



REPUBLIC OF KENYA



In re Estate of Ruth Nyakiringa Kimani (Deceased) (Succession Cause E005 of 2023) [2024] KEHC 11911 (KLR) (4 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E005 OF 2023
A MSHILA, J
OCTOBER 4, 2024
IN THE MATTER OF THE ESTATE OF RUTH NYAKIRINGA
KIMANI (DECEASED**

BETWEEN

**BEATRICE GATHON MAINA 1ST APPLICANT
LUCY WANGARI KIMANI 2ND APPLICANT
JOSEPH MWANGI MACHARIA 3RD APPLICANT
ALICE NYAMBURA KIMANI 4TH APPLICANT**

AND

**STEPHEN MIRINGU KIMANI 1ST RESPONDENT
MORRIS GITHINJI KIMANI 2ND RESPONDENT**

RULING

1. Before court is an application by way of Notice of Motion dated 19th December, 2023 and brought under Section 45, 47, 49 and 83 of the [Law of Succession Act](#) and Rules 73 of the [Probate and Administration Rules](#). The Applicants sought for orders:-
 - a. That preservative orders do issue restraining and/or stopping the Respondents either by themselves, their servants or any other person acting from their authorization or control from intermeddling with the estate or utilizing the estate to the disadvantage of other lawful beneficiaries of the estate pending the hearing and determination of this application and the Summons for Confirmation of Grant.
 - b. That preservative orders do issue restraining the Respondents either by themselves, their servants or any other person acting from their authorization or control be restrained from



intermeddling with the estate by collecting rental income from Commercial and Residential Premises on Plot Nos 1489 and 1490, demolishing the buildings, constructing structures, selling the property, developing the said property, leasing out the said property to third parties or undertaking any further development determination of this application and/or Summons for Confirmation of Grant.

- c. That the Respondents do render an account within 45 days hereof of all the rental income collected/received by themselves since October 2019 to December 2023 in respect of the commercial and residential rental houses/premises on the Wataalam Plot No's 1489 and 1490.
 - d. That the administrators start collecting the rental income derived from the commercial and residential rental houses/premises on the Wataalam Plot No's 1489 and 1490 beginning January 2024 which shall be payable to the Administrators joint account opened for that purpose as follows:-
A/C NAME: LUCY, BEATRICE AND ALICE
BANK: EQUITY
BRANCH: RUIRU
A/C NO: 0870184860476
 - e. That the funds held in the said rent administrators joint account shall be shared equally among all the beneficiaries upon Confirmation of Grant and no payments shall be paid out of the said account without leave of the court until the Grant is confirmed.
 - f. That the rental income monies collected by the Respondents from the commercial and residential rental houses/premises on the Wataalam Plot No's 1489 and 1490 since October 2019 to December 2023 be deducted from their share of the estate proceeds and the same be divided equally among all the beneficiaries.
 - g. That the Officer Commanding Station (OCS) of Wataalam Police Station do oversee the enforcement of the orders herein.
2. The application is supported by the affidavit of Beatrice Gathoni Maina, Lucy Wangari Kimani, Joseph Mwangi Macharia and Alice Nyambura Kimani the administrators of the deceased's estate. She deposed that the deceased owned properties among them two commercial plots at Wataalam Nos 1489 and 1490. That since the demise of the deceased on 27th September, 2019, the respondents have been in exclusive use and control of the said plots with the exclusion of the other beneficiaries and that they have been intermeddling with the rental income by applying it for their own use. That the respondents stopped the tenants from remitting rent into the joint account that was opened during the deceased's lifetime. The respondents were said to lack legal rights to deal with the properties as such should be stopped. Further, it was deposed that none of the beneficiaries have benefitted from the rental income collected by the respondents. They averred that they had opened a joint account for purposes of collecting the rent to be shared equally among the beneficiaries. It was stated that an account of the income and expenses will be given every 6 months. Lastly, it was deposed that the respondents will not suffer prejudice in any case failure to allow the application will bring loss to the estate.
 3. Stephen Miringu Kimani filed his replying affidavit dated 13th January, 2024. He deposed that he constructed his home on Wataalam Plot Number 1490 as well as a single rental unit in 1978. That his parents had their matrimonial home on Wataalam plot 1489 and that they had 6 rental units on Wataalam 1490 and 9 units on Wataalam 1489 and that a management company was collecting rent



on behalf of the deceased. He further deposed that his late mother discontinued the services of the management firm and authorized him to be collecting the rent on her behalf which he has been doing since. He averred that the succession cause was filed without his knowledge and consent and that the other beneficiaries forced tenants out and are now occupying the rental units as such the ones intermeddling with the estate. Lastly he stated that another account can be opened as long as the administrators are not solely in control.

Analysis And Determination

4. The High Court is vested with wide powers under the *Law of Succession Act* to make such orders as may be necessary to preserve the estate pending the distribution of the deceased's estate.
5. Section 47 of the *Law of Succession Act*, gives this court power to preserve the assets of the deceased's estate if it is being wasted. The Section provides as follows:-

“The High Court shall have jurisdiction to entertain any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient, provided that the High Court may for the purpose of this Section be represented by the Resident Magistrate appointed by the Chief Justice.”

6. In *Re Estate of Simon Kimendero (deceased)* (2020) eKLR, the court noted that of importance to preservatory order in respect of estate property is that: -

- i) The Applicant has an arguable case;
- ii) The property is estate property
- iii) The property is likely to be wasted away.

7. In the instant case, the applicants allege that the respondents are intermeddling with the deceased's estate by collecting rental income derived from the commercial and residential rental houses on the Wataalam Plot No's 1489 and 1490.

8. The applicants averred that the respondents will not suffer prejudice if the preservatory orders are granted and that the estate will suffer irreparable damage if the application is disallowed.

9. The 1st respondent stated that he was authorized by his late mother to be collecting rent after the death of the deceased and that the applicants are the ones intermeddling with the estate by chasing away tenants and occupying the said rental units.

10. In *Re Estate of John Gakunga Njoroge* (2015) eKLR, Murithi J held that:-

“A person can only deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the *Law of Succession Act*. In this regard, the jurisdiction of the court to protect the estate of a deceased person is set out in Section 45 of the *Law of Succession Act*”

11. Section 45 of the *Law of Succession Act*, Cap 160 Laws of Kenya provides that:-

“(1) Except so far 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.



- (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 in the due course of administration."

12. The 1st respondent herein does not dispute that he is collecting rent from the rental units at Wataalam Plot No's 1489 and 1490. He alleges that he was authorized by his late mother to be collecting rent. He also alleges that the applicants have also been intermeddling by chasing away tenants and occupying the said rental units. He suggests that a joint account be opened but the same should not be managed by the applicants alone.
13. It is clear then that the applicants have established a prima facie case being that the respondents are exclusively collecting the rental income while the estate has not been fully distributed. In any case, the respondents are not the ones who have been appointed as the administrators of the deceased's estate as such their actions amount to intermeddling.
14. In the circumstances, this court is satisfied that there is need to preserve the deceased's estate pending the hearing and determination of the Summons for Confirmation of Grant taking into consideration the guidance provided under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.
15. The main issue in contention is the rental income from the Wataalam Plots. The applicants propose that a joint account should be opened in the names of the administrators as the respondents are currently utilizing the rental income in exclusion of the other beneficiaries.
16. Bearing the above and in the interest of justice and to avoid prejudice on either of the parties herein, this court is satisfied that a joint account be opened in the names of the Administrators as well as the 1st Respondent as he is the one currently managing the rental units; that the Administrators may in future be called upon to render accounts when the joint account is opened and the rental income is channeled through the said account.

Findings And Determination

17. For the foregoing reasons this court makes the following findings and determination;
- i. This Court finds that the application has merit and it is hereby allowed;
 - ii. Preservatory orders be and do hereby issue restraining the Respondents either by themselves, their servants or any other person acting from their authorization or control from intermeddling with the estate of the deceased demolishing the buildings, constructing structures, selling the property, developing the said property, leasing out the said property to third parties or undertaking any further development pending hearing and determination of Summons for Confirmation of Grant.
 - iii. A joint account be opened in the names of the Administrators as well as the 1st Respondent for collection and deposit of rental income in respect of the commercial and residential rental houses/premises on the Wataalam Plot No's 1489 and 1490 – pending hearing and determination of summons for confirmation of Grant.



- iv. There shall be no order as to costs as this is a family matter.
- v. Mention on 18/11/2024 before the Deputy Registrar for compliance and directions

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 4TH DAY OF OCTOBER, 2024

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

N/A -for the Applicants

Stephen present in person

