

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAHURURU**  
**SUCCESSION CAUSE NO. 146 OF 2017**  
**IN THE MATTER OF ESTATE OF NAHASHON KIRAGU**  
**MBUTHIA (DECEASED)**

**MARY                      WANGUI                      KIRAGU.....1<sup>ST</sup>**  
**ADMINISTRATOR**

**-VERSUS-**

**ANN                      WAIRIMU                      GACHERU.....2<sup>ND</sup>**  
**ADMINISTRATOR**

**RULING**

**1.** On 3<sup>rd</sup> November, 2022, Kariuki J delivered himself thus;

***“68. In view of the foregoing, I find the court has to exercise discretion as donated by the provisions of Section 40 Laws of Succession Act, Cap 160 Laws of Kenya to the extent that the mode proposed by the 1<sup>st</sup> Administrator will be the sharing mode of the estate herein subject to the adjustment that Protestor will get half an acre of Nyandarua/Gilgil West/376 where she said she has been cultivating and harvesting crops. At the same time, the balance goes to the house***

**of the 1<sup>st</sup> House. Thus, the court makes orders that; The distribution will be;**

**(i) JANE WANJIRU KIRAGU - The first house**

- L.R. NO. NYANDARUA/OLKALOU SOUTH 533**
- L.R. NO. NYANDARUA/UPPER GILGIL/219**
- UNS RESD PLOT NO. 286 GATHUNDIA TOWNSHIP**
- L.R. NO. NYANDARUA/UPPER GILGIL/1038**
- L.R. NO. NYANDARUA/GILGIL WEST/376 (MATRIMONIAL HOME) but half an acre to be given to the second house from this L.R. 376.**

**2<sup>ND</sup> HOUSE - ANN WAIRIMU GACHERU**

- L.R. NO. RESIDENTIAL PLOT NOT. 30 - OLKALOU**
- L.R. NO. NYANDARUA/NDEMI/3688**
- L.R. NO. DUNDORI/LANET BLOCK 2/1247 (NDEGE) (MATRIMONIAL HOME)**
- L.R. NO. NYANDARUA/KAIMBAGA/2000**
- Half an acre from L.R. NO. NYANDARUA/GILGIL WEST/376**

***(ii) That cost, legal fees, valuation fees, and other expenditures will be recovered from the estate.***

**2.** Through an application dated 12<sup>th</sup> March, 2025 the 1<sup>st</sup> Administrator/Applicant seeks orders thus;

**1) Spent.**

**2) That the Deputy Registrar of the honourable court be authorized to execute mutation forms and transfer instruments for subdivision and transfer of the following properties in favour of JANE WANJIRU KIRAGU in place of ANN WAIRIMU GACHERU the 2<sup>nd</sup> Administrator.**

**a. L.R. NO. NYANDARUA/OLKALOU SOUTH/533**

**b. L.R. NO. NYANDARUA/UPPER GILGIL/219**

**c. UNS. RESD PLOT NO. 286 GATHUNDIA TOWNSHIP**

**d. L.R. NO. NYANDARUA/UPPER GILGIL/1038**

**e. L.R. NO. NYANDARUA/GILGIL WEST/376 (MATRIMONIAL HOME) (1/2 SHARE)**

**3) That the County Land Registrar and Surveyor to dispense with the production of copies of the 2<sup>nd</sup> Administrator's ID, PIN certificate and passport size photographs while transferring the estate to JANE WANJIRU KIRAGU as per the**

**certificate of confirmation of grant dated 14<sup>th</sup> February, 2024.**

**4) That the 2<sup>nd</sup> Administrator/Respondent be condemned to pay costs of this application.**

**3. The application is premised on grounds that;**

**1. That vide a judgment delivered on the 3<sup>rd</sup> November, 2022, the following properties were transmitted to JANE WANJIRU KIRAGU;**

**a. L.R. NO. NYANDARUA/OLKALOU SOUTH/533**

**b. L.R. NO. NYANDARUA/UPPER GILGIL/219**

**c. UNS. RESD PLOT NO. 286 GATHUNDIA TOWNSHIP**

**d. L.R. NO. NYANDARUA/UPPER GILGIL/1038**

**e. L.R. NO. NYANDARUA/GILGIL WEST/376 (MATRIMONIAL HOME) (1/2 SHARE)**

**2. That the 2<sup>nd</sup> Administrator/Respondent has failed to execute transfer instruments in favour of JANE WANJIRU KIRAGU despite several demands through her advocate.**

**3. That the Applicant's mother is elderly and sickly and its only fair that what belongs to her be transferred to her soonest possible.**

**4. That the Applicant prays that the 2<sup>nd</sup> Administrator be ordered to execute the said**

***documents and in default the Deputy Registrar be authorized to execute on her behalf.***

***5. That the orders sought are necessary to have the matter concluded.***

- 4.** In response thereto, the 2<sup>nd</sup> Administrator/Respondent states that whereas the court listed in its judgment the properties listed in the application that were to be transmitted to Jane Wanjiru Kiragu, the court equally held that costs, legal fees, valuation fees and other expenditures of the suit should be recovered from the estate of the deceased.
- 5.** That the transmission of the estate has been derailed by the fact that the amended form P&A 41 dated 3<sup>rd</sup> November, 2022 was erroneous and/or misleading in that it indicated that the said costs, legal fees and valuation fees would be catered for ½ acre of L.R. Nyandarua/Gilgil West/376.
- 6.** That the error was communicated to the Applicant through their advocate through a letter dated 1<sup>st</sup> September, 2023 wherein the Applicant was advised to further amend the grant of letters of administration intestate have it conform with terms of the judgment. However, there was no response from the Applicant which prompted the Respondent to seek further rectification of the grant of letters of administration after which the court issued a certificate of confirmation of the grant dated 14<sup>th</sup> February, 2024.

7. That she has not refused to execute transfer instruments in favour of Jane Wanjiru Kiragu as there are costs and valuation fees to be ascertained and recovered from the net estate of the deceased. That the valuation fees has been assessed at Kshs.300,000/- by Apple Cross Surveyors but the Applicant has refused to co-operate in facilitating recovery of the said costs from the estate of the deceased.
8. The application was disposed through written submissions. It is urged that the 2<sup>nd</sup> Administrator is concerned with payment of legal fees than concluding of the administration of the estate of the deceased by transmission of the assets to the beneficiaries identified in the certificate of confirmation of grant; That under **Section 83(e) of the Law of Succession Act**, personal representatives are to conclude transmission of the estate within a period of six (6) months from the date of the grant, a period that has lapsed.
9. That the 1<sup>st</sup> Administrator was not ordered to pay the 2<sup>nd</sup> Administrator's legal fees as costs incurred by the both Administrators was to be recovered from the estate. That the 2<sup>nd</sup> Administrator who was bequeathed assets in the certificate of confirmation of grant from the estate should settle her own advocate's legal fees not from what was awarded to the 1<sup>st</sup> Administrator who is obligated to settle her own legal fees having been awarded assets from the estate.

**10.** That respective Bill of Costs filed by the advocates will be fixed and executed to their respective client. That the 2<sup>nd</sup> Administrator has refused to sign transfer forms forwarded to her on 14/08/2023. In calling upon the court to exercise its power to make necessary orders for ends of justice, reliance is placed on **Re - Estate of Gakunyua Ndegwa alias Gakinyua Ndegwa (deceased)** where the court held that;

***“Section 47 of the Act and rules 73 of the Probate & Administration Rules give the court powers to entertain any application and make orders as may be necessary for the ends of justice such as the instant application. The grant in the instant succession cause was confirmed on July 22, 2020 which was one (1) year down the line up to the time of filing this application. This is delay that could lead to a grant being revoked under Section 76 of the act. Therefore section 47 of the Act and rule 73 of the Probate & Administration Rules empowers the court to enforce its orders and give effect to the administration of the instant estate.***

***The duties of personal representatives are fiduciary in nature as explained in section 83 of the Law of Succession Act. The administrator(s) of the deceased’s estate has a duty to distribute the estate to the beneficiaries under section***

**83(f) while section 83(g) provides for administrators' duty to render the accounts. This was elaborated in the case of Ngumi Kerugoya Succession Cause No 36 of 2013 Re Estate of Wilfred Munene (deceased) [2020] eKLR where the learned judge stated:-“Section 83(g) of the Act mandates administrators of an estate to, within six months of the confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed transaction.”**

**The respondent alleges that the documents sent to him for execution through his advocate were not in compliance with the law. If this was the position, the respondent ought to have instructed his advocate to return them to the applicant's advocate. The respondent's advocate was also in a position to prepare the correct documents and send over to the applicant's advocate because his client was a co-administrator. The excuse by the respondent is not justifiable in the delay of over one year.”**

- 11.** Also cited is the case of **the Estate of the late Simon Kiprop Cheruiyot (deceased)** where the court held that;

***“.....It is evident from the Applicant’s affidavit in support of the application and oral arguments by her Advocate, Mr. Kahiga, that the respondents have refused to sign the necessary documents to facilitate execution of the court’s Judgment/decree. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find, and hold that the petitioner’s summons dated 23/9/2019 and filed on the 25/9/2019 to be merited.....”***

***This position was further reiterated in; EMBU HIGH COURT SUCCESSION CAUSE NO. 13 OF 2003; RE ESTATE OF THE LATE KUBUTA KAMARA NGUURO ALIAS PHARIS NJEGEGU (DECEASED) [2021] eKLR, LUCAS NJAGI NJEGEGU & 6 OTHERS VS JERUSHA WAMBUI MUSA, where the court had the following to say when faced with a similar situation;***

***“..... This state of affairs is not healthy and should not be countenanced by the court. The applicants prayed that the Executive Officer/Deputy Registrar do sign all the documents on behalf of the respondent. In Rose Wanjiku Kuria -vs- Nganga Mugwe [2003] eKLR and which decision I agree with, the court held***

***that by virtue of Section 79 of the Law of Succession Act, the administrator gets all the property of the deceased vested in him/her and the court further stated that the Court's Registrar or his deputy or any other officer of the court not having been granted Probate or letters of administration and therefore having had no property of the deceased vest in him and no powers and duties in accordance with provisions of the Law of succession Act, cannot become an executor or administrator and as such cannot administer the estate of the deceased person and the court to order him or authorize him to administer by signing any of those documents as requested in this summons, is to make an order which is not supportable under the Law of Succession Act.***

***However, this court being a succession court has ample powers donated to it by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to resort to, in order to meet the ends of justice. The task of administering the estate is still on the shoulders of the respondent (administrator). As I have already noted, despite the grant having been confirmed in the year 2007 and even after the***

***subsequent amendment by Muchemi J (which included the Wang'uru Plot in the certificate), the respondent has nonetheless failed to administer the estate. I believe that court orders ought not to be issued in vain but must be complied with. Further, the office of administrator of estate of a deceased person is an office which is built on the foundation of trust and goodwill. Where such is seen to be lacking, then the court ought to invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries in an unenviable position.***

***In the instant case, the administrator having failed to distribute the estate and without any valid reason, the Deputy Registrar of this court ought to be ordered to sign all the relevant documents to effect the transfer of the properties to the beneficiaries. As such I allow prayer 5 of the application.....”***

***In the instant case, and from the documents annexed to the application, it is clear that the administrators in this case have refused to sign transfer documents in order to bequeath the beneficiaries their share of entitlement to the***

***deceased's estate as per the certificate of confirmation of grant issued on 23/7/2013."***

- 12.** The 2<sup>nd</sup> Administrator/Respondent submits that she is committed to ensure an expedited distribution of the estate of the deceased to the respective beneficiaries. That on noting that the grant of letters of administration dated 3<sup>rd</sup> November, 2022 were erroneous. She communicated to the Applicant through a letter dated 1<sup>st</sup> September, 2023 advising her to have the same amended. That there are pending liabilities to wit the valuation fees which should be recovered from the estate.
- 13.** That the Respondent through a letter dated 1<sup>st</sup> September, 2023, advised the Applicant's advocate that each party proceeds with the taxation of their respective Party to Party Bill of Costs which was not acted upon. But, the Respondent proceeded to have necessary amendments and also prepared the Party to Party Bill of Costs which pends taxation.
- 14.** It is further submitted that according to **Section 83 of the Law of Succession Act**, an Administrator's duty includes paying out of the estate's expenses obtaining in respect of the administration of the estate. In that regard reliance is placed on the case of **Re-Estate of Julius Ndubi Jaron (Deceased) [2018] KEHC (KLR)** where it was held that;

***“The personal representative comes in to fulfil those obligation or liabilities, or to realize any right or benefit thereof for the estate of the deceased. That is why the law requires the personal representative to bring in all the estate property, to pay out all liabilities and discharge all obligations of the deceased.”***

- 15.** And **Re-Estate of Samuel Muiruri Ng’ang’a (deceased) (Succession Cause E088 of 2013) [2025] KEHC 179 KLR** where it was held that;

***“The law grants administrators’ considerable discretion in the distribution and management of estates, provided they act fairly and in good faith. Administrators have the power to make reasonable decisions regarding estate distribution, as long as they fulfil their fiduciary duties. The evidence here shows the Respondent has exercised her discretion appropriately and has taken steps to ensure fair distribution among beneficiaries.”***

- 16.** In arguing that the application is not merited, it is urged that the application is brought under **Rule 36, 49 and 73 of the Probate and Administration Rules** yet **Rule 36** is in respect of **Grant of Administration and Colligenda bona** which makes the application defective and unknown in law.

- 17.** That no application has been brought to have the grant revoked. If the Respondent has failed, refused and/or incapacitated to carry out his duties as an Administrator as held in **Re-Estate of Prisca Onjanya Nande (deceased) 2020 eKLR.**
- 18.** That the Applicant's refusal and or failure to cooperate as the 1<sup>st</sup> Administrator in facilitating recovery of the expenses has significantly delayed the distribution of the estate.
- 19.** I have considered the application, affidavits in support and opposition and rival submissions.
- 20.** Indeed, the application is brought pursuant to **Rules 36, 49 and 73 of the Probate and Administration Rules** that provides thus;

**(36)**

***1. Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.***

***2. Every such grant shall be in Form 47 and be expressly limited for the purpose only of***

***collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.***

***3. Application for such a grant shall be by petition in Form 85 signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Kakamega, Meru, Machakos, Eldoret and Bungoma registries.***

***4. The provisions of rule 7(4) shall not apply to applications under this rule.***

***5. Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.***

***(49) A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.***

***(73) Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.***

**21.** Citing **Rule 36 of the Probate and Administration Rules** in this application was erroneous. This could be viewed as a procedural accidental mistake which could be considered a technicality. **Article 159 2(b)(d) of the Constitution** provides;

***2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—***

***b) justice shall not be delayed;***

***d) justice shall be administered without undue regard to procedural technicalities; and 74 Constitution of Kenya [Rev. 2022]***

**22.** Citing a provision of law that is not correct does not go to the substance of the matter. It is not fatal to the application. The court would not look at form as opposed to substance.

**23.** This court has considerable power and also discretion to determine any nature of application under the **Law of Succession Act** so as to make orders that are necessary to ensure justice is met.

**24.** The Judgment of the court by Kariuki J was in the following terms;

***“.....That costs, legal fees, valuation fees, and other expenditure be recovered from the estate.”***

**25.** Notably, the court distributed the estate between the two (2) houses. And, no appeal was preferred. Three years have lapsed from the date of the decision.

**26.** It is argued by the Respondent that she is committed to amicable distribution of the estate subject to ascertainment of recovery of the liabilities from the estate.

**27.** Upon appointment as a Co-Administrator of the estate, the Respondent was granted authority to manage the estate, distribute and sign transmission documents. **Section 83 (g) of the Law of Succession Act** provides thus;

***Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.***

**28.** By virtue of that provision of the law, both the Appellant and Respondent were obligated to conclude the administration process of the estate, and, within six (6) months from the order of the court and/or confirmation of the grant, a process that has been delayed by the actions of the Respondent for

failure to appreciate the order of the court, and, hence making demands that were not ordered by the court. This court has been invited to consider directing a court officer to execute transfer documents in favour of Jane Wanjiru Kiragu of the 1<sup>st</sup> House.

**29. In re - Estate of Gakunyua Ndegwa alias Gakinyua Ndegwa (deceased) Succession Cause 73 of 2015 [2022] KEHC 12463 (KLR)** where the Applicant sought orders to authorize the Deputy Registrar to sign transmission documents on behalf of the Respondent who had refused to execute documents to distribute the estate of the deceased, the court exercising powers under **Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules** delivered itself thus;

***“14. The duties of personal representatives are fiduciary in nature as explained in section 83 of the Law of Succession Act. The administrator(s) of the deceased’s estate has a duty to distribute the estate to the beneficiaries under section 83(f) while section 83(g) provides for administrator’s duty to render the accounts. This was elaborated in the case of Ngumi Kerugoya Succession Cause No 36 of 2013 Re Estate of Wilfred Munene (deceased) [2020] eKLR where the learned judge stated:-“Section 83(g) of the Act mandates administrators of an estate to,***

***within six months of the confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed transaction.”***

***15.The respondent alleges that the documents sent to him for execution through his advocate were not in compliance with the law. If this was the position, the respondent ought to have instructed his advocate to return them to the applicant’s advocate. The respondent’s advocate was also in a position to prepare the correct documents and send over to the applicant’s advocate because his client was a co-administrator. The excuse by the respondent is not justifiable in the delay of over one year.***

***16.It is my considered view that the application has merit and it is hereby allowed in terms of prayers 1, 2 and 3.”***

**30. In Jebungei & 4 Others v Serem & 2 Others (Probate and Administration No. 9 of 2022 [2024] KEHC 1303 (KLR) where Administrators of the estate had not executed their duties, the court held thus;**

***1. The 2nd and 3rd Respondents shall sign the requisite transfer forms and any other forms transferring the estate of the property forming***

***the estate of the deceased to the beneficiaries to give effect to the rectified certificate of confirmation of grant issued on 12th July 2023 within the next 21 days.***

***2. If the Respondents fail to comply with this order, the Deputy Registrar of this court is authorized to sign/execute all the necessary documents to effect the transfer of property forming the estate to the beneficiaries to give effect to the rectified certificate of confirmation of grant issued on 12th July 2023.***

***3. That an order is hereby made for the administrators to comply with section 83 of the Law of Succession Act to sign, execute, endorse and facilitate implementation of the certificate of confirmation of grant which in essence is a decree of this court.***

***4. That the so provided duties conferred upon the administrators by law be complied within 45 days of today's ruling.***

***5. That if the administrators commit an act of avoidance or breach as sworn in the certificate of grant that they would administer the estate of the deceased faithfully, the ministerial powers vested with the Deputy Registrar of the High Court be invoked forthwith upon expiry of***

***the 45 days to execute the legal instruments as covenanted in the certificate of confirmation of grant.***

**31.** Section 71(1) of the Law of Succession Act provides thus;

***After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.***

**32.** The Administrators have the statutory duty to distribute the estate considering the pronouncement of the court, which is not veiled in any terms that cannot be discerned, the reason given by the Respondent as to declining to act is not valid, her action renders her unsuitable to be an Administrator but the court has not been asked to annul the grant issued to her.

**33.** This court is obligated to compel the Administrators to perform their duties. The process being at the tail end and following the application by the Applicant (1<sup>st</sup> Administrator) the refusal to sign and execute transfer documents being baseless, I do exercise powers granted onto the court by **Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules**, by directing thus;

- (i) The Respondent shall execute transfer instruments in favour of Jane Wanjiru Kiragu within 30 days of today.**
- (ii) In default, the Deputy Registrar, Nyahururu High Court, to execute the instruments of transfer; and, the County Land Registrar and Surveyor to dispense with the production of copies of the 2<sup>nd</sup> Administrator's ID, PIN certificate and passport size photographs while transferring the estate to JANE WANJIRU KIRAGU as per the certificate of confirmation of grant dated 14<sup>th</sup> February, 2024.**
- (iii) Each party to bear their own costs.**

**Dated, signed and delivered virtually this 18<sup>th</sup> day of December, 2025.**

**.....**  
**L.N. MUTENDE**  
**JUDGE**