



In re Estate of Philip Munyao Mutisya (Deceased) (Probate & Administration E583 of 2024) [2025] KEHC 12571 (KLR) (Family) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E583 OF 2024
H NAMISI, J
SEPTEMBER 16, 2025
IN THE MATTER OF THE ESTATE OF PHILIP MUNYAO MUTISYA (DECEASED)**

BETWEEN

MARY NZILANI ILUVYA APPLICANT

AND

JOHN BOSCO MUTISYA NZUVE RESPONDENT

RULING

1. The Deceased herein passed away on 11 April 2024 in Nairobi County. He died intestate. By Petition dated 22 July 2024, the Applicant herein applied for Letters of Administration Intestate in her capacity as former wife to the Deceased and biological mother to the Beneficiaries of the Deceased's estate, Priscilla Syombua Munyao, Grace Nthenya Munyao And JMM . The 3 named beneficiaries are children of the Deceased and are all minors.
2. The Respondent is the father to the Deceased.
3. By Chamber Summons dated 18 October 2024, the Applicant herein seeks the following:
 - i. That pending the hearing and determination of the Application inter partes, the Respondent be ordered to make immediate payment of rental of rent arrears due and owing to NW Realite Valuers and Property Consultants;
 - ii. That the Respondent herein be ordered to give an account of all the income accruing from Odyssey Opticians Ltd from the month of April 2024 to date, all the motor vehicles that is Toyota Harrier Motor Vehicle Registration No. KCEXXXG, Toyota Prado Registration No. KCP XXXC, Toyota Noah Registration No. KDE XXXT, Toyota Probox Registration No.



KDG XXXR left by the Deceased and any other property that belonged to the Deceased as listed in the petition which he has now taken control;

- iii. That pending the hearing and determination of the Application and Confirmation of Grant, this Honourable Court be pleased to order production of the Deceased's Mpesa statements for mobile numbers 0705491919 Philip Munyao Mutisya (personal), the business numbers 072551xxxxx St Philip's Optical supplies office number (registered under Philip Munyao Mutisya), 070846xxxx Odyssey Nairobi Branch, 074135xxxx Odyssey Mombasa branch, 0711592923 Odyssey Nanyuki branch, 075900xxxx Odyssey Kilifi branch, 071212xxxx Odyssey Kitengela branch, 070328xxxx Odyssey Tala branch all office numbers were registered under the Deceased, 071751xxxx the Respondent's John Bosco Mutisya Nzuve mobile Number the Business Till Number 914xxxx in the name of Odyssey Opticians Limited, the new Pay bill details that was introduced by the Respondent that is pay bill number 522533 Account Number 6016409 registered in the name of Johnbosco Nzuve, the Statement of Account of the following banks
 - a. Co-operative Bank Limited Account No. 0119298579xxxx, Kenyatta Avenue Branch in the name of Odyssey Opticians Limited.
 - b. NCBA Bank A/c Name: Odyssey Opticians & Eye clinic Ltd Account Number: 1021006183xxx, City Centre branch.
 - c. NCBA Bank A/c Odyssey Opticians and Eye Clinic, No. 496610xxxx City Centre branch.
 - d. KCB Bank Limited, A/c Name: Odyssey Opticians Ltd, A/c: 113553xxxx Moi Avenue branch, Nairobi.
 - e. ABSA Bank, A/c Name: Odyssey Opticians Ltd, A/c: 204131xxxx, Market branch, Nairobi.
 - f. ABSA Bank, A/c Name: St Philip's Optical supplies A/c: 202150xxxx. Market branch, Nairobi.for purposes of ascertaining all transactions undertaken from April 2024 to date.
- iv. That pending the hearing of this Application inter partes the Court to give orders to the Respondent to allow the Applicant Mary Nzilani Iluvya to access the optical business known as Odyssey Opticians Limited;
- v. That pending hearing and determination of this Application and Confirmation of the Grant, the Respondent be directed to allow the Applicant and the minors PSM , NGM And JMM who are the only beneficiaries of the Deceased estate to (Particulars Withheld Apartments, Apartment No. A23 Block A on the Fifth Floor of the Building erected on Property Known as LR. NO. 1/1386 (Original No. 1/419) where they resided with the Deceased prior to the commencement of the divorce proceedings;
- vi. That pending hearing and determination of this Application and confirmation of the Grant;
- vii. That pending hearing and determination of this Application and confirmation of the Grant that an order be made that the Motor Vehicle KCP XXXG that was under repair and was currently being held with Jubilee Insurance Company Limited be released to the Applicant Mary Nzilani Iluvya for the use and benefit of the minors PSM , NGM And JMM ;



- viii. That the Officer Commanding Station (OCS) Central Police Station be directed to assist the Applicants in the enforcement of the order c hereinabove.
4. At the time of his death, the Deceased was divorced from the Applicant. A Decree Absolute was issued on 25 October 2021. While the Applicant herein filed the Petition for Grant of Letters of Administration, the cause herein, the Respondent filed another succession cause, being Machakos P&A E050 of 2024. Additionally, there is a Miscellaneous Succession Cause, Kangundo MISC SUCC NO. E022 of 2024, in which the Respondent and Priscilla Syombua Mutisya obtained an order dated 4 June 2024 for payment of school fees for the 3 children of the Deceased.
 5. In Machakos P&A E050 of 2024, the Respondent obtained preservation orders against any intermeddling.
 6. Further, there is a pending matrimonial property suit, Matrimonial Cause No. HCFOS/E079 OF 2021, which was filed by the Applicant against the Deceased prior to his demise, in which the Applicant seeks a 50% share of the businesses and other assets. A children's case, No. 383 of 2020, resulted in a judgement date 13 April 2022, providing for the minors' care and maintenance.

The Applicant's Case

7. The Application is supported by an Affidavit sworn by the Applicant herein, in which she asserts that the Respondent has illegally taken over the Deceased's business and assets, putting the estate in jeopardy and failing to provide for the 3 minors, who are the sole beneficiaries. The Applicant claims that the Respondent's mismanagement has put the business in grave danger, citing a proclamation notice from Keysian Auctioneers to distress rent, which she claims the Respondent has ignored. The Applicant asserts that the rent and service charge arrears for the Nairobi Branch amount to Kshs 1,154,517/=.
8. The Applicant accuses the Respondent of diverting sales from the business by changing mobile payment till numbers to a personal paybill account. She alleges that the Respondent has failed to restock the business, selling only existing stock, to the detriment of the estate and the minors, who rely on it as their sole source of income. The Applicant avers that she is a business partner and has directly contributed to the acquisition of the various assets. She argues that she has a legitimate claim to the business and that the Respondent has unfairly barred her and the minors from accessing the assets.

The Respondent's Case

9. The Respondent filed a Replying Affidavit in which he denies all the Applicant's allegations. He admits that the minors are the beneficiaries of the estate but denies having taken over the businesses. It is his assertion that since he is yet to be granted Letters of Administration, he is not in a position to buy new stock for the businesses.
10. Regarding the rent arrears, the Respondent avers that he filed an application in the Machakos case, seeking to preserve the estate, which resulted in a court order to pay all rent and salary arrears. Despite serving the Auctioneers with the order, they proceeded to cart away all the properties of the Nairobi branch of the business.
11. The Respondent accuses the Applicant of withholding the Deceased's motor vehicle, KCP XXXG, by writing to Jubilee Insurance not to release the vehicle to the Respondent.
12. The Respondent avers that the Applicant has maliciously kept the minors away from him despite his efforts to maintain contact with his grandchildren.



Analysis & Determination

13. The parties did not file any submissions and chose to rely on their respective Affidavits.
14. The first and most fundamental issue to be determined is the issue of duplicity of suits. I have had the opportunity to peruse the succession cause filed in the Machakos High Court, P&A E050 of 2024, and note that on 19 February 2025, the parties herein consented to have that matter transferred to the High Court at Nairobi. This led to the consolidation of the two matters by this Court on 6 May 2025. This application is, therefore, properly before this Court.
15. The Application herein seeks orders to preserve the estate, pay debts and compel an accounting. The record shows that the High Court at Machakos was already seized of these very issues through the Respondent's Notice of Motion dated 15 August 2024 filed therein. The Court issued a preservative order on 27 September 2024 and ordered Co-operative Bank of Kenya to provide an account statement.
16. This matter came before this Court on 11 November 2024, when counsel for both parties appeared. Counsel for the Respondent informed the Court that there was an application pending before the High Court in Machakos seeking similar orders. Counsel for the Applicant was unaware of any cause filed in Machakos. On 19 November 2024, counsel for Applicant informed this Court that she would file an application before the Court in Machakos, informing it of the existence of this cause. The Court record indicates that it wasn't until 17 January 2025 that the Applicant herein filed an application in the Machakos cause, seeking to be enjoined as an Interested Party.
17. On 21 January 2025, the Machakos Court rendered a substantive ruling on the application dated 15 August 2024 filed by the Respondent herein. In its Ruling, the Court issued the following order:

Consequently, pending hearing and determination of the Petition herein, an order is hereby issued preventing any further dealings including transfer of funds from and or ownership of the account name ODYSSEY OPTICIANS LIMITED, account number 01192985700400 at Co-operative Bank of Kenya, Kenyatta Avenue Branch, save for compliance with the Order issued on 10/06/2024 in the Chief Magistrate's Court at Kangundo in MISCSUCC E022 OF 2024 or unless under any other lawful Court Order.
18. In light of the foregoing, for this Court to entertain the present application would be to engage in parallel adjudication, which could lead to an absurd situation where two Courts of concurrent jurisdiction issue different orders regarding the same estate.
19. The Applicant's prayers herein include a request for access and control of the Deceased's businesses, the Kindaruma Apartments home and one of the motor vehicles. Her claim is based on her asserted direct contribution to the businesses and the matrimonial property. The Applicant's claim seeks to address a matrimonial property dispute within a succession cause. In order to determine the rights of the Applicant to the Deceased's assets, this Court would have to ascertain the Applicant's involvement in the same, based on her proven monetary and non-monetary contribution to the acquisition of the property during the subsistence of their marriage. At this interlocutory stage, the Court cannot determine such issues.
20. In the premise, I make the following orders:
 - i. The Chamber Summons dated 18 October 2024 is dismissed;
 - ii. The existing order of the High Court at Machakos in P&A Cause E050 of 2024 shall rema



in in force, pending the confirmation of Grant herein.

iii. Costs shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Ms. Nangame

Respondent: Ms. Nekesa h/b Mr. Omari

Court Assistant: Libertine Achieng

