



**In re Estate of Francis Mbutia Kamande (Deceased) (Probate & Administration
E173 of 2024) [2025] KEHC 5410 (KLR) (Family) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5410 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

PROBATE & ADMINISTRATION E173 OF 2024

H NAMISI, J

MAY 2, 2025

IN THE MATTER OF THE ESTATE OF FRANCIS MBUTHIA KAMANDE (DECEASED)

BETWEEN

MARY WANJIRU NDUATI 1ST APPLICANT

PETER NJOROGE NDUNGU 2ND APPLICANT

REGINA MWERU NDUNGU 3RD APPLICANT

AND

FAMILY BANK LIMITED RESPONDENT

RULING

1. By Notice of Motion dated 20 August 2024, the Applicants herein seek the following orders:
 - i. Spent
 - ii. That this Honourable Court be pleased to allow the 2nd and 3rd Applicants herein close the joint account and most importantly be allowed to withdraw funds held at the Respondent's bank account;
 - iii. That the Respondent advised the Applicants the only way to access the said funds it is to close the said account and get court orders to enable them withdraw the said funds;
 - iv. That the beneficiaries have agreed via the sworn Affidavit on the mode of sharing the funds.
 - v. That Jacinta Waihera who is a beneficiary and a minor, stands to suffer and not to sit for her third terms exams due to the un accessible of the funds.



- vi. That the Court to make any other ancillary orders it may deem appropriate for the proper, fair and effective execution of the preservation orders.
 - vii. That costs of this Application be in the cause.
2. Needless to say, the drafting of the prayers leaves a lot to be desired.
 3. The Application is supported by an Affidavit sworn by the 1st Applicant and premised on the following grounds:
 - a. That the 2nd and 3rd Applicant herein are the true and joint Co-owners of the said bank account;
 - b. That the Deceased was one of the signatories of the said bank account and had listed the 1st Applicant as the next of kin;
 - c. That the 1st Applicant is the legal wife of the deceased and the beneficiary of funds for the estate of Francis Mbutia Kamande;
 - d. That the Applicants have agreed on the mode of distribution of funds held at the Respondent's account, as per the sworn affidavit;
 - e. That the children of the late Francis Mbutia Kamande who are minors and beneficiaries of the estate are suffering from financial and economic constraints due to un accessibility of the funds;
 - f. That it is fair and just that the application herein be allowed to safeguard the interests of the applicants.
 4. In response, the Respondent filed a Replying Affidavit in which they averred that in January 2018, the Deceased, 2nd and 3rd Applicants opened a joint account at the Respondent's Kariobangi Branch and indicated their next of kin. The Deceased's named next of kin was Jackson Mwaniki, and not the 1st Applicant. Upon opening the account, all customers agreed that the signing mandate shall be for all to sign. The Respondent averred that the import of this is that the account is treated in the form of a tenancy in common.
 5. The Respondent contended that the estate of the Deceased ought to have initiated succession proceedings and obtained Grant of Probate to enable them operate the account on behalf of the Deceased.
 6. Parties were directed to file their submissions. By the time of writing this Ruling, the Applicants had not filed any submissions.
 7. The Respondent submitted that the mere fact that a person is a surviving spouse or child of the deceased does not make him or her a personal representative of the deceased. One only becomes a personal representative upon being appointed by the Court as such. The property of the intestate would not vest in any person until such person is appointed administrator by the Court. Any transaction entered into with a person who is yet to be appointed Administrator, over estate assets, would be null and void, since such assets would not have vested in such a person, and such person would have no standing in law to transact over such property.
 8. The Respondent referred to the provisions of section 79 of the *Law of Succession Act*, which provides as follows:

Property of deceased to vest in personal representative. The executor or administrator to whom representation has been granted shall be the personal representative of the deceased



for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

9. In defending its duty, the Respondent relied on the case of Equity Bank Limited & another v Nairobi Robert Chesang, Civil Appeal 571 of 2012 [2016] eKLR where the court stated thus,

“...The bank is also under a contractual duty to diligently handle accounts of a customer, to ensure that funds-deposited on account are available when required by the customer. Any deviation from that understanding without justifiable reasons which should be communicated to the customer well in advance or immediately, the bank is in breach of a contract with the customer and is liable in damages.”

10. I concur fully with the submissions of the Respondent. This is a clear case where counsel for the Applicants either failed to advise their clients properly or at all. In the absence of Letters of Administration, such an application has no legs upon which to stand. It is a non-starter.

11. For the foregoing reasons, I dismiss the application with costs.

DATED AND DELIVERED AT NAIROBI THIS 2 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

N/A.....for the Applicants

Ms. Ndoigo.....for the Respondent

Libertine Achieng..... Court Assistant

