



In re Estate of Timothy Kamunde Miiru alias Timothy Kamunde Gitangira (Deceased) (Probate & Administration 1239 of 2005) [2025] KEHC 5471 (KLR) (Family) (2 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5471 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION 1239 OF 2005
H NAMISI, J
MAY 2, 2025
IN THE MATTER OF THE ESTATE OF TIMOTHY KAMUNDE
MIRU ALIAS TIMOTHY KAMUNDE GITANGIRA (DECEASED)

BETWEEN

JOHN NYAGA KAMUNDE 1ST APPLICANT

PETER MAKARA KAMUNDE 2ND APPLICANT

AND

JANE WAITHIENGI KAMUNDE RESPONDENT

RULING

1. By Chamber Summons dated 23 November 2017, the Applicants herein seek the following orders:
 - i. That Jane Waithiengi Kamunde be required to render 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;
 - ii. That the portion of the Deceased's estate that remains available for distribution be distributed amongst the 4 sons of Beth Nduta Kamunde;
 - iii. That costs of this Application be provided for;
2. The Application is supported by an Affidavit sworn by the Applicants and premised on the following grounds:
 - a. That the Court in its Ruling dated 3 October 2014 ordered that the entire estate of the Deceased shall devolve upon Jane Waithiengi Kamunde to hold in trust for the 5 children of



the Deceased, and thereafter the estate shall devolve equally among the five children of the Deceased;

- b. That the Applicants have information that the said Jane Waithiengi Kamunde has disposed of most of the properties comprising the estate of the Deceased;
 - c. That it is clear that the said Jane Waithiengi Kamunde does not represent the interests of the Applicants and their 2 brothers and the four are likely to suffer irreparably if she is allowed to retain any control over any of the remaining properties;
 - d. That it is in the interest of justice that this application be allowed.
3. In their Supporting Affidavit, the Applicants stated that they had learnt that their stepmother, the Respondent, has since sold or otherwise disposed of most of the properties comprising their father's estate and that the only properties remaining are the plot on which their mother lives, one in Kenol which had been charged by the Deceased to Kenya Commercial Bank and some assorted shares. They claimed that the Respondent had even attempted to sell the plot on which their mother lives, Makuyu/Makuyu Block 1/3365, which forced their mother to lodge a claim with the Land Dispute Tribunal at Thika.
 4. The Applicants accused the Respondent of colluding with third parties to dispose of parcel land number Makuyu/Makuyu Block 1/3226 which is charged to Kenya Commercial Bank at a throw away price. The Applicants provided a list containing 24 assets that had been sold and/or disposed of by the Respondent.
 5. In her Replying Affidavit, the Respondent averred that save for 2 motor vehicles, none of the Deceased's properties had been bequeathed to her wholly. The Respondent annexed a copy of Certificate of Confirmation dated 16 July 2008 in which properties were bequeathed to the Respondent and Beth Nduta Kamunde, jointly. It was the Respondent's contention that the Applicants cannot seek an account from her without similarly seeking an account from the co-Administrator, Beth Nduta Kamunde.
 6. Further, the Respondent denied any claims of having sold and/or disposed of assets of the estate. The Respondent stated that she is ready and willing to resign as an administrator so as to leave the Applicants to deal with the estate as they wish. She is no longer eager to continue with her role as Administrator, and cited frustrations by the Applicants.
 7. The Application was canvassed by way of written submissions.
 8. I have keenly read through the Application, Affidavits and submissions filed. I have also studied the Ruling of the Court delivered herein on 3 October 2014 by Hon. Justice Musyoka, W, which states as follows:

“Consequently, I hereby allow the Summons dated 21 January 2009 and review the orders made on 16 July 2008 in the following terms:

- a. That the intestate estate of Deceased shall devolve upon Jane Waithiengi Kamunde, the surviving spouse of the Deceased during life interest, to hold in trust for the 5 children of the Deceased;
- b. That thereafter the estate shall devolve equally among all the five children of the Deceased



- c. There shall be no order on costs.
9. From the onset, it is clear that the Respondent unwittingly or intentionally places reliance on the Certificate of Confirmation of Grant dated 16 July 2008, which was subsequently reviewed by the Ruling of 3 October 2014. On the other hand, it is equally clear that the Applicants may or may not fully comprehend the meaning of “life interest” as provided in the Ruling of 3 October 2014.
10. In determining this application, and indeed the dispute between the parties, it is imperative to examine the meaning of “life interest”.
11. Section 35 of the *Law of Succession Act* provides for the mode of distribution on an intestate’s estate where the deceased is survived by a spouse and child or children. At subsection 1, it provides that:-
- “Subject to the provisions of section 40, where an intestate has left a surviving spouse and child or children, the surviving spouse shall be entitled to: the personal and household effects of the deceased, absolutely; and a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon remarriage.”
12. In *Tau Katungi vs. Margrethe Katungi & Another* (2014) eKLR Musyoka J. interpreted Section 35 of the *Law of Succession Act* in respect of life interest thus:-
- “The effect of section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallises upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated.....Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it was their own. By virtue of section 37 of the Act, a surviving spouse cannot during the life interest dispose of any property subject to that life interest without the consent of all the adult children, co-trustees and the court. This is meant to safeguard the interest of the children who are the ultimate beneficiaries of the property the subject of the life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children.” (emphasis added)
13. From the foregoing, the Respondent continues to exercise life interest in the assets but in trust for the children of the Deceased, who include the Applicants herein. Other than the mere averment, no evidence has been presented before this Court to demonstrate that the Respondent has sold or any in way whatsoever disposed of the properties. It appears, therefore, that there is no basis for the Application herein since the Applicants have failed to prove their claims.
14. For the foregoing reasons, I dismiss the application with no orders as to 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

N/A.....for the Respondent

Libertine Achieng..... Court Assistant

