



REPUBLIC OF KENYA



**KENYA LAW**  
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**J.M. Njenga & Co. Advocates v Wanyee & another (The Administrators of the Estate of the Late Scholastica Wanjiru Wanyee) (Succession Cause 2491 of 1999) [2025] KEHC 8665 (KLR) (Family) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8665 (KLR)

**REPUBLIC OF KENYA**

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

**FAMILY**

**SUCCESSION CAUSE 2491 OF 1999**

**CJ KENDAGOR, J**

**JUNE 9, 2025**

**IN THE MATTER OF ESTATE OF SCHOLASTICA WANJIRU WANYEE – DECEASED**

**BETWEEN**

**J.M. NJENGA & CO. ADVOCATES ..... APPLICANT**

**AND**

**CHRISTINE WANYEE ..... 1<sup>ST</sup> RESPONDENT**

**STEVE WANYEE KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**THE ADMINISTRATORS OF THE ESTATE OF THE LATE SCHOLASTICA  
WANJIRU WANYEE**

**RULING**

1. The Respondents are the Administrators of the Estate in this matter, while the Applicant is an Advocate who acted on behalf of the Administrators and for the Estate.
2. The Applicant has filed an application dated 23<sup>rd</sup> February, 2021 that is seeking the following orders;
  - i. That the sum of Kshs. 170,156.61/- plus all accrued interest held at I & M Bank Ltd under fixed deposit a/c no. 001 002 621 xxx xxxx in the names of J.M Njenga and Co Advocates and Masore Nyangau & Co Advocates be released to the Applicant law firm being part satisfaction of the taxed costs and outstanding amounts awarded against the estate in favour of the applicant law firm pursuant to costs taxed in NRB H.C. MISC 151 of 2015 – J.M Njenga & Co. Advocates vs Christine Wanyee & Steven Wanyee (Administrators of the Estate of Scholastica Wanyee)
  - ii. That the costs of the application be provided for.



3. The Application is opposed by the 2<sup>nd</sup> Respondent, who filed a Replying Affidavit dated 16<sup>th</sup> February, 2022.
4. The 1<sup>st</sup> Applicant did not file any response to the application.
5. Both the Applicant and the 2<sup>nd</sup> Respondent have filed written submissions, which I have carefully considered.
6. The Applicant's case is that they have represented the Estate since 1999 and that the administrators have failed to settle the firm's legal fees. The Applicant asserted that the amounts held in the names of their firm and Masore Nyangau Advocates should be released to the firm as part payment of the taxed fees.
7. The Applicant stated that the two firms in whose name the account was opened had been instructed under the agreement that the estate would cover the legal fees for both firms.
8. While the 2<sup>nd</sup> Respondent proposed that the fees be paid from the property being offered for sale, the Applicant claimed that the sale had been frustrated by the 2<sup>nd</sup> Respondent and her family, and that he had been left responsible for sourcing a buyer.
9. The 2<sup>nd</sup> Respondent contested that the Applicant is acting in the succession cause on the instructions of the 1<sup>st</sup> Respondent and that the said 1<sup>st</sup> Respondent should cover the Applicant's costs. She argued that since the other beneficiaries were paying for the costs of the advocates they had engaged, the 1<sup>st</sup> Applicant's costs should be met by the 1<sup>st</sup> Applicant.
10. The 2<sup>nd</sup> Respondent, in her affidavit, made additional proposals suggesting that, rather than the money in the account being used to pay the advocate, it should instead be allocated to support one of the beneficiaries, SWN, in addressing his medical needs.

### **Analysis and determination**

11. The issue for determination is whether the funds held in the names of the two firms can be released to the Applicant as part of the Advocate/Client fees.
12. From the record, it is evident that the Applicant is the one who drew up and submitted the Petition for Letters of Administration Intestate dated 8<sup>th</sup> September, 1999. That is the Petition that is the genesis of the proceedings in this succession cause. The Applicants acted on the instructions of the Petitioners, and what the firm did for the estate upon those instructions was for the benefit of the estate and all its beneficiaries.
13. The appointment of other advocates came much later, after the parties sought to have separate advocates appointed to secure their interests. The firm of Masore Nyangau & Co. Advocates was onboarded upon presentation of the cross petition on behalf of the 2<sup>nd</sup> Respondent, who is now a co-administrator.
14. The 2<sup>nd</sup> Respondent has relied on the authority of *Re-Estate of Kassim Hassan Malambu (Deceased)* [2021] eKLR. This case is distinguishable from the current case, as it involved advocates who had a claim against some of the parties in the case. The Court held that merely having that claim did not entitle them to seek to secure their costs in the succession cause. In the present case, the Applicant acted for the estate itself on the instructions of the petitioners, among whom the 1<sup>st</sup> Respondent, who is now a co-administrator.



15. It is undisputed that the costs were taxed and that the certificate of costs has been adopted as a judgment of the Court since 2019. I find that the Applicant correctly invoked the jurisdiction under the Advocates Act and the Advocates Remuneration Order. The Applicant's quest for fees was after the grant was confirmed.
16. From the record, the two firms – J.M Njenga & Co Advocates and Masore Nyangau & Co Advocates had been paid off some money from the same account under reference and they filed accounts that the court examined in a ruling that was delivered on 7<sup>th</sup> December, 2018.
17. In that Ruling, the Court made a determination that the Administrators appointed the Applicant and the firm of Masore Nyangau Advocates and that therefore legal fees were payable from the estate.
18. In that ruling, the Court also examined the claim for the funds amounting to Kshs.128,000/= for Stephen Wanyee Nyambura, a claim the 2<sup>nd</sup> Respondent has reiterated in her response and proposal. The Court ordered that if any sums are due to the 1<sup>st</sup> Administrator from the Estate, then those funds should be recovered therefrom in favour of Stephen Wanyee Nyambura.
19. Under Section 83 of the Law of Succession Act, an administrator has a duty 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).
20. The issue concerning the sale of the property designated as the Kenya Ihenya Company Ltd. Plot has not progressed, and there is no guarantee thus far that there is explicit goodwill on the part of the parties to expedite the sale. In short, there remains some uncertainty surrounding it.
21. The funds in the joint bank account are from the estate of the deceased. In light of the above, I find that the Applicant has made a strong case for his right to present the current claim against the Administrators to have his fees paid from the estate. Payment of an advocate's fees is an urgent necessity and cannot be ignored or treated as a lesser matter where such fees are owed.
22. The amount reported to be in the account is stated to be insufficient to cover all the Applicant's taxed costs. There is a cumulative bank interest that has not been disclosed. The issue of entitlement to interest on the fees was canvassed during the application for entry of Judgment arising from the Certificate of Taxation. I have reviewed the file and noted that, by consent, the parties allowed the application for adoption, which indicates that interest on costs is calculated at 12% from 26<sup>th</sup> October, 2018, until full payment.

### **Disposition**

23. The Application dated 23<sup>rd</sup> February, 2021 is allowed. The sum of Kshs.170,526/= and the accrued interest in I & M Bank Ltd under fixed deposit A/C No. 001 002 621 xxx xxxx in the names of J.M. Njenga & Co. Advocates and Masore Nyangau & Co. Advocates be released to the Applicant as satisfaction of the taxed and outstanding costs awarded in favour of the Applicant. The amount to be released to the Applicant should not exceed the balance of the costs sum of Kshs.289,430.34/= plus interest of 12% p.a on the amount from 26<sup>th</sup> October, 2018.
24. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 9<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**C. KENDAGOR**



## **JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Wambua, Advocate for the Applicant

No attendance for the Respondents

