



**In re Estate of Wanyoike Kiboco (Deceased) (Succession Cause
2 of 2022) [2022] KEHC 11384 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 2 OF 2022
K KIMONDO, J
JUNE 23, 2022
RE ESTATE OF WANYOIKE KIBOCO (DECEASED)
MARY WANJIRU WANYOIKE & JANE NJERI KIBOCO.....APPLICANTS
VERSUS
DANCAN KABUTHI WANYOIKE.....RESPONDENT**

RULING

1. The applicants have petitioned for a grant of letter of administration to the estate of Wainyoike Kiboco (hereafter the deceased) who died intestate on January 7, 2021. The two applicants and the respondent are children or heirs of the deceased.
2. I should point out at the earliest that the petition was only lodged on February 1, 2022 and the cause has not been gazetted. It follows as a corollary that no administrator has been appointed.
3. The applicants' summons is dated February 10, 2022 and predicated upon section 76 (b) of the Law of Succession Act and rules 44 (1), 73 and 91 of the Probate and Administration Rules (hereafter the Act and the Rules respectively).
4. The substance of the motion is to restrain the respondent "or any of the members named as beneficiaries of the estate" from interfering, trespassing, collecting rent or acquiring any property in the estate until the cause is heard and determined.
5. There is also a prayer that Sortmasters Investment Limited continue to collect rents and to retain the monies until the cause is heard.
6. The respondent filed a reply on March 31, 2022. The applicants then filed a further affidavit on April 19, 2022.
7. On June 7, 2022, I heard further arguments from learned counsel for the applicants, Mrs Owino, and from the respondent who is acting in person.



8. I take the following view of the matter. The applicants contend that the respondent has since stopped remitting rent for Kariobangi Light Industries plot 83. But it seems that he is not the only culprit: Jane Njeri Ndungu and Jotham Wanyoike Ndungu, who are children of Wilson Ndungu, have not been paying monthly rent of Kshs 20,000 and Kshs 30,000 respectively from Dandora Phase 3 plot 1803 and Thika Phase 6 plot No 85 Makongeni. It is also averred that owing to a confusing letter authored by the respondent to tenants, a good number are not paying their rents to Sortmasters.
9. I understood the key objections by the respondent to be three-pronged: Firstly, that the applicants have no standing; secondly, that he is not a tenant as the deceased had distributed all his properties; and, thirdly, that the applicants are acting in bad faith as they are also collecting rent for Dandora Phase III House 524 and Sambara, Nyandarua County.
10. The motion must fail for three main reasons. Firstly, and as I have stated earlier, the court has not yet appointed an administrator or personal representative to the estate. It thus remains doubtful that the applicants have standing at this juncture to injunct the respondent or to appoint Sortmasters or any other agent to collect the rent.
11. Secondly, and for the reason above, the actions of all the beneficiaries and their agents may be tantamount to intermeddling in the estate. The authority to deal with the assets of the deceased flows from a grant of representation and any person who handles estate property without such foundation may be guilty of intermeddling. I say that guardedly and without a final finding.
12. Thirdly, a close reading of sections 45, 79, 82 and 90 of the Act militates against the grant of the orders sought. Section 45 for instance provides-
 - (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.
 - (2) Any person who contravenes the provisions of this section shall—
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration. [underlining added]
13. See also Re Estate of Veronica Njoki Wakagoto, Nairobi High Court Cause 1974 of 2008 [2013] eKLR; Re Estate of M'Ngarithi M'Miriti Meru High Court Cause 108 of 2014 [2017] eKLR.
14. From the conflicting averments by both parties, the beneficiaries took various roles and responsibilities in the estate including obtaining a loan of Kshs 525,000 from Sortmasters Investments Limited to off-set the deceased's medical bill. The facility was to be off-set from rents collected. A number of beneficiaries are collecting rents and not remitting it to the agent while others are occupying the estate without paying rent. There is also conflicting evidence of the status of the respondent as a tenant. But if the applicants are also collecting rents as alleged, I have a classic case of the kettle calling the pot black.
15. Lastly, this is a succession cause. The disputants are close family members. I am also alive to the overriding objective to do justice to all the parties. See article 159 of the Constitution as read together with rule 73 of the Probate and Administration Rules. I will accordingly grant early dates for directions to progress the matter.



16. The issues raised at this preliminary stage can only be determined by tested evidence at the hearing of the summons for confirmation or distribution of the estate. But the cause cannot proceed unless the roadblocks to its gazettment or appointment of interim administrators is done. I heard the respondent to state that he is not averse to appointment of administrators representing the different factions of heirs. I will therefore issue further directions to unlock the gridlock.
17. Finally, and to prevent the ends of justice from being defeated I will, *suo motu*, order that the estate of the deceased be preserved until further orders of the court.
18. My final orders are thus as follows-
 - i. That the applicants' notice of motion dated February 10, 2022 be and is hereby dismissed.
 - ii. That this cause shall be listed for directions on compliance with the Rules and gazettment at the earliest and on a date that I shall now grant.
 - iii. That in order to prevent the ends of justice from being defeated, the estate of the deceased shall be preserved until further orders of the court
 - iv. That I make no orders on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 23RD DAY OF JUNE 2022.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr Mugo holding brief for Mrs Owino for the applicants instructed by NA Owino & Company Advocates.

The respondent (in person).

Ms Susan Waiganjo, Court Assistant.

