



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Fatuma Mwinyi Akida (Deceased) (Succession Cause  
239 of 2011) [2025] KEHC 5221 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5221 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 239 OF 2011**

**G MUTAI, J**

**APRIL 7, 2025**

**IN THE MATTER OF THE ESTATE OF THE FATUMA MWINYI AKIDA (DECEASED)**

**RULING**

1. Vide an application dated 10<sup>th</sup> July 2024, the petitioners seek the following orders: -
  - a. That this honourable court be pleased to issue an order of temporary injunction restraining the respondents from disposing and or having any dealing with a house situated at Magongo Bokole area and a house situated at Magongo Bomu area pending hearing interparty of this application
  - b. That this honourable court be pleased to issue an order compelling the respondent to deposit the sum of Kes. 1,800,000/- in court within 7 days;
  - c. That the court to distribute equally the sum of Kes. 1,800,000/- to the members of the estate of Fatuma Mwinyi (deceased); and
  - d. That costs of the application be provided for.
2. In the grounds and also in the annexed affidavit of the applicant, Latifa Mohamed, it was stated that the respondent received the sum of Kes. 1,800,000/- from the firm of Kasamani & Co. Advocates, which was due to the estate of the deceased herein, and that she had refused to release the same to the estate. It was urged that, given her conduct, the respondent ought to be removed as an administrator of the estate.
3. In her affidavit, Ms Latifa Mohamed deposed that Kes. 2,300,000/- was obtained by the firm of Kasamani & Co. Advocates from the buyer of the estate property, which amount was never remitted. Upon recovery action being undertaken the said firm paid Kes. 1,800,000/- to the respondent, which she has never accounted for.
4. The respondent, in her replying affidavit, admitted receiving Kes. 1,700,000/- from the firm of Kasamani & Co Advocates in instalments through bank transfers and Mpesa. She stated that she transferred Kes. 700,000/- to the firm of JK Mwarandu & Co Advocates, and the rest was used to



- renovate the house at Magongo, which forms part of the estate. She deposed that this was done with the consent of the beneficiaries, and all of them, including the applicant were aware of her activities.
5. The respondent accused the applicant of making unilateral decisions regarding the estate, for example, by building a storey apartment building for lease on a plot in the Magongo Bomu area, claiming that it would be for all, but subsequently denying the beneficiaries access thereto.
  6. In a further affidavit, Latifa Mohamed denied that there had been an agreement that the respondent would receive the sale proceeds. She averred that the storey apartment building was hers and did not form part of the estate for the deceased.
  7. On 22<sup>nd</sup> October 2024, this court directed that the application be canvassed through written submissions. The parties duly complied with the court's directions.
  8. Vide submissions dated 7<sup>th</sup> November 2021, the petitioner's advocate, JK Mwarandu, submitted that the respondent unlawfully received Kes 1,800,000/- from the firm of Kasamani & Co Advocates, which sum she never disclosed and used the said amount for her personal ends. It was urged that there had been no accounting for the proceeds nor proof of the alleged renovations of a property belonging to the estate nor how much such renovation cost. The respondent was accused of intermeddling with the estate of the deceased. The court was thus urged to allow the application.
  9. The respondent's submissions are dated 29<sup>th</sup> January 2025. Counsel for the respondent submitted that the respondent's actions had the blessing and the consent of all the administrators and beneficiaries of the estate.
  10. The respondent's counsel identified issues requiring determination as being whether the respondent intermeddled with the estate funds.
  11. It was urged that the respondent notified all the beneficiaries of the intention to renovate the mud house and that she did so by posting pictures of the progress of the renovation on WhatsApp. It was submitted that the applicant ought to have provided evidence that the beneficiaries were unaware of the renovation. In support of this contention, reliance was placed on the decision of the court in the case of *re Estate of Gladys Muthonde Katula alias Muthonde Katula* [2023] KEHC 21239 (KLR).
  12. The respondent's counsel also relied on the case of *Morris Mwiti Mburugu v Dennis Kimathi M'mburugu* [2016]eKLR and *Gichana & another v Republic* [2024] KEHC 4273( KLR).
  13. I have considered the application, the affidavits in support thereof, the response thereto, as well as the written submissions of the parties. Has a case been made for the orders sought?
  14. Although it has been alleged that what the respondent did had the agreement/blessings of the administrators and beneficiaries, no evidence of the said concurrence was provided. There was also no evidence provided of the use of Kes. 1,700,000/-, which the respondent admitted as having revived. The ineluctable conclusion is that the respondent received the money on behalf of the estate and embezzled it.
  15. As an administrator, the respondent was in a fiduciary position regarding the estate and the beneficiaries. She was required to act with almost good faith and display good judgment for the benefit of the beneficiaries. It is clear that she failed in her duties as an administrator and that she did not account for the funds she received. Rather than doing so, she chose to cast aspersions, which action appears to me as calculated to divert attention and to cause the court to go on a chase for a red herring.



16. The duty of a personal representative to render accounts to beneficiaries was considered in the case of *re Estate of Julius Mimano (Deceased)* [2019] eKLR, where the court held as follows:

“Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is, those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the *Trustee Act*, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

17. The respondent has not accounted for what she collected. She took the beneficiaries for granted. In my view, she failed in her duties as administrator.

18. In the circumstance, I agree that the application has merit. In the exercise of my jurisdiction under section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*: -

- a. I hereby remove the respondent as an administrator of the estate with immediate effect. I order that a new grant be issued to the remaining administrators, which grant shall be confirmed forthwith;
- b. I order the respondent to file a statement of account, attaching receipts and supporting documents showing how much she received from the firm of Kasamani & Co Advocates and how the same was used within 30 days of the date hereof;
- c. I further order the respondent to deposit the sum received by her in court within 30 days of the date hereof for the amounts she is unable to account for under the preceding order;
- d. I order the administrators of the estate to distribute the deceased's estate to the beneficiaries within 60 days of the date hereof. The share of the respondent shall be subject to recovery of whatever sum of money she is unable to account for; and
- e. Mention on 12<sup>th</sup> May 2025 for further directions.

19. The conduct of the respondent has been reprehensible. I therefore condemn her to pay the costs of this application.

20. Orders accordingly.

**DATED AND SIGNED IN MOMBASA THIS 7<sup>TH</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Auma, holding brief for Mr Mwinyi, for the Petitioner/Applicant;



No appearance for the Respondent; and  
Arthur – Court Assistant.

