



REPUBLIC OF KENYA



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**In re Estate of Solomon Kiguru Njuguna (Deceased) (Succession Cause 25 of 2022) [2023] KEHC 26943 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 25 OF 2022  
CM KARIUKI, J  
DECEMBER 15, 2023**

**IN THE MATTER OF THE ESTATE OF SOLOMON KIGURU NJUGUNA (DECEASED)**

**BETWEEN**

**ALICE NJAMBI KIGURU ..... 1<sup>ST</sup> PETITIONER**

**EUNICE MUKAMI KIGURU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ESTHER WANJIKU KIGURU ..... RESPONDENT**

**RULING**

1. The Applicant herein vide the application dated 17 November 2022 sought for the following orders: -
  - i. Spent.
  - ii. Spent.
  - iii. That pending the hearing of this cause, a temporary preservative order do issue restraining Esther Wanjiku Kiguru, the Respondent herein by herself, proxy, servants, agents or anyone else acting under her instructions from collecting any rental income from the buildings erected on plot nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 in Rumuruti town and or in any other manner whatsoever dealing with the said buildings until this cause is heard and determined.
  - iv. That the Court be pleased to order that a joint account be opened by both Petitioners in Equity Bank (Kenya) Ltd in Rumuruti Branch and further order all the tenants occupying the buildings erected on plot nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 in Rumuruti town to pay their monthly rent into the said account to be held by the Petitioners on behalf of the Estate until the cause is heard and determined.



- v. That the Court be pleased to order that a joint account be opened by both Petitioners together with Lydiah Wanjiru Kamwaro in Co-operative Bank of Kenya, Nyahururu Branch and further order all tenants occupying the building erected on land reference no. 6585/595 (now Nyahururu Municipality Block 4/102) within Nyahururu town to pay their monthly rent into the said account and that their half share of the said rent to be held by the Petitioners on behalf of the Estate until the cause is heard and determined.
- vi. That the Court be pleased to order that the joint account no. 01192690762200 opened by the Applicant, the Respondent and Lydia Wanjiru Kamwaro with Co-operative Bank of Kenya, Nyahururu Branch be closed and that the funds being held in the said account to be opened by both Petitioners and Lydiah Wanjiru Kamwaro in the same bank.
- vii. That the Petitioners jointly with Lydiah Wanjiru Kamwaro be allowed to withdraw Kshs. 32,507.00 every month from the account to be opened with co-operative bank of Kenya and that further the Petitioners be allowed to withdraw Kshs. 30,000.00 every month from the account to be opened with Equity Bank (Kenya) Ltd to be utilized to pay for the utility bills as well as essential services for the buildings in Rumuruti and Nyahururu towns.
- viii. That the Respondent be ordered to render an account on how she utilized the rental income amounting to Kshs. 7,798,600.00 collected from the building erected on Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 within Rumuruti town from December 2020 to date.
- ix. That this Court be pleased to issue such other restraining orders or reliefs as may appear to Court to be just and expedient and or convenient to grant the Applicant.
- x. That costs of this application be borne by the Respondent.
- xi. Which application is supported by the grounds contained in the annexed supporting affidavit of Alice Njambi Kiguru on the following grounds that: -
- xii. By the time of his death Solomon Kiguru, the deceased herein owned several properties within Rumuruti and Nyahururu towns which are developed and generate rental monthly income amounting to Kshs. 486,280.00
- xiii. The Respondent has since December 2020 been intermeddling with the Estate of the deceased by unlawfully collecting rental income from the buildings erected on Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 within Rumuruti town without obtaining a grant of letters of administration from the Court and or any authority from the Court which income she has applied for her own benefit.
- xiv. Although the Respondent has received rental income amounting to Kshs. 7,798,600.00 from the said buildings since December 2020 which income forms part of the Estate of the deceased she has never rendered an account to either the Court or to other beneficiaries entitled to the assets and properties forming the Estate.
- xv. Although the Applicant and the Respondent with the consent of all other beneficiaries opened a joint bank account with Equity Bank (Kenya) Ltd to enable the tenants pay their rent into the account, the Respondent without any lawful justification and or ground advised the tenants to pay their rent directly to her instead without consent of the other beneficiaries.
- xvi. The deceased had two houses; the 1<sup>st</sup> house of Virginia Njeri Kiguru and the 2<sup>nd</sup> house of the Respondent and the continued collection of rental income from the said buildings means that



she will intermeddle with the Estate to the detriment of the Estate of the deceased and the beneficiaries of the 1<sup>st</sup> house.

- xvii. That the Respondent has without any justification and or authority proceeded to applying the rental income for her own benefit to the exclusion of the beneficiaries of the 1<sup>st</sup> house.
  - xviii. The Court has discretionary powers to grant the orders sought for.
  - xix. Granting the orders sought for will not prejudice the Respondent in any way and it is in the interest of justice that the same be granted.
2. The Respondent filed a replying affidavit dated 16 January 2023 sworn by herself.
  3. In response, the Applicant filed a supplementary affidavit dated 7 March 2023.
  4. This succession cause relates to the Estate of Solomon Kiguru Njuguna, the deceased herein who died intestate on 28 November 2020. The deceased left behind a vast estate comprising several parcels of land including Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 within Rumuruti town and LR No. 6585/595 (now Nyahururu Municipality Block 4/102). He had two wives in his lifetime that is Virginia Njeri (deceased), the first wife and Esther Wanjiku Kiguru, the Respondent herein and the second wife. The deceased also left behind a total of twelve children from both houses.
  5. On 10.2.2020 the Applicant filed Nyahururu High Court Citation Cause No. E001 of 2022 and on 21.9.2022, the Court ordered that the Applicant/1<sup>st</sup> Petitioner representing the 1<sup>st</sup> house and the 2<sup>nd</sup> Petitioner representing the 2<sup>nd</sup> house to jointly petition for a grant of representation in respect to the deceased's Estate and consequently a grant of representation was made to them on 5.12.2022, which grant is yet to be confirmed.

### **Applicant's Submissions**

6. The Applicant submitted that the issues that arise for determination are: -Whether the Respondent has rendered an account on how she has utilized the rental income she has received and whether she has intermeddled with the Estate Whether this Court should grant temporary preservative orders against the Respondent. Who should bear the costs of this application.
7. On the first issue, the Applicant averred that from the evidence tendered through the replying affidavit, the Respondent has not in any way rendered a true, proper and comprehensive statement showing the rental income she has collected from the properties erected on Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 forming part of the Estate of the deceased from December 2020 or the rent she collected in the year 2022 as ordered by the Court.
8. It was stated that the Estate was not indebted to any creditor and that is why the Respondent has not been able to provide demands, invoices and receipts in payment if any. That the amount paid to AFC in the year 2021 was a loan taken by both the Respondent and the deceased for a dairy project and that the Respondent admits that the project was a joint venture which was only benefitting her and her family and it is for this reason that she was able to take another loan on her own from AFC after the deceased's death. That this means that the dairy project was able to repay the loan without using the rental income and the amount the Respondent purports to have paid as a loan to AFC cannot therefore be treated as a loan owed by the Estate of the deceased.
9. The Applicant averred that the Respondent was expected and was duty bound to provide statements on the rent paid by the tenants, bank statement showing how much rent deposited into her account



and documents showing how the said rent was spent to preserve and manage the Estate on behalf of all the beneficiaries but the Respondent had not discharged this duty.

10. It was argued that the Respondent does not hold a grant of representation and therefore the Court should order that the joint account no. 01192690762200 being operated by the Respondent, the Applicant and Lydia Wanjiku Kamwaro with Co-operative Bank of Kenya, Nyahururu Bank be closed and a joint account be opened by both administrators together with Lydia with same bank and the funds in that account be transferred to the new account to be held in trust for the Estate of the deceased.
11. The Applicant contended that the Respondent having admitted that she used the rental income to sustain her joint venture, her upkeep and to sustain James Muthongo a beneficiary and his child who is not a beneficiary of the Estate of the deceased among other things while not holding a grant of representation from the Court confirms that she had been intermeddling with the Estate of the deceased.
12. Reliance was placed on Section 45 of the [Law of Succession Act](#), Veronica Njoki Wakagoto (Deceased) [2013] eKLR, Benson Mutuma Muriungi vs. C.E.O Kenya Police Sacco & Anor [2016] eKLR Re Estate of Makokha Indris Khasabuli (Deceased) [2019] eKLR, Re Estate of Ndiba Thande (Deceased) [2013] eKLR
13. On issue no. 2, the Applicant submitted that the Court has wide and discretionary powers to issue preservatory and conservatory orders donate by Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules. Reliance was also placed on Re Estate of Kitur Chepsungulgei (Deceased) [2021] eKLR
14. In conclusion, it was reiterated that the Respondent is to date collecting rent which she has not accounted to Court or to the administrators yet she does not hold a grant of representation. The effect of this is that she is in total violation of the Law benefitting herself with the estate property to the detriment of the other beneficiaries and the Court has a duty to ensure the Estate is preserved for the benefit of all the beneficiaries pending confirmation of grant and distribution of the Estate to all the beneficiaries. The Applicant also stated that the Applicant has established an arguable case and that costs should follow the event.

### **Respondent's Submissions**

15. The Respondent in the considered view submitted the following issues for determination: -Whether the Respondent has interfered with the Estate to the detriment of the beneficiaries Whether the Respondent has accounted for the rent proceeds of the Estate Whether the application is merited
16. On issue No. 1, it was the Respondent's contention that plot number 3671/1/1 is her matrimonial home whereupon the Respondent and deceased settled after forceful eviction from their pervious home. That since the year 2021, they had been dwelling in the suit land and they jointly developed the same by erecting commercial and residential buildings and that it is completely hostile for the Applicant to invade the Respondent's home under the guise of an application for intermeddling for the sole purpose of getting the income from the developments thereon oblivious of the contributions monetary and non-monetary made by the Respondent to the property over the years.
17. Reliance was placed on Section 3 & 45 of the [Law of Succession Act](#), Re Estate of M'ngarithi M'miriti [2017] eKLR, Bob Njoroge Ngarama vs. Mary Wanjiru Ngarama & Another [2014] eKLR
18. It was submitted that it is noteworthy that the 2<sup>nd</sup> house has not made any claim to the home of the 1<sup>st</sup> house and developments thereon and that the 1<sup>st</sup> house and wife occupied more than 40 acres of land.



19. Further, the Respondent states that she took out loans from financial institutions, made direct deposits to the deceased account and even sold some of her property in a bid to assist the deceased in the acquisition and/or development of the parcels of land. That all this time, the Applicant and the 1<sup>st</sup> house stayed away and never assisted the deceased in paying off the loans nor in the development of the suit parcels of land.
20. That going by the nature of rentals, it is imperative to maintain the same in a habitable condition to prevent the wasting away of the Estate requiring money and that these were already existing obligations by the time the deceased died and thus only progressed in the like manner after his death.
21. It was asserted that the expenses of the Estate were listed out extensively in the meeting's minutes dated 15 September 2021 in which meeting the 1<sup>st</sup> house including the Applicant were in attendance. That at minute 6 of the said minutes, the families agreed that the expenses would run as before the death of the deceased which meant that the same would be paid out of the rent proceeds.
22. That at the said meeting, it was resolved that a joint account would be maintained and the same relayed to the tenants to facilitate transparency and accountability in the Estate but the Applicant in cahoots with the 1<sup>st</sup> house proceeded to mislead the Siron Area Chief and obtained a letter which was distributed to the tenants indicating directions on the payment of rent. That all these activities were carried out to the exclusion of the Respondent and the second house which points to the 1<sup>st</sup> house's bad faith.
23. The Respondent also stated that she pays out funds from the proceeds to cater for the expenses of Jimmy Muthogo who is the deceased's son from the 1<sup>st</sup> house who is the Applicant's brother who worked for and depended on his father for his whole life. The said maintenance is also a continuation of obligations that the deceased and the Respondent undertook before his death and thus it was only necessary that the same do proceed even after his death.
24. In the circumstances, it was their submission that the Respondent has not in any way interfered with the legal rights to free property of the deceased to the detriment of the Estate. If anything, she has only undertaken the role to manage and protect the Estate from wasting away and that this role is in furtherance to the existing obligations that she has even before the deceased's death. That the said actions are for the benefit of the whole estate contrary to the Applicant's assertion.
25. In respect to the second issue, the Respondent states that she annexed the financial reconciliation for the years 2021 and 2022 where she listed out the number of tenants on each building, the amount of rent paid and the expenses paid out. That she extensively outlined the various expenses incurred from the Estate and the rent proceeds deposited in the deceased joint account with the Respondent. She had further annexed school fees receipts and for car maintenance as proof of the expenses and in support of the financial reconciliation tabled before the Court.
26. It was asserted that the Respondent had tabulated the Estate's liabilities which amount to Kshs. 3,964,027.00 which debts are known and were discussed in the meeting before the Chief and in fact the Applicant and her siblings promised to offset.
27. Reliance was placed on Sections 107 and 108 of the *Evidence Act* and *Muriungi Kanoru Jeremiah vs. Stephen Ungu M'mwarabua* [2015] eKLR
28. On whether the application is merited, the Respondent contended that she had proved her contribution to the acquisition and development of the subject land parcels and so she is wholly reliant on the Estate for her survival as all her investments are in the Estate. Additionally, her matrimonial



home is situated in plot number 3671/1/1 in which she is wholly dependant for her basic shelter and survival.

29. That the Respondent has affirmed and adduced evidence that she only receives rent and dispatched the same in fulfilling her already existing obligations similarly to the manner in which she did before the deceased's death.
30. It was submitted that the Applicant has proven the existing unique set of circumstances leading to the development of the real estate investment which facts have not been adequately rebutted by the Applicant and that the Applicant has not proven any instances of alienation nor wasting away of the estate save for mere unsubstantiated allegations. Further, the Respondent stated that the amounts of Kshs. 32,507 and Kshs. 30,000 are not adequate in the management of the Estate as is depicted in the reconciliation accounts annexed in the supporting affidavit.
31. That it is imperative to let the Respondent proceed with management of the subject real estate investments as she is already well acquainted with the tenants, the rent collection and catering of the expenses. Maintaining the status quo will be in a bid to safeguard and protect the Estate from wasting away for the benefit of the Estate as a whole. That the Applicant's case has not met the conditions set out in *Japheth Kaimenyi M'ndatho V M'ndatho M'mbwiria* [2012] eKLR
32. Reliance was placed on *In the Matter of the Estate of Paulo Kiplagat Boiwo (Deceased)* [2012] eKLR, *Re Estate of Jeremiah Ngiri Kibati (Deceased)* [2019] eKLR, *Re Estate of Elijah Ngari (Deceased)* [2019] eKLR & *Japheth Kaimenyi M'ndatho V M'ndatho M'mbwiria* [2012] eKLR.

### **Analysis And Determination**

33. Having analyzed the application herein, the supporting affidavit, the replies filed to that, and the written submissions filed by the parties, I find the main issue for determining whether the preservative orders sought ought to be granted.
34. In a nutshell, the Applicant averred that since December 2020, the Respondent has been intermeddling with the Estate of the deceased by unlawfully collecting rental income from the buildings erected on Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15, and 3671/1/5 within Rumuruti town without obtaining a grant of letters of administration from the Court and or any authority from the Court which income she has applied for her benefit.
35. The Applicant asserted that although the Applicant and the Respondent, with the consent of all other beneficiaries, opened a joint bank account with Equity Bank (Kenya) Ltd to enable the tenants to pay their rent into the account, the Respondent, without any lawful justification and or ground advised the tenants to pay their rent directly to her instead without consent of the other beneficiaries and that the deceased had two houses; the fir<sup>st</sup> house of Virginia Njeri Kiguru and the seco<sup>nd</sup> house of the Respondent and the continued collection of rental income from the said buildings means that she will intermeddle with the Estate to the detriment of the Estate of the deceased and the beneficiaries of the fir<sup>st</sup> house.
36. On the other hand, the Respondent stated that plot number 3671/1/1 is her matrimonial home, whereupon the Respondent and the deceased settled after forceful eviction from their previous home. That since the year 2021, they had been dwelling in the suit land, and they jointly developed the same by erecting commercial and residential buildings, and that it is completely hostile for the Applicant to invade the Respondent's home under the guise of an application for intermeddling for the sole purpose of getting the income from the developments thereon oblivious of the contributions monetary and non-monetary made by the Respondent to the property over the years.



37. Further, the Respondent stated that she took out loans from financial institutions, made direct deposits to the deceased's account, and even sold some of her property to assist the deceased in the acquisition and/or development of the parcels of land. All this time, the Applicant and the fir<sup>st</sup> house stayed away and never assisted the deceased in paying off the loans or developing suitable parcels of land.
38. It was asserted that the expenses of the Estate were listed extensively in the meeting minutes dated 15 September 2021, in which the fir<sup>st</sup> house, including the Applicant, was in attendance. At minute 6 of the said minutes, the families agreed that the expenses would run as before the deceased's death, which meant that the same would be paid out of the rent proceeds.
39. The Respondent also stated that she pays out funds from the proceeds to cater for the expenses of Jimmy Muthogo, who is the deceased's son from the fir<sup>st</sup> house who is the Applicant's brother who worked for and depended on his father for his whole life and that the said maintenance is also a continuation of obligations that the deceased and the Respondent undertook before his death. Thus, it was only necessary that the same proceed even after his death.
40. This Court is vested with broad discretion to deal with all testamentary and administrative issues regarding the deceased's Estate and to go as far as to issue protective and/or preservative orders to safeguard the Estate of a deceased person.
41. Section 47 of the *Law of Succession Act* provides as follows:-  
“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.”
42. Likewise, Rule 73 of the Probate and Administration Rules provides that:-  
“73. Nothing in these Rules shall limit or otherwise affect the Court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the Court's process.”
43. Furthermore, in the case of Japhet Kaimenyi M'ndatho –Vs. M'ndatho M'mbwiria [2012] eKLR, it was held that an Applicant seeking preservative orders in a Succession Cause would have to prove the following -  
“That the suit property is at risk of being disposed of, alienated, or transferred to the Applicant's detriment unless preservative orders of inhibition are issued.  
The refusal to grant orders of inhibition would render the Applicant's suit nugatory. That the Applicant has an arguable case.”
44. Similarly, In Re Estate of Simon Kimendero (deceased) [2020] eKLR, the Court noted that of specific significance to preservative order in respect of estate property is that: -The Applicant has an arguable case; The property is estate property, and The property is likely to be dissipated or wasted away.
45. Preservative orders are often applied similarly to injunctive orders; however, some courts beg to differ. In Cheparwasi Ibrahim & 8 Others v Christopher Laptia & Another [2022] eKLR, Nyagaka J held that: -  
“From the outset, it is proper for me to state that there is a difference between preservative orders and orders of injunction or even inhibition orders. These should not be confused. I



am aware that a few of my brother and sister judges have expressed themselves before about the same, and some have held that they are similar. I beg to differ. I will not refer to the previous decisions on the synonymous meanings of the phrases but they are not.

To be clear, on the one hand, preservatory orders relate to or are ordinarily directed to properties of a historical nature a natural habit that need to be maintained in the state they are until the end of the case or at the inter partes stage. Brian A. Garner, in Black's Law Dictionary, 11 Edition Thompson Reuters, St. Paul MN, 2019 p. 1434 defines a preservatory order as follows, "An order prohibiting a property owner from taking action that would alter a historic building or natural habits before the Court makes a final order." It appears that such an order is rarely sought in our jurisdiction. Perhaps our brothers and sisters - litigants and property owners - rarely care about historical buildings and habitats. Actually, this Court often seeing historical sites being destroyed every other day. What history do we give our future generations? That is a question to ponder about. The 2010 Constitution has entrenched sustainable use and development of our environment. Our people ought to seize the moment and preserve the historical sites and habits for the future.

That said, an injunction on the other hand is that which we all know: it is an order issued by a Court designed to or commanding or preventing an action. Of course, it comes in many shades: Affirmative/mandatory, prohibitive, Mareva, Anton Pillar, special, reparative, and so on."

46. Notwithstanding, In the Matter of the Estate of Paulo Kiplagat Boiwo (Deceased) (2012) eKLR, where the Court, while affirming that preservatory orders are similar to injunctive orders, noted that Applicants have to abide by the conditions set out in the celebrated case of Giella vs. Cassman Brown (1973) E.A 358 namely The Applicant must make out a prima facie case and Show that they will suffer irreparable loss which loss cannot be compensated by damages and; Lastly, the balance of convenience should tilt in their favour where doubt exists.
47. Additionally, in Nguruman Limited v Jane Bonde Nielsen and 2 Others [2014] eKLR, the Court of Appeal, while reiterating the three conditions, further clarified that the conditions are to be applied as separate, distinct, and logical hurdles which an Applicant is expected to surmount sequentially. This means that irreparable injury and balance of convenience do not require consideration if the Applicant does not establish a prima facie case. On the other hand, if a prima facie case is established, then the Court will consider the other conditions.
48. Consequently, utilizing the latter reasoning , from the evidence placed before me, it is undisputed that the Applicant/1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Petitioner are the administrators of the deceased Estate as per the grant of letters of administration intestate dated 5 December 2022. Evidently, Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15 and 3671/1/5 within Rumuruti town and LR No. 6585/595 (now Nyahururu Municipality Block 4/102) within Nyahururu town, the suit parcels hereinafter are all part of the deceased Estate. As per copies of the titles to the suit parcels provided, the deceased is listed as the owner of the said properties.
49. In Re Estate of John Gakunga Njoroge [2015] eKLR, Murithi J held: -

“A person can only deal with the Estate of a deceased person pursuant to a Grant of Representation made to him under the Law of Succession Act. In this regard, the jurisdiction of the Court to protect the Estate of a deceased person is set out in Section 45 of the Law of Succession Act.



50. Further, in *Jane Kagige Geoffrey & Another v Wallace Ileri Njeru & 2 others* [2016] eKLR it was held that: -

“The net effect of the foregoing is clear; before a grant has been issued and confirmed, no part of the Estate of the deceased may be dealt with in a manner that amounts to intermeddling. This includes those not entitled therewith taking possession of, disposition, or alienation, as well as trespassing onto the property. Such acts are subject to reversal by the Court summarily. The spirit behind sections 45 and 82 of the Act, in my view, is to preserve the property of a deceased person until the beneficiaries and their respective shares are identified, ascertained and distributed. If intermeddling is allowed, the likelihood of the innocent beneficiaries being prejudiced by having their shares affected by reduction is real whereby, there may be no settlement and or peaceful co-existence or end to disputes between of the family members. In this regard, it is for the purposes of preserving the social fabric, cohesion and peaceful co-existence of or end to disputes between family members who are beneficiaries to estates that the Law restricts, indeed prohibits any dealings with an estate until the grant is confirmed. The net effect of the aforesaid provisions of the Law and decided cases is that, the Estate of the deceased cannot be dealt with without the sanction of the Court. Before the grant of letters of administration is confirmed, no one, including the administrators of the Estate of the deceased, can deal with the deceased's property by way of intermeddling in addition to that or effect a sale of immovable property belonging to the Estate. Anyone who purports to purchase property from the Estate before confirmation does so at his own peril.”

51. The Applicant outlined several ways in which the Respondent has dealt with the deceased's Estate in ways that can be perceived as intermeddling contrary to Section 45 of the *Law of Succession Act*. The Respondent offered up explanations that plot number 3671/1/1 was her matrimonial home, that she utilized the rental income she collected to fulfill obligations in regards to the Estate, pay up the deceased's debts, and that she was following orders of the meeting held on 15 September 2021. She also stated that she contributed to the development of the suit parcels. In my view, most of these issues cannot be conclusively dealt with at this interlocutory stage. It shall be the function of the Court at trial to establish entitlement to the deceased's Estate and to what extent. Further, it is also noteworthy that the family meeting held on 15<sup>September 2021</sup> was held before the grant of letters of administration was issued by this Court.
52. It is my finding that the Respondent's actions, as demonstrated, may result in the wasting away and/or dissipation of the deceased's Estate. Moreover., she is not one of the deceased's estate administrators. It is my view that the Applicant has established an arguable case. In my view, the above actions, when weighed together, show that the Applicants have established at this stage that there is a risk of the Estate being wasted and, secondly, that they have a prima facie case as beneficiaries of the Estate of the deceased.
53. I concur with the Applicants that further wastage and alienation by any of the beneficiaries should be curtailed until such a time as the determination and final distribution of the Estate of the deceased is complete. I agree that some beneficiaries are likely to be prejudiced if the activities of the deceased's Estate are not checked. As stated earlier, it is essential that the Court makes orders to preserve the Estate pending the final determination of the succession proceedings and taking into consideration the guidance provided under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules to meet the ends of justice. I would also like to point out that these sentiments apply to all of the deceased's estates, extending to what is occupied by both the 1<sup>st</sup> and second houses.



54. Although any losses suffered by the rest of the beneficiaries may be compensated by damages, since there are already legally appointed administrators concerning the deceased's Estate, they should be allowed to undertake their duties to protect and preserve the Estate as per the Law. Moreover, the balance of convenience tilts in favor of the Applicants to preserve the Estate pending the final determination of the succession proceedings.
55. Accordingly, the Applicant/ 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Petitioner, being the administrators of the Estate and representing the 1<sup>st</sup> and seco<sup>nd</sup> house, respectively, are entitled to hold the Estate for the benefit of others who have a valid claim against the Estate. They have the power to deal with the deceased's property within the Law's parameters.
56. In regards to the issue of the Respondent providing an account of how the rental income was collected from the commercial buildings erected on Plot Nos. 3671/1/1, 3671/1/3, R.172/99/15, and 3671/1/5 within Rumuruti town from December 2020 to date, I find that the account detailed by the Respondent in her supporting affidavit is unsatisfactory. Thus, the Court makes the following orders-
- I. The Respondent is, as a result of this, directed to prepare and place on record herein an accurate and comprehensive account of the dealings on how she utilized the rental income collected from the buildings mentioned above from December 2020 to date within the next fourteen (30) days from the date of this ruling.
  - II. As part of plot no; 3671/1/1 hosts the Respondent's matrimonial home, it is said the plot is developed as a commercial cum residential building with shops which the Applicant alleges generate monthly income amounting to Kshs. 60,000/-. I order the status quo to be maintained regarding the Respondent's occupancy. Moreover, the Respondent shall continue managing and collecting rental income as per the current arrangement on behalf of all the other beneficiaries pending the finalization of the suit. The Respondent shall produce a detailed account of the rental income accrued from the rental shops when called upon by the Court.
  - III. As regards plot nos 3671/1/3, R.172/99/15, and 3671/1/5 in Rumuruti town, I find that a temporary preservative order issued restraining Esther Wanjiku Kiguru, the Respondent herein either by herself, proxy, servants, agents, or anyone else acting under her instructions from intermeddling with the Estate and particularly from collecting any rental income from the buildings erected on plot nos. 3671/1/3, R.172/99/15, and 3671/1/5 in Rumuruti town and land reference no. 6585/595 (now Nyahururu Municipality Block 4/102) within Nyahururu town and or in any other manner whatsoever dealing with the said buildings until this cause is heard and determined.
  - IV. Accordingly, I order that a joint account be opened by both Petitioners in Equity Bank (Kenya) Ltd in Rumuruti Branch and further order that all the tenants occupying the buildings erected on plot nos. 3671/1/3, R.172/99/15, and 3671/1/5 in Rumuruti town shall be paying their monthly rent into the said account to be held by the Petitioners on behalf of the Estate until the cause is heard and determined.



- V. Moreover, I order that a joint account be opened by both Petitioners together with Lydiah Wanjiru Kamwaro in Co-operative Bank of Kenya, Nyahururu Branch, and further order all tenants occupying the building erected on land reference no. 6585/595 (now Nyahururu Municipality Block 4/102) within Nyahururu town to be paying their monthly rent into the said account and that their half share of the said rent to be held by the Petitioners on behalf of the Estate until the cause is heard and determined.
- VI. Furthermore, the joint account no. 01192690762200 previously opened by the Applicant, the Respondent, and Lydia Wanjiru Kamwaro with Co-operative Bank of Kenya, Nyahururu Branch shall be closed, and the funds being held in the said account in respect to the deceased's Estate shall be transferred to the joint account opened by both Petitioners and Lydiah Wanjiru Kamwaro in the same bank.
- VII. This Court also orders that the Petitioners, jointly with Lydiah Wanjiru Kamwaro, be allowed to withdraw Kshs. 32,507.00 monthly from the account to be opened with Co-operative Bank of Kenya, and the Petitioners will be allowed to withdraw Kshs. 30,000.00 monthly from the account to be opened with Equity Bank (Kenya) Ltd to pay utility bills and essential services for the buildings in Rumuruti and Nyahururu towns.
- VIII. Further, the administrators are directed to have the Estate expeditiously proceed with the completion of the Succession Cause by filing for confirmation of the grant. The matter shall be mentioned after 45 days to confirm compliance with the orders made above and for further directions on the disposal of the confirmation application to be filed.
- IX. There is liberty to apply.
- X. On costs, each party shall bear its own costs.

**DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 15<sup>TH</sup> DAY OF DECEMBER 2023**

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**C KARIUKI**

**JUDGE**

