



**In re Estate of Eutycus Muthui (Deceased) (Succession Cause
398 of 2012) [2024] KEHC 3355 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 398 OF 2012**

TW CHERERE, J

MARCH 14, 2024

IN THE MATTER OF THE ESTATE OF EUTYCUS MUTHUI (DECEASED)

BETWEEN

JAMES KIMATHI MUTHUI PETITIONER

AND

MIRIAM KENDI MUTHUI 1ST ADMINISTRATOR

CATHERINE KINYA MUTHUI 2ND ADMINISTRATOR

JOEL KITHINJI MUTHUI 3RD ADMINISTRATOR

RULING

1. By an order dated 05th May, 2021, this court appointed Miriam Kendi Muthui, Catherine Kinya Muthui and Joel Kithinji Muthui (the Respondents herein) as joint administrators of the estate of the deceased.
2. A further Amended Certificate of Confirmation of Grant was issued on 22nd February, 2023 identifying the respective shares of each beneficiary of the estate.
3. The provisions of Section 83 of the *Law of Succession Act* Cap concerning the duties of administrators was enunciated *in Re Estate of Wilfred Munene Ngumi (deceased)* [2020] eKLR where the court stated:

“Section 83(g) of the *Act* mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the complete administration....” .



4. I notice that the 2nd and 3rd Administrators/Respondents have transferred some assets distributed to them and no other.
5. By failing to transmit the estate to the other beneficiaries, the Administrator/ Respondents have not only acted maliciously and with unfairness but have acted contrary to the provisions of Section 83 (g) of the *Act* and this no doubt has prejudiced the other beneficiaries who have a legitimate expectation to receive their share of the Deceased's estate as ordered by the court.
6. The Administrators/Respondents claim that they have been hampered in their duties by unavailability of funds but have not explained how they were able to transfer one asset that was distributed to the 2nd Administrator/Respondent and two assets that were distributed to the 3rd Administrator/Respondent to the exclusion of all the other beneficiaries.
7. I have considered the summons for review dated 14th November, 2023 and the affidavits sworn by the Applicant on even date and on 24th January, 2024, together with the submission filed on 26th January, 2024 vis a vis the 1st and 2nd Administrators/Respondents affidavit sworn on 03rd January, 2024.
8. That the Administrator/Respondents have acted in the same manner for which they successfully applied to remove the Applicant as an administrator has been clearly demonstrated by the Applicant.
9. As stated in my ruling in this same matter on 05th May, 2021, courts are not powerless when it comes to dealing with such wrong doing. The doctrine of abuse of process, based upon the inherent authority of every court to control its process and those persons who come before it, is a power incidental and necessary to the exercise of substantive jurisdiction. That power, together with rules of court and statutory provisions, enables the court to exercise its discretion to protect its integrity and process from abuse.
10. Consequently, the summons for review dated 14th November, 2023 is considered and allowed in the following terms:
 1. Miriam Kendi Muthui, Catherine Kinya Muthui and Joel Kithinji Muthui who are the Administrators/Respondents have 30 days to complete transmission of the estate to all the beneficiaries of the deceased
 2. In the event that the Administrators/Respondents do not comply with order (1) above, this court hereby authorizes and empowers the Deputy Registrar of this court to sign all the necessary transmission documents on behalf of Miriam Kendi Muthui, Catherine Kinya Muthui and Joel Kithinji Muthui and on behalf of any other defaulting party to ensure that the estate of deceased is transmitted with finality
 3. Mention on 03rd October, 2024 to confirm transmission
 4. Costs shall be in the cause

DATED AT MERU THIS 14TH DAY OF MARCH 2024

T. W. CHERERE

JUDGE

Appearances:-

Court Assistants - Kinoti/Munene

For Applicant - Mr. Thangichia for Thangichia M.David & Co. Advocates



For 2nd & 3rd Respondents - Mr. Nyenyire for Kevin Nyanyire & Co. Advocates

