



**In re Estate of Fridah Wairimu Wanguhu (Deceased) (Succession Cause
768 of 2012) [2026] KEHC 342 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 768 OF 2012
SM MOHOCHI, J
JANUARY 23, 2026**

IN THE MATTER OF THE ESTATE OF FRIDAH WAIRIMU WANGUHU (DECEASED)

BETWEEN

RUTH MARY WANGUI PROTESTOR

AND

ANTHONY MICHEAL KINUTHIA 1ST PETITIONER

TONY KIARIE 2ND PETITIONER

ALEX MWAURA 3RD PETITIONER

RULING

1. The brief background of this Succession cause is that the deceased herein Fridah Wairimu Wanguhu died intestate on the 27th day of March 2012. A grant of letters of Administration intestate was issued to Anthony Micheal Kinuthia, Tony Kiarie Kaime and Alex Mwaura Wanguhu on 8th November, 2021.
2. The Petitioners/Administrators filed Summons for Confirmation of Grant dated 27th June, 2025 with mode of distribution attached seeking confirmation of the Grant of Letters of Administration made on 8th November, 2021.
3. The Protester, a daughter of the deceased filed an Affidavit of Protest against the Confirmation of Grant sworn on 6th August, 2025, challenging the proposed mode of distribution in respect to property known as NAKURU LR NO. 6295/1.
4. The Protester claims that the subject property does not form part of the estate as it was a gift and was given to her by the deceased during the lifetime of the deceased.
5. The Petitioners in their Replying Affidavit sworn by Alex Mwaura Wanguhu on 18th August, 2025 averred that the subject property is part of the estate and that the issue of ownership was res judicata



as it had been determined by another Court. He also prayed that the Court finds the applicant to be a vexatious litigant.

6. The Protest proceeded viva voce with parties adducing evidence in support of their of the arguments.

Protestor's Submissions

7. Through her counsel on record, the Protester in her submissions dated 11th November, 2025 submitted that on the issue of res judicata, Section 7 of the Civil Procedure Act does not apply to succession proceeding as it is not one of the rules of Civil Procedure that apply in supplementation under Rule 63 of the Probate and Administration Rules.
8. Counsel cited Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others [1996] eKLR to submit that the other cases were on the basis that she was the registered proprietor but in the instant case the protest was on the basis that the property was given to her as a gift.
9. Counsel also submitted that the property is free property under Section 3 of the Law of Succession Act and that by virtue Section 42 of the Law of Succession Act, the property being a gift, it does not form part of the deceased property.
10. The Protestor cited In Re Estate of William Kiberen Serem (Deceased) [2023] KEHC 17614 (KLR), In Re Estate of the late Gedion Manthi Nzioka (Deceased) [2015] eKLR and In Re Estate of Nkurumwa Ole Ntemel (Deceased) [2024] KEHC 1380F (KLR) to submit that she has availed enough documentation to pass the test of a gift inter vivos and that the property ought to be excluded from the distribution.

Petitioner's/Administrators' Submissions

11. The Petitioners' Submitted that the Protestors claim to the Property was not new and that this Court and other Courts of competent jurisdiction have pronounced themselves on the issue previously.
12. That none of the decision have been set aside or overturned and therefore matter remain res judicata
13. It was further submitted that the Protest was frivolous one aimed at frustration the administration process.

Analysis and Determination

14. In considering the matter before this Court, the issue of res judicata having been raised, it behooves on me to examine whether the Protest dated 6th August, 2025 raises any substantive new issues warranting adjudication or otherwise. There must be balance on the Court's duty to safeguard succession proceedings to ensure finality in distribution of the estate of the deceased herein and the constitutional right of access to justice.
15. The issue of res judicata raises two questions to wit whether this Court, sitting as a succession Court can handle issues of res judicata and if so, whether the Protest res judicata?
16. On whether the doctrine of res judicata does apply to succession proceedings under the Kenyan Law, the Protestor submitted that that this Honourable Court, sitting as a succession Court cannot entertain matters that are already res judicata within the meaning of Section 7 of the Civil Procedure Act. The reasoning behind this argument is that the said section is not listed under Rule 63 of the Probate and Administration Rules.



17. Section 7 of the *Civil Procedure Act* provides that no Court shall retry a suit or issue that has already been directly and substantially decided in a previous competent Court between the same parties... Rule 63 of the Probate and Administration Rules lists provisions of the Civil Procedure Rules that would apply in succession proceedings. Res judicata is essentially not one of it.
18. Be that as it may, Section 7 of the Civil Procedure is considered a general principle of civil procedure which bars all Courts from revisiting matters that have been extensively dealt with by other Courts of competent jurisdiction. The Succession Court is no exception.
19. The doctrine of res judicata being a fundament principle of law prevents abuse of the Court process, allowing such an argument from the Protestor would open a door parties will re-litigating issues before Succession Courts cloaking such attempts under Rule 63 in the guise of succession litigation. That would undermine the finality of judicial decisions.
20. Such arguments if allowed defeat the purpose of orderly administration of estates of deceased persons. Succession proceedings are designed to achieve finality in distribution.
21. There is no shortage of authorities where Courts have affirmed that the doctrine of res judicata with full force to succession matters. See *In re Estate of Daudi Gachonde (Deceased)* [2024] KEHC 8145 (KLR).
22. I find that this Court, as a Succession Court is bound by the doctrine of res judicata and cannot purport determine issues that have already been litigated by a competed Court to finality.
23. On the second limb of whether the Protest is res judicata, the Court of Chancery in *Henderson v Henderson* [1843] 67 ER 313 established the doctrine of res judicata which is applicable in common law jurisdictions, Kenya being one of them. Sir James Wingram V.C. held that:-

“In trying this question I believe I state the Rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time”
24. The Court of Appeal in Kenya in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1995] KECA 168 (KLR) drew the principle in *Henderson v Henderson* (supra) and clarified that res judicata applies in a wide spectrum not only on matters that were actually litigated on but those that could have been raised earlier.
25. *Majanja J. in E.T v Attorney General* [2012] eKLR provided a checklist of what must be established for res judicata to apply.

“The doctrine of res judicata applies where the following conditions are established:

 - i. The matter in issue is identical in both suits;
 - ii. The parties in the suit are the same or parties litigating under the same title;



- iii. The matter was finally determined in the previous suit;
 - iv. The court that determined the matter was competent; and
 - v. The parties were litigating in the same capacity.”
26. In this case, there is a judgment from this Court dated 3rd May, 2018 delivered by A. K. Ndung’u J which involves the same parties herein. The parties in the present and prior protest are the same beneficiaries and administrators. It also dealt with the issue of distribution of the estate.
 27. Secondly , the other issues raised therein was whether the LR No. 6295/1 forms part of the estate of the deceased (at paragraph 34). This is the same question being raised here as well by the Protestor. She insists the property does not form part of the estate of the deceased as it was gifted to her by the deceased during the lifetime of the deceased. The Court went ahead to analyse the documents submitted and found that indeed the property belongs to the deceased.
 28. The judgement is still in force and binding. The Protestor’s Application for review of the said judgment to have the subject property excluded from the assets of the deceased was dismissed by this Court, A. K. Ndung’u J, vide the ruling delivered on 4th April, 2019. The Court as found that the Application was an attempt to introduce new evidence which was within prior knowledge of the Protestor.
 29. The Administrators moved the Land Court vide Nakuru ELC No. E20 of 2021 because the Protestor had the subject property registered in her name despite the decision of 3rd May, 2018 being in force. The Court by L. Omollo J found that the property was illegally transferred by the Protestor and ordered the same to be transferred back in the name of the deceased herein.
 30. In Nakuru ELC No. E20 of 2021 and the earlier Protest in this case, the Protestor had stated that the property was given to her by her mother by way of indenture of conveyance which had been dated November of 2011 and registered in June of 2018. In the instant Protest the Protestor claims to have been given the property by the deceased as a gift. The issue of Nakuru LR No. 6295/1 being a gift has arisen just now. In the previous proceedings that never arose.
 31. Res judicata not only bars the issues that have already been litigated but those which ought to have been raised earlier. The issue of the property being a gift inter vivos is a back door attempt at re-opening matters which have been conclusively decided which is impermissible.
 32. If in deed the Protestor was truthful that it was a gift inter vivos, that is something that should have been raised in Court prior. There cannot be perpetual disputes by the same beneficiaries over the same issues. There has to be finality.
 33. Therefore, I find the issues of ownership of Nakuru LR No. 6295/1 and whether it forms part of the estate of the deceased had already been conclusively dealt with by this Court and raising them again albeit in the guise of gift inter vivos, is Res Judicata.
 34. Now therefore, having found that the Protest dated 6th August, 2025 is res judicata, the same is hereby struck out.
 35. With no valid protest remaining on record, the Court is satisfied that the summons for Confirmation of Grant, the consent to the mode of distribution is properly on record.
 36. In the absence of an objection to the Confirmation of the Grant issued on 8th November, 2021, this Court proceeds on the basis that the schedule of distribution proposed represents the agreed entitlements of the beneficiaries of the Estate of Fridah Wairimu Wanguhu (Deceased).



37. This Court hereby proceeds to confirm the Grant and orders that, the estate be distributed in accordance with the mode set out in the affidavit in support of the summons for confirmation and consent both dated 27th June, 2025.
38. The Protestor is hereby barred from filing any further protests, objections or applications in this succession cause without prior leave of the Court. Any Applications, objections or protests filed without leave of Court shall be deemed incompetent and liable to be struck-out forthwith.
39. The costs of this protest are awarded to the Petitioners/Administrators.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 23RD DAY OF JANUARY 2026

MOHOCHI S.M

JUDGE

