



**In re Estate of Patrick Katila (Deceased) (Succession Cause E731 of 2021)  
[2024] KEHC 7478 (KLR) (Family) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7478 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E731 OF 2021  
HK CHEMITEI, J  
JUNE 20, 2024  
IN THE MATTER OF THE ESTATE OF PATRICK KATILA (DECEASED)**

**BETWEEN**

**MARTHA MWENDE MULEI ..... APPLICANT**

**AND**

**PENNINAH MUTANU KIVONDO ..... RESPONDENT**

**RULING**

1. This ruling relates to the application dated 7<sup>th</sup> February, 2023 filed by Martha Mwende Mulei seeking for orders that:
  - (A) Pending the hearing and determination of the Confirmation of Grant herein this Honorable Court be pleased to restrain the Respondent from collecting and applying rents from the Deceased's Estate.
  - (B) The Respondent be ordered to immediately render account for all monies collected as rent from the following properties and estimated as follows: -
    - a. Developed Plot No 183 Kwa Mang'eli comprising of 23 rooms and each yielding rent of Kshs 3,000 p.m. each, and Day care yielding Kshs 5,000 p.m. each, approx. 4,237,000/= to date.
  - (C) All income from the Property of the Deceased be deposited in a joint account to be held by the advocates of the parties, pending further directions/ orders of this Court.
  - (D) The Respondent be ordered to immediately render an account of the whereabouts of the below listed goods which she intermeddled with after unilaterally closing down the deceased's club and converting it into a Day care centre.



- a. Pool table.
- b. Water Tank.
- c. Weighing scale.
- d. Office tables.
- e. Plastic chairs.
- f. 2 Television Sets.
- g. DSTV Decoder and set.
- h. Kegs Cans and Pumps.
- i. Water Pumps.

(E) The Applicant being the administrator of the estate be granted leave to access motor vehicles registration Numbers KAH 610J and KAP 376H solely for purposes of preserving them to prevent their wasting away.

(F) The Respondent do bear the cost of this Application.

2. The application is supported by affidavit sworn by Martha Mulei on 7<sup>th</sup> February, 2023. She avers inter alia that she was granted letters of administration intestate on 4<sup>th</sup> April, 2022 and the Respondent filed an application for revocation of grant dated 30<sup>th</sup> May, 2022, which is yet to be heard and determined. The Respondent, she deposes continues to intermeddle with the deceased's estate without accounting for the same.
3. The application is opposed vide replying affidavit sworn by Penninah Mutanu Kivondo on 13<sup>th</sup> March, 2023. She avers inter alia that this court ordered for status quo to be maintained pending the hearing and determination of the application dated 30<sup>th</sup> May, 2022. She and the Applicant reside in the respective matrimonial homes established for them by the deceased who is their late husband.
4. That the Applicant has control of the following assets namely; A/C No 01109XXXXX46600 held at Co-operative Bank of Kenya, A/C No 012XXXXX3817 held at Equity Bank of Kenya, A/C No 11519XXXXX held at Kenya Commercial Bank, Shares at Nthunguni builders and Plots at Utawala, Kamulu, Joska, Machakos, Kasarani, Mwea and Mbooni. The Applicant is harassing and threatening her and her 2 children that she bore with the deceased.
5. The Applicant has filed written submissions dated 2<sup>nd</sup> June, 2023 highlighting the issues of determination as follows:
  - i) Has the Respondent intermeddled with the estate of the deceased?
  - ii) Should the Respondent account to the estate for the intermeddling?
  - iii) Should the applicant be allowed to preserve the estate and avert wastage?
 She has placed reliance on the following:
  - a. Section 45 of the *Law of Succession Act* which provides as follows:

“(1) Except as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any



purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

2. Any person who contravenes the provisions of this section shall-

- a. Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- b. Be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

b. The case of *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR where the court stated as follows:

“The effect of [section 45] ...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

c. The case of *Benson Mutuma Muriungi v CEO Kenya Police Sacco & another* (2016) eKLR and *re Estate of M’Ngarithi M’Miriti* [2017] eKLR where the court held as follows:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order (s) of protection of the estate against any person.”

d. *In re Estate of Makokha Idris Khasabuli (Deceased)* where the court stated as follows:

“The primary roles of administrators are several. The first is collection or gathering or getting in of the assets of the estate. The second role is the protection or preservation of the assets collected or gathered or gotten in. The third one is payment of debts and liabilities of the estate from the assets gathered and preserved.”



- 6) The Respondent has filed written submissions dated 13<sup>th</sup> June, 2023 stating that the instant application is res judicata because it raises similar issues to those in her application dated 30<sup>th</sup> May, 2022. She has placed reliance on the following:
- a. Section 45 (1) of the *Law of Succession Act* [*supra*].
  - b. *In re Estate of M'Ngarithi M'Miriti* [2017] eKLR [*supra*].
  - c. Machakos Succession Cause No 372 of 2012: *Patrick Muasya Mutuku & another v David Musembi Mutua*.

### **Analysis and Determination**

7. The court has carefully read the application and the submissions on board. What is clear is that the substantive application for revocation is still pending. There is a claim by the applicant that the respondent is wasting the estate.
8. The Respondent on the other hand claims that what the Applicant is claiming to be a waste is not true since the deceased left the same with her. That each of the parties live in their respective homes as per the deceased arrangements.
9. The Respondent is also accusing the Applicant of holding the other major part of the estate and all that she is trying to achieve is wrestle whatever she is holding from her.
10. The counter accusation cannot be determined by way of affidavit evidence as it stands now. They must be subjected to the usual cross examination.
11. In light of the foregoing, I agree with the Respondent that the issues raised by the Applicant are squarely within the objection proceedings. The court on 10<sup>th</sup> June 2022 directed that *status quo* be maintained in the estate.
12. To litigate and decide on the application at hand is essentially dealing with the substantive application through the backdoor and indeed akin to reviewing the afore stated status quo orders.
13. On the face of it both parties are in control of the deceased estate and to allow the application as worded will be interfering with the status quo position of the parties. It appears that they each know at least what the other one is holding after the demise of the deceased.
14. To this end therefore it is necessary that they are all subjected to a formal hearing where they will lay bare their evidence. Of great significance is whether the respondent was lawfully married to the deceased or whether her and her children had any connection with the deceased. The assets which they claim that it belonged to the deceased shall also be subjected to strict proof.
15. I think the court has stated much to show that there is no merit in the application and the same is hereby dismissed. Costs shall await the outcome of the main application for revocation of the grant.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**H K CHEMITEI.**

**JUDGE**

