



**Macharia v Macharia & 4 others (Civil Case E008 of 2025)  
[2025] KEHC 4360 (KLR) (Family) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE E008 OF 2025  
HK CHEMITEI, J  
APRIL 7, 2025**

**BETWEEN**

**ADAM KAMAU MACHARIA ..... APPLICANT**

**AND**

**STELLA NYANJIRU MACHARIA ..... 1<sup>ST</sup> RESPONDENT**

**DAVID KARANJA MACHARIA ..... 2<sup>ND</sup> RESPONDENT**

**WANJIKU MACHARIA ..... 3<sup>RD</sup> RESPONDENT**

**SERAH NJERI MACHARIA ..... 4<sup>TH</sup> RESPONDENT**

**LISA ANYANGO AMENYA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. There are two sets of applications herein. The first application is dated 13<sup>th</sup> December 2024 in which the Respondents are seeking orders that:-
  - (a) The proceedings herein be stayed and the subject dispute be referred to arbitration.
2. The same is supported by the affidavit of Stella Nyanjiru Macharia sworn on the same date.
3. The substance of the same is that the Applicant disputed the incorporation of the Adam Kamau Macharia Trust (hereinafter referred to as Trust) and the only way was to have the matter arbitrated as provided under clause 18.2 of the said trust.
4. The Notice of Motion dated 4<sup>th</sup> February 2025 was filed after the above application and the Applicant seeks the following orders:-
  - a. (2), (3) and (4) spent.



- b. Pending the hearing and determination of this suit or reference of the dispute to arbitration this court do order the defendant/Respondents to pay the plaintiff/ Applicants tuition fees at Nottingham Trent University for the current and future semesters from bank account for Adam Kamau Macharia Trust.
- c. Pending the hearing and determination of this suit the court do order the Respondents to pay study Inn (Triumph Road) Limited GBP 2700 payable every two months for the Applicant's accommodation and monthly maintenance of GBP1000 from the bank accounts for Adam Kamau Macharia Trust.
- d. The Respondents be compelled to submit before this court and file under oath a statement of account of all funds received on behalf of the plaintiff and the Adam Kamau Macharia Trust from the date of the trust establishment to date.
- e. The court do grant any further orders in the

**circumstances.**

- 5. The application is premised on the sworn affidavit of the Applicant dated 12<sup>th</sup> December 2024 and the grounds thereof.
- 6. The application is opposed by the 1<sup>st</sup> to 4<sup>th</sup> Respondent through the sworn affidavits of Stella Nyanjiru Macharia sworn on 18<sup>th</sup> February 2025 and 26<sup>th</sup> March 2025 respectively.
- 7. The Applicant filed a further affidavit sworn on 13<sup>th</sup> March 2025.
- 8. The gist of the application and what runs across all the rival affidavits are that the Applicant who was the son of the late John Gichia Macharia is student at Nottingham Trent University.
- 9. After the demise of his father in a road accident on 26<sup>th</sup> April 2018 the Respondents took out limited letters of administration so as to manage his estate. By then the Applicant was a minor aged 17 years. It is worthy noting that it was the 1<sup>st</sup> and 2<sup>nd</sup> Respondent who took out the same and it appears that there were other administrators who thereafter withdrew from the estate including Samuel Macharia the Applicant's grandfather.
- 10. A Trust was established by the Respondents under the name and style of Adam Kamau Macharia Trust. All the benefits from the insurance companies on behalf of the estate of the Applicant's father were placed under an account in the name of the trust.
- 11. That account was opened at Diamond Trust Bank and is operated by the above trustees on behalf of the Applicant. The 5<sup>th</sup> Applicant who is the Applicant's mother was later roped in as a trustee.
- 12. The gravamen of the Applicant's case is that though the amount in the above bank which is in excess of Kshs.300,000,000 is available the Respondents have refused to pay for his tuition and upkeep at the above university. The Applicant in the originating motion herein has argued also that the said trust was not lawfully incorporated.
- 13. The Respondents through the 1<sup>st</sup> Respondent have opposed the application. She has given a chronology and the history of the Applicant's education right from the United States of America and now in the United Kingdom.
- 14. It is her case that although the trust has been clearly in support of the Applicant, he has not reciprocated by continuing with his higher education. That the Applicant has been in and out of rehabilitation courtesy of substance abuse and despite the desire to rehabilitate him he has been uncooperative.



15. She went on to give examples of places and times and incidences when he has exhibited the truant behaviour including leaving his grandfather at the airport when they attempted to bring him to Kenya and subsequently to South Africa for rehabilitation.
16. She thus deponed that in principle the trustees had no objection in ensuring that the Applicant undergoes his education successfully but on condition that he was weaned of his substance abuse through proper medical rehabilitation.
17. The Applicant in his further affidavit countered the above 1<sup>st</sup> Respondent's argument by stating that although he has had challenges with substance abuse, he has undergone rehabilitation and that he was now okay and ready to proceed with his education.
18. He explained that he had even dealt with the subjects which he had not performed well at the university. He accused the Applicants of intruding into his personal medical history by sharing the same to a doctor of their choice without his consent.
19. He was nonetheless ready to continue with the recovery journey and that the trustees ought to cost the same.
20. He said that he was almost being thrown out of the university because of non-payment of tuition fees and that it was her mother who struggled to pay for his upkeep and other needs.
21. The court directed the parties to file written submissions which they did and I have gladly perused the same. For want of time I shall not reproduce them here save to state that they all mirror the issues raised in the lengthy affidavits I have referred to above except the cited authorities.

### **Analysis And Determination**

22. What is not in dispute is that the deceased died intestate leaving behind the Applicant as well as the 5<sup>th</sup> Respondent who is the mother to the Applicant.
23. The 1<sup>st</sup> and 2<sup>nd</sup> Applicant sought took out limited letters of administration under Succession Cause No 691 of 2018 which this court granted on 31<sup>st</sup> May 2018 which authorised them to "collect settling and receiving the estate .....and maintaining the beneficiaries of the estate..."
24. They thereafter incorporated the trust and had all the insurance monies in favour of the estate of the deceased placed under the said trust and opened an account at the Diamond Trust Bank.
25. Meanwhile the Applicant who was now of age went on with his education in USA and later United Kingdom.
26. Equally, it is not disputed that the Applicant fell into bad habits where he abused substance which affected his education. He left the university in USA and enrolled in the Nottingham Trent university.
27. Because of substance abuse he has been in and out of rehabilitation centers either by himself or through her mother the 4<sup>th</sup> Respondent. The trustees have also weighed in but it appears they have not been successful.
28. As a result of this it became apparent that the trust cannot fund the Applicant who was not making headway in his academic life and was deteriorating health wise because of abuse hence the stopping of the funding.



29. From the averments in the affidavit as well as the submissions the Applicant contents that he is now a changed person and all the units he had not performed well at the university he had worked on and was going on well health wise.
30. Taking the totality of the facts herein I find that this is the situation where law and morality perhaps intertwines. The trustees are of the view that the Applicant must show evidence of reform before the trust can continue supporting him. On the other hand, the Applicant is saying that” I have improved and I am on the recovery journey I need to carry on with my education. Please fund me.”
31. Legally on the other hand the trustees have no option but to carry on the mandate given to them by the trust. The money the trust is holding does not belong to them but the Applicant. It was his father’s sweat.
32. Equally the elephant in the room is whether the trust was validly incorporated taking into consideration that the deceased died intestate. This is the issue which this suit must determine at the end of the day.
33. It also appears that the Applicant and the 5<sup>th</sup> Respondent are now the administrators of the estate of the late John Macharia as submitted before me. If that is the case ought the issues herein be litigated in that cause?
34. If the amount collected by the trustees through the various insurance policies belonged to the deceased, would it be better argued at the succession cause noting as stated above, he died intestate?
35. The incorporation of the trust it appears was post his death and after they had obtained limited letters of administration. Now that the administrators as I was told are the Applicant and the 5<sup>th</sup> Respondent is it an appropriate time to have them run the estate of their husband and father?
36. I think there needs to be more candid discussion between the parties herein taking into account their desire to have the Applicant continue with his education.
37. In my view I think this is a classic case which the parties may consider mediation and not necessarily arbitration. I state so because already the trust deed which is in force is already contentious. If that is the case then it will take the parties slightly a longer period to find a middle ground.
38. In the meantime, and while the adults argue over legalities and many other moral issues, I think the Applicant must continue with his education. This must however be tampered with the fact that the Respondents jointly and severally ensure that the funds left behind by his father ought to be prudently utilized.
39. For now, I decline the prayer to have the matter referred to arbitration for the reason stated above. Equally the substance of this cause is whether the Adam Kamau Macharia Trust was irregularly incorporated or not. Permitting the same to go for arbitration in the state and the manner grafted will simply prolong the matter.
40. The best approach is what I have stated above which is allowing the parties to attempt mediation. In the long run if they fail then they are at liberty to prosecute this cause.
41. An issue on jurisdiction was raised by the Respondents in their submissions. It is true that this court may or may not have jurisdiction to handle this matter. Looking at the history and the court said much off record when I gave directions, the same began in the civil division of this court. That court decline jurisdiction and referred the same to the family division.



42. My sister Nyaundi J directed that she doubted her jurisdiction and she referred the same to this court being the presiding court in the division for further directions.
43. It would have been therefore remiss for this court to refer the same back to the civil division noting the circumstances herein. As a matter of fact, a global reading of the provisions of Order 37 of the civil procedure rules would easily convince one of some intertwining issues between the civil and family law. The bigger picture and issues if one was to summarize are to do with family law and this court in my view is best placed to adjudicate over it.
44. The sub total of this courts finding also is to look at the big picture of substantive justice as articulated by the framers of our Article 159 of our progressive Constitution as well as Sections 3 and 3A of the Civil Procedure Act. The big picture in our case is the education and general well being of the Applicant. That is all. All the other arguments will derail the support he desires.
45. On this score the role of the 5<sup>th</sup> Respondent cannot be underestimated. She is the mother of the Applicant and it is expected that she takes center stage just like any other responsible parent to ensure that he keeps the narrow lane of life.
46. Of course, the rest of the Respondents who I believe are aunties and uncles must also be allowed to play their role as they meant well to him. The Applicant must be seen to respect them including his grandparents.
47. In view of the request by the Respondent to have a current medical report of the Applicant I direct that he ought to obtain one the soonest. This will allay the fears raised by the Respondent and on the same breath convince the court that indeed what he stated in his affidavit is true, namely, that he had reformed.
48. In view of the above observations which have touched on the applications dated 13<sup>th</sup> December 2024 and 4<sup>th</sup> February 2025 in which the Respondents had sought stay of this cause pending arbitration I direct as follows;
  - a. This matter be and is hereby referred to court annexed mediation and in the event of inability to agree the parties be at liberty to fix the suit for formal determination.
  - b. The matter be mentioned before the mediation registrar within 7 days from the date herein.
  - (c) The above exercise be concluded within 90 days from the date herein
  - (d) Pending the hearing and determination of this suit and or mediation the Respondents do pay immediately and as a matter of priority within 7 days from the date herein tuition fees, upkeep and general monthly support and or stipend to Nottingham Trent University and Inn (Triumph Road) Limited respectively upon production of the official fees structure, demand and or invoice by the Applicant including the hostel fees.
  - (e) Where appropriate the above amount may be paid by the trustees to the 5<sup>th</sup> Respondent directly for onward transmission to the Applicant.
  - (f) The amount above shall be obtained from the trust account at Diamond Trust Bank and or NCBA Bank as the trustees may find appropriate.
  - (g) The Applicant shall within 30 days from the date herein provide a comprehensive medical report from a reputable medical facility to the trustees and a copy to this court indicating his current medical status and rehabilitation exercise.



- (h) This matter shall be mentioned before the Deputy Registrar of this court in the next 30 days to confirm progress.
- (i) Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 7<sup>TH</sup> DAY OF APRIL 2025.**

**H K CHEMITEI**

**JUDGE**

