



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Lucy waithira Muiruri (Deceased) (Succession Cause E104 of 2023) [2025] KEHC 18302 (KLR) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18302 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE E104 OF 2023  
DO CHEPKWONY, J  
DECEMBER 5, 2025  
IN THE MATTER OF THE ESTATE OF THE  
LATE LUCY WAITHIRA MUIRURI (DECEASED)**

**RULING**

1. Before this court for determination is the Summons for Confirmation of Grant dated 7<sup>th</sup> August, 2024 brought by Anne Wambui Muiruri (“the Administratrix”), seeking confirmation of the Grant of Letters of Administration Intestate issued on 18<sup>th</sup> December, 2023, together with attendant orders on costs. For avoidance of doubt, the Applicant seeks for the following orders:-
  - a. That the Grant of Letters of Administration Intestate made to the said Anne Wambui Muiruri, the Applicant, in this matter, on 18<sup>th</sup> day of December, 2023 to be confirmed.
  - b. That the costs of this application be in the cause.
2. The application is supported by the Administratrix’s affidavit sworn on the same date, to which are annexed (i) a schedule of the estate’s assets and liabilities; and (ii) written consents to the proposed mode of distribution executed by some, but not all, beneficiaries.
3. The record also reflects that the grant for Letters of Administration Intestate had been made by the Applicant on 18<sup>th</sup> December, 2023, and therefore the statutory six(6) month waiting period under Section 71(1) of the *Law of Succession Act* (Cap 160) had elapsed, entitling her to apply for the confirmation of the grant. Further, the record shows that the court recognized the following children of the deceased: Cecilia Wambui Njogu, Serah Wanjiku Muiruri, Solomon Njoroge Muiruri, Isaac Njuguna Muiruri, Anne Wambui Muiruri, and Jedidah Nyokabi Muiruri as beneficiaries. Four of the beneficiaries executed written consents in favour of the proposed distribution while two (2) being Cecilia Wambui and Isaac Njogu did not.
4. On 25<sup>th</sup> November, 2024, the court directed that summons do issue to Cecilia and Isaac and on 26<sup>th</sup> February 2025 when the matter was mentioned to confirm their position, both Administrators indicated that they did not agree with the proposed Mode of Distribution. Consequently, this court directed that the family attempts a consensus settlement for failing which the two were to file formal



affidavits of protest within fourteen (14) days. The Court further ordered that, in default of filing protests, it would proceed with confirmation of the grant.

5. On 30<sup>th</sup> May, 2025, when the matter came up for mention for parties to confirm status of the Summons for Confirmation. The two non-consenting beneficiaries were absent and had not lodged any protest as directed by the court. The Court therefore reserved its ruling.

### **Determination**

6. Upon listening to parties in respect of the Summons for Confirmation, this Court finds inter-related questions arising for determination:-
  - a. Whether, on the present record, the grant can be confirmed; and if not;
  - b. What case-management directions are necessary to vindicate the parties' procedural and substantive rights while ensuring efficient administration of the Estate of the Deceased.
7. Confirmation of grants is governed by Section 71 of the Law of Succession Act and Rule 40 of the Probate and Administration Rules. After confirmation of grant, Section 71(2) obliges the court, especially in cases of intestacy to be satisfied as to the proper identification of all persons beneficially entitled and their respective shares, before authorizing distribution. Rule 40(1), (4) and (8) require disclosure of all beneficiaries and their consents; critically, where an affidavit of protest is filed, or where any person beneficially entitled has not consented in writing, the court "shall" set the matter down for directions. Rule 40(6) prescribes the formal vehicle for objection, namely, an Affidavit of Protest (Form 10) stating the grounds thereof.
8. Needless to say, this Court exercises not only the statutory jurisdiction conferred upon it under Section 47 of the said Act but also the inherent jurisdiction under Rule 73 to make such orders as are necessary for the ends of justice and or to fashion remedies appropriate to the circumstances of a particular estate. The practical consequence is that the Court may and must control the confirmation process so as to ensure that distribution is effected lawfully, transparently and fairly, and that litigation or delay which would prejudice rightful beneficiaries is minimized.
9. Moreover, confirmation of a grant is not a pro forma exercise; it is a judicial act that lends legal authority to distribution of capital assets. As such, before confirmation of the grant, the Court must be satisfied as to (i) the identity and consent of all persons beneficially entitled, and (ii) the proper quantum or shares to which they are entitled in order to protect the property rights of estate's beneficiaries and gives effect to the constitutional guarantee of fair hearing under Article 50(1).
10. Turning to the facts of this case, the record plainly shows that two beneficiaries, namely, Cecilia Wambui Njogu and Isaac Njuguna Muiruri have not executed the consent to the proposed mode of distribution. However, their silence cannot be construed as acquiescence, particularly because the record already shows they expressly informed the Court that they do not agree with the proposal when they were last before the court. Accordingly, the court gave them an opportunity to formalize their objections by filing an affidavit of protest in the prescribed format in order to enable the court scrutinize the grounds and also give other parties a fair chance to respond, pursuant to Rule 40(6) and Form 10 of the Probate and Administration Rules, which provides for the prescribed vehicle or procedure for recording and ventilating an objection to Summons for Confirmation of Grant.
11. In the circumstances, where a beneficiary has made an unequivocal statement of protest in court, at least before the grant is confirmed, there should be clarity as to the filing of any objection in the prescribed form to enable the court scrutinize the grounds raised and or the beneficiary must be shown to have abandoned the objection. In this Court's view, the clarity has not been ventilated in



this case so that to proceed and confirm the grant without giving the objecting beneficiaries a final and demonstrable opportunity to be heard to avoid a risk of disinheriting them without a hearing, would be inconsistent with the fundamental requirements of natural justice and Article 50(1) of *the Constitution*. In any event, proceeding where there is protesting voices exposes any subsequent confirmation and distribution to collateral attack and may, in appropriate cases, result in revocation or variation of the grant if irregularity or fraud is later established.

12. For those reasons, the Court is constrained from making a final order on confirmation of Grant herein at this juncture. In its view, the appropriate course that would protect the estate from undue delay while safeguarding the contested beneficiaries' right to be heard would be to grant a brief and final opportunity for formal protests to be filed, followed by a proportionate period for reply by the Administratrix and any supportive beneficiaries. And for avoidance of doubt, nothing in this ruling should be read as prejudging the substantive question on confirmation of the grant. If protests are filed the Court will determine the Mode of Distribution and shares in accordance with the *Law of Succession Act*.
13. In the premises, and in the exercise of the court's inherent jurisdiction, the following orders are made to resolve the matter fairly and expeditiously:-
  - a. Cecilia Wambui Njogu and Isaac Njuguna Muiruri, and or any other beneficiary opposed to the proposed mode of distribution, be and are hereby granted a final period of fourteen (14) days from the date hereof to file and serve Affidavits of Protest in Form 10 setting out the grounds of objection as required under Rule 40(6) of the Probate and Administration Rules. For the avoidance of doubt, failure to comply within the above set timelines, the court shall proceed to consider confirmation on the basis of the material and consents on record pursuant to the governing law.
  - b. Upon service of any protest, the Administratrix and or any other supportive beneficiaries who wish to, shall have fourteen (14) days to file and serve Replying Affidavit(s) addressing the protests and, where appropriate, proposing any Amended Mode of Distribution.
  - c. The Administratrix, Anne Wambui Muiruri, is directed to serve this ruling and the orders herein issued to all beneficiaries including Cecilia Wambui Njogu and Isaac Njuguna Muiruri, within three (3) days of this ruling and file an Affidavit of Service prior to the next mention date.
  - d. Mention on 5<sup>th</sup> February, 2026 to confirm compliance and for further directions.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5<sup>TH</sup> DAY OF DECEMBER , 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Ayiecha holding brief for Mr. Macharia counsel for the Petitioner

Court Assistsant – Martin/Sakina

