



REPUBLIC OF KENYA



**In re Estate of Samuel Muchai Kinyanjui (Deceased) (Probate & Administration
1 of 2024) [2024] KEHC 13392 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 1 OF 2024
MA ODERO, J
NOVEMBER 4, 2024**

IN THE MATTER OF THE ESTATE OF SAMUEL MUCHAI KINYANJUI (DECEASED)

RULING

1. This Ruling concerns an application dated 6th May 2024 filed by Naomi Wangui Muchai a widow of the Deceased from the 2nd House seeking the following orders;-
 - “ 1. Spent
 2. That the treatment and medical costs for Naomi Wangui Muchai at the Texas Health Southwest be paid form the Bank Account of the Estate of the late Samuel Muchai Kinyanjui held at Gigiri Branch at I & M Bank being Account No 02xxxxxxxx010.
 3. That the sum of United States Dollars 46, 842, 69 be paid from the Account of the Estate of the late Samuel Muchai Kinyanjui at I & M Bank, being Account No. 025xxxxxxxx010 to Texas Health Southwest for the treatment of Naomi Wangui Muchai.
 4. That the costs of this Application be in the cause.”
2. The application which was premised upon Section 47, 82, 83(c), 94 and 95 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 73 of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The application seeking release of funds from the estate account was supported by Richard Maina Muchai a Co-Executor of the Deceased’s will through his Replying Affidavit dated 10th June 2024. The other Executor Johanna Mwaura Muchai representing the 1st House filed a Reply dated 20th June 2024 opposing the application.
4. A third Co-Executor Anita Wangari Muchai who represents the 3rd House filed a Replying Affidavit dated 23rd May 2024 in opposition to the application.



5. The court requested the parties to attempt to compromise the application by way of consent. This was not possible and thus the matter was canvassed by way of written submissions.
6. The Applicant filed written submissions dated 4th July 2024, the 1st House filed submissions dated 15th July 2024, whilst the 3rd House filed written submissions dated 16th July 2024.
7. This is an old succession cause which was filed in the year 2017. The substantive hearing commenced before this court on 28th June 2021 and is still ongoing.
8. In order to preserve the estate the parties entered into a consent dated 15th November 2017 to the effect that an estate account be opened by the three executors at I & M Bank Gigiri Branch into which account all estate income was to be deposited and held pending the hearing and determination of the main suit.
9. The Applicant now seeks to have funds withdrawn from that estate account to cater for her medical costs.
10. I am mindful of the fact that this is a very contested cause. I also note that the parties all consented to the opening of the estate account, where all estate income was to be held until the case was determined.
11. Other parties in this matter have made similar applications for release of funds for medical expenses which applications were not allowed. The parties were unable to reach a consensus themselves on this issue.
12. The duty of this court is to ensure that the estate of the Deceased is preserved until it is distributed to the genuine beneficiaries. An estate account cannot be utilized as an ATM for parties to dip into at will no matter how pressing the need may be.
13. I note that in the supporting Affidavit the Applicant has addressed at length issues relating to her contribution and development of estate assets. These are not matters for consideration under this application. The question of the Applicants share in the estate is one that can only be determined upon conclusion of the main hearing. As such these arguments are misplaced.
14. Given the age of this matter and the fact that the hearing is at its tail end I am not inclined to allow this application as to do so will only open the gates for a flood of similar applications. I therefore dismiss the application dated 6th May 2024. Each party to meet their own costs.

DATED IN NYERI THIS 4TH DAY OF NOVEMBER, 2024

MAUREEN A. ODERO

JUDGE

