



REPUBLIC OF KENYA



**Kungu & 3 others v Kamau & 6 others (Succession Cause E051 of 2021)  
[2024] KEHC 13669 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E051 OF 2021  
HI ONG'UDI, J  
NOVEMBER 7, 2024**

**BETWEEN**

**KAGIRI KUNGU ..... 1<sup>ST</sup> ADMINISTRATOR  
SERAH WANJIKU KUNGU ..... 2<sup>ND</sup> ADMINISTRATOR  
FRANCIS NDEGWA KUNGU ..... 3<sup>RD</sup> ADMINISTRATOR  
DAVID NGANGA KUNGU ..... 4<sup>TH</sup> ADMINISTRATOR**

**AND**

**STEPHEN KUNGU KAMAU ..... 1<sup>ST</sup> BENEFICIARY  
STEPHEN KUNGU KAMAU ..... 2<sup>ND</sup> BENEFICIARY  
STEPHEN KUNGU NJOROGE ..... 3<sup>RD</sup> BENEFICIARY  
STEPHEN KUNGU KAGIRI ..... 4<sup>TH</sup> BENEFICIARY  
REBECCA NJERI KAGIRI ..... 5<sup>TH</sup> BENEFICIARY  
RITA MUTHONI KAGIRI ..... 6<sup>TH</sup> BENEFICIARY  
JESSE NJOGU KAGIRI ..... 7<sup>TH</sup> BENEFICIARY**

**RULING**

1. This ruling is in respect of two applications. The first one is the chamber summons dated 20<sup>th</sup> February, 2024 while the second one is dated 13<sup>th</sup> March, 2024.
2. In the application dated 20<sup>th</sup> February, 2024 the administrators pray for the following orders:
  - i -
  - ii. Spent.



- iii. That this honourable Court be pleased to vary downwards and/or review its ruling and/or orders on reasonable provision made on 7<sup>th</sup> November, 2023 and enhanced on 15<sup>th</sup> December, 2023 pending confirmation of grant.
  - iv. That this honourable Court be pleased to direct that all the proceeds from the estate rental income, held by Stephen Kungu Njoroge and/or any other beneficiaries be deposited in the estate account number 2050XXXX66 and rent reschedules released for scrutiny immediately for ease of administration and meeting of recurrent obligations.
  - v. The cost of this application be in the cause.
3. The application is premised on the grounds on its face and the administrators' affidavit sworn on even date. They deponed that there was a subsisting order directing the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators to make reasonable provision of Kshs. 200,000/= monthly to 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> beneficiaries /respondents the same amounting to Kshs. 1,000,000/= a month.
  4. He further deponed that they had been informed by their advocates that the said directions were granted on the basis that the deceased's estate was vast and rental income was not the only income the administrators received. That the same was an error /mistake on the part of the court as the representations by the parties herein did not reflect the true financial status of the estate and they had been constrained to borrow from the family business wherein the deceased was only a part shareholder. In addition, that their advocates on record had advised them that companies' income was exempted from the directions of the court since to order its use would be interfering with corporate governance.
  5. They deponed that the bank accounts which had money were fixed deposit accounts and the other bank accounts had nil balances while the only pieces of land were not under the administrators' control. Further, that they had no problem with the reasonable provision but the challenge was that the same was not sustainable. That no prejudice would be occasioned to the beneficiaries if the review of orders are granted since they had alternative sources of income.
  6. In response, the 3<sup>rd</sup> beneficiary/respondent filed a replying affidavit dated 27<sup>th</sup> February, 2024. He admitted to the contents of paragraphs 1 and 2 of the supporting affidavit and denied those of 3 to 16. He averred that the administrators had failed to disclose where the revenue they had collected had been banked, the exact amount of money collected and to what extent they were able to abide by the directions of the court. He added that this application was an afterthought deliberately filed to delay the hearing of the summons for confirmation of grant to allow the administrators continue managing the vast estate for their own benefit.
  7. The 2<sup>nd</sup> beneficiary/respondent equally filed a replying affidavit dated 28<sup>th</sup> February 2024 where he reiterated the contents of the 3<sup>rd</sup> beneficiary's/respondent's affidavit.
  8. The 4<sup>th</sup> beneficiary filed a replying affidavit dated 28<sup>th</sup> February 2024. He averred that administrators had not paid the monthly provisions for January and February 2024. Further, that the deceased's estate was indeed vast and comprised several bank accounts, real property and rental income as listed in the inventory of assets and liabilities to the estate. Thus, it could not be said that the deceased's estate could not afford to pay each of the 5 beneficiaries kshs. 200,000/= per month.
  9. The administrators/applicants filed a supplementary affidavit dated 26<sup>th</sup> April 2024 in response to the beneficiaries' /respondents' replying affidavits.
  10. The summons dated 13<sup>th</sup> March, 2024 was filed by the 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> beneficiaries/respondents seeking the following orders;



- i. Spent.
  - ii. That the order issued on 21<sup>st</sup> February 2024 suspending the directions/orders given by the court on 7<sup>th</sup> November 2023 and 15<sup>th</sup> December 2023 be set aside and or discharged.
  - iii. That Kagiri Kungu, Serah Wanjiku Kungu and David Nganga Kungu being the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators of the deceased's estate be ordered and authorized to withdraw a sum of Kshs. 1,000,000/= per month from the deceased's bank account number 1953XXXX010 at HFC Limited, Nakuru Branch or the deceased's bank account number 2042XXXX87 at Absa Bank Kenya PLC, Nakuru East Branch to pay the reasonable provision of Kshs. 200,000/= per month ordered to be paid to 5 beneficiaries Stephen Kungu Kagiri, Rebecca Njeri Kagiri, Jesse Njogu Kagiri, Stephen Kungu Kamau (1) and Stephen Kungu Kamau (2) on 15<sup>th</sup> December 2023,
11. The application is premised on the grounds on its face and the affidavit of the 4<sup>th</sup> beneficiary/respondent herein sworn on even date. He deponed that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators had not paid the monthly provisions for January, February and March 2024. Further, that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators stated in their chamber summons dated 20<sup>th</sup> February 2024 that they had no problem with reasonable provision. The challenge was that they had no access and are not signatories to the deceased's bank accounts which had funds.
  12. He further deponed that one of the deceased's bank account number 1953XXXX01-0 at HFC Limited, Nakuru Branch had a credit balance of Kshs. 23,785,046/66 as at 11<sup>th</sup> December 2023 (he annexed a copy of the bank statement). He added that the deceased's bank account number 2042XXXX87 at Absa Bank Kenya PLC, Nakuru East Branch had a credit balance of Kshs. 322,890,151/55 as at 27<sup>th</sup> November 2023(he annexed a copy of the bank statement).
  13. Both applications were canvassed by way of written submissions.

#### **Administrators' submissions**

14. The said submissions were by filed by Sheth & Wathigo Advocates and are dated 26<sup>th</sup> April, 2024. Counsel gave a brief background of the application and identified two issues for determination by this court.
15. The first issue is whether there are sufficient reasons to vary downwards and/or vary review the orders of reasonable provisions made on 7<sup>th</sup> November 2023 and enhanced on 15<sup>th</sup> December 2023. Counsel submitted in the affirmative and added that the administrators had the obligation to collect and preserve the estate. In support of this position he cited the case of *In the Estate of Kamatu Mwanthi Kamatu*.
16. He further submitted that all the estate's proceeds had been put in company accounts and it was therefore the administrators' request that the court reinforces the need to have the estate income in a central kitty managed by them for ease of accountability. He argued that the deceased was only a part shareholder in the companies listed in this cause and the benefits to her estate only accrued to the extent of her shares.
17. The court's attention was drawn to the decisions in *Salomon v Salomon* [1897] Ac 78, *Victor Mabachi & Another v Nurtturn Bates Ltd*, Civil Appeal No. 247 of 2005 [2013] eKLR, *In re Estate of Juilius Mimano (Deceased)*[2019] eKLR, *Veronica Njoki Wakagoto (Deceased)* [2013]eKLR and *Mohamed Guyo Boru v Richard Mwilaria Aritho* [2022] eKLR.



18. The second issue is whether the court should direct all proceeds from the estate rental income to be deposited in the account number 2050XXXX66. Counsel submitted in the affirmative and urged the court to allow the administrators application and to dismiss the one by the beneficiaries /respondents.

#### **The 4<sup>th</sup> and 5<sup>th</sup> beneficiaries' submissions**

19. The said submissions were filed by Kefa Ombati & Company and are dated 25<sup>th</sup> April 2024. Counsel gave a brief background of both applications and identified four issues for determination.
20. The first issue is whether there are sufficient reasons to vary downwards and or review the orders on reasonable provisions made in 7<sup>th</sup> November 2023 and enhanced on 15<sup>th</sup> December 2023. Counsel submitted in the negative while relying on sections 26, 27 and 28 of the *Law of Succession Act*.
21. Regarding the second issue on whether the court should direct all proceeds from the estate rental income to be deposited in the estate account number 2050XXX66, he submitted that the court had already dealt with that issue in the orders/directions issued on 7<sup>th</sup> November 2023 and 15<sup>th</sup> December 2023.
22. The third issue is whether the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators can be ordered and authorized to withdraw the sum of kshs. 1,000,000 per month from the deceased's bank account to pay the reasonable provision of kshs. 200,000/= per month to the 5 beneficiaries. He submitted in the affirmative while indicating the deceased's bank accounts balances. On the issue of costs of the application, he submitted that the same should be paid from the estate.
23. In conclusion, the court was urged to dismiss the chamber summons dated 20<sup>th</sup> February 2024 with costs. Equally, the court was urged to allow the summons dated 13<sup>th</sup> March 2024 in terms of prayers 2,3 and 4.

#### **7<sup>th</sup> Beneficiary/respondent submissions**

24. The said submissions were filed by Mirugi Kariuki & Company Advocates and are dated 9<sup>th</sup> May 2024. Counsel gave a brief background of the application dated 20<sup>th</sup> February 2024 and identified four issues for determination.
25. The first issue is whether the application dated 20<sup>th</sup> February 2024 has met the threshold for setting aside the order of reasonable provision. Counsel submitted that the said application was prejudicial and ought to be dismissed and the reasonable provision of 15<sup>th</sup> December 2023 be reinstated. He placed reliance on section 28 of the *Law of Succession Act* and the case of Re Estate of Albert Musyoka Mueti (Deceased) [2020] eKLR.
26. The second issue is whether the application filed on 14<sup>th</sup> March 2024 has met the threshold for varying the orders of 21<sup>st</sup> February 2024. Counsel submitted in the affirmative and added that the directions issued on 21<sup>st</sup> February 2024 were prejudicial and discriminatory to the 5 beneficiaries. He cited section 29 of the *Law of Succession Act* and the case of PMM of JNW [2020] eKLR.
27. The third issue is whether the court should direct that all the proceeds from the estate rental income ought to be deposited into the estate account number 2050XXXX66 and rent schedules released for scrutiny. He submitted in the affirmative and cited the decision in Re estate of Haji Mohamed (Deceased) [2016] eKLR.
28. On the issue of costs, counsel cited section 83 of the *Law of Succession Act* and submitted that costs should be in the cause. In conclusion, he urged the court to set aside the orders issued on 21<sup>st</sup> February



2024 and the ones issued on 15<sup>th</sup> December 2023 be reinstated. Further, that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> administrators be ordered to make payments of reasonable provisions to the five (5) beneficiaries.

### **Analysis and determination**

29. I have considered the two applications together with the affidavits sworn in support, the replying affidavits and the submissions by the respective parties. I opine that the issue for determination is whether both applications or either of them is merited.
30. Looking at both applications, there is no doubt that they are intertwined since one seeks that the directions on reasonable provision made on 7<sup>th</sup> November, 2023 and reviewed on 15<sup>th</sup> December, 2023 be suspended and/or stayed. While the summons dated 13<sup>th</sup> March 2024 seeks that the orders issued on 21<sup>st</sup> February 2024 suspending the directions /orders given by the court on 7<sup>th</sup> November 2023 and 15<sup>th</sup> December 2023 be set aside and or discharged.
31. This court notes that in issuing the directions of 7<sup>th</sup> November 2023 it was guided by the parties' oral submissions in court. When the matter came up for mention on 14<sup>th</sup> December 2023 the court noted that there was partial compliance of the said directions. On 15<sup>th</sup> December, 2023 the court therefore went ahead to issue further directions to those of 7<sup>th</sup> November 2023. On 14<sup>th</sup> March 2024 the court upon hearing the parties' counsel directed that there be a consultative meeting to resolve the issues raised in the application dated 20<sup>th</sup> February 2024. Further, on 4<sup>th</sup> April 2024 this court gave the parties more time to hold the consultative meeting on 12<sup>th</sup> April 2024 for settlement. The matter came up for further mention on 29<sup>th</sup> April 2024 and the court was notified that the settlement had not succeeded.
32. In view of the unfolding circumstances, it is clear that this court's directions issued on various dates have not been complied with and the parties herein have equally failed to reach a settlement on the matter. This court has been patient in order to accommodate the wishes of the parties herein but there seems to be no progress. The court will not allow the parties herein to take it in circles and continue to make it issue directions/orders in vain. It is my opinion that it is in the interest of justice that this matter having been filed in 2021 proceeds for full hearing of summons for confirmation of grant to avoid further waste of the deceased's estate and the precious judicial time.
33. I clearly wish to categorically state that whatever directions/orders that have been issued by this court were based on the information and submissions presented to the court by the parties' counsel. To turn around and start making claims that the court has issued prejudicial and discriminatory orders to the 5 beneficiaries is really disrespectful. This court will therefore not allow the parties herein to take it round in circles. The administrators should take up their roles seriously for the benefit of the entire estate. The Administrators must comply with the current directions/orders before the court can issue directions on deposit of rent in a specific account.
34. The upshot is that the applications dated 20<sup>th</sup> February, 2024 and 13<sup>th</sup> March, 2024 lack merit and are dismissed with no order as to costs.
35. Let all parties prepare for the hearing of the summons for the confirmation of the grant.
36. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

