



REPUBLIC OF KENYA



**In re Estate of Lawrence Kimani Khirrecu (Deceased) (Succession Cause
2679 of 2000) [2025] KEHC 1752 (KLR) (Family) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2679 OF 2000
PM NYAUNDI, J
FEBRUARY 20, 2025**

RULING

1. This ruling relates to the following applications that are pending determination
 - a. Summons dated 25th April 2023 presented by James Muigai Khirrecu under Section 45 of the *Law of Succession Act* and Rules 49 of the Probate and Administration Rules. The 1st Respondent has sworn an affidavit in response dated 26th July 2024.
 - b. Application dated 31st May 2023, presented by Monica Mukuhi Khirrecu under Article 159(2) (a) of *the Constitution* and Sections 35, 40, 82 and 83 of the *Law of Succession Act* and Rules 49 and 73 of the Probate and Administration Rules
 - c. Application dated 11th July 2023, presented by Monica Mukuhi Khirrecu under Article 159(2) (a) of *the Constitution* and Section 45 of the *Law of Succession Act* and Rules 49 and 73 of the Probate and Administration Rules
 - d. Application dated 22nd July 2023, presented by Monica Mukuhi Khirrecu under Article 159(2) (a) of *the Constitution* and Section 45 of the *Law of Succession Act* and Rules 49 and 73 of the Probate and Administration Rules. A replying affidavit sworn by James Muigai Khirrecu sworn on 24th August 2023 has been filed in opposition.
 - e. Summons dated 16th November 2023 presented by James Muigai Khirrecu under Sections 37 and 76 (d) (iii) of the *Law of Succession Act*, Rules 44,45,49, 69 and 73 of the Probate and Administration Rules.
 - f. Notice of Motion dated 30th April 2024 presented by Augustine Ngugi Khirrecu, Monicah Mukuhi Khirrecu & Thomas Kimani Khirrecu under Sections 1A, 1B,3A and Section 80 of the Civil Procedure Rules and Order 45 of the Civil Procedure Rules and Rule 63 of the Probate and Administration Rules. The 1st Respondent has sworn an affidavit in response dated 13th August 2024.



- g. Motion dated 2nd October 2024 presented by Augustine Ngugi Khirrecu, Monicah Mukuhi Khirrecu & Thomas Kimani Khirrecu Sections 1A, 1B,3A and Section 80 of the Civil Procedure Rules and Order 45 of the Civil Procedure Rules and Rule 63 of the Probate and Administration Rules.

Background

2. The deceased herein died on 14th November 1998 and was survived by the following-
- a. Monicah Mukuhi Njoroge- Widow
 - b. Augustine Ngugi Khirrecu- Son
 - c. Thomas Kimani Khirrecu- Son
 - d. Angela Wanjiru Khirrecu- Daughter
 - e. Paul Njoroge Khirrecu- Son
 - f. James Muigai Khirrecu- Son
3. Subsequently on 1st March 2001, a Grant of letters of Administration issued to Monicah Mukuhi Khirrecu And Augustine Ngugi Khirrecu, the grant was confirmed on 14th May 2003. The Confirmed Grant distributed the following assets to Monicah Mukuhi Khirrecu in whole
- a. Kiambaa/ Waguthu/832
 - b. Nairobi/ Block 90/153
 - c. Kiambaa/ Ruakaa/707
 - d. Nyandarua/Ndemi/1777
 - e. Nyandarua/Ndemi/1778
 - f. Nyandarua/Ndemi/1779
 - g. Nyandarua/Ndemi/1780
 - h. Nyandarua/Ndemi/1781
 - i. Nyandarua/Ndemi/1782
4. This certificate was amended on 14th November 2006, to include Nairobi / Block 116/ 972 which was distributed solely to Monicah Mukuhi Khirrecu. It was further rectified on 25th November 2013 to include Karuri Town Plot No. 50 (Karuri Urban Council), Plot No.43 Ruaka and East African Breweries Limited Shares, all distributed to Monicah Mukuhi Khirrecu solely.
5. Vide Summons dated 25th February 2019, James Muigai Khirrecu sought to revoke the grant herein. In ruling dated 11th October 2019, the Court, while dismissing the Application for revocation, determined that the grant be rectified to reflect that Monicah Mukuhi Khirrecu was holding the properties as trustee for her own benefit and for the benefit of the other beneficiaries. It is to be observed that at the time this application was made the hue of the estate had changed as the Administrator then had already disposed of some of the assets.
6. On 7th October 2020, the Court dismissed an application by the Administrator to further rectify the grant to include assets acquired subsequent to the sale of some assets of the estate of the deceased. The



- Court instead directed that a rectified certificate of confirmation of grant issue with the same assets in the rectified certificate of confirmation of grant dated 25th February 2013 and Monicah Mukuhi Khirrecu to hold the assets in trust for all the beneficiaries.
7. The Court further directed that Monicah Mukuhi Khirrecu provide account within 45 days on how she had handled all the affairs and the assets of the estate.
 8. On 17th June 2022, the Court dismissed the Applicants application dated 20th April 2020 seeking leave of the Court to sell LR No. Nairobi 90/153 and LR No. Kajiado/ Kaputei- North/15138, and reiterated the need for the Administrators then to furnish an account of their dealings with the estate.
 9. On 10th May 2023, the Court gave the following orders with regard to application dated 25th April 2023
 - a. That pending the hearing and determination of the Application the Respondents by themselves, their servants, employees, agents and / or assigns be and are hereby restrained from intermeddling with transferring, alienating, misappropriating, misapplying and / or wasting any and all income from Title Numbers Kiambaa/ Waguthu/2959; Nairobi/ Block90/153 And Kajiado/ Kaputei-north/ 69174
 - b. That pending the inter- partes hearing and determination of this application all income collected from title numbers Kiambaa/ Waguthu/2959; Nairobi/ Block90/153 and Kajiado/ Kaputei-North/69174 be deposited in Court
 - c. That pending the hearing and determination of this application the 1st Respondent be and is hereby ordered to comply with the orders issued on 7th October 2020 and render an account to all beneficiaries of the estate and have the same filed in Court within 14 days failure of which, the 1st Respondent be removed as an administrator.
 - d. That the grant rectified on 11th October 2019 be amended to include Kajiado/ Kaputei/15138, Kajiado/Kaputei-north/ 69174; Kiambaa/Waguthu/2959, Kiambaa/Waguthu/2960 and Loitoktok/Emperon/ 454 to be held by Monica Mukuhi Khirrecu for all beneficiaries.
 - e. On 16th August 2023, this Court allowed application dated 22nd July 2023 on the following terms,
 - i. Monica Mukuhi Khirrecu to collect rent from Nairobi/ Block 90/ 153 for 3 months
 - ii. The Administrators to open an account to receive the rent
 - iii. The Applicant to draw from that account for her medical treatment
 - iv. That the account to be furnished to the Court within sixty (60) days
 - v. Matter for hearing on 19th September 2023 before Hon. Lady Justice M. Odero
 10. On 19th September 2023 Hon. Lady Justice Maureen Odero referred the matter back to me to give directions on the apparent contradiction between the orders issued by the 2 Courts. I issued Orders on 26th September 2023 requiring that the Administrators
 - a. Avail evidence of the account that was opened pursuant to orders granted on 16th August 2023
 - b. That the Applicants serve accounts as directed on 10th May 2023
 - c. Make available the accounts on expenditure of the rent collected from Nairobi/ Block/90/153 pursuant to the order of 16th August 2023.



11. When the matter was subsequently mentioned on 22nd April 2024 the Administrators were yet to comply with the orders and in accordance with the earlier orders of the Court issued on 10th May 2023, the grant issued to the Monicah Khirrecu was revoked and a fresh grant issued to Paul Njoroge Khirrecu, James Muigai Khirrecu and Augustine Ngugi Khirrecu.
12. It was further directed that the Administrators freshly appointed finalise administration of the estate within 90 days.
13. These orders provoked the applications dated 30th April 2024 and 2nd October 2024.
14. The Applicants in Application dated 30th April 2024 have filed submissions dated 11th December 2024. The Applicant identifies the following as the issues that should be determined-
 - a. Whether the orders issued on 22nd April 2024 should be reviewed
 - b. Whether Monicah Mukuhi Khirrecuis entitled to a life time interest to the estate
 - c. Whether Monicah Mukuhi Khirrecuis entitled to rental income in this matter
 - d. Whether the rental income deposited in Court should be released to Monica Mukuhi Khirrecu
 - e. Whether James Muigai Khirrecu should be removed as Co Administrator and Thomas Kimani Khirrecu appointed as Co Administrator

Analysis And Determination

15. Having considered the pleadings herein and the relevant law, I discern the following as the issues for determination-
 - a. Who should administer the estate?
 - b. What assets are comprised in the estate of the deceased?
 - c. What if any provision should be made for Monicah Mukuhi Khirrecuas widow of the deceased?
 - d. Based on (a), (b), (c) above what if any are the consequential orders that this Court should make
 - e. Who should pay costs of this Application
16. On the 1st issue, the Application dated 30th April 2024, contests the appointment of James Muigai Khirrecu as administrator of the estate of the deceased. It is submitted that owing to his past actions he is unlikely to act in the interests of the estate and is actually likely to waste the estate. That there is evidence that he is already diverting rental income to his personal benefit at the expense of the other beneficiaries.
17. Suffice it to state that the appointment of James Muigai Khirrecuas co administrator was occasioned by the revocation of the grant previously issued to Monicah Mukuhi Khirrecu and Augustine Ngugi Khirrecu. This revocation was necessitated by the persistent failure by the Administrators to furnish accounts as directed.
18. I have seen the ruling of Ongeri J delivered herein on 11th October 2019 in which she dismissed an application by James Muigai Khirrecu for revocation of the grant issued to his mother and his appointment as administrator in her place.
19. In dismissing the Application, the Court observed as follows about James Muigai Khirrecu



- (31) The Applicant has not displayed qualities of a good administrator. He is still a dependent of the Estate at the age of 38 years. His interest in the estate has not matured and he is admonished to be patient and to note that the law protects a surviving spouse from being rendered destitute.
20. This indeed is a harsh indictment of James Muigai Khirrecu. In the intervening period Monica Mukuhi Khirrecu has failed to comply with the Court order to furnish accounts. It has been stated on several occasions, and should now be clear to all, that Court orders never issue in vain, they are not offered as suggestions with an option to the parties to make their own independent actions. Failure to comply with Court orders is tantamount to disregarding to the rule of law and hurtling society into anarchy. I am guided by the Court's pronouncement in *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi* [2018] eKLR where it was held as follows;
- Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in *Teacher's Service Commission v Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013*:
- The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.
21. Once parties are under to the jurisdiction of the Court they are obligated to act in accordance with the orders of the Court. The disregard by Monica Mukuhi Khirrecu of the Court's orders meant that the Court had to appoint another family member and this time in exercise of discretion provided for under Section 66 of the *Law of Succession Act* the lot has fallen on Paul Njoroge Khirrecu, James Muigai Khirrecu and Augustine Ngugi Khirrecu.
22. It is evident from the multiple applications on record that the children in the family are split down the middle with some children standing in support of their mother and James Muigai Khirrecu challenging his mother at every turn. The Court cannot get into the fray except, as in the case of Monica Mukuhi Khirrecu move to revoke the grant when the administrator fails to act in accordance with the grant or the orders of the Court
23. The current administrators are therefore well advised that unless they move to administer the estate as per the confirmed grant within the timelines I shall issue the grant issued to them shall accordingly be revoked. The Court will only protect the actions of an administrator who acts in accordance with the confirmed Grant. In this instance the Grant has already been confirmed, the administrators can only act in accordance with the grant. I will speak more to this in the conclusion of this ruling.
24. On the 2nd Issue, vide application dated 31st May 2023, the Applicant seeks to review interim orders of 10th May 2023 that revised the Certificate of Confirmation of Grant to include Loitokitok/ Emperon/ 454 and injuncting the Applicant from dealing with the listed assets.
25. It is submitted that in ruling delivered on 7th October 2020 by Hon. Dulu J. the Court found that the said asset did not comprise the estate of the deceased. The Court declined to rectify the grant to



- include the assets that had been acquired after the death of the deceased and found that Loitokitok/ Emperon/ 454 was not part of the estate of the deceased. The only recourse available to the parties if not in agreement with this finding was to appeal that decision. They did not appeal that decision.
26. The Court directed that, 'A further rectified certificate of confirmed grant do issue with the same assets in the rectified certificate of confirmed grant dated 25th February 2013, with the difference only being that Monicah Mukuhi Khirrecu will hold the assets as trustee as ordered by Justice Asenath Ongeri in ruling of this Court of 11th October 2019.
27. I concur with the decision of Hon. Dulu J. Monica Mukuhi Khirrecu sold some assets of the deceased in the intervening period between 14th May 2003 and 11th October 2019. The assets so sold do not now comprise the estate of the deceased and neither do the assets that she subsequently bought. The remedy for the beneficiaries with regard to safeguarding their interest lies in the Environment and Land Court for a declaration of trust. Hopefully it is not necessary to litigate this matter as the parties are in consensus.
28. The matter having been resolved by a Court that went into the substantive merits, it is not open to the Applicants to revisit the matter as they have in the application dated 25th April 2023. The Court was clearly misled by the Applicants in the Application dated 25th April 2023 as there were subsisting valid orders in respect of the assets which the Applicants sought injunctive orders. Accordingly, to the extent that the Application dated 25th April 2023 seeks a review of the orders of 7th October 2020 through the backdoor it is dismissed, and I will review the Order issued on 10th May 2023 to exclude the assets that were disposed of and purchased subsequent to the death of the deceased.
29. In doing so, I rely on Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration rules in addition to Sections 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules.
30. Based on the admission of the parties the only asset of the estate is Nairobi/ Block/90/153, the other assets having been disposed of, before the grant was rectified on 19th October 2019
31. On the 3rd issue, it is not in dispute that Monicah Mukuhi Khirrecu is the sole surviving widow of the deceased and therefore has a life interest in the estate of the deceased which will extinguish on her death or remarriage. The interest of her children will only crystallise when hers extinguishes. The Children cannot bully the mother out of her interest. I vacate the orders requiring that the rents be deposited in Court and direct that the Administrators open an estate account into which the rental income from Nairobi Block/90/153, will be paid into.
32. The money so deposited shall be paid out as a monthly allowance to Monicah Mukuhi Khirrecu not later than the 10th day of each subsequent month effective 10th March 2025. In the same vein any money deposited in Court on the strength of orders that issued on 10th May 2023 will be released forthwith to Monicah Mukuhi Khirrecu.
33. I agree with the decision of the Court in *Tau Katungi vs Margrethe Katungi & Another* [2014] eKLR and in its interpretation of Section 35 of the [Law of Succession Act](#) thus
- The effect of Section 35(1) is that the children of the deceased are not entitled to access the intestate estate so as there is a surviving spouse. The children's right to the property crystallises upon the determination of the life interest following the death of the life interest children or her remarriage. Prior to that the widow would be entitled to exclusive right over the net intestate. This means that if the net intestate is generating income she would be the person entitled exclusively to the income so



generated .. Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it was their own.

34. On the 4th issue as relates to the consequential orders, these are the final orders deriving from my ruling above-
- a. The Administrators of the Estate, pursuant to orders issued on 22nd April 2024 are Paul Njoroge Khirrecu, James Muigai Khirrecu and Augustine Ngugi Khirrecu and a grant should issue accordingly.
 - b. Pursuant to orders of the Court issued on 7th October 2020, a rectified grant shall issue with Nairobi/ Block 90/153 as the sole asset of the estate to be held by Monicah Mukuhi Khirrecu in trust for all the beneficiaries
 - c. The Administrators will open an Estate account and the rental income from Nairobi/ Block 90/153 will be deposited in to that account and Monicah Mukuhi Khirrecu receive a monthly allowance payable every 10th day of each successive month effective 10th March 2025.
 - d. The monies deposited in Court pursuant to the order of 10th May 2024, to be released to Monicah Mukuhi Khirrecu forthwith.
 - e. With regard to the following assets it is determined that they do not comprise the estate of the deceased
Kajiado/ Kaputei/15138,
Kajiado/Kaputei-north/ 69174;
Kiambaa/Waguthu/2959,
Kiambaa/Waguthu/2960.
Accordingly, any the resolution on safeguarding the interests of the beneficiaries to be resolved in a court of competent jurisdiction.
 - f. The Administrators to finalise the Administration of the Estate within 90 days from the date hereof. Failure to comply will result in the revocation of the grant.
 - g. Mention on 2nd July 2025 to confirm compliance
 - h. Each party will bear their own costs.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 20th DAY OF FEBRUARY, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of;

Fardosa Court Assistant

