



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Kamanu (Succession Cause 521 of 2007)
[2025] KEHC 3325 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 521 OF 2007**

**M MUYA, J
MARCH 20, 2025**

BETWEEN

JOACHIM KARIUKI MWANGI PETITIONER

AND

JEDDIDAH WANJIKU KAMANU PETITIONER

RULING

1. The application dated 2nd December, 2021 seeks the following orders:-
 1. Spent
 2. That the proceeds from the National Land commission for the acquisition of 0.2066 hectares out of LR. No. Kirimukuyu/Mutathiini/347 be paid to a joint Administrators Bank Account to be jointly operated by the administrators.
 3. That an order do issue restricting any further dealings/sale transfer/lease of:-
 - a. LR. NO. Laikipia/Marmanet/2989
 - b. LR. NO. Laikipia/Marmanet/2990
 - c. LR. NO. Laikipia/Marmanet/2991
 - d. LR. NO. Laikipia/Marmanet/2992All being sub-divisions from Laikipia Marmanet/240.
 4. That an Estate account be opened within 30 days in the join names of the Administrators to which all the proceeds from the bank accounts held by the Deceased, proceeds of sale of shares, dividends and all other incomes shall be deposited and operated jointly.



5. That the honourable court do issue an order compelling the 1st Administrator Joachim Kariuki Mwangi to render a full and accurate account of all dealings therewith up to the date of the account within 30 days and bank balances held by the Deceased at Kenya Commercial Bank, National Bank of Kenya and shares held by the Deceased namely:-
 - a. KFA Shares
 - b. KCB Shares
 - c. East African Breweries Ltd
 - d. Proceedings from sale of livestock on Laikipia/Marmanet/240
 6. That an order do issue directing the joint administrators to henceforth administer the Estate as one corporate body and none should administer any assets with exclusion of any other administrator.
2. The grounds are as follows:-
1. That the Respondent has become hostile and uncooperative when the applicant sought to acquaint herself with the status of the Administration after the court revoked the earlier grant issued to Joachim Kariuki Mwangi on the 9th day of May, 2019, to the extent of threatening, abusing, disparaging and defaming the applicant and other beneficiaries in the social media.
 2. That the Respondent has continued to misuse the grant that was not returned to court to sub-divide and transfer the property of the Estate i.e. Laikipia/Marmanet/240 into LR Nos. Laikipia/Marmanet/2989, 2990, 2991, 2992 respectively and therefore intermeddling with the Estate.
 3. That the Respondent has sold all the livestock of the Estate that was in LR Laikipia/Marmanet/240 and has failed to account for it.
 4. That the Respondent is in the verge of receiving proceeds of acquisition of a portion of the property of the Estate namely LR. NO. Kirmukuyu/Mutathiini/347 by the National Land Commission.
 5. That the Respondent has contracted with a road construction company namely China Wuyi Company Limited to deposit soil and other debris on LR. NO. Kirmukuyu/Mutathiini/347 thereby devaluing the property to the detriment of the Estate.
 6. That the Respondent has withdrawn money from the Estate accounts, received dividends and sold the Estate shares which he has not accounted for.
 7. That it is extremely important that the property of the Estate is duly administered and properly identified before the process of identifying the beneficiaries and sub-division is commenced.
3. This application is opposed.
1. In his replying affidavit the Respondent deposes that he was appointed as an administrator of the Estate on 15th December, 2005.
 2. That the confirmation of the grant was issued on 18th May, 2007. The applicant did sign a consent in distribution of assets.
 3. Thereafter the transmission papers were prepared. LR Kirmukuyu/Mutathiini/347 had been issued to him as per the confirmed grant.



4. LR Laikipia/Marmanet/240 was sub-divided into four portions amongst his 4 brothers. His deceased mother was given life interest of the above stated land and Barclays and KCB Bank Accounts.
5. That on the 4th day of November, 2007 the applicant filed an application for revocation of the confirmed grant. On 9/5/2019, the court added the applicant as one of the administrators alongside the Respondent.
6. That on 12th February, 2019, his niece Anne Watetu swore an affidavit renouncing her bequeath from the Estate as her mother had done so.
7. That LR. Kirimukuyu/Mutthiini/347 had been designated as his wholly.
8. That they live on the parcels of land above mentioned and therefore any orders of restriction would adversely affect them.
9. That he has given a full account of the assets, shares, regarding the Estate and the beneficiaries are aware of this fact.
10. That some bank accounts are in the name of his late mother and the funds therein are still intact to day.
11. That there were no proceeds from the livestock sold as the Deceased did not have any in the farm at the time of his demise.
12. That he is not conversant with issues of social media.
13. That he did not in any way devalue the land as alleged as the debris on the land consists of construction materials in the form of hardcore and construction stones.
14. That LR. Laikipia/Marmanet/240 was acquired through Settlement Trustee Fund which had not been paid for a period of twenty four years and hence had accumulated to a sum of kshs.140,000/- which balance was settled by the Deceased sons and Rose Jacinta Wangui also deceased.
15. That his uncle approached him in the year 1988 and requested that he sell to him his portion as he owned the land jointly with the Deceased and he agreed and refunded him Kshs.42,000/-
16. Subsequently, he borrowed sums of money Kshs.20,000/- from Barclays Bank in 1985, Kshs.21,000/- from the same bank in 1988 by using title documents for the said land.
17. On 2nd January, 1988, the Deceased wrote a letter authorizing him to use the land in question as his.
18. That he has been receiving owner occupier allowance through LR. Kirimukuyu/Mutathiini/347 since 1988.
19. That he has developed the land by constructing a semi-permanent house, a permanent one, planted coffee, done electrification, bio-gas, keeps cattle therein.
20. That his father bought two parcels of land which were registered in the names of Esther Waithegeni Kiama And Muthoni Gichohi which he bequeathed to two of his daughters.



Analysis and Determination Issues:

Whether the applicant has attained the required standards for the grant of the orders sought?

4. This application largely falls on the duties of administrators. The applicant seeks various orders relating to and touching on immovables belonging to the Deceased Estate in particular LR. NO. Kirimukuyu/Mutathiini/347 and LR. NO. Laikipia/Marmanet/240, movables in the form of Bank accounts and shares.
5. Both the Applicant and the Respondent were appointed by the court as administrators of the Estate.
6. Section 47 of the *Law of Succession Act* clothes the High Court with jurisdiction thus:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decree and make such orders therein as may be expedient”

Rule 73 of the Probate and Administration rules provides:- “Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”

7. Section 83 of the Law of Succession provides for the roles and duties of administrators as follows:-
 - a. “To provide and pay out of 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 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 the 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 the 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 upto 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”

8. The Applicant who is a joint administrator with the Respondent alleges in his application that the Respondent has intermeddled with the Estate of the Deceased.
9. Section 45 of the Law of Succession provides:- “(i) 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 the Deceased Person”
10. The matter of intermeddling with an Estate presented itself before the court in the case of In Re Estate of Julius Mimano Deceased (2019) eKLR where it was observed:- “According to Section 79 of the Law of Succession Act. The Estate of a Deceased Person vests in the personal Representatives. In this case, the deceased died testate.

He named executors in his will who have obtained probate to the will. It is the said Executors in whom the assets of the Estate are vested by virtue of Section 79 of the Act. By virtue of the vesting the said Executors (Personal Representatives) became entitled to exercise the powers that are set out in Section 82 of the Law of Succession Act, which are akin to those of an owner of the property. They can sue or be sued over the property. They can sell or enter into contracts in respect to it, among others. The personal representatives have authority from the grant of representation they hold, whether it is one of probate or of letters of representation, to handle the Estate property. In so handling it, in view of Section 79 of the Act, it cannot be said that they intermeddled with such property. In the present cause, the executrix holds a grant of probate, the assets vest in her by virtue of Section 79 of the Act. I note that her grant has been confirmed. She is entitled in law to handle the assets and therefore the issue of her intermeddling with the Estate does not arise”

11. In the present case the Respondent and the Applicant are both legal representatives of the Estate. They are duty bound to administer the Estate jointly.
12. This application has succeeded partially and in particular, as regards prayers for the opening of joint accounts which prayers are in sync with the stipulated duties of administrators. To that extent I grant prayer 4, 5 and 6 of the application.
13. The court is not satisfied that the allegations of intermeddling of the Estate have been proved. The applicant has not demonstrated before the court how the Respondent has acted contrary to the provisions of Section 83 of the Law of Succession Act which provides for the duties of administrators.
14. The applicant did in his application allege that the Respondent has been threatening, abusing, disparaging and defaming the applicant. Apart from making the said allegations, the applicant has not in any way endeavored to make an attempt of placing evidence before the court to that effect, and therefore they remain unsubstantiated and unproven.
15. Prayers no. 2 and 3 of the application are found to be without merit and are dismissed.

Each party to bear its costs.

RULING READ AND DELIVERED IN OPEN COURT THIS 20TH DAY OF MARCH, 2025.

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M. MUYA
JUDGE



In the presence of:-

Ouma for the Petitioner

Kabathi for the Respondent absent

