



**In re Estate of Alex Njoroge Wamachi (Deceased) (Succession Cause E3295 of 2022)  
[2024] KEHC 15292 (KLR) (Family) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E3295 OF 2022  
PM NYAUNDI, J  
NOVEMBER 29, 2024  
IN THE MATTER OF THE ESTATE OF ALEX NJOROGE WAMACHI- (DECEASED)**

**BETWEEN**

**MERCY BOSIBORI WAMACHI ..... 1<sup>ST</sup> ADMINISTRATOR**

**ANDERSON BABU WAMACHI ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**JOSEPHAT NDUNG’U ..... OBJECTOR**

**RULING**

1. This matter relates to the estate of Alex Njoroge Wamachi who died intestate on 1<sup>st</sup> March 2022. Mercy Bosibori Wamachi and Anderson Babu Wamachi, in their capacity as wife and son of the deceased respectively petitioned for letters of administration intestate. They were issued with grant of letters of administration intestate on 4<sup>th</sup> January 2023. The grant was due for confirmation on 31<sup>st</sup> July 2023.
2. The Applicants filed Summons for Confirmation of Grant dated 21<sup>st</sup> June 2024. In response thereto, the Protestor herein filed affidavit of protest dated 30<sup>th</sup> October 2023. The Protestor set out his proposed mode of distribution at paragraph 8 of the Affidavit.
3. The Protestor contends that he is a son of the deceased, as his paternity was determined in Meru CMCC No. E298 of 2022. He proposes that the estate be distributed as follows;
  - a. Mercy Bosibori Wamachi- Ngong/Ngong/15481 (Absolutely).
  - b. Mercy Bosibori Wamachi, Anderson Babu Wamachi, Nicholas Wamachi Junior- North Eastern C1713 Dandora (To share jointly).



- c. Mercy Bosibori Wamachi, Josphat Ndung’u, Anderson Babu Wamachi, Nicholas Wamachi Junior- ABSA BANK AC NO. 0822015XXX (to share equally)
  - d. Mercy Bosibori Wamachi, Josphat Ndung’u, Anderson Babu Wamachi, Nicholas Wamachi Junior-DTB ACC NO. 03040306437XXX(to share equally).
  - e. Mercy Bosibori Wamachi- Honda CRV KBW 103R (solely).
  - f. Josphat Ndung’u- Nissan KCB 711N (solely).
  - g. Laikipia Nanyuki Marura Block 111/10705- Josphat Ndung’u (solely).
  - h. Josphat Ndung’u- Laikipia Nanyuki Marura Block 111/10706(solely).
  - i. Josphat Ndung’u- Laikipia Nanyuki Marura Block 111/0707(solely).
  - j. Mercy Bosibori Wamachi - Laikipia Nanyuki Marura Block 111/0708(solely).
  - k. Anderson Babu Wamachi - Laikipia Nanyuki Marura Block 111/0709(solely).
  - l. Nicholas Wamachi Junior- Laikipia Nanyuki Marura Block 111/0710(solely).
  - m. Josphat Ndung’u- LOC.11 Maragi 8185(solely).
4. The protest was disposed of by way of written submissions. The Administrators filed written submissions dated 30<sup>th</sup> October 2024 along with Amended Summons for Confirmation dated 30<sup>th</sup> October 2024 while the Protestor’s submissions are dated 7<sup>th</sup> October 2024.

#### **Administrator’s Submissions.**

- 5. Counsel for the Administrators submitted that Mercy Bosibori Wamachi is the only surviving widow of the deceased and is entitled to the deceased’s estate pursuant to Section 35 of the [Law of Succession Act](#) which vests the deceased’s properties on the wife to prevent her from being rendered destitute. She relied on the decision of *Tau Kakungi v Margrethe Thorning Katungi & Another* [2014] eKLR. That she acquired properties with the deceased and depends on them for her day to day expenses.
- 6. She accused the protestor of intermeddling with the deceased’s estate in contravention with Section 45 of the [Law of Succession Act](#). She averred that the protestor broke into her house and took away all the title deeds in her possession. He also took away a motor vehicle registration number KCB 711N. She urged the court to dismiss the protest and allow her summons of confirmation of grant.

#### **Protestor’s Submissions.**

- 7. Counsel submitted that the Objector is the deceased’s son and is recognised as a dependant under Section 29 (a) of the [Law of Succession Act](#). That Articles 27 (1) (4) and 53 (1) (e) of [the Constitution](#) prohibits any form of discrimination against children whose parents are not married.

#### **Analysis And Determination**

- 8. I have looked at the Protest and the submissions by both parties. The issues that falls for determination is whether the Protestor is a beneficiary to the estate of the deceased and the mode of distribution of the estate.
- 9. In the first instance I will strike out the amended Summons dated 30<sup>th</sup> October 2024 as the same was filed by the Administrator without leave of the Court and after pleadings herein had closed. In that



- Summons the Administrator purports to introduce additional dependants without stating how those dependants bring themselves under Section 29 of the *Law of Succession Act*
10. On the 1<sup>st</sup> Issue, as to whether or not the Protestor is a beneficiary to the Estate of the deceased? It is not disputed that the deceased died on 1<sup>st</sup> October 2022 and he was survived by his wife and children; Nicholas Wamachi Junior, Anderson Babu Wamachi as per the chief's letter dated 24<sup>th</sup> October 2022. The issue of the paternity of the Protestor is also not contested as the same was established by a DNA Test conducted by order of the Court in Meru CMCC No. E298 of 2022.
  11. Section 29 of the *Law of Succession Act* defines Dependant to include-  

For the purposes of this Part, “dependant” means— (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death (Emphasis Supplied)
  12. The Administrator in her submissions appears to suggest that the Protestor is excluded from benefitting from his father's estate since he was ‘illegitimate’. Suffice it to not that the law post, the promulgation of the 2010 Constitution, does not perceive of ‘illegitimate children’. By virtue of Article 27 and 53 of *the Constitution* of Kenya the term has been dismantled with the law now referring to them with the non-stigmatizing term of children born to parents who are not married to each other and prohibiting discrimination on the basis of the marital status of the parents.
  13. It follows therefore that the Protestor is a dependant and therefore a beneficiary of the Estate of the Deceased within the provisions of Section 29 of the *Law of Succession Act*.
  14. The lawful beneficiaries of the Estate of the deceased are
    - i. Mercy Bosibori Wamachi
    - ii. Anderson Babu Wamachi
    - iii. Nicholas Wamachi Junior and
    - iv. Josphat Ndung'u
  15. The 2<sup>nd</sup> issue is the mode of the distribution of the Estate of the deceased. The law governing distribution of property in an intestate estate where the deceased has left one spouse surviving and children or child is Section 35 of the *Law of Succession Act* which provides:-
    - (1) Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:-
      - a. The personal and household effects of the deceased absolutely; and
      - b. A life interest in the whole residue of the net intestate estate;
  16. In the proposed distribution by the administrator she does not provide for the Protestor. The law recognises that a surviving widow is entitled to a life interest. At the same time in the appropriate circumstances the Court may grant an absolute proprietary interest to the surviving spouse.
  17. In Re Estate of M'Ikiugu M'Mwirichia [2015] eKLR, the Court of Appeal reiterated that Courts are obligated to distribute property in accordance with the *Law of Succession Act*. The Court proceeded to direct that the assets of the deceased be registered in favour of his widow to hold in trust for herself and the deceased children in equal shares.



18. The circumstances of the current matter show that the Protestor's relationship with the Administrator is not cordial. He is also not her biological son. It is best that the protestor get his share of the estate, solely. Guided by Section 35 I therefore direct that the Estate of the deceased be distributed as follows amongst the beneficiaries-
- a. Ngong/Ngong/15481 to be registered in the name of the Administrator to hold in Trust for Anderson Babu Wamachi and Nicholas Wamachi Junior in equal shares.
  - b. North Eastern C1713 Dandora to be registered in the name of the Administrator to hold in Trust for Anderson Babu Wamachi and Nicholas Wamachi Junior in equal shares.
  - c. ABSA BANK AC NO. 0822015XXX
  - d. DTB ACC NO. 03040306437XXX to be shared equally between; Mercy Bosibori Wamachi, Josphat Ndung'u, Anderson Babu Wamachi, Nicholas Wamachi Junior
  - e. Honda CRV KBW 103R to Mercy Bosibori Wamachi- Solely
  - f. Nissan KCB 711N to Josphat Ndung'u- solely.
  - g. Laikipia Nanyuki Marura Block 111/0705 to Josphat Ndung'u solely.
  - h. Laikipia Nanyuki Marura Block 111/0706 to Josphat Ndung'u- solely.
  - i. Laikipia Nanyuki Marura Block 111/0707 to Josphat Ndung'u- solely.
  - j. Laikipia Nanyuki Marura Block 111/0708 to be registered in the name of the Administrator to hold in Trust for Anderson Babu Wamachi and Nicholas Wamachi Junior in equal shares
  - k. Laikipia Nanyuki Marura Block 111/0709 to be registered in the name of the Administrator to hold in Trust for Anderson Babu Wamachi and Nicholas Wamachi Junior in equal shares
  - l. Laikipia Nanyuki Marura Block 111/0710. to be registered in the name of the Administrator to hold in Trust for Anderson Babu Wamachi and Nicholas Wamachi Junior in equal shares
  - m. LOC.11 Maragi 8185 distribution deferred pending confirmation of what the parcel of land is designated as, especially if it is the share of the deceased from his ancestral home.
19. The matter will be mentioned on 5<sup>th</sup> February 2025 to confirm the designation of parcel LOC.11 Maragi 8185.
20. This being a family matter each party will bear their own costs

**DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 29<sup>th</sup> DAY OF NOVEMBER, 2024.**

**PATRICIA NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

