



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of David Kiamba Muli (Deceased) (Probate & Administration  
21 of 2020) [2022] KEHC 11071 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
PROBATE & ADMINISTRATION 21 OF 2020**

**MW MUIGAI, J**

**MAY 31, 2022**

**IN THE MATTER OF THE ESTATE OF DAVID KIAMBA MULI (DECEASED)**

**BETWEEN**

**AGNES NTHAMBI KASYOKA ..... 1<sup>ST</sup> ADMINISTRATOR**

**EVERLYNE MWENDE KIAMBA ..... 2<sup>ND</sup> ADMINISTRATOR**

**BRAIN MUTINDA KIAMBA ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**WINROSE EMMAH NDINDA KIAMBA ..... ADMINISTRATOR**

**RULING**

**Court Record**

1. David Kiamba Muli died on 27<sup>th</sup> January 2020 vide Death certificate serial No. xxxx.
2. Agnes Nthambi Kasyoka, Everlyne Mwende Kiamba, Brian Mutinda Kiamba and Winrose Emmah Ndinda Kiamba petitioned for letters of administration and annexed the following documents:
  - a. The Death Certificate of Death Certificate No xxxx - David Kiamba Muli who died on 27<sup>th</sup> January 2020 aged 59 years issued at Nairobi.
  - b. The Chief's letter dated 30/01/2020 confirming the list of beneficiaries left behind by the deceased.
3. The Deceased left the following heirs/beneficiaries surviving him:
  1. Agnes Nthambi Kasyoka – 1<sup>st</sup> wife
  2. Everlyne Mwende Kiamba – daughter



3. Brian Mutinda Kiamba - son
  4. Juliet Mumbua Kiamba – daughter
  5. Mathew Kasyoka Kiamba – son
  6. Winrose Emmah Ndinda Kiamba – 2<sup>nd</sup> wife
  7. Mumbua Kiamba – daughter
  8. Muuo Kiamba – son
4. The Deceased left behind property known as;
- a. Masinga/Kangonde/1498
  - b. Masinga/Kangonde/1500
  - c. Machakos/Matuu/1125
  - d. Masinga/Kangonde/1496
  - e. Masinga/Kangonde/1504
  - f. Kiosk No. 45 Matuu Bus Park (Matuu Town)
  - g. M/v Reg. No. KAP 105 Q Toyota Pickup
  - h. Motor cycles Reg. No. (details to be availed)
  - i. Widow & Children Benevolent Fund
  - j. Kwetu Sacco Shares
  - k. KLB royalties for KCPE Top marks series (Mazoezi na Marudio)
  - l. Payments/employment benefits at Kenyatta University (part time employment)
  - m. Britam insurance benefits (Msingi Poa cover)
  - n. AON Minet Insurance Cover Benefits
  - o. KNUT Benefits burial expenses and Post-burial Benevolent Funds
  - p. Account No. xxxx Equity Bank Matuu Branch (salary account)
  - q. Joint Account with Equity Bank Matuu (Winrose Emmah Ndinda kiamba with the deceased (details to be availed)
  - r. Death Gratuity (Teachers Service Commission)
5. The grant of letter of administration was issued to Agnes Nthambi Kasyoka, Everlyne Mwendu Kiamba, Brian Mutinda Kiamba and Winrose Emmah Ndinda Kiamba on 11<sup>th</sup> March, 2021.

**Summons for confirmation of grant dated 12/07/2021**

6. The Summons for Confirmation of Grant sought the following prayers:-



- a. The Grant of Letters of Administration intestate in this matter made to Agnes Nthambi Kasyoka, Everlyne Mwendu Kiamba, Brian Mutinda Kiamba and Winrose Emmah Ndinda Kiamba on 11/03/2021 be confirmed.
  - b. That costs of this application be in the cause.
7. The supporting affidavit sworn by Agnes Nthambi Kasyoka (1<sup>st</sup> Administrator) dated 13<sup>th</sup> July, 2012 filed on the same date gave a list of the beneficiaries of the deceased and the properties left and she deposed that it has been difficult to ascertain the deceased's exact interest in a majority of the stated assets due to the 4<sup>th</sup> Administrator's (Winrose Emmah Kiamba ) lack of cooperation and frustration and she sought Court's direction and or Orders to file a further affidavit after filing this application so as to include a proposal on the mode of distribution.

**Replying affidavit by winrose emmah ndinda kiamba filed on 26<sup>th</sup> august 2021: (protest)**

8. That she is 4<sup>th</sup> Administrator/Respondent in this cause; and also deposed that the allegation by the 1<sup>st</sup> Administrator that she is not cooperative is not true and urged the Court not to allow the Applicants any further chance to register a further affidavit on a proposed mode of distribution of the estate as the moves by the Applicants are only calculated to further delay the distribution of the estate while they continued to intermeddle and waste the estate of the deceased and should consider that the Respondent was wholly dependent on the deceased for maintenance and upkeep as the mother and care giver of the deceased's minor and school – going children. She attached a proposed mode of distribution to be adopted by the Court.
9. On 13 /10/2021, this Court took over the matter, the Applicant 1<sup>st</sup> Administrator through Counsel sought orders of preservation of the assets that comprise of the deceased's estate as outlined in the Petition pending determination of the deceased's interest and value of property and proof of nomination and annexed letters addressed to various Insurance, Sacco and Employer institutions. Counsel for the 4<sup>th</sup> Administrator was absent. This Court perused the Court record and formed the opinion that there was/is a dispute amongst the administrators of the deceased's estate in carrying out their mandate in gathering and collecting the assets that comprise of deceased's estate. Therefore, to maintain status quo and preserve the subject-matter of the dispute pending hearing and determination, this Court granted orders of preservation of all deceased's interest and assets held by the various institutions pending further orders of the Court or confirmation of grant proceedings and issuance of certificate of confirmation of grant.

**Summons dated 18<sup>th</sup> October, 2021\_**

10. The Applicant sought that;
- a. Spent
  - b. The court to set aside the exparte preservation orders issued on 13<sup>th</sup> October, 2021 in respect of the benefits held by Kwetu Sacco, Kenya Literature Bureau, AON Minet Insurance, Kenyatta University, Britam Insurance, Kenya National Union of Teachers, Equity Bank and Teachers Service Commission pending interpartes hearing of these Summons.
  - c. That in the alternative to 2 above, the Court to stay exparte preservation orders issued on 13<sup>th</sup> October, 2021 in respect of the benefits held by Kwetu Sacco, Kenya Literature Bureau, AON Minet Insurance, Kenyatta University, Britam Insurance, Kenya National Union of Teachers, Equity Bank and Teachers Service Commission pending interpartes hearing of these summons.



- d. The court to set aside the preservation orders issued on 13<sup>th</sup> October, 2021 in respect of the benefits held by Kwetu Sacco, Kenya Literature Bureau, AON Minet Insurance, Kenyatta University, Britam Insurance, Kenya National Union of Teachers, Equity Bank and Teachers Service Commission pending interpartes hearing of the application.
  - e. The Court to set aside orders of preservation of the estate with respect the benefits held by Kwetu Sacco, Kenya literature bureau, AON Minet insurance, Kenyatta university, Britam insurance, Kenya National Union of teachers, Equity Bank And Teachers Service Commission issued on 13<sup>th</sup> October, 2021.
  - f. The costs of this application be borne by the Respondents.
11. The application is based on the following grounds inter alia:
1. That on 13<sup>th</sup> October, 2021 this Court issued orders of preservation of the estate with respect to the benefits held in Kwetu Sacco, Kenya Literature Bureau, AON Minet Insurance, Kenyatta University, Britam Insurance, Kenya National Union of Teachers, Equity Bank and Teachers Service Commission.
  2. That these proceedings relate to the distribution of the assets of the estate of the deceased. The Court does not have jurisdiction to issue preservation orders of the benefits because they are subject of nomination and not available for distribution as part of the estate of the deceased.
  3. That there was material non-disclosure and mis- representation of material facts by the Respondents to lead the Court to believe that the benefits form part of the estate of the deceased.
  4. The Respondent sought the orders for preservation of the estate in bad faith to enable them to continue intermeddling with the estate of the deceased to the detriment of the 4<sup>th</sup> Administrator/Applicant.
  5. The Respondent came to court with unclean hands and they are therefore not entitled to the orders for preservation of the estate.
  6. During previous proceedings before this Court, and this Court's record will show the Respondents advocates severally made the application for the preservation orders and the Court declined to grant directing that they file a formal application for the Court to consider upon response by the Applicants advocates. The Respondents advocates failed to disclose these previous declined requests by the previous Judge who had been hearing this matter.
  7. The Respondents advocates took advantage of the fact that this Court was new in handling this matter and did not have knowledge of the previous proceedings and also the fact that the Applicants advocates did not manage to log in on the Court's online session due to technical difficulties and therefore there was no objection from the Respondents advocates as had been done before.
  8. The Applicant's advocates did not intentionally fail to log in to the Courts online session and they have always attended court as the Court record can prove/show.
  9. The Respondents advocate failed to disclose that the 1<sup>st</sup> administrator has in the past instructed the TSC and AON Minet Insurance to pay to her the funeral benefits of KHSs.600,000/- on the false allegation that she was the one who buried the deceased's remains while it was the 4<sup>th</sup>



Administrator/applicant who did so. The TSC paid the benefits to her while she was not the person entitled to the benefits.

10. That the 4<sup>th</sup> Administrator buried the deceased pursuant to the judgment of the ELC case Machakos in Machakos ELC suit no. 11/20202 – Agnes Nthambi Kasyoka & others –vs- Naomi Mumbua Muli & Winrose Ndinda Kiamba. A burial dispute which was maliciously instituted by the Respondent against the 4<sup>th</sup> administrator and the deceased’s mother.
11. Despite the judgment of the Court the 1<sup>st</sup> administrator colluded with the TSC and the sum of KShs.600,000/- being funeral benefits was released to her. The 1<sup>st</sup> administrator has adamantly refused to reimburse the benefits which she acquired fraudulently.
12. The 1<sup>st</sup> administrator continues to block the payment of Kwetu Sacco shares to the 4<sup>th</sup> administrator/applicant where the deceased had appointed her as the sole nominee. The shares at Kwetu Sacco does not form part of the estate as they are benefits subject of a nomination.
13. Further, the 1<sup>st</sup> Administrator has instructed the Kenya National Union of Teachers not to pay to the 4<sup>th</sup> Administrator/Applicant the full post –burial dues under the Burial and benevolent fund while the deceased had appointed the 4<sup>th</sup> Administrator/Applicant as the sole nominee.
14. The 1<sup>st</sup> administrator continues to block the payment of the Kenya literature bureau dividends and other benefits to the 4<sup>th</sup> Administrator/applicant while the deceased had appointed her as the sole nominee.
15. The benefits payable from Britam Insurance were already processed and paid to the 4<sup>th</sup> Administrator/Applicant as the appointed nominee by the deceased, a fact which within the Respondents knowledge and which they failed to disclose to the court.
16. The application for preservation of Estate is malicious and meant to facilitate the Respondents to continue to frustrate the payment of the benefits to the 4<sup>th</sup> Administrator/Applicant.
17. That it is in the interest of justice that the orders sought be granted.

#### **Grounds of opposition dated 27<sup>th</sup> October, 2021:**

12. The Respondents filed grounds of opposition on the following grounds:
  - a. The application is incompetent, bad in law and the orders contained therein are incapable of being granted.
  - b. The preservation orders sought to be stayed, varied and/or set aside are necessary for preservation of the deceased’s estate which estate is in danger of being wasted on the apparent insistence of the Applicant in the summons dated 18<sup>th</sup> October, 2021.
  - c. The abovestated insistence necessitated the application for preservation orders sought by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> administrators/respondents herein as such staying, varying and/or setting them aside will be detrimental to the preservation of the estate as sought by the administrators/respondents.

#### **Replying affidavit by the respondent:**

13. That the 4<sup>th</sup> Administrator/applicant was co-operating with 1<sup>st</sup> Administrator and the other administrators of the deceased’s estate. This is supported by letters from the Area administration that



cite her conduct right before inception of the proceedings herein to which she (through her advocates on record) declined their invitation to amicably deal with the deceased's estate.

14. That in addition to the foregoing, AON/MINET Kenya vide a letter dated 3<sup>rd</sup> November 2020 expressly communicated to the 4<sup>th</sup> Administrator/Applicant that the deceased's benefits held with them cannot be released to her alone.

## Submissions

### Applicant's Submissions

15. The Applicants submit that by a petition for divorce dated 31<sup>st</sup> August 2016 and registered in court on 1<sup>st</sup> September, 2016 the deceased averred that he married the 1<sup>st</sup> administrator in 1989 and they separated in the year 2012; that the 1<sup>st</sup> administrator registered an answer to the petition and counterclaim reiterating that the marriage had irretrievably broken down and urged the court to dissolve it; that at the time of the deceased's demise the deceased had not prosecuted the divorce to conclusion; that the deceased married the 4<sup>th</sup> administrator in 2011 under Kamba customary Law and practice.
16. The Applicant stated that she was the sole nominated beneficiary of the benefits held by the TSC through AON Minet insurance and Britam Insurance and the monies held thereunder should be disbursed to her. The Respondents have not placed any evidence before this Court to rebut this position. There is no evidence, whatsoever to convince the Court otherwise and we urge the court to discharge the preservation orders and pave way for payment of the benefits in accordance with the will and decision of the decision.

In the *Re Estate of Faith Muiya (Deceased)* [2016] eKLR the Court stated that:-

“Is money that accrues to a nominee named in an insurance policy payable to the estate of the member of the insurance scheme? I should think the answer to that question is in the negative. The funds would not be due to the deceased or her estate, but to the persons she has named as the beneficiaries of the scheme. The persons named in the nomination form as beneficiaries, are the persons to whom the assured funds ought to be paid in the event the policy matured upon the death of the member. Clearly, the nominated funds were not payable to the deceased or to her estate. Upon her death, the assured sum was to be paid to the person she had nominated, in this case E K and I M.

17. On the issue where there was a dispute on nomination and orders that the Court can issue, the Applicant submitted that the deceased nominated her as the sole beneficiary of the benefits held by the various institutions and there has been no material or evidence whatsoever placed before the court to show that the deceased did not nominate the applicant. In the above cited the court stated that;

“I must state that no evidence has been furnished to the effect that the nominations of E K and I M had been revoked, either by the subsequent marriage of the deceased or by the death of either or both nominees. All pointers are that the two (2) nominees are still alive, healthy and hearty, and entitled to be paid what is due to them under the nomination.

Certainly, this is not a probate matter. The funds being fought over do not form part of the estate of the deceased. They do not vest in the administrators appointed herein to administer the estate of the deceased. Disputes over such funds should not be entertained in this cause. The applicants are better off pursuing a remedy, if they have any, elsewhere.”



18. Also in the case of *Re Estate of Peter Ngugu Muchai (deceased)* [2021] eKLR the Court granted an order that the TSC be ordered to provide a certified copy of the Deceased's file for the Objector to produce as evidence of nomination.

19. On the issue of who bears the costs;

In the case on pg 94 of the Judicial Hints on Civil Procedure, 2<sup>nd</sup> Edn by Justice (retired) Kuloba it states that costs are awarded at the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and the to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.....

20. In the case of *Cecilia Karuru Ngavu –Vs- Barclays Bank of Kenya & Anor* [2016]eKLR Justice Mativo was of the view that;-

“in determining the issue of costs, the Court is entitled to look at among other things the conduct of the parties, the subject of litigation, the circumstances that led to the institution of the proceedings, the events which eventually led to their termination, the state at which proceedings were terminated, how they were terminated, the relationship between the parties and the need to promote reconciliation among the disputing parties according to the Article 159(2) (c) of *the Constitution*.

21. The Respondent caused the Applicant to bring these Summons for the ends of justice be met. The 1<sup>st</sup> Administrator has been colluding and fraudulently causing the institutions listed to interfere with the payments of the nominations contrary to the will of the deceased. That the Applicant approached this Court on several times to defend her rights. The Applicant urges this Court to compensate her and order that the Respondent pay the costs of these Summons.

### **Respondents Submissions**

22. The Respondents submitted that this Court has jurisdiction to grant preservation orders. Section 47 of the Law of Succession vests upon this Court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. It provides

Section 47

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.

Similarly, Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

23. *In Re Estate of Jeremiah Ngiri Kibati (deceased)* [2019] eKLR and *Re Estate of Elijah Ngari (deceased)* [2019]eKLR, the Court in dealing with the issue of issuance of conservatory orders in Succession matters cited with approval the decision of this Court in *Japhet Kaimenyi M'ndatbo M'mbiria* [2012] eKLR noting that an Applicant in an application for preservatory orders.

“has to satisfy the following condition;



- a. That the suit property is at the risk of being disposed or alienated or transferred to the detriment of the applicant unless preservatory orders of inhibition are issued.
  - b. That the refusal to grant orders of inhibition would render the applications suit nugatory.
  - c. That the applicant has arguable case.”
24. The Applicant herein has however not demonstrated any prejudice that she will suffer if the orders sought in her application are not granted. On the flip side the Respondents, the deceased’s estate and the deceased’s other beneficiaries stand to suffer irreparably if the preservation orders issued on the 14<sup>th</sup> October, 2021, are set aside.
25. The preservation orders issued by this Court on 14<sup>th</sup> October, 2021 were issued procedurally and on merit contrary to the 4<sup>th</sup> administrator’s allegation that the respondents and/or their advocates took advantage of her absence from court. The 4<sup>th</sup> administrator/ Applicant and/or advocates were aware of the mention date since they participated in the reserving the same. In addition, the 4<sup>th</sup> administrator’s advocate’s offices are located at Machakos hence the allegation they faced network challenges is neither here nor there.
- In the case of Nairobi Civil Suit No.209 f 1974, *Ruth Kavindu –vs- Josiah Mbaya* and another where the court stated

“ A Court should not be used or called upon to aid the indolent to cause injustice and hardship to blameless applicants.”

26. The Respondents submit that the 4<sup>th</sup> administrator’s application dated 18<sup>th</sup> October, 2021 is incompetent on the face of it and the same should be dismissed with the contempt it deserves and with costs to the Respondents herein.

### **Determination**

27. The Court has considered the application, pleadings and submissions by respective Counsel for the parties. The issue(s) for determination are;
- a. Whether the Court has jurisdiction in granting preservation orders to interest value or properties of the deceased where he/she nominated the beneficiary.
  - b. Whether the preservation orders granted on 13/10/2021 should be vacated, set aside or dismissed.

### **Jurisdiction**

28. “Jurisdiction” refers to the rights or authority by which a specific court is able to judge a case. Jurisdiction may either be original or appellate or even both.
29. In the locus classicus case of *Owners of the Motor vessels “Lillian S”-Vs- Caltex Oil (K) Ltd.* Civil Appeal No. 540 of 1989 where it was held that;

“...Jurisdiction is everything. Without it a court has no power to make one more step. Where the Court has no jurisdiction, there would be no basis for a continuation of procedure



pending other evidence. A Court of law shall lay down tools in respect of the matter before it the moment, it holds the opinion that it is without jurisdiction”

30. Article 165 of CoK 2010 provides;

the High Court shall have-

- a. unlimited original jurisdiction in criminal and civil matters;
- e any other jurisdiction, original or appellate, conferred on it by legislation.

31. Section 47 LSA provides;

Jurisdiction of High Court 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:....

32. Section 45 LSA provides;

No intermeddling with property of deceased person (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

33. In the case of *Priscillah Wanja Kibui vs James Kiongo Kibui & Charles Wambugu Gitonga* ELC 170 of 2011 it was held as follows;

Status quo is defined in Black’s Law Dictionary as “the situation as it exists”

In my view an order to status quo to be maintained is different from an order of injunction both in terms of the principles for grant and practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for preservation of the situation as it exists in relation to pending proceedings before hearing and determination thereof.

34. The Court outlined the various provisions of law to confirm that the Court is clothed with requisite jurisdiction in hearing and determination of Succession matters/disputes. Further, the Court has jurisdiction to grant interim temporary orders to preserve the subject-matter of the dispute pending hearing and determination of the disputes filed by parties in Court.

35. *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR where the court observed as follows:

“.....The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants.



36. The parties herein , beneficiaries of the deceased have ongoing disputes as to the deceased's interest value or property in the listed assets in the Petition ; some properties are alleged to have been disposed off, others are not free property of the deceased available for distribution as the deceased during his life nominated the beneficiary/recipient of the proceeds.
37. The Summons for Confirmation Application filed on 13/7/2021 is not agreed on by parties therein, the assets available for distribution were listed without further information or detail as to extent of value or interest; the fact of whether they are all available for distribution was/is contested. There was/is no proposed mode of distribution and the beneficiaries failed to file written consents.
38. There are on record correspondence by the Local Administration that any efforts to have the disputants meet, consult and/or agree on way forward were futile.
39. So, any distribution of the deceased's estate is premature and hence in the circumstances, the Court granted interim /temporary orders to maintain status quo and preserve the subject-matter pending hearing and determination of the matter.
40. The Law of Succession attends to testate and intestate estates of the deceased persons. Where there is a valid Will under Section 11 LSA the Court cedes distribution of the deceased's estate according to the wishes of the deceased by the Executor of the deceased's Will. This is a testate estate, whereas the Court is clothed with jurisdiction to resolve any conflict or contest of the dispute arising, the distribution is according to the wishes of the deceased.
41. Section 34 LSA defines an intestate estate as follows;

A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.
42. In the instant case, properties listed in the Petition are not contained in a Will but some of the deceased's interest value and property is said/alleged to be subject to Insurance and Pension Laws where the deceased provided the nominee(s).
43. This Court confirms that the law is that once the deceased during his/her lifetime provides nomination of the recipient of his/her interest, value or property in the event of his/her death, the property is not subject to distribution by the Court. Such property, benefit or proceeds are not available for distribution and shall be released to the nominee as per nomination document endorsed by the deceased as elucidated in the *Re Estate of Faith Muita (Deceased)* [2016] eKLR supra.
44. That is why at this stage of proceedings, the allegation that the properties listed some were to be released to the 4<sup>th</sup> Administrator as nominee of the deceased is subject to proof of such nomination before the Court cedes the right to distribute such benefits as part of the deceased's intestate estate.
45. As confirmed by the Applicant in relying on the cited case *Re Estate of Peter Ngugu Muchai (deceased)* [2021] eKLR supra the Court granted an order that the TSC provides a certified copy of the Deceased's file for the Objector to produce as evidence of nomination; the same requirement is applicable in the instant case before the Court cedes its jurisdiction to distribute the deceased's intestate estate where nomination is proved as alleged by tangible and cogent evidence.

## Disposition

1. The application Summons of 18/10/2021 seeking that the Court sets aside the exparte preservation orders issued on 13<sup>th</sup> October, 2021 in respect of the benefits held by Kwetu Sacco, Kenya literature



bureau, AON Minet insurance, Kenyatta University, Britam insurance, Kenya National Union of Teachers, Equity Bank and Teachers Service Commission is dismissed.

2. The Applicant 4<sup>th</sup> Administrator shall avail /provide formal copy /Copies of nomination as endorsed by the deceased of 4<sup>th</sup> Administrator as the nominee/recipient of the deceased's interest, proceeds or benefits to the Court through DR High Court MHC and serve the other parties/Advocates. Thereafter, the Court upon proof of nomination lift the preservation order and cede jurisdiction and distribution of deceased's properties according to deceased's wishes as outlined in the nomination.
3. In default, the beneficiaries and administrators of the estate shall state individually or collectively the proposed mode of distribution of the assets that comprise of deceased's estate available for distribution.
4. The Court shall hear through viva voce evidence the 4<sup>th</sup> Administrator's Protest, Replying Affidavit of 26/8/2021 first before Summons for Confirmation is granted.
5. It is a Family matter costs are in Cause.

**DELIVERED, DATED & SIGNED IN OPEN COURT IN MACHAKOS ON 31<sup>ST</sup> MAY 2022  
(VIRTUAL CONFERENCE)**

**M.W. MUIGAI**

**JUDGE**

