



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 329 OF 2018
IN THE MATTER OF THE ESTATE OF THE LATE JOHN
MWAURA NDUNGU *alias* JOHN MWAURA NDUNG'U
(DECEASED)

DAVID MWAURA NDUNGU & TWO OTHERS
APPLICANTS

VERSES

PETER MUTURI NDUNGU
RESPONDENT

RULING

1. In their application dated 3rd July 2024 the Applicants are seeking the following orders:-
 - (a) That the grant of letters of probate to Esther Nguhi Ndungu and Peter Muturi Ndungu issued on 22nd September 2021 be revoked.
 - (b) That the court do appoint George Itotia Ndungu, Julia Njeri Ndungu Skilton and David Mwaura Ndungu as co administrators together with Peter Muturi Ndungu.

2. The application is based on the grounds thereof and the sworn affidavit dated the same day as well as further joint affidavit sworn on 27th March 2025.
3. The Respondent filed his replying affidavits dated 29th November 2024 opposing the application.
4. The premise of the application is that the deceased left a valid written Will and appointed Esther Nguhi Ndungu, his wife, as one of his executors together with the Respondent and one Fredrick Mari Mbiru.
5. It is the Applicants' case that their mother is aged, suffering from dementia and mild stroke and therefore her role as the executor has been rendered hopeless for lack of mental capacity. They backed up the above assertion by producing medical reports which have not been challenged.
6. It is their case therefore that the grant which had appointed the Respondent as well be revoked so as to bring them on board as well as the Respondent who is their brother and one of the executors of the Will.
7. In their further affidavit the Applicants have raised serious criticism of the Respondent for failing to administer the estate well including failing to transmit the titles and accounts misappropriation and totally mishandling the estate.
8. On his part the Respondent denied the above assertion claiming *inter alia* that the Will was self-executing and that

the deceased had clearly set it out in the event of failure by any of the executors.

9. That the issues raised by the Applicants does not fall within the provisions of Section 76 of the LSA and therefore it should be dismissed.
10. I directed the parties to file written submissions which they both complied. I have perused the same together with the cited authorities. The court does not wish to reproduce the same here save to state that they both mirror issues raised in the rival affidavits.
11. I have perused the written Will of the deceased as well as the history of this cause. Clearly there was no challenge to the Will by any of the parties whether in form or substance.
12. Paragraph 5.3 states as hereunder;

“In case my wife and Mr. Mbiru predecease me, are unwilling, refuse or are unable to prove this my Will, then I appoint my son Peter Muturi Ndungu to be my sole executor and trustee of this my will.”
13. The grant which is alive now is one dated 22nd September 2021 appointing the Respondent and the widow as executors as per the Will. If then one of the executors is incapacitated as claimed by the Respondent, then the intention of the testator was to have the remaining executor carry on with the exercise and complete the process.

14. The reason given by the Applicants on the face of the application is that their mother, one of the executors is incapacitated and they wish to be appointed joined executors together with the Respondent.
15. I respectfully disagree with them. The Will does not state so and if the deceased desired to have them as executors of the Will there was nothing difficult to have indicated. The Respondent to the extent that the Will is in existence must carry out the remaining work.
16. The issue of mismanagement of the estate by the Respondent came as an independent reason and has nothing to do with their mother's ailment. If indeed the Applicants' felt strongly that the Respondent is not executing the will as required in law then they need to make an independent application for the grounds raised in their application are not supporting the prayers sought.
17. It is probable that the estate may not have been administered well and in the manner the Applicants desire but I think the best way was perhaps to demand accounting from the Respondent. The two submissions have in a sense dwelt on the same but that is not what they have prayed for. Parties as they say are bound by their pleadings.
18. Nonetheless the Applicants who are beneficiaries of the estate have "fired" warning shots. The Respondent whom I regard as the only able executor must comply and execute the Will as directed by the deceased. Nothing

stops the Applicants from bringing in a proper application for this court's consideration.

19. I further observe that the grant was issued way back in September 2021 and I suppose by now, close to five years later, ought to have been executed regardless of the bottlenecks which are not insurmountable by the executors. This Will obviate any need by the beneficiaries to burden the court with applications.
20. All in all, the application before me will fail for the reasons stated above except that since it is not disputed that their mother is not unwell, I shall proceed to revoke the grant so as to permit the Respondent carry out the deceased wishes as per the Will and specifically aforesaid clause.
21. **The court directs that:**
 - (a) The application is disallowed.**
 - (b) The grant issued on 22nd September 2021 is hereby revoked and fresh grant issued to Peter Muturi Ndungu.**
 - (c) Costs in the cause.**

**Dated signed and delivered at Nairobi via video link
this 19th day of March 2026.**

**H K CHEMITEI
JUDGE**