



In re Estate of Daniel Kuria Macharia (Deceased) (Probate & Administration E1059 of 2023) [2025] KEHC 13749 (KLR) (Family) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E1059 OF 2023
H NAMISI, J
OCTOBER 3, 2025**

BETWEEN

**MARGARET NYAMBURA MACHARIA 1ST APPLICANT
MARY MWITHA MACHARIA 2ND APPLICANT
LUCY NJAMBI MACHARIA 3RD APPLICANT
JAMES MAINA MACHARIA 4TH APPLICANT
STEPHEN MWANGI MACHARIA 5TH APPLICANT**

AND

**GEORGE KURIA MACHARIA 1ST RESPONDENT
JOHN GAKOBO MACHARIA 2ND RESPONDENT**

RULING

1. What began as a simple Petition for Limited Grant ad Litem has now turned into a complex legal battle between siblings, and their mother, with myriads of applications filed by the Applicants herein.
2. On 24 August 2023, a Limited Grant ad litem was issued to the Respondents herein for purpose of prosecuting two suits, namely CMCC 5456 of 2014 – Daniel Macharia Kuria & Erwins Okello Tom & Another -vs- Nairobi City County & Others; and ELC Suit No. 745 of 2016 – Daniel Macharia -vs- Kimani Kamau & others.
3. The Application before the Court is an Originating Summons dated 2 October 2024 filed under section 47 of the *Law of Succession Act* and Order 37 Rule 1 of the Civil Procedure Rules. The same seeks preservation orders. The Applicants pray for orders to stop the Respondents from accessing bank accounts or interfering with the estate properties. Further, they would like to open a Bank account for



collection of rental income, which account is to be managed by the Applicants. Further, the Applicants want the 1st Respondent compelled to surrender to the Applicants all documents including title deeds pertaining to the estate properties and that the 1st Respondent do vacate the family house at Kariobangi Riverbank or pay monthly rent to an appointed agent.

4. The Application is premised on the numerous grounds on the face of it and supported by an Affidavit sworn by the 5 Applicants. The Affidavit on record contains on 5 paragraphs. It would appear that the Applicants did not file the entire Affidavit, and paragraphs 4 to 11 are missing in the filed copy. That being the case, there is nothing for this Court to consider in support of the Application.
5. The Application is opposed by the Respondents through their Replying Affidavit.
6. I have keenly considered the Application before me. First, the same is brought by way of Originating Summons, in an existing Succession Cause. That, coupled with the missing Affidavit, are sufficient grounds for me to strike out the same.
7. Further, I note, with great concern, that the Affidavit is executed by the 1st Applicant along with the other Applicants. The Respondents have presented evidence of a Mental Health Cause filed by the other Applicants seeking to have their mother, the 1st Applicant, declared mentally incapacitated. This fact has not been rebutted by the Applicants. In the interest of justice, I perused the file in Misc Cause No. E206 of 2024, in which I found a judgement delivered on 15 May 2025 by my brother, Hon. Riechi, J, declaring the 1st Applicant to be suffering from a mental illness. This fact was not brought to the attention of this Court on 3 June 2025 when parties appeared, or any time thereafter.
8. The Petition in the Miscellaneous Application is dated 26 September 2024, while this present Application is dated 2 October 2024. It is, therefore, presumable that the 2nd to 5th Applicants were fully aware of their mother's mental health condition at the time when she purportedly executed the Affidavit, but chose to conceal this fact.
9. Finally, the Applicants would like this Court to issue orders on collection of rental income and deposit into an account to be held and operated by the Applicants. It is unclear in what capacity the Applicants would do so, since they are not Administrators.
10. In view of the foregoing, I have no choice but to strike out the Application.
11. In the interest of justice, I direct that Petition for Grant of Letters of Administration be filed within 30 days from the date hereof. There will be two Administrators, with each side selecting one person to be appointed as Administrator.

DATED AND DELIVERED AT NAIROBI THIS 3 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicants: Ojienda

For Respondents: N/A

Court Assistant: Lucy Mwangi

