

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1130 OF 2018

IN THE MATTER OF THE ESTATE OF CARMELINA

NGAMI MBURU

CATHERINE NJERI NGANGA

APPLICANT

VERSUS

LOUISA WANJIRA MBURU 1ST

OBJECTOR

LEWIS WANYOIKE KANGETHE 2ND

OBJECTOR

JOSEPH KANGETHE WANYOIKE 3RD

OBJECTOR

RULING

1. This matter is related to several matters that are before or have been before the High Court, the Environment and Land Court, and the Court of Appeal.
2. The deceased died on 24th October, 2017. The Applicant was granted a limited Grant *Ad Litem*, limited to filing on 15th January, 2019. The Grant was thereafter revoked by a ruling delivered by Hon. Justice A. Muchelule (as he then was) on 25th October, 2021.
3. The Court determined that the proceedings leading to the limited grant were defective in substance and revoked the grant under **Section 76** of the **Law of Succession Act**. The Applicant's petition relied on a power of attorney to obtain this limited grant. However, the Court found that the power of attorney automatically terminated upon the deceased's death.
4. As at the time of the revocation, the Court was informed that a petition for the grant of probate had been filed in **P&A 1493 of 2018** by the 2nd and 3rd Objector.
5. The 1st Objector is an administrator in the Estate of John Godhard Ichahuria Mburu (Deceased) in the High Court at Nairobi, **P&A No. 494 of 1982**. The late John Godhard

Ichahuria Mburu was the husband of Carmelina, whose estate is the subject of this case.

6. The Applicant has presently filed an application dated 20th June, 2025 seeking for review of the orders made on 25th October, 2021 on the grounds that the Applicant wishes to pursue the protection of the interests of John Godhard Mburu, deceased pursuant to the determination made in Environment and Land Court **Case No. 1180 of 2024** which touches on the property L.R 209/35863.

7. In the application, the Applicant references an agreement with Late Carmelina, stating that they agreed she would act on Carmelina's behalf to trace properties belonging to her and her deceased husband. According to the Applicant the agreement also states that she will receive a percentage of the assets recovered as compensation for her efforts.

8. The 1st Objector, who is a co-administrator and beneficiary of the Estate of John Godhard Ichahuria Mburu (Deceased), opposed the application. She asserts that the Applicant lacks *locus standi* to deal with or make any claims over the properties referenced.

9. The issue for determination is whether the Applicant has made a case for the review of the orders that revoked the limited grant that had been issued to her.

10. The Applicant has stated that there is no pending appeal at the Court of Appeal. The pleadings before me show that a notice of appeal was filed, and there is also a ruling regarding **Civil Application No. E408 of 2021** at the Court of Appeal, Nairobi Civil Registry. The Civil Application does not reference a formal appeal before the Court of Appeal, and the Ruling indicates that the Civil Application file was limited to consideration of a stay of the order for revocation.

11. The issue of whether a Notice of Appeal constitutes preferring of an appeal has been addressed by the Court of Appeal in **Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited, Communications Commission of Kenya & Kenya Broadcasting Corporation [2020] K ECA 633 (KLR)** that a Notice of Appeal is but a manifestation of an intention to appeal and that the definition of an appeal in **Rule 2** of the **Court of Appeal Rules** to include an intended appeal is only for purposes of an applicati

on under **Rule 5(2) (b)** of the **Court of Appeal Rules**, a kin to **Order 42 Rule 6(1)** of the **Civil Procedure Rules**, otherwise known as applications for stay of execution of decree/order pending appeal.

12. There being no appeal therefore, the Applicant could approach the Court for review.

13. Under **Order 45, Rule 1** of the **Civil Procedure Rules**, a review of a decree or order is permitted based on the discovery of new and important evidence, a mistake or error apparent on the face of the record, or any other sufficient reason.

14. The Applicant states that new evidence has emerged from the determination by the Environment and Land Court in **Nairobi ELC Case No. 1180 of 2018**, with a judgment delivered on 25th March, 2025. According to the Applicant, this judgment includes 'directions' that the Estate of John Godhard Mburu is required to follow and pursue.

15. The issue of the Environment and Land Case was presented before the Court when the application for

revocation was allowed. It is therefore not a new matter to form a basis for a review.

16. Besides, the Estate of John Godhard Mburu, which the Applicant says needs follow-up regarding the decision of the ELC Court regarding the specific property, has legal representatives appointed in **P&A 494 of 1982**. The Grant is in force, and under the **Law of Succession Act (Cap 160) of Kenya**, administrators are personal representatives in whom the property of a deceased person vests upon the granting of letters of administration. They are empowered to manage the estate, including the legal authority to act on behalf of the estate in lawsuits.

17. Regarding the present Estate of Carmelina Ngami Mburu, the ruling of 25th October, 2025 already found that the power of attorney the Applicant relies on was automatically terminated upon the deceased's death.

18. There is another **Succession Cause No. 1493 of 2018**, concerning the same estate. This case was referenced in the ruling by Justice Muchelule and is currently active before the Court. It is noted that the Applicant is also participating in that case. Additionally,

there is a limited Grant issued to Joseph (3rd Objector), which is mentioned in the case **In re Estate of John Godhard Ichahuria Mburu (Deceased) (Succession Cause 494 of 1982) [2025] KEHC 15936 (KLR) as P&A 1043 of 2018.**

19. The Applicant's invocation of review is without merit; the threshold required for such proceedings under **Order 45 of the Civil Procedure Rules** has not been met.

20. The application dated 20th June, 2025 by Catherine Njeri Nga'nga is dismissed with costs to the 1st Objector.

21. This file is marked as closed.

22. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this **2ND** day of **FEBRUARY, 2026.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Kibelion Advocate, holding brief for Mr. Arusei Advocate
for the Applicant

Mr. Otieno Advocate, holding brief for Mr. Anzala, Advocate
for the 1st Objector

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