



REPUBLIC OF KENYA



In re Estate of Christopher Matata Musyoka (Deceased) (Succession Cause 2845 of 2014) [2025] KEHC 3211 (KLR) (Family) (21 January 2025) (Ruling)

Neutral citation: [2025] KEHC 3211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2845 OF 2014
PM NYAUNDI, J
JANUARY 21, 2025
IN THE MATTER OF THE ESTATE OF CHRISTOPHER MATATA MUSYOKA (DECEASED)**

RULING

1. The application for determination is the Notice of Motion dated 19th July 2024. The application is presented under Sections 4,7,9,90(b), 93,97 and 98 of the *Children Act* 2001, Sections 2, 2A, 3A and 63 (e) of the *Civil Procedure Act* and Order 51 of the Civil procedure rules. The Applicant seeks the following orders, THAT-
 1. Spent
 2. Spent
 3. That Kshs 150000/- be deducted from the monthly proceeds of the estate of the deceased to cater for the minor basic needs which include;
 - a. A medical cover from a reputable insurance company
 - b. Food and clothing
 - c. Caregiver/ nanny fees
 - d. School fees and other school expenses including uniforms, books and stationery
 4. the Respondent be compelled by this Honourable court to render accounts for the estate of Christopher Matata Musyoka (Deceased)
 5. the costs of this application be provided for.
2. The respondent did not respond to the application, notwithstanding that he was served.
3. The minor, subject of these proceedings is the only daughter of the deceased. The Respondent is her paternal grandfather, he is also joint administrator of the estate of the deceased alongside the paternal



grandmother of the minor (his wife), having obtained grant on 30th November 2015. The grant herein was confirmed on 16th September 2016 and rectified on 24th February 2020.

4. The Applicants are the maternal grandparents of the minor. The minor is an orphan. The Applicants and the respondent are Court appointed guardians of the minor. The lament of the Applicants is that the Respondent has access to the rental income of the estate assets and has also collected the policies that were payable to the minor. It is submitted that the Administrators have failed to provide for the minor. The applicants therefore seek an order to compel the Respondent to utilize the income from the estate to the benefit of the minor to the tune of Kshs 150000 per month.
5. With regards to prayer 3, the Application is presented under provisions of the repealed Children Act, 2001. Whereas this court is obligated by virtue of Article 53 (2) of the Constitution of Kenya, 2010 to ensure that 'A child's best interest are of paramount importance in every matter concerning the child.' It must be moved in accordance with the law. Prayer 3 of the Application must fail as it is presented under a repealed statute.
6. Further an application for the maintenance of the child should be made to the court with requisite jurisdiction, in this instance the Children Court, as the mandate of this court, as was enunciated in Re Estate of Alice Mumbua Mutua [2017] eKLR, is limited to-

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...
7. After confirmation of the grant and declaring that the Administrators were to hold the assets in trust for the minor, the Court is basically functus officio and only intervenes under limited circumstances, for instance to revoke or rectify the grant. In this instance the Applicants seek that the Respondent provide for the minor, these orders should be obtained from the Children Court that has already issued guardianship orders. This prayer will therefore fail.
8. With regard to prayer 4, The duties of an Administrator are enumerated under Section 83 of the Law of Succession Act and include
 83. Personal Representatives shall have the following duties—
 - (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
 - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding



paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration

9. In Re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR the Court, reiterated that the relationship between personal representatives and heirs of the deceased's estate is a fiduciary one and stated further that-

(28) the duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. There is no shortcut about it. It is a statutory obligation to which the administrator of an estate must adhere without any discretion.

10. As stated above, by the Administrators under section 83 of the *Law of Succession Act* are required to produce full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from 16th September 2016 to 31st December 2024.

11. Accordingly, I direct that the Respondents do furnish the Court with accounts in terms of paragraph 8 above within 45 days from the date hereof.

12. Mention on 4th March 2025 to confirm compliance. The Administrators to attend in person.

13. Since the respondent has occasioned this application by being non-responsive he shall meet the costs of this application assessed at Kshs 25000 payable within 30 days.

It is so ordered

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF JANUARY, 2025.

P. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ms Muhonja, Advocate for the Applicant

No appearance for the Respondent

