



In re Estate of Nom Okaro Muluka (Deceased) (Succession Cause 441 of 2004) [2024] KEHC 3021 (KLR) (11 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 441 OF 2004
SC CHIRCHIR, J
MARCH 11, 2024**

BETWEEN

BILHA OLINGO MULUKA 1ST APPLICANT

SOPHIE AKOLA MULUKA 2ND APPLICANT

JUDITH AYUMA MULUKA 3RD APPLICANT

AND

JOSEPH MARTIN MULUKA RESPONDENT

RULING

1. Through the Application dated 19th June 2023, the 2nd applicant moved the court praying for the following orders;
 - a. Spent
 - b. That a temporary order be issued barring the Respondent/ intermeddler Joseph Martin Muluka from entering into title no. Butso /Esumeiya/241 and undertaking any construction works or continuing works or continuing with any works on the said title or in any way interfering with the workmen on the said property pending hearing of the application inter-parties
 - c. That the respondent be cited for interfering with, intermeddling in , destroying , wasting and alienating the estate of the deceased person contrary to the law
 - d. That the respondent be appropriately punished by fine and term of imprisonment prescribed by the law.



- e. That the respondent be ordered to remove the offending demarcations boundaries and structures he has erected and or caused to be erected on title no. Butso / Esumeiya/241 being part of the intestate estate of the deceased.
- f. That the respondent by himself, his workmen, servants and hirelings be restrained from making entry and remaining onto title no. Butso / Esumeiya/241 or any other property forming part of the intestate estate of the deceased, except with the prior authority and consent of the applicants/ administrator.
- g. That the respondent , by his servants, agents ,workmen and hirelings be restrained by this honourable court from collecting rent or exercising any authority over all the intestate estate of the deceased.
- h. That the respondent be compelled by order of this honourable court to remove all the locks he has placed on the main house and store of the deceased home and return the maize that he has removed from the store house and to return and or account for the 1st applicant's heifer that he sold.

The Applicant's case

- 2. The Applicant who is the also the 2nd Administrator has stated that the respondent is intermeddling with the estate; that he has gone ahead and unilaterally subdivided the land, being parcel No title no. Butso / Esumeiya/241 (Suit property) without the consent or consultation with any of the Administrators; that he has forcefully collected rent from some premises in Maseno and Mukunga; and finally that he has sold some domestic Animals and taken occupation of 1st Administrator's house .
- 3. The 2nd Administrator is the mother of the Respondent , and the widow of the deceased.

Respondent's case

- 4. In his replying affidavit dated 2nd July 2023, the respondent denied the allegations of intermeddling; He insists that he only brought in a surveyor at the request of the Applicant, to establish the actual size of the land parcel. He he admits that he has built his house in part of on the suit property. He however states that it was with the consent of the entire family, which consent he allegedly received during a family meeting held on 28.12.2022.
- 5. He further asserts that it was in the same meeting that the family mandated him to take care of the livestock and maintain the homestead, which he claimed, had become dilapidated. He produced photographs of the dilapidated cow sheds.
- 6. He denied entering the 1st Administrator's matrimonial home as was alleged in the application claiming he was denied access by the 3rd administrator despite his effort to access the house so as to manage the estate.
- 7. By way of further response the Applicant denied that such an Agreement ever took place; that a meeting was to be held on 28th January 2023 to discuss the issue of distribution and that in any event the duties and responsibilities of the administrator highlighted under section 83 of the law of Succession Act are all vested on the Administrators.



Determination.

8. I have identified the following issues for determination:
 - a. Whether the respondent has intermeddled with the Estate of the Deceased .
 - b. Whether the court should issue restraining orders against the Respondent.
 - c. Whether this court should make any other appropriate orders?

Whether the Respondent has intermeddled with the Estate

9. The Applicant is one of the Administrators of the Estate while the respondent is a beneficiary. It is the Applicant's case that the respondent has interfered with management of the Estate while he has no Authority to do so. The Respondent has largely admitted to up certain activities on the suit property but insist that it was with the authority of the Administrators. He admits for instance to have brought a surveyor to conduct sub- division; He has also admitted that he has started constructing his house on the land. He has not denied the fact that he has been collecting rent from some of the rented premises.
10. The respondents has made repeated averments to the effect that he was authorised to take care of the affairs of the estate but he has no evidence to support his allegations.
11. From the averments of both parties it is evident that the Estate has not been distributed. The management of a deceased's Estate is the exclusive mandate of the Administrator(s) . where a beneficiary considers that the Estate is not being properly managed, his recourse is to seek for removal of the Administrator and not to "help out" the Administrator as the respondent is purporting to do in this case. His acts are constitute intermeddling in the Deceased's Estate.
12. Section 45(1) of the Law of succession Act provides as follows: Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under the Act no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person"
13. What constitutes acts of intermeddling are varied. In *Benson Mutuma Muriungi v CEO Kenya Police Sacco & Another* [2016] eKLR the court stated that; "There is no specific definition of the term intermeddling provided for in the Law of Succession Act. The Act simply prohibits taking possession of or disposing of, or otherwise intermeddling with, any free property of a deceased person by any person unless with the express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as: "for any purpose" and "or otherwise intermeddle with" in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as: taking possession, or occupation of, disposing of, transferring, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with existing lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act or any other written law. I do not pretend to close the list either or make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law."
14. The respondent by purporting to sub- divide the Title No. Busostso/Esumeiya/ 241, by constructing on the same , by collecting rentals , disposing of livestock and seeking to forcefully occupy his widow's house, all constitute acts of intermeddling within the context of the aforesaid decision.



15. Further it matters not if the intermeddler has a stake in the Estate. *In the case of Re Estate of Ndiba Thande (Deceased)* [2013] eKLR, Musyoka (J) the court stated: "It is fallacious for a spouse or child to imagine that they cannot be guilty of intermeddling when they handle property belonging to their dead spouse or parent without a grant of representation. Intermeddling can be committed by any person so long as the handler has no grant of representation. "

Should the court issue restraining orders

16. The Respondent has readily admitted that has been intermeddling in the Estate , only that he does not view it as such. Am therefore satisfied that the Applicant has demonstrated that the Estate is at risks of wastage by the Respondent and he needs to be restrained.
17. *William Musyoka, in his book, Law of Succession, Law Africa 2006 at page 115* notes that the provisions of Section 47 of the Law of Succession Act gives court wide discretion in dealing with testamentary and administrative issues. The import being that Section 47 gives court the power to issue protective orders in order to safeguard the estate of a deceased person.
18. The prayer for restraining orders are in my view merited

Whether this court should make any other appropriate orders

19. Before I conclude I wish to remind the Administrators of their responsibilities. Their focus should be to distribute the estate as fast as possible to the beneficiaries. It is not for them to get powers of Administration , stay put and lord over the beneficiaries. Their powers, Rights and responsibilities are transient.
20. The grant was issued in October 2022, the properties to be distributed are only three land parcels and the mode of distribution arrived at, is fairly straight – forward. There has been no explanation as to why the distribution of the properties is still being held in abeyance.
21. Rule 73 of the *Probate and Administration Rules* gives this court the powers to make such orders as may be necessary towards the end of justice.
22. In view of all the foregoing, I hereby proceed to make the following orders:
- a. A mandatory injunction do hereby issue directing the respondent to remove any demarcations, boundaries he has erected on parcel No. Butsosos/ Esumaiya/ 241 and to remove any locks on the deceased's home or other buildings and to make good any property of the Estate that he has interfered with.
 - b. The Respondent by himself, his workmen , servants or hirelings is hereby restrained from entering, remaining , or carrying out any developments on the whole of that parcel of Land known as Title No. Butsoso/Esumeiya/241 or on any other property forming part of the deceased's estate or from collecting any rent from any premises forming part of the estate or from interfering with the estate in any manner.
 - c. The 1st , 2nd and 3rd Administrators are hereby ordered to proceed to distribute the estate and complete this exercise within the next 90 days .
 - d. This matter will be mentioned on a date to be given during the delivery of this Ruling to confirm compliance with all the aforesaid orders.

DATED , SIGNED AND DELIVERED AT KAKAMEGA THIS 11TH DAY OF MARCH 2024.



S. CHIRCHIR.

JUDGE.

Godwin- Court Assistant

No appearance by the parties.

