



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Esther Thithi Mwaura (Deceased) (Succession Cause  
769 of 2013) [2025] KEHC 727 (KLR) (Family) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 727 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 769 OF 2013  
RN NYAKUNDI, J  
JANUARY 31, 2025  
IN THE MATTER OF THE ESTATE OF ESTHER THITHI MWAURA (DECEASED)**

**RULING**

1. Vide Summons dated 30<sup>th</sup> May 2022, Margaret Kanyuri Kamau, the Applicant herein seeks the following orders-
  - a. This Honourable Court be pleased to substitute James Gachuhi Mwaura with Margaret Kanyuru Kamau as the administrator of the estate of Esther Thithi Mwaura (deceased) and the Grant of Letters of administration issued by this Honourable Court on 19<sup>th</sup> February 2019 be rectified/ amended accordingly.
  - b. Upon substitution of the administrator in terms of prayer 1 herein above, this Honourable Court be pleased to confirm the Grant of Letters of Administration Intestate forthwith.
  - c. That costs of these proceedings be in the cause.
2. The application is premised on the grounds on the face of the application and is supported by affidavit of the Applicant sworn on 30<sup>th</sup> May 2022, her further affidavit sworn on 2<sup>nd</sup> August 2022. Attached to the Application are consent to the Summons for Substitution signed by the following beneficiaries-
  - a. Samuel Karuru Mwaura
  - b. Irene Wairimu Ndungu
  - c. Emmah Wanjiru Mburu
  - d. Milka Wambui Njogu
3. Also attached is Consent to Mode of Distribution dated 30<sup>th</sup> May 2022, signed by
  - a. Samuel Karuru Mwaura



- b. Irene Wairimu Ndungu
  - c. Emmah Wanjiru Mburu
  - d. Milka Wambui Njogu
4. The Summons is also accompanied by a consent to confirmation of grant dated 30<sup>th</sup> May 2022 signed by
- a. Samuel Karuru Mwaura
  - b. Irene Wairimu Ndungu
  - c. Emmah Wanjiru Mburu
  - d. Milka Wambui Njogu
5. One of the beneficiaries has filed an Objection dated 9<sup>th</sup> October 2024, he enumerates 3 grounds of Objection;
- a. That the Applicant herein Margaret Kanyuru Kamau cannot dutifully and diligently administer the Estate as she is biased and this Application has been made with intention to jeorpadise another ongoing case being Nairobi Succession Cause No. 784 of 1990- *In the Matter of the Estate of Mwaura Gitachu* where the mode of distribution has blatantly been disregarded through a different sketch plan.
  - b. That there exists a protest against the confirmation of grant filed by Samuel Karuru Mwaura which is yet to be determined.
  - c. That the mode of distribution proposed by the Applicant is against the will and sketch plan where it was mentioned that Samwel Karuru Mwaura and his two brothers, Godfrey Ndungu and Hezekiah Njuguna, were to remain where they were cultivating and had built their houses.
6. In response to the Objection, Emma Wanjiru, Milka Wambui Njogu, Irene Wairimu Ndungu and Margaret Kanyururu Kamau have sworn affidavits dated 7<sup>th</sup> November 2024. Emma Wanjiru Mburu a daughter in law to the deceased depones that at a family meeting where the Protestor was present it was agreed that the Applicant substitute the current administrator and that the assets be distributed as per affidavits sworn by the Applicant.
7. Milka Wambui Njogu and Irene Wairimu Ndungu are daughters of the deceased as is the Applicant. It is contended that the objection of the Protestor relates to a different estate, that of Mwaura Gitachu and the assets are distinct. It is further contended that all the Beneficiaries are advanced in age and it is in the interests of Justice that the matter be concluded expeditiously.

### **Analysis and Determination**

8. The deceased herein, died on 28<sup>th</sup> July 2006. Letters of Administration of Grant in respect of the Estate were issued to Hezekiah Njuguna Mwaura on 27<sup>th</sup> November 2017. Vide Summons dated 10<sup>th</sup> September 2018, the Administrator sought confirmation of the Grant. The beneficiaries of the Estate were enumerated as –
- a. Hezekiah Njuguna Mwaura
  - b. Irene Wairimu Ndungu (daughter in law)
  - c. Samuel Karuru Mwaura



- d. Francis Thiga Mwaura
  - e. James Gachuhi Mwaura
  - f. Margaret Kanyururu Kamau
  - g. Milka Wambui Njogu (daughter in law)
  - h. Emma Wanjiru Mburu (daughter in law)
  - i. Mary Wairimu Njoroge
9. The following lodged Objections/ Protests to the Summons for confirmation; Mary Wairimu Mwaura, Milka Njogu, Irene Wairimu Ndungu and Samuel Karuru Mwaura.
  10. Before the Summons for Confirmation could be determined the administrator died and that grant revoked and a fresh one issued to James Gachuhi Mwaura on 19<sup>th</sup> February 2019. It is in respect of this grant that the Applicant wishes to be ‘substituted’.
  11. The Applicant seeks to revoke this grant. I note that the Beneficiaries have consented to this and her appointment as administrator. I will therefore allow the application for revocation of grant issued to James Gachuhi Mwaura and issuance of fresh grant to Margaret Kanyaru Kamau
  12. With regard to the Confirmation of Grant, at paragraph 6 of the Affidavit in support of the Petition lodged by Hezekiah Njuguna Mwaura he enumerated the assets of the estate of the deceased. There were no documents lodged as proof of ownership of those assets by the deceased. What was provided was the Grant of Probate of Written Will in the Estate of Mwaura Gitachu in High Court (Nairobi) Succession Cause No. 784 of 1990, alongside a copy of the Will of Mwaura Gitachu (deceased) dated 15<sup>th</sup> October 1989. Both the Summons for Confirmation lodged on 10<sup>th</sup> September 2018 and 30<sup>th</sup> May 2022 do not provide proof of ownership.
  13. This is material to the determination of this summons as the Objector/ Protestor herein contends that this estate is linked to the outcome in the estate in H.C. Succession Cause No. 784 of 1990, of the husband to the deceased. Nothing has been placed before Court to demonstrate that the deceased is the registered owner of the assets enumerated under paragraph 3 of the further affidavit sworn on 2nd August 2022. It is therefore not clear from the record whether the Applicant has established that the assets enumerated in paragraph 3 belong to the Estate or have been transmitted to her (as a beneficiary in Succession Cause 784 of 1990) and therefore are available for distribution.
  14. Not all the beneficiaries have signed consent as required by rule 40 (8) of the Probate and administration rules, those who have not signed are Francis Thiga Mwaura and Mary Wairimu Njoroge
  15. Finally, the prayer to confirm the grant must fail as it includes daughters in law who have no stake in the *Estate of the deceased as beneficiaries. In re Estate of Imoli Lubatse Paul (Deceased)* [2021] eKLR the Court was emphatic that on the basis of Sections 39 and 41 of the *Law of Succession Act*
    - [4] ..... consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. they can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the estate of their parents.



16. Absent letters of Administrations in respect of their deceased spouses by the daughters- in- law, it is only the children of the deceased beneficiaries (sons of the deceased), who can stand in their place.
17. For the foregoing reasons the summons dated May 30, 2022 is partially allowed to revoke the grant issued to grant issued to James Gachuhi Mwaura and issuance of fresh grant to Margaret Kanyaru Kamau
18. The Administrator will be at liberty to present a compliant summons for confirmation grant, that shows proof of ownership of the assets by the deceased.
19. Mention before the Deputy Registrar on March 19, 2025 to confirm compliant summons for confirmation filed and to take further directions
20. This being a family matter each party will bear their own costs.

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31<sup>ST</sup> JANUARY 2025.**

.....

**P. NYAUNDI**

**JUDGE**

**In the presence of:**

Noel Court Assistant

..... for the Applicant

..... for the Respondent

