



**Nyakeriga & another (For the Estate of Francis Nyaruri Omambia (Deceased))
v Public Trustee; Ombongi & another (Interested Parties) (Judicial Review
Application 5 of 2019) [2025] KEHC 2546 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION 5 OF 2019
PN GICHOHI, J
FEBRUARY 24, 2025**

IN THE MATTER OF AN ORDER OF CERTIORARI, PROHIBITION AND MANDAMUS

BETWEEN

**BEATRICE MWANGO NYAKERIGA 1ST APPLICANT
LAWRENCE NYARURI 2ND APPLICANT
FOR THE ESTATE OF FRANCIS NYARURI OMAMBIA (DECEASED)**

AND

PUBLIC TRUSTEE RESPONDENT

AND

**LYDIAH KEMUNTO OMBONGI INTERESTED PARTY
NDUKU MUHIA INTERESTED PARTY**

JUDGMENT

1. The Applicants' Chamber Summons dated 11th February, 2019 seeking leave to apply for orders of Certiorari, Prohibition and Mandamus was granted on 26th February, 2019, by Prof. Joel Ngugi J (as he then was). He directed the Applicants to file the Substantive Notice of Motion within 21 days and serve both the Respondent and the Interested Parties.
2. In compliance, the Applicants filed the substantive application on 21st March, 2019 seeking the following Orders:-
 1. An order of certiorari directed at the Public Trustee and quash forthwith such Respondent's decision and failure to transmit money requested by the Applicant's use and eventual appropriation.



2. An order of prohibition against the Respondent, to prohibit and restrain it from proceeding with unreasonable decision and acts which are in breach of trust by failing to transmit money requested by the Applicants.
3. An order of mandamus, compelling the Respondent to transmit money requested and in any event within twenty-four (24) hours of this Honourable Court's Judgement.
4. Costs be in the cause.
3. The grounds are on the face of the application and emphasised in the Supporting Affidavit sworn by Beatrice Mwangi Nyakeriga (Applicant) on 11th March 2019.
4. The gist of this matter is that the Public Trustee is holding the deceased's Death Gratuity on behalf of the beneficiaries and has declined to release the same to the Applicants by expressing intention to hold the estate assets indefinitely.
5. The events leading to this application are that the deceased herein died on 29th October, 2007 and following his death, the Applicants petitioned Molo Magistrate Court vide Succession Cause No. 10 of 2014 and obtained a Grant of letters of Administration which was confirmed on 11th December, 2018.
6. Armed with the Certificate of Confirmation of Grant, Applicants and co-administrator of the Estate of Francis Nyaruri Omambia (deceased) went to the officers of the Public Trustee at Nakuru on 6th February, 2019 to claim death gratuity of the deceased herein.
7. However, the Public Trustee sent them back and directed them to supply the Public Trustee with complete bundle of Molo Succession cause No. 10 of 2014 that granted them the letter of Administration, which they did, the next day on 7th February, 2019.
8. Upon perusal of the copies availed, they were directed further to secure certified copies from the issuing court. They obtained the certified copies from Molo Court and served on the Public Trustee on 8th February, 2019. Once again, the Trustees refused to accept the documents for the purposes of processing the death gratuity on the grounds that the Interested Parties herein have been disinherited and that there was a pending case at Nakuru High Court, being Miscellaneous Succession Application Cause No. 2 of 2016 which should be determined first before the money is released to them.
9. The Applicants' position was that the Nakuru High Court Misc. Application No. 2 of 2016 filed against them by the Interested parties seeking revocation of the grant issued to them in Molo Court had been dismissed on 24th September 2018, for non-attendance and therefore, there was no case pending regarding the Grant issued to them and consequently, the Public Trustee had no basis for refusing to release the Death Gratuity of the deceased.
10. The Public Trustee opposed this application in its Replying Affidavit sworn on 7th June, 2019 by Anthony K. Sang, a Principal State Counsel in the office of the Attorney General and an Assistant Public Trustee in the Public Trustee office at Nakuru. He, however, confirmed that the Public Trustee received Kshs 1,279,726.40 from the ministry of Finance, Pension department on 22nd September, 2016, being death gratuity due to the Estate of Francis Nyaruri Omambia.
11. He depones that on 21st November, 2016, the Estate of the deceased was referred to the Public Trustees for administration by the 1st Interested Party who produced documents in support of the Application to include; list of heirs dated 24th November, 2016 from the District Commissioner Masaba South indicating that the deceased left behind three wives and children and the Applicant was indicated as the second wife. She filled a report of death form (PT 1).



12. Since the death gratuity received went beyond the jurisdiction of the Respondent, whose limit was Kshs 500,000 as at 2016, the Interested Party was advised to petition the Court for issuance of Letters of Administration and which she stated is ongoing with the aid of T.T Nganga & Company Advocates.
13. It is the Respondent's position that no communication was exchanged between the parties until 6th February, 2019, when the Applicants herein served the Respondent with copies of Grant of Letters of Administration and Certificate of Confirmation of Grant.
14. He states that considering that the Interested Parties had intimated to the Respondent that they are the ones pursuing the Grant of Letters of Administration, the Respondent called the Interested Parties on the 18th February, 2019 and informed them of the Grant of Letters of Administration served on his office.
15. With the help of Mr. Nyamwange Advocates of Wamaasa, Masese, Nyamwange & Company Advocates, the Interested Parties protested the release of the money on the grounds that they had been disinherited when they are beneficiaries of the Estate of the deceased and further, there was another cause pending vide Kisii Public Trustee No. 245 of 2010, Gazette No. 9072 Vol. CXII-73 dated 30th July, 2010.
16. Consequently, he notified the Applicants about the objection raised by the Interested Parties and advised that the money will not be released until the issues raised by the Interested Parties are addressed and settled.
17. He denied refusing to release the said money saying that he is only awaiting determination of the objection proceedings filed by the Interested Parties so as to comply. He however contended the practicability of an order for release of the money within 24 hours as payed since the processing of the money held by the Respondent takes at least 30 days.
18. The Respondent maintains that none of the Orders sought should issue as the Applicants have failed to justify that the Public Trustee has refused to release the money.
19. Further, he maintains that the Certificate of Confirmation of Grant issued to the Applicants shows that it was obtained by fraud and concealment of material facts as they left out some of the beneficiaries indicated by the list of heirs drawn by the District Commissioner, Masaba South and the letter from pensions and therefore, that the Applicant have come to Court with unclean hands.
20. It is the Respondent's position that allowing the prayers sought by the Applicants would cause administrative chaos and public inconvenience to members of the Public and further, the right of third parties such as the Interested Parties would be negatively affected and also that such an Order will occasion miscarriage of justice. Lastly, he prayed for dismissal of the application with costs.
21. The Interested Parties also opposed the application herein vide their Replying Affidavit sworn on 4th July, 2019 by the 1st Interested Party (Lydia Kemunto Ombongi), the alleged 1st widow of the deceased. She terms the application as misconceived, one that raises unsubstantiated issues and uncorroborated facts thus a fabrication meant to attract leniency and discretion of this Court.
22. She states that she filed the list of heirs of the Estate of the deceased who had three wives including the Applicant herein and the children of each household and that she was advised to obtain letter of administration from the Court since the money released to the Public trustee was higher than its pecuniary jurisdiction.
23. It is her position that before filing for the said Letters of Administration as advised, she was informed by the Respondent that the Applicants herein had furnished it with Letter of Administration demanding



released of the said money and it is at that point that Interested Parties noted that the Applicants were on the verge of disinheriting them.

24. As a consequence, they lodged objection proceeding against release of the said money until the issue of proper list of beneficiaries of the Estate of the deceased is settled.
25. In rejoinder, the Applicants filed their Further Affidavit sworn by Beatrice Mwangi Nyakeriga on 16th September, 2019 and stated that contrary to the allegations in the Replying Affidavit by the Respondent and the Interested Parties, she wrote the letter dated 10th November, 2016 addressed to Administrator General-Public Trustee Nakuru requesting the release of the Death Gratuity of the deceased.
26. She denied allegations by the Interested Parties that the Applicants are in the process of applying for Letters of Administration for the Estate of the deceased. She maintained that the Interested Parties are strangers to the Estate of the Deceased and trying to stop release of the Death Gratuity amounts to intermeddling with the Estate.
27. Though directions were taken that the application herein be canvassed by written submissions, only the Applicants and the Respondent filed theirs. In other words, the Interested Parties did not file any.

Applicants' Submissions

28. The Applicants submitted that the issues raised in Nakuru Misc. Application No. 2 of 2016 are the same issues which the Interested Parties are raising yet High Court dismissed the former application pursuant to Order 12 Rule 3 and therefore, no subsequent suits can be filed.
29. Terming the issues as res judicata, the Applicants relied on the case of Thomas K Sambu Vs Paul K Chepkwony alias Paul Chepkwony alias Paul Chepkwony Koskei [2015] KLR where Munyao Sila J held:-

“It will be seen that Order 12 Rule 6(2) is clear and unambiguous, that where a suit has been dismissed under Rule 3, (meaning under Order 12 Rule 3), no fresh suit may be brought in respect of the same cause of action.”

30. They submitted that they are the duly appointed legal representatives of the Estate of the deceased under Section 82 of the Laws of Succession Act, hence they are entitled to receive the death gratuity of the deceased in the process of collecting and preserving the Estate for proper distribution and close of the Estate accounts.
31. In support of that argument, they relied on the case of Alexander Mutunga Wathome Vs Peter Lavu Tumbo & Another [2015] eKLR (Machakos Succession Cause No. 80 of 2011) where the court held that:-

“In law one can only represent the estate of a deceased person when a grant of representation has been made in respect of the estate of such deceased person under the Law of Succession Act. In addition, section 82 of the Law of Succession Act provides that it is the personal representative who has the powers) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased. A personal representative is defined under section 3 of the Act as the executor or administrator, as the case may be, of a deceased person.”



32. It is the Applicants' submissions that the decision to hold the death gratuity indefinitely is unlawful in light of the fact that the objection raised by the Interested parties in Miscellaneous Application No. 2 of 2016 was dismissed, therefore, no pending issue remaining for adjudication between the parties.
33. Consequently, the Applicants submitted that the Interested Parties are intermeddling with the estate of the deceased in the way they are engaged in his Estate, contrary to Section 45 of the Laws of Succession Act. They cited the case of *In the Estate of M'Ngarithi alias Paul M'Ngarithi M' Miriti (Deceased)* Meru HC SUCC. 108 of 2014 [2017]eKLR, where the Court held that:-
- “Before I delve into the distribution of the estate, I should first settle the issue of intermeddling. Courts have said time and again that any person who without the authority of the *Law of Succession Act* or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or administrator of the extent of the assets he has intermeddled with.”
34. On locus standi of the interested parties to participate in these proceedings, the Applicants argued that, the Interested Parties have not demonstrated sufficient connection to either the Estate of the deceased or the proceedings at hand, thus, their interest remain unknown, hence their case should be dismissed with costs. In support this, they cited the case of *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] eKLR, where the Court of Appeal stated this regarding locus standi in succession matters:-
- “...the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.”
35. In the circumstances, they submitted that since the Interested Parties are not administrators of the Estate of the deceased, neither have they proved any interest in the estate of the deceased, their objection should be dismissed.
36. The Applicants therefore maintained that since the deceased's employer (Department of Defence) had made a determination as per their records on who the deceased's legitimate heirs were, the issue was not open for any inquiry.
37. They submitted that with the Interested Parties' Nakuru Misc. Application No. 2 of 2016 having been dismissed, there was no basis for refusing to release the money to them and therefore, Respondent should thus be compelled to release the money to them for proper distribution.

Respondent's Submissions

38. He submitted that under Section 6 of the Public Trustees Act as read with section 46 of the *Law of Succession Act*, the Respondent is mandated to take action and make further inquiries where a report of death of a deceased estate is made. It provides as follows:-
- “(1) Where a report of action taken under section 46 of the *Law of Succession Act* has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the



Public Trustee shall cause further inquiries to be made as to the estate of the deceased.”

39. It was his submissions that it is pursuant to the above provision that when an objection was raised, the Respondent wrote the letter dated 23rd November, 2016 addressed to Deputy County Commissioner, Masaba South, inquiring on the list of beneficiaries to the Estate of the deceased. That the response was received vide the letter of 24th November, 2016 listing the Applicants and the Interested Parties together with their children as the legitimate heirs.
40. The Respondent therefore submitted that the Applicants have come to this Court with unclean hands and in support of that argument, reliance was placed on the case of Re-Estate of Julius Ndubi Javan (Deceased) [2018] eKLR where F. Gikinyo J held that:-

“Applying the test of law in section 76 of the *Law of Succession Act*, the fact that there was an agreement between the deceased and the Applicant for sale of the suit land is important to these proceedings. It seems also that consideration may have passed between the two parties. I am aware that this court does not have jurisdiction to determine the validity or enforceability of the said agreement. Environment and Land Court does; it is the court which is constitutionally mandated to determine such matters. But of relevance in these proceedings is that such material facts were never disclosed to this court during confirmation of the grant so as to enable the court make an informed decision on distribution of the estate. Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”

41. In the circumstances, the Respondent submitted that its move to hold the money until the objection is resolved was done in good faith and in the interest of justice.
42. On locus standi of the Interested Parties, it was submitted that the Interested Parties objected to the release of the Death gratuity held by the Public Trustee as wives of the deceased and in line with Section 29 (a) and 3(5) of the *Law of Succession Act*. The Respondent therefore relied on the case of Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKLR, where R. Nyakundi, J held:-

“The evidence on record suggest that the Applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan (deceased) who was the beneficiary to his father’s estate. The Applicant’s interest emanates from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim’s estate within the provisions of section 29 of the *Law of succession Act*, he acquires an interest in his grandfather’s estate; the suit property by virtue of his father’s share. Therefore, in the court’s view, the instant Application is properly before this court.”

43. It is on the strength of the above decision that the Respondent submitted that equally, being the wives of the deceased, the Interested Parties have locus standi.
44. On prayers sought, it was submitted that the Respondent’s actions were lawful and reasonable in the circumstances as the Gratuity funds forwarded to the Respondent is held in trust for eventual transmission and appropriation to all the legitimate heirs of the deceased listed in the Application to



Pension Department and Deputy County Commissioner Masaba South, in accordance with section 40 of the *Law of Succession Act*.

45. In addition, it was submitted that there being pending issues in various court between the Interested Parties and the Applicants touching on the Estate of the deceased, releasing the money to the Applicant will cause miscarriage of justice and disinherit the Interested Parties and their children.

Determination

46. Having heard the parties herein through the material placed before this Court as analysed above, the issues that arise for determination are:-

1. Whether the issues raised by interested parties herein are res judicata.
2. Whether interested parties have locus standi to object to these proceedings.
3. Whether the Public Trustee is vested with powers to carry out inquiries into the Estate of the Deceased before releasing the money in its custody.
4. Whether the Judicial Review Application is merited.
5. Who should bear costs of this Application.

47. On the first issue, Section 7 of the *Civil Procedure Act* provides that :-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.” [Emphasis added].

48. It is noted that seeking revocation/ annulment of the Grant of the letter of Administration Intestate issued to the Applicants in Molo Succession Cause No. 10 of 2014. On 24th September, 2018, this Court (A.K Ndungu, J) dismissed that application for non-attendance. It is therefore clear that the said application was not heard and finally determined and therefore, the issues raised therein cannot be res judicata.

49. On locus standi, the Applicants argued that the Interested Parties have not established any interest in these Proceedings and in the Estate of the deceased to be given audience by this Court.

50. On the other hand, the Interested Parties maintained that they have locus standi to be included in this case by virtue of being the wives of the deceased. In support of that, Lydia Kemunto Ombongi, the 1st Interested Party exhibited a copy of marriage certificate No. 056943 showing that she got married to the deceased on 30th April, 1983.

51. The 2nd Interested Party did not produce any marriage certificate but availed a birth certificate No. 644474 of her son Erick Keronga, showing her as the mother and the deceased as the father.

52. The Chief of Nyaribari Ikorongo Location wrote a letter dated 14th July, 2015 to the Deputy Registrar High Court, informing the Court that the Interested Parties and the 1st Applicant (Beatrice Mwangi) are the wives of the deceased.

53. That letter indicated the 1st Interested Party as the first wife, the 1st Applicant as the second wife and the 2nd Interested party as the third wife. The letter also indicated that both the 1st and 2nd wives were blessed with three children each while 3rd wife was blessed with one child.



54. That material was in support of the Interested Parties' Miscellaneous Succession Application No. 2 of 2016 . Upon dismissal of the said application on 24th September 2018, the Court directed that Summons for Confirmation of Grant be taken out within the next 45 days.
55. The Interested Parties did not seek to have said orders set aside and therefore, their Misc. Succession Application No. 2 of 2016 stands dismissed and there is no evidence that the Grant of Letters of Administration Intestate issued on 28th November 2014 and confirmed on 11th December 2018 has been revoked by any Court. Going by Rajesh Pranjivan Chudasama(supra), the material before this Court does not sufficiently show the interests of the Interested Parties in regard to the application at hand.
56. On the third issue, the Respondent confirmed having received an application for the release of the Death Gratuity of the deceased herein amounting of Kshs. 1,279,726.40 but since their jurisdiction is capped at Kshs. 500,000, he directed the Applicants to obtain Grant of Letters of Administration from the Court, which they did and a Certificate for Confirmation of Grant issued on 11th December 2018 supplied.
57. The Respondent argued that he refused to release the money to the Applicants for reasons that the Interested parties raised an Objection with it and also that there were several pending cases between the parties. That he retained the money to shield itself from litigation, protect the interested of alleged wives of the deceased and did all these in the interest of justice.
58. Section 6 of the Public Trustees Act relied on by the Respondent to support his actions in this matter provides that:-

“6.

- (1) Where a report of action taken under section 46 of the *Law of Succession Act* has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the Public Trustee shall cause further inquiries to be made as to the estate of the deceased.
- (2) If it appears to the Public Trustee as a result of inquiries made under subsection (1) as to the estate of a deceased person that—
 - (a) the person died intestate;
 - (b) the deceased, having made a will devising or bequeathing his estate or any part thereof, has omitted to appoint an executor;
 - (c) the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate thereof or otherwise are unable or unwilling to act;
 - (d) probate of the will of the deceased or letters of administration with the will annexed to the



deceased's estate has or have not been obtained within six months from the date of the death of the deceased;

- (e) the deceased has appointed the Public Trustee as an executor of his will; or
- (f) the whole or any part of the estate of the deceased has been left unadministered and the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been made, are dead or otherwise are unable or unwilling to complete the administration of the estate, he may apply under the *Law of Succession Act* to the court for a grant of representation and the court shall, except for good cause shown, make a grant of representation to the Public Trustee.

59. Further, Rule 24 of the Public Trustee Rules provides that-

“The Public Trustee may at any time require such evidence as he may think sufficient that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until the evidence is produced.”

60. In this case, a perusal of the record indicates that save for the Order issue in Nakuru Misc. Succession Application No. 2 of 2016, which showed that the Application was dismissed, the Respondent did not furnish the Court with any other copies of purported cases pending in various court, including the alleged objection at Kisii Public Trustee No. 245 of 2010. No objection proceedings were exhibited either.

61. Flowing from the above is the fourth issue, that is whether the application for Judicial Review is merited. Regarding the scope of Judicial Review, the Court of Appeal in the case of *Municipal Council of Mombasa v Republic & another* [2002] eKLR stated as follows:-

“Judicial review is concerned with the decision -making process, not with the merits of the decision itself. Mr. Justice Waki clearly recognized this and stated so; so that in this matter, for example, the court would not be concerned with the issue of whether the increases in the fees and charges were or were not justified. The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision-maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.”

62. In this case, the main prayer sought by the Applicants herein is an Order of Mandamus to compel the Respondent to release the money held by the Public Trustee in Nakuru. In regard to such remedy,



the Court of Appeal in *Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996* (CAK) [1997] eKLR, held:-

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

63. As the custodian of the Death Gratuity benefits of the deceased herein forwarded to it by the Pension department through the letter dated 22nd November, 2016, the Respondent was required to satisfy itself that the Certificate of Confirmation of Grant served on it was legitimate and that the persons listed therein as beneficiaries are the same ones seeking release of the death gratuity.
64. As admitted through the Replying Affidavit sworn by Anthony Sang (Assistant Public Trustee) on 7th June, 2019, the Respondent received certified copies of the complete petition in Succession 10 of 2014 filed at Molo Court. Having been furnished with all the certified copies and the originals of the same for verification, the Respondent was required to release the money to the Applicants.
65. Indeed, and as earlier stated herein and in the circumstances of this matter, the Applicants are Administrators of the Estate of the deceased and their duties in that capacity are well spelt. The Respondent has however not released the said money to date.
66. Having received the documents from the Applicants as required, the Respondent did not have any powers to investigate the issues raised by the Interested Parties in that regard so as to determine the legitimate heirs of the deceased or to make any determination as to whether the Interested Parties had been disinherited or not. That is the mandate of the Court in a succession cause.
67. The Respondent’s failure to release the money to the Applicants on the grounds that it is carrying out the investigations as highlighted herein are unjustified. That decision clearly went beyond its mandate under the *Public Trustee Act* and Rules and therefore, the application herein is merited.



68. In conclusion, this Court makes the following orders:-

1. An order of Mandamus be and is hereby issued compelling the Respondent herein (Public Trustee) to release to the Applicants Kshs. 1,279,726.40 within 30 days.
2. Due to the nature of this matter, each party is directed to bear its own costs of these proceedings.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF FEBRUARY, 2025.

PATRICIA GICHOCHI

JUDGE

In the presence of:

Mr. Nyakeriga for Applicants

N/A for the Respondents

N/A for Interested Parties

Ruto Court- Assistant

