



**In re Estate of Bedan Njoroge Nduati (Deceased) (Succession Cause
782 of 2009) [2025] KEHC 14556 (KLR) (Family) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 782 OF 2009

HK CHEMITEI, J

OCTOBER 16, 2025

IN THE MATTER THE ESTATE OF BEDAN NJOROGE NDUATI (DECEASED)

BETWEEN

MONICAH WANJIKU KIGURU 1ST APPLICANT

RACHAEL WAITHERA MACHARIA 2ND APPLICANT

AND

JANE WANJIKU NJOROGE 1ST RESPONDENT

JULIUS CHEGE NJOROGE 2ND RESPONDENT

SIMON MWANGI NJOROGE 3RD RESPONDENT

AND

HANNAH NYAMBURA NJOROGE INTERESTED PARTY

ESTHER WAITHERA INTERESTED PARTY

MONICA WANJIKU NJOROGE INTERESTED PARTY

RULING

1. This ruling relates to the applications dated 2nd October, 2024, 8th November, 2024 and 2nd January, 2025.
2. The application dated 2nd October, 2024 filed by the Applicants, Monicah Wanjiku Kiguru and Rachael Waithera Macharia, seeks for orders that:
 - a. Spent.



- b. The court be pleased to issue an *ex parte* order staying execution of the consent dated 20th May, 2024 and adopted by the court on 7th October, 2024 pending hearing and determination of the application.
 - c. The court be pleased to issue an order striking out the consent order recorded on 7th October, 2024 from its record for having been obtained through fraud, duress and material non – disclosure.
 - d. The court be pleased to order that Monicah Wanjiku Kiguru and Hannah Nyambura Njoroge be enjoined as administrators of the estate.
 - e. The court be pleased to order Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge to furnish the Applicants with accounts of the estate of the deceased from their appointment as administrators to date of the ruling.
 - f. The court be pleased to order Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge to furnish the Applicants with accounts of the estate of the deceased from their appointment as administrators to date of the ruling.
 - g. The court be pleased to extend time and grant the Applicants leave to put in an objection to the summons for confirmation of grant.
 - h. The court be pleased to extend time and grant the Applicants leave to file and exchange of affidavits and witness statements in the matter as ordered by Lady Justice M. A. Odero on 16th December, 2022.
 - i. The court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances; and
 - j. The Respondents be condemned to pay the costs of the application.
3. The application is based on the grounds thereof and supported by affidavit sworn by Monicah Wanjiku Kiguru on 22nd December, 2024 where she avers *inter alia* that she is a beneficiary of the deceased's estate and has the authority of her co-applicant to swear this affidavit on their behalf.
 4. She deponed that Initially, they acted in person in this matter but have since engaged an advocate to take over its conduct. They were never informed of the contents of the consent prepared by the administrators and were shocked to learn that the estate had been distributed on the basis of the disputed Will. The consent filed in court was fraudulently prepared by the administrators, its averments being their own creation rather than a reflection of the beneficiaries views on distribution of the estate.
 5. The administrators acted unilaterally, without proper instructions, in filing it. As beneficiaries, they are legally entitled to be notified of any developments concerning the disposition of the estate's assets. The deceased died intestate, and therefore the Will relied upon by the administrators is invalid. Its use as the basis for the consent amounts to an illegality designed to disinherit the rightful beneficiaries. The impugned consent was adopted by this court on 7th October 2024, and unless it is set aside, there is a real and imminent risk of the deceased's assets being wasted.
 6. The application is unopposed.
 7. The application dated 18th November, 2024 and filed by the Applicants Monicah Wanjiku Kiguru, Rachael Waithera Macharia, Monicah Wanjiku Njoroge, Hannah Nyambura Njoroge and Esther Waithera Njoroge; seeks for orders that:



- a. Spent.
 - b. The court be pleased to issue ex parte orders staying the execution of the order dated 11th October, 2024 pending the hearing and determination of the application.
 - c. An interim order to issue restraining withdrawing and/or transferring monies held at Account Numbers 702xxxx Absa Bank Thika Branch, 1102xxxxxx KCB Bank Limited Thika Branch, 005000xxxxxx Family Bank Thika Branch, registered in the deceased's names and any other entity or person from releasing, paying out to Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge joint account 2041805601 held at Absa Bank, Thika Branch or any other account pending the hearing and determination of this application.
 - d. An order directing the Respondents jointly and severally to return and/or credit account No. 1102xxxxxx KCB Bank Thika Branch monies withdrawn and/or transferred pending the hearing and determination of this application.
 - e. The honourable court cancels any subsequent transfers or transactions in the accounts 702xxxx Absa Bank Thika Branch, 1102xxxxxx KCB Bank Limited Thika Branch, 005000xxxxxx Family Bank Thika Branch registered in the deceased's names to Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge and/or their agents pending the hearing and determination of this application.
 - f. The court be pleased to order Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge to furnish the Applicants with accounts statements for all of the deceased's bank accounts for the period January, 2020 to the date of the ruling.
 - g. The court be pleased to order Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge to furnish the Applicants with accounts of the estate of the deceased from their appointment as administrators to date of the ruling.
 - h. The court be pleased to extend time and grant the Applicants leave to file and exchange affidavits and witness statements in the mater as ordered by Lady Justice M. A. Odero on 16th December, 2022.
 - i. The court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances.
 - j. The Respondents be condemned to pay the costs of the application.
8. The application is based on the grounds thereof and supported by affidavit sworn by Monicah Wanjiku Kiguru on 18th November, 2024.
 9. She avers inter alia that the administrators are in the process of transferring funds from the deceased's accounts, namely Absa Bank Thika Branch Account No. 702xxxx, KCB Bank Thika Branch Account No. 1102xxxxxx and Family Bank Thika Branch Account No. 005000xxxxxx.
 10. The Applicants filed an application dated 22nd October, 2024 before this Honourable Court opposing the consent filed by the administrators, which had led to the issuance of orders on 11th October, 2024. The matter was scheduled for hearing on 9th December, 2024. Notwithstanding the court's directions issued on 24th October, 2024, the administrators proceeded to transfer funds held at KCB Bank Thika Branch in an account registered in the deceased's name. In doing so, they excluded the co-applicants and herself as beneficiaries of the estate and exploited the orders of 11th October, 2024 to transfer funds before their application could be determined.



11. Further that since the deceased died intestate, the purported will relied upon by the administrators is invalid. Its use as the foundation of the consent and subsequent orders issued on 11th October, 2024 constitutes an illegality. Unless this Honourable Court intervenes, the administrators will continue transferring all monies held in the deceased's bank accounts.
12. That the court has not yet heard and determined the Applicants' application. In the meantime, the administrators are hurriedly distributing the estate to their detriment. Unless the consent adopted by the court on 7th October, 2024 is set aside, there is an imminent risk that the deceased's assets will be wasted.
13. The application is unopposed.
14. The application dated 2nd January, 2025 filed by the Applicants, Monicah Wanjiku Kiguru, Rachael Waithera Macharia, Hannah Nyambura Njoroge, Esther Waithera and Monica Wanjiku Njoroge; seeks for orders that:
 - a. Spent.
 - b. The court be pleased to issue an ex parte order staying execution of the consent dated 20th May, 2024 and adopted by the court on 7th October, 2024 pending hearing and determination of the application.
 - c. The court be pleased to order Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi Njoroge to furnish the court with a detailed report setting out all actions undertaken pursuant to the consent order dated 20th May, 2024 and adopted by the court on 7th October, 2024.
 - d. The court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances.
 - e. The Respondents be condemned to pay the costs of this application.
15. The application is based on the grounds thereof and supported by affidavit sworn by Monicah Wanjiku Kiguru on 2nd January, 2025; reiterating the contents of the supporting affidavit sworn on 18th November, 2024.
16. The application is unopposed.
17. The Applicants have filed written submissions dated 22nd July, 2025 and 3rd October, 2024 placing reliance on the following:
 - a. Brooke Bond Liebig Ltd v Mallya [1975] EA 266 where the court stated as follows: "A court cannot interfere with a consent judgment except in circumstances as would afford good grounds for varying or rescinding a contract between the parties."
 - b. Flora N. Wasike v. Destino Wamboko [1985] eKLR where the court pronounced itself as follows: "It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out."
 - c. Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & Another [2015] eKLR where the court pronounced itself as follows: "In its classic rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party."



- d. Sofia Mohamed v Rodah Sitienei [1992] where the court pronounced itself as follows: “..., an advocate who appears for a client is presumed to be properly instructed unless the contrary is proved.”
 - e. Stanley Munga Githunguri v Republic [1986] eKLR where the court pronounced itself as follows: “..., as prudent men which we believe justifiably ourselves to be, we hold, that where applicable, the matters mentioned in the applicant’s affidavit to which he deponed from personal knowledge have been turned and established into facts. The degree of probability is so high that proceedings by the sound rule of common sense we are justified in regarding them as certainty and to act accordingly.... True the Respondent was not compelled to file an affidavit in reply. It is a question of prudence in each case. The necessary information being in the possession of the respondent it would have been easy to disprove, if such be the case, by answering an affidavit.”
18. The Respondents have not filed written submissions to all the applications.

Analysis and Determination

19. I have read the applications before this court and the filed submissions. I also note that the applications are not opposed.
20. Essentially the last two applications are a follow up of the first application dated 22nd October 2024. In it the Applicants’ content that they are beneficiaries of the estate herein and that they were acting in person at the time the consent was signed. That whatever was signed and adopted was not within their knowledge.
21. It is true upon perusing the record that at the time the consent was signed they were acting in person as per the notice dated 29th February 2024. I note however that at the time of adopting the consent they were represented by a counsel Mr Michuki.
22. The consent dated 20th May, 2024 however was signed by Jane Wanjiku Njoroge, Julius Chege Njoroge and Simon Mwangi. These were the estates administrators. It was also signed by the counsels on record.
23. Their complaint however is that they were not consulted and that the administrators acted on their own. In other words, as beneficiaries, they ought to have been consulted as the ramifications of the consent affected them directly since it related to the disputed Will.
24. Barring any objection or opposition from the Respondents I find the argument valid. Since the administrators knew that the consent was eventually affecting all the deceased beneficiaries it would have been prudent to have their input even if they were in opposition of the same noting that the Applicants were not represented.
25. I therefore find that the Applicants have demonstrated that the said consent was obtained without their input and the Respondents/administrators did not disclose this fact.
26. The Court of Appeal in Intercountries Importers and Exporters Limited v Teleposta Pension Scheme Registered Trustees & 5 others [2019] eKLR observed that, “... The principles that appertain to setting aside of a consent order are well established in a line of cases including Brooke Bond Liebig vs Mallya (1975) EA where Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances e.g. on grounds of fraud or collusion, that there was no consensus between



the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.” And in the case of Flora N. Wasike vs Destino Wamboko [1988] eKLR Hancox JA cited Setton on Judgments and orders (7th Edition) vol 1 page 124, and reiterated that;

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them... and cannot be carried or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a court set aside an agreement.”

The Judge A. K. Murgor thus concluded that, “... Essentially, the above cited authorities are clear that a consent order will only be set aside if it can be demonstrated that it was procured through fraud, non – disclosure of material facts or mistake or disclosure of material facts or mistake or for a reason which would enable a court set it aside.”

27. I therefore find and hold that the applications are merited and worth allowing them.
28. Before penning off, in the cause of awaiting this ruling and without the knowledge of this court the two Applicants through their counsel on record filed a complaint against this court with Judicial Service Commission in the manner I have handled the matter especially adoption of the consent.
29. The said commission requested me to respond to the complain and as at the time of delivering this ruling the complaint is still alive.
30. In the premises and to avoid any perceived bias on my part and so as not to prejudice the matter at the Commission I shall recuse myself from further handling this case and referred it to Honorable Justice Riechi of this division to continue with the same.
31. In light of the foregoing, and in allowing the applications I order as follows:-
 - a) The orders adopting the consent dated 20th May 2024 on 7th October 2024 are hereby set aside with all the attendant consequences.
 - b) The rest of the prayers contained in all the three applications if need be be pursued by the parties before Hon. Justice Riechi.
 - c) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 16TH DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE

