



**In re Estate of Gerishon Kamau Kirima (Deceased) (Succession Cause  
1298 of 2011) [2025] KEHC 13290 (KLR) (Family) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13290 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1298 OF 2011  
PM NYAUNDI, J  
SEPTEMBER 26, 2025  
IN THE MATTER OF THE ESTATE OF GERISHON KAMAU KIRIMA (DECEASED)**

**RULING**

**Introduction**

1. If it is true that the dead turn in their graves every time the living do something that displeases or dishonours them, then some members of the family of G K Kirima (deceased) have succeeded in ensuring that that over the past 14 years the patriarch has not rested in peace.
2. The application before me, dated 8<sup>th</sup> April 2025, presents yet another folio in the voluminous litigation history of this Estate.
3. By the judgment delivered on 21<sup>st</sup> February 2025, the earlier grant of letters of administration was revoked and a fresh grant was issued to Anne Wangari Kirima and Stephen Kirima. The Administrators were required to-
  - i. Present a final report of all the liabilities of the estate within 6 months
  - ii. Prepare a 'cost to the estate report' of the intermeddling
  - iii. Ensure that all rental income due to the estate is deposited into the estate accounts effective February 2025
  - iv. Pay to Grace Warwathia the sum of Kshs 54 million in cash or identify an asset of that value for transfer to her within 90 days 21<sup>st</sup> February 2025
  - v. Ensure transmission of the Estate as per partial confirmation of grant vide certificate dated 13<sup>th</sup> December 2023 is finalised within 6 months
  - vi. Present a revised proposal on distribution of the net estate (factoring in liabilities, gifts and intermeddling) within 18 months.



4. Barely a month after that judgment the administrators were back in Court, urging that-
  - i. Spent
  - ii. Spent
  - iii. Spent
  - iv. Spent
  - v. This Honourable Court be pleased to find and hold that Teresia Wairimu Kirima is guilty of intermeddling for interfering with the management of the properties of this Estate and collecting rent from Estate properties in violation of the law and the judgment of 21<sup>st</sup> February 2025.
  - vi. This Honourable Court be pleased to find and hold that Teresia Wairimu Kirima is in contempt of this Court and has disobeyed the judgment of 21<sup>st</sup> February 2025.
  - vii. Teresia Wairimu Kirima be committed to civil jail for such period as shall be determined by this Honourable Court for intermeddling and contempt of the judgment of 21<sup>st</sup> February 2025
  - viii. In the alternative to (7) above, Teresia Wairimu Kirima be fined such an amount as shall be determined by this Honourable Court for intermeddling and contempt of the judgment of 21<sup>st</sup> February 2025.
  - ix. This Honourable Court be pleased to issue orders restraining Teresia Wairimu Kirima by herself, her agents or servants, employees or any other assigns or representatives from interfering with the management and control of the premises forming part of this estate or from interfering with the properties of this estate in any manner until the final determination of this Succession Cause.
  - x. This Honourable Court do grant such other orders as it shall deem fit under the circumstances of this case in exercise of its inherent jurisdiction to protect this Estate.
  - xi. The Costs of this application be borne by Teresia Wairimu Kirima in any event.
5. The Administrators filed affidavit of service sworn on 22<sup>nd</sup> April 2024 averring that the application was served upon Counsel for the respondent, alongside Counsel on record for the other beneficiaries via email. When the matter came up for mention for directions, Counsel for the respondent indicated he had not received the application. I then directed that it be served physically on the respondent and both Counsel who are on record for the Respondent; the firms of Nyamu and Nyamu Advocates and M/s S Musalia Mwenesi Advocates.
6. This was apparently effected by affidavit of service sworn on 18<sup>th</sup> June 2025. When the matter next was in Court, Counsel for the respondent took to the stage in Shakespearean fashion. He had not heard from the Respondent, she was not responding to his calls, messages, in short, he had no instructions and consequently he has lodged a Notice of Motion seeking leave to cease acting.
7. It looked like it would be a herculean task to get the respondent to Court, the Court however is never stuck in the mud, so I directed that the Respondent be served by substituted service in 2 newspapers of wide circulation and proceeded to direct that the ruling on the application would be delivered on the 26<sup>th</sup> September 2025. It would appear that the Respondent has the proverbial ears on the ground, because she now reached out and instructed both her counsel and responded to the application not by one but by two replying affidavits.



8. The 1<sup>st</sup> affidavit of 41 paragraphs, is that drawn by S. Musalia Mwenesi Advocates and it is sworn on 15<sup>th</sup> August 2025. She saw the Chamber Summons Application on 12<sup>th</sup> August 2025 along with Notice on Directions of the Court on 12<sup>th</sup> August 2025. An Askari found them outside her gate and passed them on to her. She denies the charges made against her to the contrary she desires that the family be united and peaceful. After she was relieved the task of being an administrator she stepped back and has given free rein to the Administrators to execute their mandate.
9. The allegations against her are unfounded and without basis. The communication has been to Nyamu and Nyamu Advocates who have ceased acting for her. The threshold for a finding of contempt of Court has not been met.
10. In the affidavit sworn on 26<sup>th</sup> August 2025 and drawn by Nyamu & Nyamu Advocates, she reiterates that she has conducted herself within the confines of the law in relation to the estate. She avers that the electronic evidence submitted falls afoul of the rules of evidence. She explains her presence at the properties as being in solidarity with former employees who were being forcefully evicted.
11. The Applicants have sworn a further affidavit in which they aver that the affidavit drawn by M/s Nyamu & Nyamu Advocates should be struck out for being an abuse of court process. In response to this charge Teresia Wairimu Kirima files a Notice to Withdraw the application filed by M/s Nyamu and Nyamu Advocates.
12. The Application was canvassed via written submissions, at the time of writing this ruling only the applicant had filed their submissions. The Submissions are dated 22<sup>nd</sup> July 2025, the issues framed for determination are-
  - i. Whether there is sufficient evidence to warrant a finding that Teresia Wairimu Kirima is guilty of intermeddling and has interfered with the responsibilities of the Administrators?
  - ii. Whether the Applicants have proved a *prima facie case* with a probability of success to warrant the grant of the orders sought in the application?
  - iii. Whether the balance of convenience favours granting of the orders sought in the application?
  - iv. Whether the balance of convenience granting of the orders sought?
13. The Fourth issue for determination is a replication of the 3<sup>rd</sup>.

### **Analysis and Determination**

14. Having considered the pleadings filed herein, submissions filed and authorities cited, I frame the following as the issues for determination
  - i. Whether Affidavit drawn by M/s Nyamu & Nyamu Advocates should be struck out?
  - ii. Whether Teresia Wairimu Kirima has intermeddled with the estate of the deceased
  - iii. Whether the Teresia Wairimu Kirima is guilty of contempt of Court.
  - iv. Who should pay costs of the Application
15. On the 1<sup>st</sup> issue, it is not disputed that the application dated 25<sup>th</sup> July 2025 is yet to be prosecuted. The indication that it may have been abandoned is the Notice of Withdrawal dated 5<sup>th</sup> September 2025 presented by Teresia Wairimu Kirima. Order 9 Rule 13 (1) sets out the process by which an advocate moves the court for an order that he cease acting for the party.



16. In response to the objections by the Applicant the respondent purported to withdraw the notice of motion, the notice dated 5<sup>th</sup> September 2025 is defective as the application can only be withdrawn by the applicant, who is the Advocate.
17. The law is categorical that until the lawyer formally removes themselves from record via a court order, that advocate 'is considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.' A lot can be said about the conduct of the respondent but the black and white of the law is that until there is a formal order Counsel remains on record and can therefore as he has done present the affidavit on her behalf.
18. The 2<sup>nd</sup> issue, is whether or not respondent is guilty of intermeddling? The charge against her is that; she is guilty of intermeddling for interfering with the management of the properties of this Estate and collecting rent from Estate properties in violation of the law and the judgment of 21<sup>st</sup> February 2025.
19. The charge as framed lacks the requisite specificity for the Court to issue the sought orders. Is the respondent intermeddling with all the rental properties of the estate or only some of them? In respect of which properties is the Court called upon to make the orders?
20. On the 3<sup>rd</sup> Issue, whether or not the Applicant is guilty of contempt of Court? The Court of Appeal in [\*Kenya National Union of Teachers & 2 others v Teachers Service Commission\*](#) [2018] KECA 214 (KLR), laid out the test to be applied by the Court in the determination of whether the threshold for citing an alleged contemnor for contempt of court has been satisfied.
  - i. The first test is the determination of the existence of the order(s) made by a court of competent jurisdiction and which was (were) allegedly transgressed.
  - ii. The Second test is the identification of the addressee(s) of the order allegedly transgressed
  - iii. The third test is the determination of whether the orders allegedly transgressed required the addressee (s) to do or refrain from doing something
  - iv. The fourth test deals with the determination of the address's knowledge of both the existence of the orders as well as the requirements in such orders as to what the address(s) should or should not do.
21. The Orders emanating from the Judgment of 21<sup>st</sup> February 2025 were addressed to the Administrators. They were charged with collecting all the rental income. Under Section 83 of the [\*Law of Succession Act\*](#), the administrators are vested with broad powers as regards the Estate. On the other hand, the mandate of the probate court is as was stated in the case of [\*Re Estate of Alice Mumbua Mutua \(Deceased\)\*](#) [2017] eKLR, as follows:

The [\*Law of Succession Act\*](#), and the [\*Rules\*](#) made thereunder, are designed in such a way that they confer jurisdiction to the probate court distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally identification of survivors and beneficiaries, and distribution of the assets.
22. The import of this is that after the grant is confirmed the Court is more or less *functus officio* except for the limited instances of revocation or rectification of grant. The administrators are now vested with powers to execute their mandate and either pursue criminal or civil channels without reverting to the probate Court.



23. The 3<sup>rd</sup> limb will also fail on account of the limits of the mandate of the probate court and as did the 2<sup>nd</sup> limb on account of the absence of specificity of the estate assets that the respondent is charged to be interfering with.

24. In conclusion therefore, the application is dismissed in its entirety, there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**P. M NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

Musyoka holding brief for Peter Munge for Administrators

Nyamu for Teresia Kirima & Alice Kirima

Jan Mohammed Senior Counsel for Estate of Agnes Waruguru

Mugu holding brief for Ms. Wambugu

Ms. Ochieng holding brief for Mr. Ataka for John Gerishon Kirima

Warongu holding brief Ojiambo Senior Counsel for Kirima Trust

Mwangi Kigotho for Catherine Kirima

Thuita for Victoria Technical Enterprises Ltd & Paul Ndung'u Kioi (Creditors)

Ruth Kirima in person

Wanjiru Kirima in person

Irene Kirima in person

Susan Kirima in person

