



REPUBLIC OF KENYA



**In re Estate of Jason Kiamba Kimbui (Deceased) (Succession Cause  
16 of 2018) [2023] KEHC 18369 (KLR) (Family) (19 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18369 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 16 OF 2018**

**PM NYAUNDI, J**

**MAY 19, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE JASON KIAMBA KIMBUI (DECEASED)**

**BETWEEN**

**MARY KIMBUI ..... APPLICANT**

**AND**

**LOIC NYEGERA KIMBUI ALIAS LOIS NEGERA KIMBUI .... 1<sup>ST</sup>  
ADMINISTRATRIX**

**PAMELA KARAMBU KIMBUI ..... 2<sup>ND</sup> ADMINISTRATRIX**

**RULING**

1. The Application for determination is presented under sections 47, 82 and 83 of the [Law of Succession Act](#), and Rules 49 and 73 of the *Probate and Administration rules* and seeks the following orders
  - a. That the Administrators be compelled to distribute the estate of the deceased as per the certificate of Confirmation of Grant issued on October 23, 2018 and rectified on June 30, 2021
  - b. That the Administrators be compelled to release to the applicant all title documents relating to the properties allocated to one Dennis Kinoti Kimbui namely: -
    - a. 3 acres on Ntima/Igoki/ 4101 in Kaaga Meru
    - b. Ngumo House No.251 on Nairobi Block 32/848
    - c. Leases relating to Apartment No. A1, A3, A5 and A9 situate on L.R. No. 4858/12
    - d. Ntima/Igoki/1910



- c. That the Administrators be ordered to give an account of the proceeds collected from the properties known as Apartment No. A1, A3, A5 and A9 situate on L.R. No. 4858/12 as well as rental income collected from Ntima/ Igoki/1910 from the date of the grant to the present.
  - d. That the Administrators be ordered to handover to the applicant all proceeds collected as rental income from June 30, 2021 to the present.
  - e. That the costs of this Application be in the cause.
2. The Application is supported by the affidavit of the applicant sworn on July 29, 2022. The Application is opposed and the 2<sup>nd</sup> respondent has sworn a replying affidavit on January 27, 2023. In response thereto, the applicant has sworn a further Affidavit on January 31, 2023.
  3. The parties agreed to canvas the application by oral arguments and the Court heard them on April 25, 2023.

### **Background**

4. The applicant is the daughter in law to the 1<sup>st</sup> respondent and sister in law to the 2<sup>nd</sup> respondent. She is the widow of Dennis Kinoti Kimbui (Deceased) who is the son of the 1<sup>st</sup> respondent and brother to the 2<sup>nd</sup> respondent. The applicant is a Co-Administrator to the Estate of her deceased husband having obtained Grant of letters of Administration on February 1, 2022.
5. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are Co Administrators of the Estate of Jason Kiamba Kimbui (Deceased) who is the father Dennis Kinoti Kimbui (also deceased) as per Certificate of Confirmation of Grant of Probate of Will dated October 23, 2018 and Rectified on June 30, 2021.
6. As per the grant the following properties were allocated to Dennis Kinoti Kimbui
  - a. 3 acres on Ntima/Igoki/ 4101 in Kaaga Meru
  - b. Ngumo House No.251 on Nairobi Block 32/848
  - c. Leases relating to Apartment No. A1, A3, A5 and A9 situate on L.R. No. 4858/12 and
  - d. Ntima/Igoki/1910
7. The applicant submits that the respondents have not fulfilled their obligation to distribute the estate and that further they continue to collect rents due to the estate of the deceased absent legal basis.
8. For this reason, the applicant is moving the court to compel the applicant to distribute the estate, and provide an account of the rental income collected in respect of the properties due to the estate of Dennis Kinoti Itumbi.
9. The respondent defends their action on several fronts. It is contended that prior to his death, the deceased accrued a medical bill and the rental income being collected is being utilised to offset the Bill and meet liabilities of the Estate.
10. On the withheld titles, the respondents justify their action that they are holding the same until the stamp duty on the same is paid.

### **Analysis and Determination**

11. It is not in dispute that the applicant is the Administrator of the Estate of Dennis Kinoti Itumbi. It is also agreed that he is the heir of the properties set out in paragraph 6 above. It is also not contested that



the respondents continue to hold onto the titles and that the respondents continue to collect rental income from the properties allocated to the Dennis Kinoti Kimbui and use them to offset liabilities they say owed by him and the Estate.

12. At the hearing of the Application counsel for the respondents stated that they are prepared to submit current accounts of all the rental income they have collected.
13. Having considered the rival submissions, I frame the following as the issues for determination
  - a. Whether the respondents should be compelled to finalise the administration of the estate?
  - b. Whether the respondents should render an account of the Estate of Dennis Kinoti Itumbi?
  - c. Whether the respondents are liable to refund any money to the Estate of Dennis Kinoti Itumbi and if so the amount?
  - d. Who should pay the costs of the suit?
14. Whether the respondents should be compelled to finalise the administration of the estate?

Section 83 of the *Law of Succession Act* sets out the duties of personal representatives and provides as follows with regards to the administration of the Estate

83. Personal Representatives shall have the following duties-

.....

- (g) within six months from the date of confirmation of the grant or such longer period as the court may allow to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

15. This responsibility is so critical that section 76 (d) of the *Law of Succession Act* identifies this as one of the grounds upon which a grant may be revoked. In the following words-

76. grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - ii. to proceed diligently with the administration of the estate; or
  - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular ;...

16. In this matter the Grant was issued on October 23, 2018 and later rectified on June 30, 2021. This application was presented on July 29, 2022. The respondents have not provided a tangible reason for the failure to administer the Estate, they have therefore run afoul of section 76 (d) (ii) as they have failed to proceed diligently with the administration of the estate.



**a. Whether the Respondents should render an account of the Estate of Dennis Kinoti Itumbi? and Whether the Respondents are liable to refund any money to the Estate of Dennis Kinoti Itumbi and if so the amount?**

17. Dennis Kinoti Itumbi died on August 10, 2021 and the applicant herein was issued letters of Administration on February 1, 2022. Section 45 of the [Law of Succession Act](#) is categorical, 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 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.

18. It is not contested that the respondents have been collecting rent of properties that have been allocated to the Deceased Dennis Kinoti Kimbui. This is in contravention of the clear provisions of the law, especially on account of the fact that the applicant has been granted letters of Administration.

It is evident that the respondents have no right to make any decisions and take any action in relation to the Estate of Dennis Kinoti Itumbi.

19. In [Benson Mutuma Muriungi v C. E. O, Kenya Police SACCO & another](#) [2016] eKLR the court defined ‘intermeddling’ as follows:

“There is no specific definition of the term intermeddling provided 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 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, or disposing of, transferring, 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](#) or any other written law. I do not pretend to close the list either or to 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.”

20. From the foregoing it is not in dispute that by collecting rents the respondents herein have been intermeddling with the Estate of Dennis Kinoti Itumbi. The respondents are prepared to render accounts but are not willing to refund any money as in their view that the funds have not been misappropriated but have been utilised to pay debts owed by his estate.

21. It is not debatable as to whether or not the respondents should provide an account, it follows therefore that they must prepare full, accurate and audited accounts in respect to the dealings with the Estate from the date of the rectification of the grant on June 30, 2021 to date.



22. It is upon presentation of the audited accounts that a determination will be made of the amounts if any that are refundable to the Estate of Dennis Kinoti Kimbui.
23. The upshot of the foregoing is that the Application dated July 29, 2022 is allowed and following orders made
  - a. The Administrators to finalise the Administration of the estate as per certificate of Confirmation of Grant issued on October 23, 2018 and rectified on June 30, 2021 within 120 days from the date hereof.
  - b. That the Administrators release to the applicant all title documents relating to the properties allocated to Dennis Kinoti Kimbui as set out in paragraph 6 above within 14 days.
  - c. That the Administrators cause the preparation of audited accounts of the rents received from properties allocated to Dennis Kinoti Itumbi by them from June 30, 2021 to May 31, 2023 within 45 days.
  - d. That the respondents, their agents, servants and or employees are hereby restrained from intermeddling and or interfering with the Estate of Dennis Kinoti Itumbi. For the avoidance of doubt the applicant herein will with immediate effect collect without any obstruction rental proceeds from the Estate of Dennis Kinoti Kimbui
  - e. That the matter be mentioned on July 5, 2023 to confirm compliance.
  - f. On costs, having regard to the nature of the dispute and the relationship between the parties, each party will bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

**In the presence of:**

Ms Ndirangu... .....Advocates for the Applicant

Ms. Wanjiku.....Advocates for the Respondent

Karani Court Assistant

