



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waweru & 2 others v Waweru & another (Sued as the Joint Administratrix of the Estate of the Late Mwenje Waweru - Deceased) (Environment and Land Case Civil Suit 273 of 2017) [2026] KEELC 2672 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2672 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND CASE CIVIL SUIT 273 OF 2017**

**LN MBUGUA, J**

**MAY 6, 2026**

**BETWEEN**

**PETER KINYUA WAWERU ..... 1<sup>ST</sup> PLAINTIFF**

**SIMON WARUTERE WAWERU ..... 2<sup>ND</sup> PLAINTIFF**

**MARY WAIRIMU KIBERA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE RAJAB KIBERA WAWERU) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**NJERI MWENJE WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**JANE NYAWIRA MWENJE ..... 2<sup>ND</sup> DEFENDANT**

**SUED AS THE JOINT ADMINISTRATRIX OF THE ESTATE OF THE LATE MWENJE WAWERU - DECEASED**

**RULING**

1. Before me is a notice of motion application dated 31.10.2025 and amended on 07.11.2025 where the Applicant a Defendant seeks the following orders;
  1. That the firm of Maina P. Kairu & Co. Advocates be allowed to come on record post judgment.
  2. That pending inter parties hearing and determination of this application, there be stay of execution and/or further execution of the decree in this matter and the Applicant herein Jane Nyawira Mwenje be released from prison forthwith.
  3. That warrants of arrest and order for committal to civil jail issued against the Applicant herein be set aside and/or reviewed.



2. The application is premised on grounds on the face of the application and the supporting affidavit of the Applicant. She avers that the suit was instituted against her and one Njeri Mwenje Waweru as the administratrix of the estate of Mwenje Waweru, deceased, of which Njeri died before the date of delivery of the judgment, thus their grant became inoperative and ought to have been revoked. She avers that she has been committed to civil jail on the basis of the irregular judgment, thus she ought to be released. The Applicant has availed the burial permit dated 15.6.2012 to support her claim.
3. In opposition thereof, the 1<sup>st</sup> Plaintiff filed a replying affidavit dated 19.11.2025 stating that the advocate is conflicted as he acted for the 1<sup>st</sup> respondent in the same matter when he was in the firm of Ndegwa Wahome as is evident from the correspondence availed. Thus, in terms of professional conduct, the said advocate is barred from representing the Applicant. He avers that the judgment debtor was properly sued as per the grant dated 19.1.2004 and the fact that one of the administrators has since passed on does not extinguish the liability of the estate, nor does it invalidate the decree. Thus, the surviving administrator continues to bear responsibility for the due administration of the estate.
4. The Applicant has filed a supplementary affidavit where she avers that though indeed her proposed new advocate worked in the firm of Ndegwa Wahome, he only signed the letter attached to the replying affidavit, and he did not handle the matter substantially.
5. On 4.3.2026, the court gave directions for the Applicant to file and serve submissions by 20.3.2026, while the respondent was to comply by 4.4.2026. None of the parties complied with the said directions.
6. On the issue of legal representation, I make reference to the case of Delphis Bank Ltd v Channan Singh Chatthe & 6 others [2005] eKLR, where it was stated that;

“The starting point is, of course, to reiterate that most valued constitutional right to a litigant; the right to a legal representative or advocate of his choice. In some cases however, particularly civil, the right may be put to serious test if there is a conflict of interests which may endanger the equally hallowed principle of confidentiality in advocate/client fiduciary relationships or where the advocate would double up as a witness. There is otherwise no general rule that an advocate cannot act for one party in a matter and then act for the opposite party in subsequent litigation.”
7. In the case at hand, the proposed advocate is not even embarking on representing the Applicant in a different litigation, it is the same matter. Certainly, the said advocate had a fiduciary relationship with the Plaintiffs, who stands to be prejudiced by the cross over of the said advocate. To this end, I find that prayer 2 in the application must fail.
8. On the rest of the prayers, I find that the grant dated 19.1.2004 has not been revoked. It was incumbent upon the Applicant to move the appropriate probate court if she was not a proper administratrix of the estate of Mwenje Waweru. She has not done so. I am in agreement with the averments of the 1<sup>st</sup> respondent that the Applicant, having participated in these proceedings which were filed more than 18 years ago in year 2008, in her capacity as an administrator of the estate of the deceased, she cannot now hide the estate to escape responsibility.
9. In the end, I find that this application is not merited, the same is hereby dismissed with costs to the 1<sup>st</sup> Respondent/Plaintiff.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 6<sup>TH</sup> DAY OF MAY, 2026 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**



## **JUDGE**

In the presence of:

Bedan – Court Assistant

No appearance for parties

