issues the parties can agree on despite the fact that the objections proceedings are ongoing. Nevertheless, the issue of earning some own income is upon the Applicant to decide. Surely, she cannot claim that she was old and heading for retirement and or her business busted because of hard economic times.
47. I find it too simplistic that she has to await her father’s estate to put food on her table so to speak. She ought to demonstrate, I believe, that she was venturing into other

productive activity albeit in a small way other than waiting for her father's estate.

48. Nonetheless it is imperative for her as well as the Respondent's and all the beneficiaries of this estate to fastrack the determination of the objection proceedings.

49. **In the premises I find and hold that:-**

**(a) The Respondents shall pay fees towards the beneficiaries schooling at Braeburn Arusha school equivalent to what they would have paid at Kivukoni school and any amount on top shall be met by the Applicant.**

**(b) If there are any arrears and after carrying out the above calculations the same must be paid forthwith and not later than 14 days thereafter.**

**(c) The prayer for the Applicant's monthly allowances is disallowed for the reasons stated above.**

**(d) The university fees for Siaka Munga is disallowed for want of better particulars and evidence of enrollment.**

**(e) The appropriate and valid consent is that handwritten by the court on 3<sup>rd</sup> December 2024 and reproduced above.**

**(f) Costs in the cause.**

**Dated signed and delivered via video link at Nairobi  
this  
16<sup>th</sup> day of December 2025.**

**H K CHEMITEI  
JUDGE**