



REPUBLIC OF KENYA



**In re Estate of Anne Mbula Munyao (Deceased) (Succession Cause E2513 of 2021)
[2022] KEHC 13138 (KLR) (Family) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13138 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E2513 OF 2021
AO MUCHELULE, J
SEPTEMBER 28, 2022
IN THE MATTER OF THE ESTATE OF ANNE MBULA MUNYAO (DECEASED)**

BETWEEN

OWEN NDETO MUOKI APPLICANT

AND

SAMMY KIPCHIRCHIR SANG RESPONDENT

RULING

1. The deceased Anne Mbula Munyao died on October 5, 2021. She left a written will dated August 17, 2019 in which she appointed her friends Ruth Mueni Maweu and Yvonne Maranga as executors. In the will, she acknowledges the respondent Sammy Kipchirchir Sang as her husband and the applicant Owen Ndetu Muoki as her only child. She willed that her residuary estate goes to the applicant, and asked that before he gets to age of majority the respondent and Ruth Mueni Maweu shall be his trustees over the property. The applicant is now an adult.
2. The respondent has challenged the validity of the will, but the challenge has not been heard or determined.
3. The present application is dated March 8, 2022 by the applicant. He seeks the preservation of the motor vehicle xxx xxxx (Toyota Prado V8) pending the final distribution of the estate. He wants the vehicle delivered to him or to the executors for preservation. There is no dispute that the vehicle belonged to the deceased and is in the possession of the respondent.
4. The respondent opposed the application. He referred to his challenge of the validity of the will. He explained that he was driving the vehicle which got involved in an accident. He paid Ksh 550,000/= to redeem and settle the costs of contributory repairs to the vehicle; that the insurance had advised that the costs of the repair was Kshs 1,886,000/= and the insurance was going to redeem only Kshs



1,000,000/=. After the Kshs 550,000/= there was Kshs 336,000/=to be borne. He sated that he had always used and maintained the vehicle, and that the applicant had vehicle xxx xxxx for his use. The vehicle belonged to the deceased.

5. Until the will is successfully challenged, the executors have under section 80(1) of the Law of Succession Act (cap 160) the duty, as they wait for formal appointment through a grant of probate, to do all things that pertain to their executorial office. This includes get in and receiving the testator's (the deceased's) estate. Section 80(1) of the Act provides that:-

“(1) A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.”

6. The said motor vehicle belonged to the deceased, and is therefore estate property that should be preserved as the parties quarrel about whether or not the will was valid. The continued handling of the vehicle by the respondent amounts to intermeddling under section 45 of the Act (In the Matter of the Estate of David Nturibi M'Itthinji (Deceased)).
7. I allow the application, and direct that motor vehicle xxx xxxx Toyota Prado V8 shall immediately be handed over by the respondent to the executors of the will of the deceased for preservation.
8. Costs shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

