



REPUBLIC OF KENYA



**In re Estate of Paul Gatete Kiratu (Deceased) (Succession Cause
E003 of 2020) [2025] KEHC 3604 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E003 OF 2020
SM MOHOCHI, J
MARCH 25, 2025**

IN THE MATTER OF THE ESTATE OF PAUL GATETE KIRATU (DECEASED)

BETWEEN

**FAITH NYAMBURA GATETE 1ST OBJECTOR
JOYCE WAMBUI GATETE 2ND OBJECTOR
ELIZABETH NJERI GATETE 3RD OBJECTOR**

AND

**ESTHER NYAMBURA WANYOIKE 1ST PETITIONER
DORCAS NJERI MAINA 2ND PETITIONER
MARGARET NJERI NJOROGE 3RD PETITIONER**

AND

DAVID MACHARIA KIRATU RESPONDENT

RULING

1. Before Court for determination is the Objection to making of Grant dated 22nd July, 2024 and the Summons dated 8th November, 2024.

Objection to Making of Grant

2. The Objectors in support of the Objection filed an Affidavit sworn on 23rd July, 2022 by Faith Nyambura Gatete with authority from the 2nd and 3rd objectors. She deposes that the Objectors are daughters of the deceased herein from the second house.



3. She further deposes that the Petitioners did not involve them in taking out letters of administration and on perusing the list of properties listed, some of the properties belong to their late mother and that other properties are jointly registered in the names of Francis Macharia, Daniel Maina and Margaret Njeri therefore do not form part of the estate of the deceased.
4. That the Petitioners went further and filed Summons for Revocation of Grant dated 18th January, 2021 in Nakuru Succession Cause No. 43 of 2019 seeking the said properties do not form part of the estate of Ruth Wanjiku Gatete to which the Court on 31st November, 2021 directed that he Respondent's to file and pursue and appropriate claim in the environment and Land Court.
5. The Court further on 14th January, 2022 directed that the rent collected from the list of properties registered in the name of Ruth Gatete be collected by the deponent herein. When the Respondents moved the Environment and Land Court, the Court declined to issue stay of proceedings in relation to the subject properties.

Petitioner's Case

6. Petitioners in opposition filed a Replying Affidavit sworn by Dorcas Njeri Maina on 29th January, 2025. She deposed that the instant Application is an abuse of the Court process as there is another Objection on record dated 23rd October 2020 which the Objectors are yet to prosecute.
7. It was contended that most of the contentious assets were jointly acquired by the deceased herein and their mother Beatrice Gatete and upon the demise of their mother the deceased married the Objector's mother Ruth Gatete and therefore all the properties belong to the Estate of the deceased registered in other family members' names' including Ruth Gatete to hold in trust for the rest of the family.
8. It was argued that in 2000 the deceased was having financial problems and there were threatened auctions due to the outhandling debts. He proposed to the creditors to sell some of his properties to offset the debts but finding buyers on time proved challenging hence transferred the properties in the names of his children and then wife to hold in trust for him and the rest of the family.
9. That unfortunately the Objectors' mother passed on before transferring the properties back to the deceased's name. That the deceased upon settling his debts sought to have the properties transferred back to him but the Objectors frustrated his efforts and went ahead to fraudulently include them as free property of Ruth Wanjiku Gatete in Succession Cause No. 43 of 2019.
10. They sought to have the grant revoked and also instituted Nakuru ELC No. 007 of 2022 where the matter is coming up for further hearing on 29th May, 2025. That the hearing of this Objection should wait the determination of Nakuru ELC No 007 of 2022 which shall assist in determination of the issues in dispute.
11. That the Objection dated 22nd July 2022 has been filed out of time and without leave of Court contrary to the rules.

Summons dated 8th November, 2024,

12. The petitioner's vide Summons brought under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules seek that:-
 - a. Spent
 - b. This Honourable Court be pleased to make an order appointing O'clock Housing Agents as a caretaker/agent to manage and collect rent from rental premises in property known as Nakuru



Municipality Block 2/438 and remit the same to estate bank account SMEP Bank Account No. 12792832.

- c. That costs of the Application be provided for.
13. The Summons was supported by the sworn Affidavit of Dorcas Njeri Maina on behalf of the 1st and 3rd Petitioners sworn on even date. She deposes that the Court issued orders on 21st July, 2022 which the Respondent has demanded that the tenants from the suit premises disregard the order and continue paying rent to him and or face eviction if they do not pay rent to him.
14. That there is need to appoint agents to assist in the collection of rent and ensure the tenants are complying with orders issued of 24th November, 2022 since the Respondent is continuing to be in contempt of the orders of 24th November, 2022 and the ones of 3rd November, 2023 despite being given several opportunities to purge the contempt and comply.

Objectors' Case

15. By way of Replying affidavit sworn on 26th November, 2024 the Objectors through Faith Nyambura opposed the application terming it inter alia baseless, frivolous, vexatious and an abuse of the Court process. That the property known as Nakuru Municipality Block 2/438 does not form part of the estate of the deceased herein since the property is registered in the names of Ruth Wanjiku Gatete and Francis Macharia Gatete.
16. She averred that she was ordered to collect rent from all properties registered in the name of Ruth Wanjiku Gatete including the subject property and depositing them in Court. That the Applicants are not sincere and thus taking Court in a circus and occasioning two conflicting orders from two Courts of Concurrent jurisdictions.

Rejoinder

17. The Petitioner's in the Further Affidavit sworn on 29th January, 2025 deposed that the Court made a specific order that the rent to be collected and deposited in Court was for the properties registered in the name of the Ruth Gatete. That on 24th November, 2022 the Court pronounced itself that the subject property forms part of the estate of the deceased and was registered in the name of Ruth Gatete and Francis Macharia. The said orders cannot be said to be contradictory as they complement each other. That the orders of Matheka J have never been appealed or set aside and that Faith Nyambura has never deposited rent in respect of the orders of 31st November, 2021.
18. The Objectors in the Supplementary Affidavit sworn on 19th February 2025 denied the Petitioners claims that deceased transferred his properties to his family members or that the properties registered to Ruth Gatete were being held in trust. That the loan allegation cannot be substantiated. That leave to file the Objection was granted on 11th July, 2024.

Petitioners' Submissions

19. The Petitioners filed joint submissions in respect of both the Objection and the Summons and submitted that the Objection lacks merit as was filed without leave and contrary to Sections 68 and 69 of the Law of Succession Act and Rule 17 of the Probate and Administration Rules.
20. Further that the objection was made outside the 30 days stipulated period and reliance was place in the case of re Estate of Paul Gathito Kibanya (Deceased) [2023] KEHC 19461 (KLR) and in re Estate of Johnstone Ochwang'i Moronge [2022] eKLR.



21. It was further submitted that the hearing of the objection is premature as there is a pending case in regards of the assets forming part of this estate being ELC No. E007 of 2022

Objector's Submissions

22. The Objectors too filed joint submissions in respect of both the Objection and the Summons and submitted that they have demonstrated sufficient grounds for revocation of grant of letters of administration and relied on the provisions of Section 76 of the Law of Succession Act.
23. That they were not involved in process that led to the issuance of grant. That the proceedings were defective in substance. That the Grant was obtained by redolently making false statement and the concealments of facts. That the Petitioners misrepresented themselves as being the sole beneficiaries.
24. It was further submitted that the suit property does not form part of the estate of the deceased herein within the definition under Section 3 of the Law of Succession Act and hence not deserving of the orders sought in the Summons

Analysis and Determination

25. I have carefully considered the Objection to the issuance of Grant, the Summons together with the various affidavits in support of each party's claims and against as well as the submissions. The issues arising for determination are:-
- i. Whether the Objection to making the grant dated 22nd July, 2024 has merit
 - ii. Whether the orders sought in the summons dated 8th November, 2024 can issue
 - iii. Costs

Whether the Objection to making the grant dated 22nd July, 2024 has merit

26. The Objectors filed an Objection to Making of Grant objecting to the Petition for Letters of Administration. It is rather surprising that they submitted on revocation of grant yet the the Grant of Letters of Administration has not been issued. Section 76 of the Law of Succession Act deals with revocation or annulment of Grant. Those submissions are premature.
27. Objectors' reasons from opposing the making of Grant is that they were not involved in the process of taking out letter of administration. That appears to be inaccurate since the former advocates on record for the Objectors wrote a letter dated 21st January, 2020 allowing the Petitioners as the first family to apply for letter of administration.
28. The Petition for letters of administration was sent to the Objectors on 22nd July, 2020. Counsel for the Objectors then wrote back stating the Objectors had refused to sign the Petition since some of the properties do not form part of the estate.
29. They cannot say they were unaware of the process. The Petitioners also included the Objectors in the Petition for letter of Administration filed on 30th September, 2020 as survivors of the deceased. They were involved and were aware that the process had been initiated and chose not to sign the Petition and instead filed the Objection dated 23rd November, 2020 which they are yet to prosecute. The Objectors can therefore not come late in the day and claim non-involvement.
30. The Petitioners have argued and submitted that the Objection has been filed out of time and without leave of Court.



31. Section 68 of the Law of Succession Act provides that:
- i. Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow
 - ii. Where notice of objection has been lodged under sub-section (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period
32. Rule 17 (1) of the Probate and Administration Rules provides that:-
- “any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection”
33. The meaning of the above provisions is that filing of an Objection has to be filed within a prescribed time, 30 days, after publication of the Notice in the Kenya Gazette. Rule 17 allows is to the effect that any party desirous of filing and objection and is out of time has to seek the Court’s indulgence by seeking leave to file the objection out of time.
34. On 11th July, 2024 the Court granted leave to the Objectors to file their objection within 7 days therefrom thus they had to file it on or before 18th July, 2024. The Objection was filed on 26th July, 2024. Despite being granted leave within specified time the same was filed seven (7) days outside the allowed time. The delay has not been justified or explained.
35. In re Estate of Agnes Ogola Okoth (Deceased) [2016] eKLR the Court held that:-
- “The Law of Succession is a self-contained Act of Parliament which has clearly set out provisions on how matters of succession cause can be dealt with. An aggrieved party cannot ignore the express provisions of the law like in the case in raising any matter regarding specific provisions in the Act and claim that he is doing so, so as to get substantive justice in respect of his claim. In my view even when a party is seeking substantive justice, such justice must be attended to through some definite process. Article 159 (2) (d) of the Constitution in regard to administration of justice without undue regard to procedural technicality do not therefore mean we do away with all rules of procedure, as doing so would breed anarchy and would mean injustice to those who are vulnerable or weak or un cunning. Procedures and rules are in my view good, and makes things move in an orderly and predictable manner and cannot be wished away.”
36. The Petitioners contend that the Objection is premature before this Court since there is a pending land matter which outcome would inform the decision of the Court. I disagree. The Court has the jurisdiction to entertain this objection as it relates to the estate of the deceased herein and not the estate of Ruth Gatete.
37. The properties that will be deemed to form part of the estate of the deceased can be incorporated later. The proceedings in this Court cannot be halted or held in abeyance due to an ownership tassel amongst



the beneficiaries and in relation to the estate of another person pertaining to properties that may or may not form part of the estate of the deceased herein.

38. The upshot of the forgoing is that the Objection lacks merit and is clearly an abuse of the Court process. It was drawn and filed despite the Petitioners mounting another Objection that is still pending. No substantive reasons have been advanced on why the same should be allowed.
39. Be that as it may be, the Petitioners are members of the first house. There is already a visible disconnect between the two houses and making the Grant as is would causes more problems than solutions. This Court is of the opinion that each house should be represented in the making of grant.

Whether the orders sought in the summons dated 8th November, 2024 can issue

40. This Court is of the opinion that; the Petitioners have convinced the Court why they are deserving of the Orders sought for the following reasons: -
- a. Firstly, there is no conflict in the orders issued by the Courts. There is no ambiguity in the order made by Honourable Prof. Ngugi J. (as he then was) in the order of 31st November, 2021. I do concur with the Petitioners that, Faith Nyambura Gatete was to collect rent and deposit the rent in Court for the properties registered in the name of the late Ruth Gatete and not jointly registered in the name of Ruth Gatete and others.
 - b. Secondly, the orders issued on 24th November, 2020 by Matheka J. to the effect that Nakuru Municipality Block 2/438 forms part of the estate of the deceased herein unless otherwise established, have not be varied or reviewed or set-aside or otherwise established. The Court further directed that the rental income be deposited in the estate bank account. The agent will only be doing what the Respondent has refused to do and giving effect to the said Court order.
 - c. Thirdly, the Objectors have not disputed that the signatories of the estate account are members of both houses. There is therefore no room for mischief or a party from either house to steal a march if the rental income is deposited there and collected by a neutral party. The estate will be preserved.
 - d. Fourth, the conduct of the Respondent is wanting. He admitted that the property was registered in both the names of Ruth Gatete from the first house and Francis Macharia from the second house and was being held in trust for the family. The Court found him to have intermeddled and this Court also cited him for Contempt. He has refused to obey the Court orders which speaks a lot about his character. He cannot be left to collect rent or in any way manage or deal with the property.
41. The upshot of the above is that the Objection dated 22nd July, 2024 is found to be lacking merit and is hereby dismissed. The Summons dated 8th November 2024 is found to be with merit and is hereby allowed. The Court makes the following orders:
- a. O'clock Housing Agents is hereby appointed as a caretaker/agent to manage and collect rent from rental premises in property known as Nakuru Municipality Block 2/438 and remit the same to the estate bank account SMEP Bank Account No. 12792832.
 - b. I direct those four administrators be appointed from the 2 houses, so that each house can have two administrators.
 - c. Each house to propose their administrator of choice within the next thirty (30) days from this Ruling.



d. Being a family matter each party shall bear their own costs

It is so Ordered.

DELIVERED, DATED AND SIGNED AT NAKURU ON THIS 25TH OF MARCH, 2025.

MOHOCHI S.M.

JUDGE

