



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Samuel Nganga alias Samuel Kimani Nganga (Deceased) (Succession Cause E1331 of 2021) [2025] KEHC 4403 (KLR) (Family) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4403 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE E1331 OF 2021**

**H NAMISI, J**

**APRIL 8, 2025**

**IN THE MATTER OF THE ESTATE OF SAMUEL NGANGA  
ALIAS SAMUEL KIMANI NGANGA (DECEASED)**

**BETWEEN**

**THOMAS KAMAU KIMANI ..... 1<sup>ST</sup> APPLICANT**

**NICHOLAS ARTHUR KINUTHIA KIMANI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DAVID NGANGA KIMANI ..... RESPONDENT**

**RULING**

1. Before the Court is Summons dated 11 December 2024 seeking the following orders:
  - i. Spent
  - ii. That this Honourable Court be pleased to orders that the Thomas Kamau Kimani And Nicholas Arthur Kinuthia Nganga be appointed as co administrators of the estate and a grant of Letters of Administration intestate amended accordingly;
  - iii. That this Honourable Court be pleased to issue preservative orders restraining the Respondent, his agents, servants, employees or other assigns or representatives from collecting rent, managing, selling, disposal of, sub-dividing, alienating, wasting, leasing and otherwise intermeddling in any way with the property of the deceased known as L.R. Ngong/Ngong/XXXXX pending hearing and determination of this application and issuance of certificate of confirmation of the Grant of the estate of the Deceased;



- iv. That this Honourable Court be pleased to issue an order directing the Respondent to render true and just accounts of all rental income and proceeds so far received by the Respondent in respect of property known as L.R. Ngong/Ngong/XXXXXX from the date of death of the previous Administrator, Yuster Nyamwitha Kimani, to date in full account;
  - v. That this Honourable court be pleased to order that all the estate income and rent from L.R. Ngong/Ngong/XXXXXX be deposited by the tenants directly into the deceased's Standard Chartered Bank account number 01501057XXXXXX pending hearing and determination of the application;
  - vi. That L.R. Ngong/Ngong/XXXXXX be included as an asset of the Estate and be distributed accordingly;
  - vii. Any other orders that are deemed just and expedient that will meet the end of justice.
2. The Application is supported by the Affidavit sworn by the 1<sup>st</sup> Applicant and premised on the following grounds:
- a. The Respondent, the eldest brother, was issued with Grant of Letters of Administration of the estate of the Deceased on 25 October, 2021 and rectified on 26 June, 2024;
  - b. Being the sole Administrator, the Respondent has been collecting rent due to the Estate from parcel of land L.R. Ngong/Ngong/XXXXXX since April 2023 and disposing it of to the detriment of the estate and will continue to do so unless restrained by the Court;
  - c. Misappropriation of funds collected by the Respondent from the estate of the Deceased parcel of land L.R. Ngong/Ngong/XXXXXX will continue and there will be enhanced accountability by adding the 1<sup>st</sup> and 2<sup>nd</sup> Applicants as co-administrators;
  - d. The property known as L.R. Ngong/Ngong/XXXXXX was not listed as one of the assets of the Deceased as there was an ongoing matter Kajiado ELCA E006 of 2023 at the time of filing the succession cause which has since been determined in favour of the Estate. It is imperative to include and distribute it
  - e. For proper and efficient management of the estate, the Applicants wish to be included as co administrators of their father's estate;
  - f. The Respondent has not been accountable on the usage of the funds collected from the estate of the Deceased and any attempts by the Applicants together with the Advocate for the Estate to settle the matter amicably have been futile;
  - g. The Respondent has also expressed his intention to dispose off L.R. Ngong/Ngong/XXXXXX and disinherit us;
  - h. The interests of justice dictate that the orders sought be granted as no prejudice will be occasioned to the estate and/or the beneficiaries.
3. The Affidavit sworn in support of the Application reiterates the grounds of the Application. The 1<sup>st</sup> Applicant averred that since the death of their mother in April 2023, the Respondent has been collecting rent from the property known as L.R. Ngong/Ngong/XXXXXX as an Administrator but there is no proof of accountability on how he spends the money. Further, during his last visit to Kenya, the Respondent expressed to Wilson Karanja the tenant at L.R. Ngong/Ngong/XXXXXX his intention to illegally dispose of the property of the deceased without the knowledge of the Applicant. When



the 1<sup>st</sup> Applicant learnt of this, he notified my brothers via email which the Respondent did not deny. Attached to the Affidavit are copies of the email correspondence.

4. The 1<sup>st</sup> Applicant pleaded that despite the efforts by the counsel for the estate of the Deceased to settle the matter amicably, the Respondent has been adamant on his intention to dispose the property known as L.R. Ngong/Ngong/XXXXXX.
5. The 1<sup>st</sup> Applicant contended that it is in the best interest of the Deceased's estate that the Court allows the Applicants to be included as co-administrators to prevent any further wastage of funds collected from the estate by the Respondent. The Applicants urged the Court to restrain the Respondent, his servants, agents and/or any other person under his authority from selling, advertising, disposing off, transferring the property known as L.R. Ngong/Ngong/XXXXXX belonging to the Deceased. Further, in order to guarantee accurate account of the funds collected from the estate of the deceased, the Applicants urged the Court to issue orders for the tenant of parcel of land L.R. Ngong/Ngong/XXXXXX to deposit the rent each month into the Deceased's Standard Chartered Bank account number 015XXXXXXXXXXXX00 until this matter is determined.
6. The Respondent did not file any response. I have carefully examined the Affidavits of Service filed herein and confirmed that the email addresses of the Respondent and Counsel for the estate are correct. I am, therefore, satisfied that the Respondent was properly served.

### **Analysis and Determination**

7. The Application is brought under section 45, 74 and 95 of the [Law of Succession Act](#) and Rules 43, 49, 69 and 73 of the Probate and Administration Rules.
8. Section 45 of the Act relates to intermeddling and provides as follows:
  - (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.
  - (2) Any person who contravenes the provisions of this section shall-
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
9. Section 95 relates to offences by personal representatives and provides as follows:

Any personal representative who, as regards the estate in respect of which representation has been granted to him—

  - (a) wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
  - (b) wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
  - (c) wilfully or recklessly produces any such inventory or account which is false in any material particular; or



- (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy, shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
- (2) Any personal representative who, as regards the estate in respect of which representation has been granted to him if at any time there is a continuing trust and he is the sole surviving administrator, wilfully fails to apply to the court within three months in accordance with section 75A for the appointment of further administrators shall be guilty of an offence and shall be liable to a fine not exceeding five thousand shillings.
10. Section 74 is not relevant to the current application.
11. Before delving into the merits of the Application herein, a look at the history of the matter is important in order to shed some light on the matter.
12. The Grant of Letters of Administration Intestate was made on 25 October 2021 to Yuster Nyamwitha Kimani. The Grant was subsequently confirmed on 28 September 2022. There was only one named asset: Cash in Standard Chartered Bank A/c No. 012XXXXXX5000, which was distributed to the Administrator, Yuster Nyamwitha Kimani, absolutely.
13. An application was filed dated 8 June 2023 seeking to substitute the Administrator with David Kimani Nganga, the Respondent herein, since the Administrator had passed on. The Application also sought rectification of the bank account number and amendment of the Certificate of Confirmation of Grant. The Applicants herein consented to the said Application and the Grant was rectified on 27 June 2023.
14. On 4 November 2023, the Respondent herein filed another application seeking to amend his names as they appeared on the Grant. Once again, the Applicants consented to the application. The Grant was further rectified on 26 June 2024.
15. From the foregoing, it is clear that the Applicants and Respondent agreed to distribute the only known asset at the time, the bank account held at Standard Chartered Bank, to the Respondent.
16. From the evidence adduced, pursuant to judgement rendered on 9 October 2024, in Kajiado ELC Appeal No. E006 of 2023 – David Nganga Kimani (suing as personal representative of Samuel Kimani Nganga) -vs- John Kitembei Ndichu – the Court held that the Appellant is the lawful owner of property known as LR Ngong/Ngong/XXXXXX. It is this property that the Applicants seek to have included as part of the estate of the Deceased and in respect of which they seek injunctive orders. Regarding the inclusion of the property as part of the estate, barring any evidence to the contrary, the property rightfully belongs to the estate of the Deceased herein. The Administrator/Respondent ought to have moved the Court quickly to have this property included and presented proposed a mode of distribution. I note that the Applicants, in their Affidavit, have proposed a revised mode of distribution.
17. At this juncture, it is crucial to remind the Administrator of his duties as stipulated at section 83 of the Act, which include the following:
- (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) .....
  - (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.
18. From the evidence provided, there is no indication that the Respondent has abdicated his responsibility or failed to carry out his duties as Administrator, save that the Applicants were quick to file the present application barely 2 months after the Environment and Land Court had rendered its decision.
19. Regarding the prayer for accounts to be rendered by the Respondent, I remind the parties that the asset (bank account held at Standard Chartered) is vested in the Respondent absolutely. Unless and until the Grant is amended to reflect otherwise, this Court cannot grant such orders.
20. It is not lost on this Court that there is an asset that is yet to be distributed. It is important that the same be preserved, pending distribution. For that reason, I make the following orders:
- i. The property known as L.R. Ngong/Ngong/XXXXXX be and is hereby included as an asset of the Estate;
  - ii. Pending distribution of the unadministered property of the estate, the rental income collected from the property known as LR Ngong/Ngong/XXXXXX be deposited in account opened in the name of the Estate and the Administrator/Respondent do render a full and accurate account of all rental income and proceeds collected in respect of the said property from October 2024 to date;
  - iii. This being a family dispute, I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 8 DAY OF APRIL 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

MS. Mwangi .....for the Applicants

N/A.....for the Respondent

Libertine Achieng .....Court Assistant

