



REPUBLIC OF KENYA



**In re Estate of Waime (Deceased) (Succession Cause 433 of 1998)  
[2026] KEHC 2109 (KLR) (Family) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2109 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 433 OF 1998**

**EKO OGOLA, J**

**FEBRUARY 19, 2026**

**IN THE MATTER OF THE ESTATE OF JAMES GATHIGU WAIME (DECEASED)**

**BETWEEN**

**EVANSON NDUNG’U GATHIGU ..... APPLICANT**

**AND**

**STANLEY MURIU GATHIGU ..... RESPONDENT**

**RULING**

1. Before this Court is a Notice of Motion application dated 1st November 2023 filed by the Applicant, Evanson Ndung’u Gathigu, seeking inter alia:
  - a. A stay of the Court’s orders issued on 16th October 2023 pending the hearing and determination of the application;
  - b. An order directing the Public Trustee to administer L.R. No. Dagoretti/Thogoto/255 strictly in accordance with the Certificate of Confirmation of Grant dated 2nd December 1998 and the Court’s ruling of 16th October 2023;
  - c. Costs to be in the cause.
2. The application is supported by the affidavit of the Applicant and several further affidavits. It is opposed by both the Public Trustee and the Respondent, Stanley Muriu Gathigu, through a preliminary objection, grounds of opposition, replying affidavits, and a further replying affidavit dated 30th May 2024, with an additional affidavit sworn on 7th March 2025.
3. The matter arises from the administration of the estate of the late James Gathigo Waime, whose estate has been the subject of prolonged litigation spanning over two decades.



#### Applicant's Case:

4. The Applicant contends that: The Public Trustee, in an application dated 22nd February 2021, sought orders to review earlier court orders and to have Title No. Dagoretti/Thogoto/T.157 declared lost without disclosing that two properties, namely Dagoretti/Thogoto/255 and Dagoretti/Thogoto/T.157, formed part of the estate.
5. The Public Trustee failed to mention Dagoretti/Thogoto/255, thereby demonstrating bias in favour of the Respondent.
6. The Applicant occupies Dagoretti/Thogoto/T.157, while the Respondent occupies Dagoretti/Thogoto/255.
7. Despite several court rulings directing that the estate be administered strictly in accordance with the confirmed grant, the Public Trustee has allegedly focused only on Dagoretti/Thogoto T.157, to the exclusion of Dagoretti/Thogoto 255.
8. The Applicant fears that unless restrained, the Public Trustee may proceed to administer Dagoretti/Thogoto T.157 alone, contrary to the Certificate of Confirmation of Grant.
9. The Applicant asserts that any purported subdivision or transfer of Dagoretti/Thogoto/255 was irregular as the grant has never been amended to introduce third-party beneficiaries.
10. The Applicant therefore urges the Court to enforce the confirmed grant as issued and restrain any deviation therefrom.

#### Public Trustee's and Respondent's Case:

11. The Public Trustee raised a Preliminary Objection, arguing that the application is res judicata, misconceived, bad in law, and an abuse of the court process.
12. The Respondent filed grounds of opposition and affidavits stating that: The Public Trustee was duly appointed as administrator by orders of Hon. Lady Justice Amin Farah on 6th March 2018, after himself and the applicant were discharged as administrators.
13. The Certificate of Confirmation of Grant dated 2nd December 1998 distributed the estate equally between the beneficiaries. Dagoretti/Thogoto/255 was fully administered by the previous administrators and subdivided into:
  - a. Dagoretti/Thogoto/2590 (0.041 ha) – Stanley Muriu Gathigu;
  - b. Dagoretti/Thogoto/2591 (0.025 ha)– Evanson Ndung'u Gathigu;
  - c. Dagoretti/Thogoto/2589 (0.053 ha) – held in trust and later transferred to James Gathigu Ndungi and Dennis Ngugi Ndungi, grandchildren of the deceased, with the knowledge of the family and the Public Trustee.
14. Part of Dagoretti/Thogoto/255 was compulsorily acquired by the Government for the construction of the Nairobi Southern Bypass, compensation amounting to Kshs. 2,266,030/= having been paid and shared among family members through a joint bank account in which the Applicant was a signatory.
15. The only remaining unadministered asset is Dagoretti/Thogoto/T.157, whose title deed the Applicant has refused to surrender, thereby frustrating administration.



16. The Applicant has persistently filed applications seeking to vary the confirmed grant so as to inherit Dagoretti/Thogoto/T.157 absolutely on account of being the eldest son, a position consistently rejected by the Court.
17. The Public Trustee filed a detailed report pursuant to Court directions, outlining extensive efforts made since 2018 to administer Dagoretti/Thogoto/T.157, including meetings with beneficiaries, correspondence with the Land Registrar, and an application to declare the title lost, which was allowed by Hon. Justice Muchelule on 13th July 2022.

#### **Issues for Determination:**

18. This court has identified the following issues for determination:
  - a. Whether the application dated 1st November 2023 is res judicata and an abuse of the court process;
  - b. Whether Dagoretti/Thogoto/255 remains unadministered;
  - c. Whether the Applicant has frustrated the administration of Dagoretti/Thogoto/T.157;
  - d. Whether the Court should, on its own motion, rectify the Certificate of Confirmation of Grant;

#### **Determination**

19. Section 7 of the *Civil Procedure Act* bars courts from re-litigating matters already conclusively determined. The record before this Court demonstrates that the issue of distribution of the estate, and particularly Dagoretti/Thogoto/T.157, has been conclusively addressed in several rulings, including those delivered on 6th March 2018, 13th July 2022, and 16th October 2023.
20. The Applicant's repeated attempts to re-open settled matters under the guise of enforcement amount to an abuse of the court process, contrary to the principle enunciated in *Uhuru Highway Development Ltd v Central Bank of Kenya & Others [1996] eKLR*.
21. The evidence on record, including affidavits and documentary proof, shows that Dagoretti/Thogoto/255 was partially compulsorily acquired and the remainder subdivided and transmitted by the former administrators long before the appointment of the Public Trustee.
22. The Applicant actively participated in these processes, including surrendering the title for cancellation and receiving compensation. This Court therefore finds that Dagoretti/Thogoto/255 has been sufficiently and appropriately administered.
23. The Court finds that the sole remaining asset yet to be transmitted is Dagoretti/Thogoto/T.157, and that the Public Trustee's inability to complete transmission is directly attributable to the Applicant's refusal to surrender the original title deed.
24. Section 83 of the *Law of Succession Act* imposes a duty to the administrator to facilitate, not obstruct, the administration of estates.
25. Section 74 of the *Law of Succession Act* empowers the Court to rectify a grant where necessary to give effect to the true position of the beneficiaries. The record, particularly the respondent's response to the applicant's affidavit dated 16th February 2025 and sworn on 7th March 2025, indicates that by mutual agreement of both the applicant and the respondent, parcel No. Dagoretti/Thogoto/2589 (0.053 Ha) was allocated to their sister, Eunice Njeri. In order to reflect that agreement and to meet the ends of



substantive justice, the Certificate of Confirmation of Grant is hereby rectified to expressly include Eunice Njeri as a beneficiary in respect of parcel No. Dagoretti/Thogoto/2589 (0.053 Ha).

Accordingly, the Court makes the following orders:

26. The Applicant's Notice of Motion dated 1st November 2023 is hereby dismissed.
27. The Certificate of Confirmation of Grant dated 2nd December 1998 is hereby rectified to include Eunice Njeri as a beneficiary of the estate.
28. The Court hereby declares and clarifies that the portions of land known as L.R. No. Dagoretti/Thogoto/2589 currently registered in the names of James Gathigu Ndungi and Dennis Ngugi Ndungi, being grandchildren of the deceased and sons of Eunice Njeri, are held and deemed to constitute the share of Eunice Njeri in the estate of the deceased, James Gathigo Waime, and not as independent or additional beneficiaries of the estate.
29. The Court declares that L.R. No. Dagoretti/Thogoto/255 has been duly and appropriately administered.
30. The Applicant is hereby ordered to surrender the original title deed for L.R. No. Dagoretti/Thogoto/T.157 to the Public Trustee within thirty (30) days of this ruling.
31. The Public Trustee is directed to proceed with the administration and transmission of L.R. No. Dagoretti/Thogoto/T.157 strictly in accordance with the Certificate of Confirmation of Grant as rectified and with previous court orders.
32. Each party shall bear their own costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026**

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**E. K. OGOLA**

**JUDGE**

In the Presence of:

Mr. Miriu..... for the Respondent

Mr. Wambugu ..... for the Applicant

Giselle..... Court Assistant

