



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
SUCC CAUSE NO.27OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE OF WILLIAM
KILOVELO (DECEASED)

JAMES MUTHAMA NGUYO 1ST
ADMINISTRATOR

JANET MBITHE 2ND ADMINISTRATOR

RULING

1. William Nguyo Kilovelo died on 10/10/2015.
2. Grant of letters of administration intestate were issued on 8/5/2019 to James Muthama Nguyo and Janet Mbithe Nyaga.
3. According to the from P & A 5 dated 30/10/2018 the deceased was survived by the following:-

- i. Rose Ngina Kilovelo - Wife*
- ii. Beatrice Kamene Kilovero - Daughter*
- iii. Janet Katunge Mutui - Daughter (deceased)*
- iv. Daniel Maingi Nguyo - Son (Deceased)*
- v. Rose Mumbua Kilovelo - Daughter*

- vi. *Phylis Mwanza Munyao* - Daughter
- vii. *Janet Mbithe Nyagah* - Daughter
- viii. *Margaret Mutinda Kilovelo* - Daughter
- ix. *Naum Nzilani Kilovelo* - Daughter
- x. *Samuel Kamukwa Nguyo* - son
- xi. *Benjamin Kioko Nguyo* - Son
- xii. *James Muthama Nguyo* - Son
- xiii. *Dorcas Mukonyo Nguyo* - Daughter
- xiv. *Japheth Munywa Nguyo* - Son

4. He left the following estate:-

- a) *Title Number Mavoko Town Block 3/5744*
- b) *Mavoko Town Block 3/45172*
- c) *Makueni/Kako/393*
- d) *Nguu Ranch Settlement NO. 1582 at Makueni*
- e) *7.5 Acres at Malivani*
- f) *2 Acres at Malivani*
- g) *2.5 acres at Katelembu Membership No. 1267*
- h) *2.5 Acres at Katelembu Members No. 1268*
- i) *50x100 Plot at Mathatana*
- j) *50x100 Plot at Kananie, Athi Reiver*

- k) Barclays Bank of Kenya Shares*
- l) Co-operative Bank Shares*
- m) Eveready East Africa Shares*
- n) Kenya Commercial Bank Shares*
- o) Kengen shares*
- p) Kenya Re-Insurance Corporation Shares*
- q) Standard Chartered Bank Kenya Shares*
- r) Safaricom Ltd Shares*
- s) Barclays Bank A/C 2023218138*

5. On 27/6/2019 the firm of BM Mung'ata came on record for the Administrators and the requisite document dated 26/6/2019 was filed.
6. Accompanying that was an undertaking to pay the sum of Kshs. 120,000 for settlement of Machakos MCC 487/2008.
7. On **4/7/2019** the firm of B Mung'ata filed an application in this cause seeking inter alia, an order for the release of the sum of Kshs. 930,184 from the account of the deceased to settle **money owed by Japheth Munywa Nguyo** - a beneficiary of the estate.
8. On **5/8/2019** - a consent was filed in the following terms;

“Consent to release the sums to the firm of M/s BM Mung’ata & Co. Advocates form deceased’s account No. 2023218138 held at Barclays Bank of Kenya Ltd Wote Branch”

9. The consent was signed by:
- i. Rose Ngina Kilovelo*
 - ii. Beatrice Kamene Kilovero*
 - iii. Rose Mumbua Kilovelo*
 - iv. Phylis Wanza Munyao*
 - v. Margaret Mutinda Kilovelo*
 - vi. Benjamin Kioko Nguyo*
 - vii. Dorcas Mukonyo Nguyo*
 - viii. Japheth Munywa Nguyo*
 - ix. James Muthama Nguyo*
 - x. Janet Mbithe Nyagah*

10. The matter came before the Hon. Ong’udi J on 5/8/2019 and the following order was issued:-

This matter coming up for mention- Mr. Musya for petitioners/applicants present. Non- appearance for

interested party. **Following the signed consent by the beneficiaries;**

Order

1) That I hereby order for release of Kshs. 1,124,259=(Kshs. One million one hundred & twenty four thousand, two hundred & fifty nine only) from Barclays Bank of Kenya Wote branch to the firm of M/s B.M Mung'ata & Co. Advocates KCB Machakos A/C 1183175213.

2) That for avoidance of doubt, the sum of Kshs. 1,004,259/= has to be paid to settle the decretal sum in Machakos CMCC No. 487/08.

Given under my hand and seal of this honourable court on the 5th August, 2019.

11. The firm of BM Mung'ata filed chamber summons dated **25/4/2024** brought under order 9 Rule 13(1) of the Civil Procedure Rules and Section 3 A, Section 100 of the Civil Procedure Act seeking orders that the firm of B M Mung'ata & Co. Advocates be granted leave to cease

acting for the Administrators in the estate – On the grounds that the said administrators had failed to furnish the firm of BM Mung’ata with sufficient instructions to proceed effectively with the matter.

12. The application is supported by supporting affidavit of Brian Munyao Advocate reiterating the facts that they had no instructions to proceed with the matter further.
13. ON **16/5/2024** Mr. Muny’asya appearing for Benjamin Kioko Nguyo and Naomi Kilovelo told the court that the application to cease acting was opposed vide replying affidavit of Benjamin Kioko Kilovelo on his and Naomi’s behalf.
14. In the further affidavit in support of the application to cease acting – Brian Munyao and his associate Stanley Muema each swore an affidavit and deponed at (Para, 5,6,13,14)

*1) That the administrators herein, **with the consent of all other beneficiaries**, petitioned for and were granted letters of Administration Intestate on the 8th day of May, 2019.*

2) That one of the beneficiaries, Japheth Munywa Nguyo, was a defendant in Machakos Civil Suit No. 487 of 2008, the particulars of which are as follows:-

George Mutunga Mutiso - ----- Plaintiff

Versus

Office Dynamic ----- 1st Defendant

Japheth Munywa Nguyo ----- 2nd Defendant

And

Lawrence Nuve Maingi ----- Third Party

3) That the court allowed the application on the condition that Japheth Munywa Nguyo deposits a sum of Kshs. 500,000 within one week, a condition he was unable to fulfill, thus raising concerns about his imminent arrest.

4) That the beneficiaries of this Succession Cause who were aware of the funds held in account Number 2023218138 at Barclays Bank of Kenya Limited, Wote Branch, which forms part of the estate of the deceased, consented to release of Kshs. 930,184 from the account to settle the

***decretal sum and costs in Machakos Civil Case
Number 487 of 2008.***

15. They annexed the undertaking dated **26/6/2019**, the consent for release of funds dated **5/5/2019**, the application for release of funds dated **28/6/2019** and the court order dated 5/5/2019 as the clear and chronological explanation of how the money was withdrawn.
16. The objection by Benjamin and Naomi is on the ground that they did not as beneficiaries of the estate, consent to the withdrawal of the said sum of money from the account of the deceased - and that before the firm of BM Mung'ata and Co Advocates is allowed to leave the matter, the issue of the withdrawal of the funds must be settled and the money be deposited either in a joint interest earning account of both advocates or in court; and once the Administrators give a comprehensive account over the estate - then the advocates can be discharged from the matter.
17. The only issue for determination is whether the application to cease acting will be allowed, and on what terms.

18. I have read order 9 Rule 13(1) of the Civil Procedure Rules.

The ceasing to act by an advocate is subject to the orders of this court.

19. Section 47 of the Law of Succession Act provides for the Jurisdiction of High Court

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient

20. Rule 73 of the P&A Rules states

Saving of inherent powers of court

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

21. This court is empowered with the discretion to grant any orders that may be expedient, necessary in the matter, and this jurisdiction includes the inherent jurisdiction to meet the ends of justice or prevent the abuse of the process of court.

The court is empowered to protect the estate of the deceased from wastage pending its distribution.

22. It is not in dispute that money was withdrawn from the account of the deceased to pay the debt of one of the beneficiaries Japheth Munywa Nguyo where he was sued as the 2nd Defendant in MKS MCCC 487/2008.
23. The record shows that the 2 Administrators each swore on affidavit on 28/6/2019 stating that they were in support of the application to have money released from the account of the deceased to the firm of BM Mung'ata to settle the decretal sum in MKS MCCC 487/2018 and counsel's professional fees for handling that matter on their behalf.
24. There is an order of this court authorizing the transfer of those funds from the account of the deceased. **One can see from the supporting affidavit of the application that counsel deponed that counsel had the consent of all the beneficiaries.**
25. That consent was **"signed"** by 10 out of the 11, listed and of the total 15 who were the beneficiaries in the form P & A5. I have to state here that on the face of it , counsel mislead the

court that all the beneficiaries had consented to the withdrawal of the money from the account of the deceased.

26. In addition, I have noted that administrators were not parties to the MCCC 487/2018. When that matter was in court, the deceased was not alive; the estate was not party to the said suit - and there was no connection and none has been established, between the said suit and the estate, except that the debt was incurred by one of the deceased's children, a beneficiary.
27. Hence it is not clear, how the two Administrators of the estate of the deceased came to be undertake to pay fees for a matter that did not involve the deceased / the estate of the deceased or how they supported the withdrawal of money from the account of the estate when in fact it was not for the settlement of any debt of the deceased and not all the beneficiaries had signed the consent. It was not lost to the court that it was difficult to get the administrators to respond to the application by counsel to cease acting or to explain what happened. By the time of this ruling, they had not

responded to the application for withdrawal from acting by Counsel despite several mentions to enable them to do so.

28. Section 83 of the Law of Succession Act speaks for itself

83. Duties of personal representatives

1. *Personal representatives shall have the following duties—*

(a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;

(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(f)subject to [section 55](#), to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

(g)within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

(h)to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(i)to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of

any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

29. Section 83(c) clearly provides for the payment of legal expenses in **obtaining the grant and expenses of administration**. Counsel was not paid fees for the obtaining of the grant/administration of the estate - Counsel got the Administrators who were his clients - to authorize payment out of the estate - payments that should never have been paid in the 1st place. There is nothing on the record to justify the payment out of the estate of the deceased.

30. There was no way of knowing what the share of Japheth Munywa Nguyo in the estate would be; why they did not execute for the decree in other ways - other than raiding the estate of the deceased - before the estate had been administered. This in my view and in view of Section 83 of the Law of Succession Act, and 45 of the said Law of Succession Act ought not to have been done.

31. In the circumstances, I am persuaded that there is sufficient ground to refuse the application by the firm of BM Mung'ata to cease acting for the administrators in this case

until the issues raised in the objection to the same are settled.

32. To settle these - I am persuaded that the money paid out of the deceased's account was paid wrongfully and must be returned - I direct that the sum be paid back into the deceased's account and if that is not tenable - it be deposited in court within 45 days hereof.

33. When the court is satisfied that the order has been complied with then the court will act accordingly. To that end the matter will be mentioned within 45 days hereof for compliance.

34. The costs of this application will abide the orders of this court.

Dated signed and delivered virtually on 28th October 2025

Mumbua T Matheka
Judge

Court Assistant - Chrispol

Counsel Present