



**In re Estate of David Mwaura Karaba (Deceased) (Succession Cause
2574 of 2015) [2025] KEHC 2148 (KLR) (Family) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2574 OF 2015
PM NYAUNDI, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF DAVID MWAURA KARABA (DECEASED)**

BETWEEN

MARY WAKARI GUTUBA APPLICANT

AND

WINGRACE WANJIKU WAMBUGU 1ST RESPONDENT

SUSAN WANJIRU KINYANJUI 2ND RESPONDENT

ESTHER WANGARI KARABA 3RD RESPONDENT

CAROLINE WANGARI MWAURA 4TH RESPONDENT

RULING

1. Before this Court for determination are two applications. The first application is a Notice of Motion dated 11th July 2024 by which Mary Wakari Gutuba (the applicant) seeks the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of this suit this Honourable court be pleased to grant an order restraining the Respondents or any of them from interfering, locking up, creating disturbance, harassing, stopping or interfering with the operations and businesses and shop of the applicant at Title Nos. Thika Municipality Block 1/1774 and 1775.



5. That pending the hearing and determination of this suit, this Honourable court be pleased to order that the status quo as to the management of the estate of the deceased as of 1st June 2024 be maintained pending the agreement of the parties as to the management of the estate and or further orders of this court.
 6. That the Officer Commanding Makongeni Police Station or Officer Commanding any other police station near where the properties of the estate are situated be compelled to ensure compliance with court orders issued herein.
 7. That this Honourable Court be pleased to grant such other order or reliefs that the court deems fit to grant.
 8. That the costs of this application be provided for.
2. The summons is premised upon Section 47,50 and 70 of the *Law of Succession Act* and Rules 63 and 73 of the *Probate & Administration Rules* Cap 160 Laws of Kenya, Article 40 and 159 of the *Constitution* and all other enabling provisions of the Law and was supported by the Affidavit of even date sworn by the Applicant.
 3. The Applicant's case is that she is the wife of the deceased. She has been operating business on Title Nos. Thika Municipality Block 1/1774 and 1775. The premises have since been locked thereby paralysing her business. She averred that there are no orders in place which ordered for her eviction from any part of the estate. She operated the business before the deceased died. She is now jobless and cannot be able to fend for her children who go to school. She argued that she filed an application for stay at the court of appeal. She urged the court to allow her application.
 4. The 2nd Application dated 27th July 2024 is similar to the 1st it also filed by the applicant, Mary Wakari Gutuba under Section 47,50 and 70 of the *Law of Succession Act* and Rules 63 and 73 of the *Probate & Administration Rules* Cap 160 Laws of Kenya, Article 40 and 159 of the *Constitution* and all other enabling provisions of the Law seeking the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That this Honourable Court be pleased to review and set aside the orders herein issued on 26th January 2024.
 5. That this Honourable Court be pleased to grant an order compelling the Respondents, their agents, servants and persons acting under their authority and directions to immediately open up the applicant's business premises conducted within Titles No. Thika Municipality Block 1/1774 and 1775 and to stop any interferences whatsoever with her business operations in the said premises.
 6. That the Officer Commanding Makongeni Police Station or Officer Commanding any other police station near where the properties of the estate are situated be compelled to ensure compliance with court orders issued herein.
 7. Spent.
 8. That this Honourable Court be pleased to grant such other order or reliefs that the court deems fit to grant.



9. That the costs of this application be provided for.
5. The application was supported by the affidavit of even date sworn by the Applicant. She averred that she operated business on Title Nos. Thika Municipality Block 1/1774 and 1775 when the deceased was alive. The Respondents have since locked the premises thereby paralysing her business. The Respondents have used goons and mungiki to prevent her from accessing the premises. Her stock is now expiring and wasting up in the premises. She argued that there is no reason to close the premises. She is now jobless and cannot be able to fend for her children who go to school. She urged the court to allow her application.
6. Wingrace Wanjiku Wambugu, the 1st Respondent opposed the applications vide a Replying Affidavit sworn on 5th November 2024. She averred that she was the first widow of the deceased and one of the administrators of the estate. She averred that this court rendered a judgment on 27th September 2021 identifying the beneficiaries of the estate, the estate properties and how the properties were to be distributed. Before that, the court had ordered that the assets of the estate be valued within 60 days.
7. The applicant intentionally frustrated the efforts to have the estate properties valued by refusing to co-operate with the other administrators to choose a valuer. Through the court's intervention, the Chief Government Valuer was appointed and the properties were valued. Valuation fees was to be paid from the estate. She sought the intervention of the court and filed an application to compel the administrators pay for the valuation fees. The court delivered a ruling on 26th January 2024 compelling the administrators to sign the necessary documents to enable the branch manager of the estate account to issue a banker's cheque to pay for the valuation fees. The ruling further vacated the consent order of 18th December 2018 which appointed Tom Mrao as the Estate manager and directed that the administrators do appoint a new agent for purposes of collecting rent and depositing it in the estate account.
8. The applicant refused to co-operate with the other administrators in the appointment of a new estate and in the signing of the necessary documents for paying the estate valuer. The three administrators appointed a new agent to manage the estate properties. The applicant has been directly collecting rent from the estate properties. That the Applicant has come to court with unclean hands and is underserving of the orders sought. She has been doing business on estate property without paying rent to the estate thereby occasioning great loss to the estate, fraudulently transferring a motor vehicle and a property in the deceased's name into her name. She accused the applicant of hiring goons to obstruct estate agents from inspecting estate property. That most of the orders of 26th January 2024 have been spent. She urged the court to dismiss the applicant's applications and is delaying tactic to deny the beneficiaries of their share while the applicant continues to intermeddle with the estate.
9. At the time of writing this ruling none of the parties had filed written submissions as directed.

Analysis and Determination.

10. In my view, the only issue for determination is whether the applications have merit. Both applications relate to estate property which is being managed by the Applicant. She argues that she carries on business on Thika Municipality Block 1/1774 and Thika Municipality Block 1/1775. These premises have been closed by the estate agents for failure to pay rent. She has come to this court seeking orders that the premises be opened and be allowed to carry on business.
11. The estate of the deceased is yet to be distributed. No party therefore can claim proprietary or any other interest to the assets of the estate. The Applicant's actions prior to distribution and transmission of



the estate amount to intermeddling with the estate of the deceased. the distribution of the estate is in its last stages. Section 45 of the law of Succession Act provides;

45.

- (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.

12. In *Gitau and 2 others v Wandai & 5 others* (1989) KLR 23, Tanui J, as he then was stated as follows: -

“According to Section 45 of The *Law of Succession Act*, Cap.160 intermeddling with the property of a deceased man consists of taking possession, disposing or otherwise intermeddling with any free property.”

13. It is not dispute that the applicant has been occupying the properties which belong to the estate. She has not been paying rent thereby denying the estate and other beneficiaries from benefiting from the proceeds if the rent was being collected by the estate agents. Furthermore, the distribution of the estate is at its last stages and the other administrators have charged the Applicant with frustrating the distribution of the estate.

14. It is not in the interest of the estate that the applications herein be allowed. The estate should be distributed. In the end, the applicant’s applications dated 11th July 2024 and 27th July 2024 are dismissed with no orders as to costs.

15. In accordance with ruling delivered on 26th January 2024, the Administrators will file summons for confirmation of grant within 21 days. The summons will be served on all beneficiaries. Any beneficiary who opposes the proposed distribution will file protest within 21 days of service.

16. The matter will be mentioned on 31st March 2025 before the Deputy Registrar Family Division to confirm compliance and take further directions.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

M NYAUNDI

HIGH COURT JUDGE

In the presence of:

..... Advocates for the Applicant

..... Advocates for the Respondent

Fardosa Court Assistant

