



**In re Estate of Gerrison Stephen Maina (Deceased) (Succession Cause
2567 of 1995) [2025] KEHC 12331 (KLR) (Family) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2567 OF 1995
CJ KENDAGOR, J
JULY 31, 2025
IN THE MATTER OF THE ESTATE OF GERRISON STEPHEN MAINA (DECEASED)**

BETWEEN

HENRY MBUGUA MAINA ADMINISTRATOR

AND

ALICE WAMBUI MAINA APPLICANT

AND

JACINTA WAITHERA MAINA 1ST RESPONDENT

DAVID KABERERE MAINA 2ND RESPONDENT

STEPHEN KURIA MAINA 3RD RESPONDENT

RULING

1. The deceased in this case died on 16th August, 1995 and Jacinta Waithera Maina and Henry Mbugua Maina were appointed as administrators of his estate on 15th January, 1996. A dispute arose as to the distribution of the estate and the cause has since been pending.
2. There was no action in the file since 2015 and the matter has been reactivated via an application dated 31st January, 2025 filed by the Applicants herein - Henry and Alice.
3. The 1st Respondent is the widow and mother of the two Applicants, as well as the 2nd, 3rd and 4th Respondents. The 5th Respondent is the grandson of the deceased (son of the late Josephine Maina, deceased, who was a daughter of the deceased).
4. The application seeks the following orders;



- i. Spent
 - ii. That a temporary injunction be issued to restrain the respondents from evicting the applicants, demolishing structures, or in any manner interfering with the applicant's peaceful use and occupation of the suit property known as Plot No. Kiamba/Karuri/T720 situated in Karuri, Kiambaa Constituency, which forms part of the estate of the deceased, pending the hearing and determination of the application;
 - iii. That a temporary injunction be issued to restrain the respondents from evicting the applicants, demolishing structures, or in any manner interfering with the applicant's peaceful use and occupation of the suit property known as Plot No. Kiamba/Karuri/T720 situated in Karuri, Kiambaa Constituency, which forms part of the estate of the deceased, pending the issuance of summons for confirmation of grant with a schedule for distribution of the deceased's assets;
 - iv. That the OCS Karuri Police Station to supervise and ensure compliance.;
 - v. That costs be provided for.
5. The application is supported by an affidavit sworn by the 1st Applicant. The Applicants claim that the Respondents have issued them a notice to vacate the property in question, and failure to comply could lead to their eviction. The 1st Applicant states that he has lived in the property for over 30 years without any interference or opposition from the first Respondent and argues that he will be greatly prejudiced if the orders sought are not granted.
 6. The 1st Respondent filed a replying affidavit sworn on 24th February, 2025 in which she opposed the prayers sought. She asserts that the 1st Applicant, as co-administrator, has hindered the administration of the estate and contends that the 1st Applicant initiated the current application after she demanded he give her vacant possession of her master bedroom, which she had permitted him to stay in while he undertook some residential house construction on the property.
 7. The 3rd Respondent filed a Replying affidavit sworn on 28th March, 2025, in which he supported the application. He asserted that the property has rental units where they all reside, except for the 2nd Applicant, who has leased out her two units. According to the 3rd Respondent, the 2nd Respondent is trying to evict them using the 1st Respondent, their mother, who is elderly.
 8. The Court ordered a site visit to be conducted to assess the actual status of occupation of the property before determining the current application. The site visit was carried out by the Assistant Deputy Registrar, and a report dated 14th May, 2025 was filed.
 9. The report highlighted the following findings;
 - i. The parties who were present did not raise any comments as to the 1st Respondent's assertion that she is the one in possession of the suit property;
 - ii. The 1st Applicant resides in an extension of the main house and also occupies the 1st Respondent's master bedroom, which has been converted into part of the extension;
 - iii. The 2nd Applicant does not stay at the subject property;
 - iv. The 1st Respondent occupies the main house, together with the 2nd Respondent's family;
 - v. The 3rd Respondent resides in two of the rental units;
 - vi. The 4th Respondent resides in two of the rental units;



- vii. The 5th Respondent does not reside at the property.
10. The findings reveal that all parties have significantly benefited from long-term use and occupancy of the property. While there is a general understanding of the specific portions from which each party derives benefit, underlying tensions and persistent acrimony continue to mar their relationship as a family.
 11. The 1st Respondent acknowledges allowing the 1st Applicant to reside in the master bedroom. It is apparent that the demand for vacant possession is what has sparked the current dispute and the application now before Court.
 12. The issues that present themselves are best addressed during the estate distribution. The Confirmation of the Grant is essential to ensure a smooth distribution of the estate among the beneficiaries.
 13. The administrators have regrettably not taken the essential measures to accelerate the conclusion of the succession proceedings. They have neglected to actively pursue a timely hearing and determination of the summons for Confirmation of the Grant, as well as the associated protests. Should they continue to fall short in their responsibilities as administrators, the court may revoke the grant altogether. At this critical juncture, the court is granting them a renewed opportunity to fulfil their obligations.
 14. The application before the Court lacks sufficient grounds for the issuance of the orders sought. The interim orders are hereby vacated.
 15. To prevent any party from gaining an unfair advantage and to promote an equitable resolution, this Court exercising its inherent powers under Rule 73 of the Probate and Administration Rules, orders the 1st Applicant to vacate the part of the main house that belongs to his mother, specifically the master bedroom, and to move to the extension he has built on the side of the property. Any belongings of either party should also be kept in their respective sections. Thereafter, the parties shall uphold the status quo regarding the occupation and use of the property until the succession cause is concluded.
 16. The parties involved are urged to take swift and necessary action to accelerate the proceedings aimed at concluding the succession process.
 17. The matter will be scheduled for directions regarding the hearing of the summons for the Confirmation of the Grant and any related protests.
 18. I make no order as to costs.
 19. It is so ordered.

DATE, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 31ST DAY OF JULY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant – Beryl

Ms. Shikali, Advocate holding brief for Mr. Kiprop, Advocate for the Applicant

Ms. Kibebo, Advocate for the 1st, 2nd, 3rd, 4th and 5th Respondents

Mr. Mutunga, Advocate for the 3rd Respondent

