



REPUBLIC OF KENYA



**In re Estate of Bedan Gachibiri Kathamari (Deceased) (Succession Cause 348 of 2013) [2025] KEHC 1234 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1234 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 348 OF 2013  
EM MURIITHI, J  
FEBRUARY 27, 2025**

**IN THE MATTER OF THE ESTATE OF BEDAN GACHIBIRI KATHAMARI (DECEASED)**

**BETWEEN**

**CYPRIAN NYAMU BEDAN ..... PETITIONER**

**AND**

**MICHAEL NYAMU ..... 1<sup>ST</sup> PROTESTOR**

**SOLOMON GACHOKI ..... 2<sup>ND</sup> PROTESTOR**

**RULING**

1. The petitioner/ applicant filed Summons dated 12<sup>th</sup> June, 2020 seeking the following orders:
  1. Spent.
  2. The Executive officer of this court be authorized to sign all necessary forms to facilitate distribution of the deceased's estate including form RL7 and RL19, mutations and R.I.M maps for any beneficiary who refuses to sign the forms to facilitate distribution of land parcel no Ngariama/kabare/ 129 to the beneficiaries.
  3. This court do authorize the land registrar Kirinyaga to dispense with the production of the old title deed for land parcel No. Ngariama/kabare/129 during registration of the transmission forms to distribute the estate.
  4. The OCS Kianyaga police station do provide security during subdivision exercise.
  5. The respondents be given 30 days to remove their crops and houses from the portion of 4.64 acres and in default they be evicted from the portion of 4.64 acres in land parcel No. Ngariama/kabare/ 129 and OCS Kianyaga do provide security during the subdivision and eviction exercise.



6. All cautions and encumbrance registered over land parcel no. Ngariama/kabare/ 129 be lifted.
7. Costs be in the cause.
2. The application is based on the grounds that the applicant wishes to give effect / execute the grant so that the estate can be distributed and the respondents is uncooperative and has refused to sign the forms and attend land board to distribute the estate.
3. The applicant's Supporting Affidavit set out the facts relied on that the court confirmed the grant and distributed the land to all the deceased children equally and he is to hold the share of Fausto Mugo in trust for his siblings. That they wish to distribute the estate. That the respondents are hostile to them and have chased them from the suit land and that he is ready to give the respondents 30 days to remove their items that fall on the portion of 1.66 acres that has been awarded to him in trust for his siblings. That the land had encumbrances of beneficiaries and it is in the interest of justice that the same be removed. That the respondents have been unwilling to sign the transmission forms and do not even talk to him or his siblings and it has proved very hard to have him sign form RL7 and RL19, and finally that the respondents have also been hostile and refused to give them vacant possession of 4.46 acres for him and his 2 aunts Alicarada Wagatwe Bedan and Sicily Muthoni Bedan.
4. The respondent filed a Response dated 8<sup>th</sup> February, 2023 entitled Protestor's Response to the Summons (General Form) dated 12<sup>th</sup> June 2020 signed by the advocate for the Protestors contending that no specific jurisdiction is conferred on the court's executive officer to sign form RL7, RL19, Mutations and R.I.M maps for any of the beneficiaries to a succession cause, with respect to parcel of land Ngariama/kabar&/129 which is subject to this succession cause. The *Succession Act* Cap 160, and the *P & A rules*, which are sui generis do not provide for use of the *Civil Procedure Rules* for forced execution orders, use of the police, making of eviction orders, demolition of houses and crops. The jurisdiction to remove cautions and encumbrances does not belong to the succession court. The property of the deceased in this matter, that is to say parcel of land Ngariama /kabare/ 129 remains the property of the deceased until it is lawfully and safely distributed to all the beneficiaries by the court appointed administrator. Until then, the administrator remains a trustee of the estate. The distribution of the deceased's estate belongs to the administrator and the beneficiaries. The request for orders of the use of force, violence, coercion and distasteful methods being sought by the administrator amount to a statement that the court administrator has failed as an administrator and should surrender the grant back to the court.

### **Issue**

5. Whether the court should direct the executive officer to sign the transmission documents.

### **Analysis**

6. The petitioner seeks orders that the Executive officer of this court be authorized to sign all necessary forms to facilitate distribution of the deceased's estate including form RL7 and RL19, mutations and R.I.M maps for any beneficiary who refuses to sign the forms to facilitate distribution of land parcel no Ngariama/kabare/ 129 to the beneficiaries.
7. The court's judgement delivered on 29<sup>th</sup> May, 2020 ordered for the grant of letters of administration to be issued and confirmed in these terms: That the estate of the deceased comprised of land parcel No Ngariama/kabare/ 129 shall be distributed to all his children equally.
8. The applicant depose that the respondents have been unwilling to sign the transmission forms and do not even talk to him or his siblings and it has proved very hard to have him sign form RL7 and RL19.



9. The respondents avers that there is no specific jurisdiction conferred on the court's executive officer to sign transmission forms.

10. Section 47 of the [Law of Succession Act](#) provides as follows:

“47. Jurisdiction of High Court

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice. [Act No. 16 of 1977, Sch.]”

11. The provision may be given effect through the general provision rule under Rule 73 of the [P&A Rules](#) which provides for the inherent powers of the court to make such orders as to as may be necessary for the ends of justice or prevent the abuse of the court process, as follows:

“73. Saving of inherent powers of court

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

12. The respondents in refusing to sign the transmission documents without reasonable cause is making it impossible for the administrator to fulfil his statutory duties. That status cannot be allowed to remain. In standing in the way of implementation of an order for distribution by the court, the administrator who as the personal representative of the deceased has powers and duty to do so under sections 82 and 83 of the [Law of Succession Act](#), or any other person who is required to do something to give effect to the order of court would be in disobedience of the Court order of distribution. It is a strange thing that a party who is in contempt of court may use the excuse of want of express provision for an order to give effect the order of the court sought to be implemented to defeat any enforcement measures.

13. There is not demonstrated any order for stay of implementation of the order of court in distribution.

14. The administrator is fortunate the contempt jurisdiction has not been invoked in this case. It is also opportune to reiterate the warning of Court of Appeal to counsel for such contemnors in [Commercial Bank of Africa Limited v Isaac Kamau Ndirangu](#) [1992] eKLR per Kwach JA. as follows:

“It is a fundamental tenet of the rule of law that court orders must be obeyed:

This appeal is essentially about alleged flagrant disobedience of a court order by one of the parties and its advocates. Advocates who aid and abet their clients to disobey or circumvent court orders must understand that they are as much liable to be committed for contempt of court as their clients. If any authority were needed for this perfectly obvious proposition, it can be found in the cases of *Marengo v Daily Sketch & Sunday Graphic Ltd* [1948] 1 All ER 406; *Elliot v Klinger* [1967] 3 All ER 141; and *Acrow (Automation) Ltd V Rex Chainbelt Inc* [1971] 3 All ER 1175.”

15. The Respondents' have refused to execute the documents required to give effect to the grant herein. The Court shall pursuant to its authority under section 47 of the [Law of Succession Act](#) and in accordance with Rule 73 of the [Probate and Administration Rules](#) 1981 direct the Deputy Registrar to execute the transmission documents to facilitate distribution of land parcel no Ngariama/kabare/129



to the beneficiaries. In the interests of maintenance of peace in view of the belligerent stance taken by the respondents, the Court grants the request for police security.

### **Orders**

16. Accordingly, for the reasons set out above, the Court grants the application dated 12<sup>th</sup> June, 2020 as prayed.

17. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms. A. Thungu for the Applicant.

M/S Morris Njage & Co. Advocates for protestors.

