

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 460 "B" OF 2010

IN THE MATTER OF LINAH NYOKABI NGATIA -

DECEASED

NANCY WAITHIRA

APPLICANT

VERSUS

CHARLES JOHN MWANIKI NJOKA

RESPONDENT

RULING

1. The deceased, **Linah Nyokabi Ngatia**, died on 2nd October, 2009. She is survived by her daughter, Nancy Waithira and from the pleadings before me, the deceased was engaged to Charles John Mwaniki Njoka during her lifetime.

2. The Grant of Letters of Administration was reissued to Nancy Waithira after her grandmother passed on. The Certificate of Confirmation of the Grant vests half share of the property L.R. No.12151/2 (subject property) to Nancy Waithira.

3. The matter has been reignited by an application dated 11th November, 2026 by Nancy Waithira (Applicant) against Charles John Mwaniki Njoka (Respondent). The application seeks the following orders:-

(i) THAT this application be certified as urgent and be heard ex parte in the first instance, with service thereof dispensed with or abridged;

(ii) THAT pending the hearing and determination of this application, this honourable court be pleased to issue an order barring the Respondent, his servants, agents, and/or assigns from disposing of, alienating, transferring, charging or otherwise dealing with the suit property known as L.R. No.

12151/2 or any part thereof, so as to preserved the subject matter of these proceedings pursuant to Order 40 Rule 1 of the Civil Procedure Rules;

(iii) THAT the Respondent, Charles John Mwaniki Njoka, be compelled to render a full and accurate account of all rental income received from the commercial residential building erected on the suit property known as L.R. No. 12151/2 from February 2024 to date, and to refund the Applicant her rightful share thereof, being approximately Kenya Shillings Two million (Kshs.2,000,000/=) calculated at the rate of Kshs.100,000/= per month as previously remitted to her;

(iv) THAT all rental income generated from the commercial residential development erected on the property known as LR No.12151/2 be forthwith, and on a continuing monthly basis, collected and deposited into an escrow

account to be opened at a reputable bank nominated by this honourable court within thirty (30) days of the date of this order, such account to be jointly operated by the advocates of the Applicant and the Respondent, pending the full implementation and distribution of the estate in accordance with the confirmed grant;

(v) THAT this honourable court be pleased to give effect to the confirmation of grant issued on 3rd December, 2018 by Justice A.O. Muchelule, by directing that the Applicant be registered as a joint proprietor of the property known as LR No.12151/2, entitled to a one-half undivided share thereof, together with all attendant rights of proprietorship including access, management and enjoyment of her share;

(vi) THAT the Chief Land Registrar be and is hereby ordered, pursuant to Section 71 (2) of

the Law of Succession Act and Section 60 of the Land Registration Act, 2012, to effect such registration forthwith and issue a new title deed reflecting the Applicant's entitlement in accordance with the confirmed grant;

(vii) THAT in the alternative, should this honourable court deem it just and expedient, the property be sold, whether through a public auction conducted by a licenced auctioneer to be appointed by this honourable court or by private treaty, under the joint supervision of the Advocates for both parties, and the net sale proceeds be shared equally between the Applicant and the estate as the deceased co-owner, subject to deduction of Kshs.2,000,000/= from the Respondent's one-half share of the proceeds, being rental income wrongfully and illegally withheld from the Applicant and lawfully due to her in respect of her one-half (½) undivided share;

(viii) THAT the costs of this application be awarded to the Applicant and provided for in the cause.

4. The Respondent did not file a response to the application despite a notice of appointment of advocates being filed on 6th February, 2026 and attendance by Counsel on 9th February, 2026, when leave was granted for the filing of the response and submissions. As such, the application is treated as unopposed.

5. I have considered the application, supporting affidavit and the submissions in support thereof.

6. The orders sought are summarized as follows;

(i) Injunctive orders against alienation of the property;

(ii) Orders directing the filing of the accounts with regard to the rental income for the subject property;

(iii) Orders directing deposit of rental income in an escrow account;

- (iv) Orders to give effect to the registration of the Applicant as a joint proprietor of the property;*
- (v) An alternative prayer for the sale of the property.*

7. From the pleadings in the file, there was a case between the deceased and the Respondent with regard to the subject property in **NRB ELC 2081 of 2007**. In that case, the Applicant substituted the deceased following her appointment as administrator. The ELC Court, in the Judgment, acknowledged the issuance of the Certificate of Confirmation of Grant as a valid decree, declined to issue a permanent injunction against the Applicant suing as the administrator of the estate of the deceased and acknowledged the ½ share vested in the Applicant in the Certificate of Confirmation of Grant.
8. It is apparent from the previous proceedings that the Respondent has been fully aware of the succession matter concerning the deceased's estate. Despite having this knowledge, the Respondent has not taken any steps to file an application regarding the property, nor has he

opposed the application presently under consideration by the Court. As a result, the Court views the Respondent's inaction as an acknowledgement of the ½ share that has been conferred upon the Applicant, who is recognized as the daughter of the deceased.

9. The annexures to the application show on a balance of probability that indeed the Applicant was receiving the rental income from the subject property. It is not clear, though, whether it was being shared or not. It is evident, though, that the ½ share granted to the Applicant remains unregistered.

10. The application dated 11th November, 2025 is allowed in the following terms;

(a) The Applicant shall present the certificate of confirmation of grant, which is validly in force, to the Land Registrar to effect the transfer by transmission of the ½ share of the subject property vested in the Applicant;

(b) The Applicant is entitled to a half share of the rental income generated from the subject

property; The Applicant shall furnish the Respondent with a bank account number to which ½ of the net rental income shall be remitted by the 10th of each succeeding month, beginning 10th May, 2026;

(c) Pending (a) above or until further orders by the court, the Respondent is restrained from selling, transferring, charging, disposing of or wasting the property L.R. No. 12151/2.

(d) No order as to costs.

(e) Either party is at liberty to apply.

11. It is so ordered.

DATED, DELIVERED and SIGNED at NAIBORI through the Microsoft Teams Online platform on this 4TH day of MAY, 2026.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Wachira, Advocate for the Applicant

Ms. Shikali, Advocate holding brief for Kiprop Advocate for
the Respondent

RULING