



**In re Estate of Late Ephantus Githatu Waithaka (Probate & Administration
244 of 2002) [2025] KEHC 19087 (KLR) (19 December 2025) (Directions)**

Neutral citation: [2025] KEHC 19087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 244 OF 2002**

E OMINDE, J

DECEMBER 19, 2025

IN THE MATTER OF THE LATE EPHANTUS GITHATU WAITHAKA

IN THE MATTER OF

ESTHER WANJIRU KIARIE 1ST ADMINISTRATOR

MARY WANJIRU GITHATU 2ND ADMINISTRATOR

DIRECTIONS

1. The brief background underlying this cause is that vide the further judgement of Justice G. Kanyi Kimondo delivered on 8th March 2016, the court gave the following orders to give effect to the decree therein;
 - i. That there be a valuation of all the immovable assets registered in the name of the deceased which valuation was to be done by a valuer agreed upon by the administrators of the estate within 30 days of the date of the judgement. In default, the court would appoint an independent valuer and the findings of the valuer would be final for purposes of distribution.
 - ii. The objector must render a current, full and true account of all the rents and income from the properties from 9th April 2002 to date. the account shall be under a certified accountant and shall be filed within 60 days of the date of the judgement.
 - iii. The costs of the valuation and accounts shall be made to the estate.
2. After joint administration was ordered, the administrators were directed to dispose of some of the properties to cater for medical expenses of the 1st administrator.
3. The issue currently pending to enable the court give the proper directions are, in a nutshell, whether there was compliance with the court orders of 8th March 2016 and more specifically;
 - i. Whether the valuation and survey of the properties were conducted and the relevant reports file



- ii. Whether the accounts were done in accordance to the directions of the court and the relevant reports filed

Whether the valuation and survey of the properties were conducted

4. Before the valuation was conducted, the Petitioner filed an application dated 16th February 2017 which was compromised of a consent which was adopted as an order of the court on 29th May 2017. Therein it was settled that;
 - i. 1644 shares in BAT Kenya Ltd and 1283 shares in Standard Chartered Bank Ltd be sold and the deposits be deposited in court for distribution as follows; 1/3 to Esther Wanjiru Kiarie and 2/3 to Mary Wanjiru Githatu.
 - ii. Plot No. 701 (A sub division of Eldoret Municipality Block 20/365) be valued by Highland Valuers for purposes of sale and a report captured in court with copies to all parties.
 - iii. That Majuwa agencies and Town Shelters Limited be and are hereby granted the authority to sell the properties. That the agency fee should not exceed 5% of the purchase value and should be paid from the sale proceeds.
 - iv. That the balance of the proceeds should be shared as follows; 1/3 to Esther Wanjiru Kiarie and 2/3 to Mary Wanjiru Githatu.
5. Vide an order of the court dated 22nd October 2018 and Amended on 30th September 2019 the court allowed the disposition of the shares as per the consent order and Kshs. 601, 666/- was released to the Petitioner. An Amended Partial Certificate of Confirmation of Grant dated 30th October 2018 and Amended on 30th September 2019 was subsequently issued in this regard.
6. When the matter came for mention on 22nd October 2018 and after the parties submitted, the court directed that pursuant to the orders arising from the consent the court would appoint a valuer through the Deputy Registrar and that the costs of the valuer were to be met from the estate. The objector was also to hand over the necessary documentation to the valuer. On 7th December 2018, the Deputy Registrar appointed Sterling Valuers and directed that they file a report after conducting the surveys and valuation.
7. On 30th September 2019, the objectors were directed to supply the court with the aliases of the deceased and they were not opposed to having the properties listed before the Deputy Registrar as per the judgement of 8th March 2016. Counsel for the objector also supplied the court with the aliases of the deceased to wit; Ephantus Githatu Waithaka alias Ephantus Githatu A Waithaka alias Ephantus Githatu Asaph Waithaka..
8. On 6th July 2020, the registrar was directed to give specifications on the properties to be valued and on 28th July 2020, the parties agreed that the properties were the ones contained in the judgement. Additionally, counsel for the objectors indicated to the court that the CPAs report had been filed in court. The court then directed the Deputy Registrar to peruse the judgement and the CPA report filed on 4th February 2020 to be able to pick out the parcels of land which ought to be listed for purposes of valuation.
9. The valuer filed the valuation reports on 18th December 2020 and when the matter came up for mention on 21st December 2020, counsel for the petitioner indicated to the court that parcel No. Eldoret Municipality Block 21/365/Kapyemit (365) was missing yet it was in the Deputy registrar's list as number 7.



10. After carrying out the survey and valuation exercises on various dates, the following was established;
- a. LR Municipality Block 5/502 (Subdivided into 741, 742, 744, 745 and 746) – the status on the ground is that they had all been sold off.
 - b. LR No. Uasin Gishu/Illula Scheme 223 was valued at Kshs. 41,100,000/- and is registered in the name of the deceased
 - c. Murang'a/Gikindu/Mirira 1219 is registered in the names of EM Githinji and E.G Gikindu Mirira was valued at Kshs, 32,000,000/-; it is not registered in the name of the deceased.
 - d. LR No. 37/244/19 (IR No. 13342/1) was registered in the name of the deceased (Ephantus Githatu Asaph), Samuel Muchai Kinyanjui and Ephantus Maina Githinji as tenants in common in equal shares. Its open market value was found to be Kshs. 60,000,000/-
 - e. Eldoret Municipality Block 6/109 was registered in the name of the deceased and valued at Kshs. 80,000,000/-
 - f. Eldoret Municipality Block 5/249, West Indies was registered in the name of the deceased and valued at Kshs. 17,000,000/-
 - g. LR No. Uasin Gishu/Illula Scheme/195 was registered in the name of the deceased and valued at Kshs. 34,500,000/-.
11. The surveyor clarified the position of the properties which were said to have been excluded as follows;
- a. Eldoret Municipality Block 21/365/Kapyemit (365) was sold off and no longer exists.
 - b. Eldoret Municipality Block 8/2206 – The Land Registry was yet to reach this number.
 - c. The motor vehicles KAH 887Z and KAC 804H were not on the NTSA TIMS but on the ground they had a residual value of Kshs. 300,000/- as they had been grounded.

Whether the accounts were done

12. The Certified Public Accountants report dated 30th September 2019 filed in court on 4th February by Kigano & Associates Advocates. The report was with regard to the rent collected from the following properties for the period of 9th April 2002 to 30th September 2019;
- a. Nairobi West Plot No. LR 37/60/244/19 and
 - b. Eldoret Block 6/109
13. According to the report;
- a. The estate received Kshs. 24, 925,967.05 in terms rent
 - b. Kshs. 24,925,967.05 were made in payments.
 - c. The balance was Kshs. 9,555,304.85 as at 30th September 2019
 - d. Liabilities were Kshs. 2,304,940/- outstanding in hospital bills which had not been captured as expenses in the report.
14. It therefore follows that the properties that are available as per the judgement and the outcome of the surveyor's report are as hereunder;
1. The properties acquired before 1984



- a. Eldoret Municipality Block 5/249
 - b. Eldoret Municipality Block 6/109
 - c. LR 37/60/244/19 (Nairobi West)
 - d. Uasin Gishu/Illula/223
 - e. Uasin Gishu Illula/195
2. Properties acquired after 1984
- a. Eldoret Municipality Block 5/502
 - b. Lorry Registration number KAA 348D
 - c. Saloon vehicle Registration No. KAH 887Z
 - d. Lorry Registration No. KAC 804H.
3. Rental income and estate liabilities as at 30th September 2019
- a. Net balance from rental income Kshs. 9,555,304.85
 - b. Medical expenses incurred by the estate – Kshs. 2,304,940/-
15. In this regard, it is my finding that the orders of the court were complied with and the free estate of the deceased has been established. The only pending issue at this stage, therefore, is the distribution of the estate. I note that there was a proposal filed by Esther Wanjiru Kiarie on the mode of distribution of the estate but a perusal of the same reveals that it was drafted and filed without factoring in the outcome of the valuation report and the accounts report in as directed by the court.
16. In light of the valuation reports and the CPA report, the parties are now hereby directed to file their proposals on the mode of distribution of the estate of the deceased within the next 30 days. The parties are to take into account the directions given by the Hon Justice Kimondo with regard to distribution taking into account the fair spread of urban, rental and agricultural land as per the Further Judgment delivered on 8th March 2016. It is so ordered.

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025

E. OMINDE

JUDGE

