



REPUBLIC OF KENYA



In re Estate of Stephen Murathi Muiruri (Deceased) (Succession Cause E008 of 2022) [2024] KEHC 5592 (KLR) (17 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E008 OF 2022**

A MSHILA, J

MAY 17, 2024

IN THE MATTER OF THE ESTATE OF STEPHEN MURATHI MUIRURI (DECEASED)

BETWEEN

PAULINE WANJUE APPLICANT

AND

LOISE NJOKI MURATHI RESPONDENT

RULING

1. Before court is an application by way of Summons dated 11th October, 2022 and brought under Section 45,47,82 and 83 of the Law of Succession Act, Rule 49,63 and 73 of the Probate and Administration Rule, Rule 3(2) of the High Court (Practice and Procedure) Rules and all other enabling provisions of the Law. The 1st Administrator/Applicant sought for orders:-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That pending hearing and determination of the petition for administration of estate intestate, this Honourable Court be pleased to issue a temporary injunction restraining the 2nd Administrator Loise Njoki Murathi her agents, assigns and/or representatives and anyone claiming under her from collecting rental income on premises erected on LR No. 209/2490/26, Kiambaa/Ruaka/1615 and Kiambaa/Ruaka/T.33.
 - e. That pending the hearing and determination of the petition for administration of estate intestate, this Honourable Court be pleased to issue an order directing all rental income collected from premises erected on land reference no. 209/2490/26, Kiambaa/Ruaka /1615



and Kiambaa/Ruaka.T.33 be deposited into the estate account no. 01109XXXX Cooperative Bank Ruaka operated by the two administrators jointly.

- f. That this Honourable Court be pleased to order account no. 01109XXXX held at Cooperative Bank-Ruaka branch be converted and recognized as an estate account for the estate of the late Stephen Murathi Muiruri held in the joint names of the administrators.
 - g. That this Honourable Court be pleased to issue an order directed to the tenants occupying premises erected on the property referenced as L.R 209/2490/26, Kiambaa/Ruaka/1615 and Kiambaa/Ruaka/T.33 to deposit monthly rent into the estate account no.01109XXXX Cooperative Bank Ruaka operated jointly by the administrators.
 - h. That this Honourable Court be pleased to issue an order directed to the respondent/2nd Administrator (Loise Njoki Murathi) to render an account of all rental income collected by herself and/or her agents, assigns and/or representatives from the premises erected on L.R.209/2490/26 Kiambaa/Ruaka /T.33 for the months of August and September 2022.
 - i. That this Honourable Court be pleased to issue an order directed to the bank manager Cooperative Bank Limited-Ruaka branch to deduct monthly rental income tax payable on the estate from account no. 01109XXXX Cooperative Bank Ruaka branch held in joint names of the administration for payment to Kenya Revenue Authority and render an account on the rental income tax payable outgoings.
2. The application is premised on the grounds that the 2nd administrator and his representative being Wilson Ngure Murathi are in breach of the trend where the rental income collected from LR No. 209/2490/26 is deposited in the estate account being 01109XXXX Cooperative Bank Ruaka Branch after deducting the expenses. That the actions constitute to intermeddling with the assets of the estate.
 3. The application is supported by the affidavit of Pauline Wanjue Murathi the 1st Administrator herein. She deposed that since the death of her husband, together with the 2nd administrator, they agreed to collect rent from the deceased's properties and the same to be deposited at a joint account number 01109XXXX Cooperative bank Ruaka Branch. That the rental income from LR. No. 209/2490/26 was being collected by the caretaker in cash and the same was used to pay for rental income tax and the balance is deposited in the joint account. She deposed that in the month of August 2022, Kshs. 277,700/= was collected and Kshs. 338,900/= was collected in September, 2022 by the 2nd administrator as such a report was made at Ruaka Police Station for intermeddling. She deposed that all tenants should be directed to deposit their monthly rent in the joint account.
 4. George Bangote swore his supporting affidavit. He deposed that he is the caretaker employed by the deceased on LR. No. 209/2490/26. He deposed that he collects rent amounting to Kshs. 300,000/= and the same is delivered to the administrators. That in August and September 2022 the 2nd administrator collected the rent without the knowledge of the 1st administrator.
 5. Loise Njoki Murathi filed her replying affidavit filed on 22nd February, 2023. She deposed that LR. No. 209/2490/26 belongs to her and does not form part of the estate. She confirmed that she still pays the taxes, utilities and salaries. The applicant was accused of diverting rent income from Kiambaa/Ruaka/3657 and Kiambaa/Ruaka/3658 estimated at Kshs. 650,000/=. She contended that Wilson Ngure Murathi is her son and not an intermeddler as alleged by the applicant and that he only collects rent in Kiambaa/Ruaka. T.33 and LR. No. 209/2490/26. The applicant was urged to account for the rental income from Kiambaa/Ruaka/3657 and Kiambaa/Ruaka/3658 since August, 2022. She stated that the caretaker has since refuted his averments in support of the applicant's application.



6. Pauline Wanjue Murathi filed her supplementary affidavit dated 3rd March, 2023. She refuted the claims by the 2nd administrator that LR. No. 209/2490/26 does not form part of the deceased's estate. She stated that the issue in regard to Kiambaa/Ruaka/3657 and Kiambaa/Ruaka/3658 are res judicata as the same have already been dealt with by the ELC court in Thika. The 2nd administrator's son was said to be an intermeddler as he is not authorised to collect rent as he is not an administrator.
7. The application was canvassed by way of written submissions.

Applicant's Submissions

8. The Applicant submits that the court is clothed with wide powers to ensure that the ends of justice are met. She contended that she has met the threshold set in the *Giella v Cassman Brown and Company Ltd* (1973) EA 358. That she has met the existence of a prima facie case with high chances of success as she has demonstrated that the 2nd administrator is intermeddling with the deceased's estate as such there is need for preservation. Reliance was placed in the case of *in the estate of Veronica Njoki Wakagoto (Deceased)* (2013) eKLR. Further, the applicant submits that the administrators should have a joint account and there is need to render accounts as the 2nd administrator is collecting rent for her own gain. In the circumstances, the court was urged to allow the applicant's application as prayed.

Respondent's Submissions

9. The Respondent submits that no party has authority to withdraw money from the estate's account without the consent of the other as such the respondent has no power to misuse funds held in the estate account. It was submitted that George, has since disassociated himself with his affidavit alleging that the respondent collected rental income in the month of August and September 2022. She submitted that only 50% of shares in Kiambaa/Ruaka/T.33 belong to the deceased's estate. Further, she submitted that LR. No. 209/2490/26 (Nrb) belongs to her as the same was transferred to the deceased since it could not be registered in her name due to cultural issues. In regard to Kiambaa/Ruaka/3657 and Kiambaa/Ruaka/3658, the applicant was said to have concealed their existence and continues to collect rental income.

Issues For Determination

10. Whether the applicant is deserving of the orders sought.

Analysis

11. Order 40 Rule 1(a) of the *Civil Procedure Rules* provides that:-
 1. Where in any suit it is proved by affidavit or otherwise—
 - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.



12. The criteria for determining whether the applicant is deserving of the injunctive orders sought are laid down in the case of *Giella versus Cassman Brown* (1973) EA 358. Similarly, in the case of [*Kibutiri... v...Kenya Shell*](#), Nairobi High Court, Civil Case No.3398 of 1980 (1981) KLR, the Court held that:

“The conditions for granting a temporary injunction in East Africa are well known and these are: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience. See also *E.A Industries ..v. Trufo ods* (1972) EA 420.”
13. In respect of a prima facie case, the applicant submits that her case has high chances of success as she has presented sufficient evidence to demonstrate that the respondent has been intermeddling with the deceased estate as such there is need for preservation. She further contends that the administrators should have a joint account and there is need to render accounts as the 2nd administrator is collecting rent for her own gain.
14. The 2nd Administrator, denied the claims of intermeddling. In any case, she alleges that LR. No. 209/2490/26 (Nrb) belongs to her and the deceased was holding it on her behalf since the same could not be registered in her name.
15. In the case of [*Mrao versus First American Bank Of Kenya Limited & 2 Others*](#) (2003) KLR 125, a prima facie case was described as follows:-

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
16. In the case herein, the parties herein being the administrators of the deceased’s estate agreed to collect rent from the deceased’s properties and the same is to be deposited in a joint account belonging to the estate. As for LR. No. 209/2490/26, the rental income is collected in cash for purposes of settling rental income tax and other utilities and the balance is to be deposited in the joint account. This however, has not been the position, because according to the applicant the respondent has been collecting rent for her own use which is detrimental to the estate.
17. Having perused the court record, and bearing in mind the nature of the matter, it is paramount to preserve the deceased’s estate as such all the rental income collected and the balance from LR. No. 209/2490/26 should be deposited in the joint account belonging to the estate for easy rendering of accounts when required.
18. Irreparable damage (no submissions in support)
19. Balance of convenience (no submissions in support)
20. In regard to whether the 2nd Administrator/Respondent should render an account in respect of all the rent collected, the [*Law of Succession Act*](#) is clear in Section 83 (e) and (h) on the duties of a personal representatives;-



- (e) within six months from the date of the grant, to produce to the court 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;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, 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.

21. See *Re Estate of David Kyuli Kaindi (deceased)* (2016) eKLR. The duty of an administrator is to account for the deceased's estate and this accounts should be made available to all beneficiaries in the estate as rendering of accounts is a statutory duty that the administrator owes to the beneficiaries and to the court. In the circumstances, therefore, the 2nd administrator should render accounts in regard to the estate of the deceased.

Findings And Determinations

22. For the forgoing reasons this court makes the following findings and determinations;
- a. The application is found to be partially merited.
 - b. Pending the hearing and determination of the Petition for administration of estate intestate, an order be and is hereby issued directing all rental income collected from premises erected on land reference no. 209/2490/26, Kiambaa/Ruaka /1615 and Kiambaa/Ruaka.T.33 be deposited into the estate account no. 01109XXXX Cooperative Bank Ruaka operated by the two administrators jointly.
 - c. The tenants occupying premises erected on the property referenced as L.R 209/2490/26, Kiambaa/Ruaka/1615 and Kiambaa/Ruaka/T.33 be and are hereby directed to deposit monthly rent into the estate account no.01109XXXX Cooperative Bank Ruaka operated jointly by the administrators.
 - d. The Respondent/2nd Administrator (Loise Njoki Murathi) do render an account of all rental income collected by herself and/or her agents, assigns and/or representatives from the premises erected on L.R.209/2490/26 and Kiambaa/Ruaka /T.33 for the months of August and September 2022.
 - e. This being a family matter each party to bear their own costs.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 17TH DAY OF MAY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice Court Assistant

Onkonyi for the Respondent

Munyoki for Mwangi for the Applicant.

