



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Wanguku Kanyi (Deceased) (Succession Cause
E033 of 2021) [2023] KEHC 26735 (KLR) (21 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26735 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE E033 OF 2021
CM KARIUKI, J
DECEMBER 21, 2023
IN THE MATTER OF THE LATE WANGUKU KANYI (DECEASED)**

BETWEEN

JACKSON GICHOHI MUREITHI APPLICANT

AND

ALICE WANGUI WANGUKU 1ST RESPONDENT

JOHN WANYIRI WANGUKU 2ND RESPONDENT

RULING

1. By application dated 26/4/2023 Applicant/beneficiary seeks prayer; -
 - a. That the Honourable court be pleased to issue an order of injunction to bar the Respondents, their agents, proxies, servants, and employees from harvesting, selling, and lumbering any trees growing on Nyandarua/Ndaragwa/43 pending the entire distribution of the deceased's estate.
 - b. That the Honourable court be pleased to compel the 1st Respondent to offer an accurate account of the Deceased's estate, in particular concerning proceeds of the sale of the trees harvested from Nyandarua/Ndaragwa/43.
 - c. That the 1st Respondent be compelled to finalize the administration of the estate within 90 days.
 - d. That there be no order as to costs.
2. Grounds on the face of the Application support it:
 - i. The administration of the Deceased's estate is pending finalization.



- ii. The delay in finalization of the administration of the Deceased is inordinate and inexcusable since the Identity of all persons is beneficial, and the extent of their entitlement has already been ascertained.
 - iii. The Respondents have subjected the Deceased's estate to significant wastage by harvesting trees from Nyandarua/Ndaragwa/43 and selling them at throw away price thus depreciating the value of the estate significantly.
 - iv. The reckless harvesting of trees growing upon Nyandarua/Ndaragwa/43 greatly threatens the environment since part of the land is a water catchment area.
 - v. It is only just and fair that the respondents are prevented from continuing with their reckless and wasteful tree harvesting on Nyandarua/Ndaragwa/43 pending the whole administration of the deceased's estate.
 - vi. Unless the orders sought herein are granted, the Deceased's estate will be wasted and suffer great loss in value to the detriment of all beneficiaries entitled.
 - vii. Unless the orders sought herein are granted, the Deceased's estate will be wasted and suffer significant loss in value to the detriment of all beneficiaries entitled.
 - viii. This honourable court has jurisdiction to issue the orders sought herein.
 - ix. No lawful beneficiary stands to suffer any undue prejudice due to the Orders sought herein.
3. It is also supported by an affidavit of Application sworn on 26/4/2023. In opposition to the said Application, the Respondent lodged grounds of opposition.
- a. The Section quoted in the Motion (45 & 46) do not support the Application.
 - b. The Applicant has no capacity to deal with the estate of the deceased.
 - c. Being named a beneficiary does not give one the power or right to deal with the affairs of the estate.
 - d. The Application is misconceived, wrong in law and an abuse of the court process. The same should be dismissed with costs.
4. Parties were directed to canvass the Application via submissions, but only the Applicant filed the same according to the record.

5. Applicant Submissions

6. The following are the main issues that the honorable court ought to determine:
- a. Does the Applicant have the right to apply to protect the Deceased's estate from wastage?
 - b. Should the court be inclined to grant an order to protect the deceased's estate from being wasted by the Respondents?
 - c. Should the 1st Respondent be compelled to finalize the administration of the estate?
7. The 1st Respondent, on her grounds of opposition, has stated that the Applicant has no power or right to deal with the deceased's estate. To understand this, insinuate that the Applicant has no right to bring the current Application for determination by this honorable court.



8. A beneficiary has locus standi to bring an application concerning the Intermeddling of estates. *In Re Estate of Benson Maingi Mulwa (Deceased)* [2021] eKLR, this court held that a beneficiary has the right to bring such an application for the protection of an estate. Odunga J stated,

“In my view, since Intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate. It is therefore not mandatory that such an application be made by the administrators or with the consent or authority of the other beneficiaries since a beneficiary is a property entitled to protect his or her interest in the estate.”

9. Undoubtedly, the 1st Administrator has a life interest in the deceased's estate. However, this does not mean she has absolute ownership of the estate. She cannot thus deal in the estate on the same plane of rights as the deceased would have done in his lifetime. Though a widow enjoys a life interest of the net estate, the same is held in trust for all beneficiaries. Guided by a high court decision in *Tau Katungi -v- Margrethe Katungi & Another* [2014] eKLR, the court, in elaborating on the nature of a life interest, stated thus,

“Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it were their own. By section 37 of the *Act*, a surviving spouse cannot, during the life interest, dispose of any property subject to that life interest without the consent of all the adult children, co-trustees, and the court. This is meant to safeguard the interest of the children, who are the ultimate beneficiaries' property and the subject of the life interest. It is in this respect that the life operates as a trust over the property of the subject there.”

10. The court will make a finding that the 1st Respondent's mismanagement of the estate is detrimental to the benefits of all concerned beneficiaries. The court will issue conservatory orders pending the distribution of the estate.

Should the court be inclined to grant an order to protect the deceased's estate from being wasted by the Respondents?

11. It is trite that an applicant for an interlocutory injunction should meet the law laid in *Giella v. Cassman Brown Co. Ltd* 1973 (EA) 35.
- i. That he has a prima facie case with a probability of success.
 - ii. That he will suffer an irreparable loss that damages cannot adequately compensate or
 - iii. That the balance of convenience is in his favor
12. Order 40(1) (a) and (b) of the *Civil Procedure Rules* 2010.
13. Order 40 is one of the provisions of the *Civil Procedure Rules* imported into the Law of Succession Act by dint of Rule 63 of the *Probate and Administration Rules*.
14. The Applicant has deponed in his affidavit that the 1st Respondent has allowed herself and the 2nd Respondent the latitude to harvest trees from Nyandarua/Ndaragwa/43 in a wasteful manner. From the Applicant's affidavit, it is deposed that the wasteful nature of the Respondent's actions is to the detriment of the rest of the beneficiaries. Thus, the court is urged to make an order barring the commercial harvest of trees on the Deceased's estate until the administration of the estate is finalized.



Should the 1st Respondent be compelled to finalize the administration of the estate?

15. The estate administration is long overdue, as the grant of representation was issued in 2021. Confirmation of grant of representation under section 71 (1) is pinned on the ascertainment of
 - a) the Identity of all persons beneficial and
 - b) beneficiaries' respective shares.
16. The Applicant averred that the Identity and shares of all persons beneficial to the Deceased's estate have been established. The delay in filing a summons to confirm the grant by the 1st Respondent is not explainable. It can only be attributed to ulterior motives to waste the Deceased's estate. As detailed in the consent for Confirmation marked JGM-I annexed to the supplementary affidavit.
17. All persons entitled to the estate have consented to its distribution. The Applicant has explained that the waste of the estate is done in the name of administering the estate.
18. The period within which the Administrator ought to have applied for the Confirmation of the grant is ripe. There is no reasonable explanation other than the delay in finalizing the administration of the estate, which is beneficial to the Administrator as she can use the role to manipulate the estate's assets.
19. The court ordered the Administrator to move the court to finalize the administration process.
20. This is a family-related case. The honorable court is to make an order that each party bears their costs.

21. Issues, Analysis and Determination

22. After going through the proceedings, pleadings, and submissions on record, I find the issues to be: Does a beneficiary have a locus to protect the estate of a deceased person? If aforesaid in affirmative, has Applicant made a case for orders sought? Should the Respondent be compelled to finalize the administration of the estate? And costs.
23. On the first issue, the 1st Respondent, in her grounds of opposition, has stated that the Applicant has no power or right to deal with the deceased's estate. To understand this, insinuate that the Applicant has no right to bring the current Application for determination by this honorable court.
24. A beneficiary has locus standi to bring an application concerning the Intermeddling of estates. In [*Re Estate of Benson Maingi Mulwa \(Deceased\)*](#) [2021] eKLR, this court held that a beneficiary has the right to bring such an application for the protection of an estate. Odunga J stated,

“In my view, since Intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate. It is therefore not mandatory that such an application be made by the administrators or with the consent or authority of the other beneficiaries since a beneficiary is a property entitled to protect his or her interest in the estate.”
25. Thus, the court finds that the beneficiary of an estate has locus standing to seek protection of the estate of a deceased person.
26. On the second issue, an interlocutory injunction applicant should meet the test laid out in *Giella v. Cassman Brown Co. Ltd* 1973 (EA) 35.
 - I. That he has a prima facie case with a probability of success.



- II. That he will suffer an irreparable loss that damages cannot adequately compensate or
- III. That the balance of convenience is in his favor
27. Order 40(1) (a) and (b) of the Civil Procedure Rules 2010. Deals with temporary injunctions. Order 40 is one of the provisions of the Civil Procedure Rules imported into the Law of Succession Act by dint of Rule 63 of the Probate and Administration Rules.
28. The Applicant has deponed in his affidavit that the 1st Respondent has allowed herself and the 2nd Respondent the latitude to harvest trees from Nyandarua/Ndaragwa/43 in a wasteful manner. From the Applicant's affidavit, it is deposed that the wasteful nature of the Respondent's actions is to the detriment of the rest of the beneficiaries. Thus, the court is urged to make an order barring the commercial harvest of trees on the Deceased's estate until the administration of the estate is finalized. The Respondent did not rebut the averment.
29. Final is: Should the 1st Respondent be compelled to finalize the administration of the estate?
30. The estate administrator is said to have taken a long time to apply for Confirmation of the grant of representation under section 71 (1), which is pinned on the ascertainment of
- a) the Identity of all persons beneficial and
 - b) beneficiaries' respective shares.
31. The grants were issued in 2021, but the Respondent has failed to distribute the estate.
32. The Applicant averred that the Identity and shares of all persons beneficial to the Deceased's estate have been established. The delay in filing a summons to confirm the grant by the first Respondent is not explainable. It can only be attributed to ulterior motives to waste the Deceased's estate.
33. As detailed in the consent for Confirmation, marked JGM-I annexed to the supplementary affidavit, all persons entitled to the estate have consented to its distribution. The Applicant has explained that the waste of the estate is done in the name of administering the estate.
34. The period within which the Administrator ought to have applied for the Confirmation of the grant is ripe. The court finds no justification for such delay. Thus, the court makes the following orders:
- i. An order of injunction be and is as a result of this issued restraining the Respondents, their agents, proxies, servants, and employees from harvesting, selling, and lumbering any kind of trees growing on Nyandarua/Ndaragwa/43 pending the full distribution of the deceased's estate.
 - ii. The 1st Respondent to offer an accurate account of the Deceased's estate, in particular concerning proceeds of the sale of the trees harvested from Nyandarua/Ndaragwa/43 by herself to date in the next 45 days.
 - iii. The Respondent is to file an Application to confirm the grant together with the agreed or proposed distribution of estate within 30 days from the dates herein. In Default the applicant is mandated to take over administration and file the same Application within 30 days after default by the Respondent to comply with the court order.
 - iv. That the 1st Respondent is at thereby ordered to finalize the administration of the estate within 90 days from the dates of Confirmation of the grant if she complies with (iii).
 - v. No orders as to costs.



DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 21ST DAY OF DECEMBER 2023

C KARIUKI

JUDGE

