



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kamandura Ali (Deceased) (Succession Cause 1399 of 2003)
[2025] KEHC 15246 (KLR) (Family) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1399 OF 2003
HK CHEMITEI, J
OCTOBER 30, 2025**

BETWEEN

**OMAR KAMANDURA 1ST APPLICANT
JUMA NJENGA 2ND APPLICANT
SULEIMAN MWANGI 3RD APPLICANT**

AND

**MARIAM NJOKI CHEGE 1ST RESPONDENT
FATUMA WAITHERA 2ND RESPONDENT**

RULING

1. This ruling relates to the application dated 21st November, 2024, filed by the Applicants, Omar Kamandura, Juma Njenga and Suleiman, seeking for Orders That:
 - i. Spent.
 - ii. Pending the hearing and determination of this application, this honourable court be pleased to issue a temporary injunctive order against the Respondents (Administrators) either by themselves, their servants, agents, or any other person from subdividing, selling, offering for sale, advertising, alienating. Disposing off or otherwise completing by conveyance, re – entering, transfer of any sale, leasing, letting, dumping solid waste, charging or otherwise interfering with all that parcel of land known as Dagoretti/Riruta/329.
 - iii. Reasonable provision be made for the Applicants as beneficiaries of the estate of the deceased out of the 1st respondent’s share in parcel number Plot No. 3 Dagoretti/ Riruta/329.
 - iv. Costs of the application be in the cause.



2. The application is based on the grounds on its face thereof and supported by affidavit and supplementary affidavit sworn by Omari Kamandura on 21st November, 2024 and 25th March, 2025.
3. He avers inter alia that he is a beneficiary of the deceased's estate. He is aware that his father, Ali Chege, was one of the deceased's sons and that his father's siblings were Hawa Wanja, Fatuma Waithera, Halima Wanjiru, Amina Wanjiku, Zainabu Wahu, Twaha Kuria and Mariamu Wambui. His father, Ali Chege, was married to two wives - Miriam Njoki Chege and Sofia Wairimu Chege.
4. The children born of Miriam Njoki are Omari Kamandura, Zuhura Wangari, Saumu Njeri, Musa Ali and Fatuma Waithera, while those born of Sofia Wairimu are Omar Kamandura, Juma Njenga, Suleiman Mwangi and Zuhura Wangari Ali.
5. Their mother, Sofia Wairimu, passed away on 15th March, 1999, leaving them under the care of their grandmother, Zuhura Wangari. Upon attaining majority age, he and his siblings relocated to their father's rental properties, which had been constructed on a portion of Dagoretti/Riruta/329, land which their grandfather, Kamandura Ali, had permitted their father to build upon prior to his demise.
6. He therefore believes, with good cause, that Dagoretti/Riruta/329 was bequeathed to both Twaha Kuria and to the family of Ali Chege, with the 1st Respondent's share intended to be held in trust for the benefit of Ali Chege's family, as their grandfather had allowed them to establish themselves on the property.
7. He deponed that under Islamic law of succession, the share of each son must be twice that of a daughter. The 1st Respondent, being a daughter-in-law of the deceased, was not entitled to hold a share equal to or greater than that of her brother-in-law, Twaha Kuria, as she currently does. Her share in Dagoretti/Riruta/329 was intended to be held in trust for the two families of Ali Chege, rather than as her absolute property.
8. The reasonable provision for both families of Ali Chege's two wives ought therefore to devolve from Dagoretti/Riruta/329, which their grandfather had designated for their father's benefit. However, the 1st Respondent has refused to apply her share for the benefit of himself and his siblings and has instead discriminated against them by favoring her own children, despite the fact that both families depended on the deceased during his lifetime.
9. It is only fair and equitable that they be reasonably provided for from the portion held by the 1st Respondent, as that share was the one intended to devolve to Ali Chege's family and should be shared equally among his children.
10. He stated that while it is true that the Respondents were appointed as co-administrators of their grandfather's estate, the 1st Respondent's lack of cooperation with the 2nd Respondent, coupled with her antagonistic conduct toward other family members, has hindered the proper administration of the estate. Their rightful claim to beneficial interest in their grandfather's estate cannot be extinguished merely because of the 1st Respondent's haste to complete administration.
11. Her urgency to finalize the process is motivated by self-interest, aimed at defeating their claim for reasonable provision, which would otherwise lapse once distribution is completed. The assertion that this is a civil dispute is both misleading and untenable, since the matter is a succession cause, properly filed before this Honourable Court in 2003.
12. Although the estate belongs to a Muslim, this Court retains unlimited and unfettered jurisdiction under the law. Once this Court assumed jurisdiction to administer the estate, such jurisdiction cannot be ousted.



13. The share currently held by the 1st Respondent should have devolved to their father, Ali Chege, but because he predeceased his father, the share was to descend to his family.
14. Under Islamic succession principles, sons and daughters do not inherit equally, and thus the share intended for Ali Chege's family ought to mirror that of their uncle, Twaha Kuria.
15. It is untrue that the 1st Respondent provided them with rental properties allegedly belonging to her. Those properties were, in fact, constructed by their father during his lifetime on a portion of Dagoretti/Riruta/329, which their grandfather had earmarked for him. Their father collected rent from those properties to sustain his family, and following his death, their grandfather continued collecting rent and providing for them until his own demise.
16. If, as the 1st Respondent admits, Plot No. 3 within Dagoretti/Riruta/329 was intended to devolve to both families of Ali Chege, there is no justification for her opposition to the children of the first family receiving their independent share, especially since they are adults capable of managing their own affairs. The 1st Respondent's conduct demonstrates an intention to unjustly enrich herself at the expense of the rightful heirs and to exercise control over the benefits that should devolve to them, thereby keeping them destitute and dependent.
17. The application is opposed vide replying affidavit sworn by Mariam Njoki Chege on 3rd February, 2025.
18. She avers inter alia that she vehemently opposes the prayers sought in the summons dated 21st November, 2024, noting that Hon. Justice H. K. Chemitei, in a ruling delivered on 3rd October, 2024, appointed her as a co-administrator of the estate of the deceased, jointly with Fatuma Waithera, the 2nd Respondent herein, for the sole purpose of completing the administration of the deceased's estate - particularly in relation to Land Parcel No. Dagoretti/Riruta/329, which is one of the assets expressly listed in the deceased's will dated 15th September, 1992.
19. She asserts that the orders sought in the Applicant's application are not made in good faith, but are instead intended to delay the conclusion of the administration of the remaining estate. Such delay would unfairly prevent the beneficiaries from receiving their rightful shares from Dagoretti/Riruta/329.
20. She further notes that the succession proceedings were filed as a civil matter, and that the issues raised in paragraph 6 of the application ought properly to have been pursued before the Kadhi's Court, which operates under Islamic law, as the Applicants themselves have previously acknowledged.
21. She emphasizes that Twaha Kuria is not a party to the present application and therefore should not be joined as such. She denies the allegation that the share bequeathed to her was intended to cater for all the deceased's children and herself, except for the second wife, who was not mentioned in the Will.
22. She maintains that Plot No. 3 Dagoretti/Riruta was specifically bequeathed to her and that the share she currently holds in Dagoretti/Riruta/329 is exactly as provided in the deceased's Will. If the Applicants were dissatisfied with the Will, they had the opportunity to contest it before this Honourable Court at the time of its confirmation, rather than seeking to reopen the matter many years later.
23. She further states that she is the one who raised Omari Kamandura Ali and his three siblings - Zuhura Wangari Ali, Juma Njenga Ali and Suleiman Mwangi Chege - following the death of their mother. She clothed, educated and housed them, treating them as her own children, and even allocated them rental properties she personally owns in Riruta Muslim Place, from which they earn approximately Kshs. 60,000/= per month in rental income.



24. Her late husband, who was a son of the deceased and a lawful heir, predeceased his father, and therefore she, as his widow, together with their children, are entitled to benefit from his rightful share of the deceased's estate. She contends that the orders sought by the Applicants are intended to frustrate and delay the completion of the administration of the estate, which has already remained pending for over 22 years, having been filed in 2003. Such delay, she adds, will only encourage further wastage of the deceased's property and undermine the interests of all beneficiaries.
25. The Applicants have filed written submissions dated 1st July, 2024 placing reliance on the following:
- a. *Kamene Ndolo v George Matata Ndolo* [1996] eKLR where it was held as follows: "This court must, however, recognize and accept the position that under the provisions of Section 5 of the Act every adult Kenyan has an unfettered testamentary freedom to dispose of his or her property by will in any manner he or she sees fit. But like all freedoms to which all of us are entitled the freedom to dispose of property given by Section 5 must be exercised with responsibility and a testator exercising that freedom must bear in mind that in the enjoyment of that freedom, he or she is not entitled to hurt those whom he was responsible during his or her lifetime. The responsibility to the dependants is expressly recognized by Section 26 of the Act..."
 - b. *Marete v Marete & 3 others (Civil Appeal 014 of 2023)* [2024] KECA 371 (KLR) (22 March 2024) where it was held as follows: "... 17. From thee foregoing, where testamentary freedom has not been exercised responsibly, the court has power to step in and interfere with the said freedom, by making reasonable provision for any disinherited beneficiaries, upon application by such dependant. 18. It is our considered view that the respondents have not placed sufficient material before the court to prove that the impugned will is a forgery. However, it is our opinion that the impugned will cannot stand the test of reasonableness of provision for beneficiaries as provided by the law since it did not provide for all the dependants equitably."
 - c. *In re Estate of Phylis Wasuma Kamau (Deceased)* where it was held as follows: "Failure to make provision for a dependant be a deceased person in her will does not invalidate the will as the court is empowered under Section 26 of the *Law of Succession Act* to make reasonable provision for the dependant. Section 28 sets out the parameters that this court should consider when making such provisions."
26. The 1st Respondent has filed written submissions dated 7th July, 2025 placing reliance on the following:
- a. *Banks v Goodfellow* where it was stated as follows: "He must have a sound and disposing mind and memory. In other words, he ought to be capable of making his will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, and of the persons who are the objects of his bounty and the manner it is to be distributed between them."
 - b. *In the matter of James Ngengi Muigai (Deceased)* [2018] eKLR where it was stated as follows: "In the recent case of *Rosemary Koinange (suing as legal representative of the late Dr. Wilfred Koinange and also in her own personal capacity) & 5 others v Isabella Wanjiku Karanja & 2 others* [2017] eKLR this court examines the issue of mental capacity (to make a will) and stated as follows: The essentials of testamentary capacity were laid out in the case of *Banks v Goodfellow* [1870] LR5QB 549 as cited with approval in the Tanzanian Court of Appeal case of *Vaghella v Vaghella* [1999] EA 351 thus: "A testator shall understand the nature of the nature of the act its effect, shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and,



with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.”

Analysis And Determination

27. I have read the application before this court, the responses thereto and the rival submissions.
28. There is no doubt that the Applicant is the deceased grandson. The 1st Respondent and the Administrator of the estate is his step mother, being the second wife of his father.
29. The issue revolving this estate is the deceased Will. The deceased died testate. The Applicant is not essentially challenging the Will but instead raising fresh issues concerning the household of Ali Cheges house.
30. In my view the application is not merited for the simple reason that it was not challenging the Will but instead a dispute between his father’s household. If the deceased desired that the Applicant’s father, who predeceased him, was to get a specific share of the estate, then he would have stated so in the Will.
31. More importantly nowhere in the Will does the deceased argue that the estate be managed under the tenets of Muslim law. He would have specifically stated so. This court cannot therefore take away his testamentary freedom and wishes as the Applicants seems to be suggesting.
32. As a matter of fact, if he has any complain against the 1st Respondent and by extension his father’s household then he ought to raise it separately but not under this larger estate of his grandfather. In other words, let him agitate his rights under the banner of Ali Chege.
33. For the above reasons therefore, I find that the application herein is simply delaying this estate for another longer period contrary to the ruling of this court dated 3rd October 2024.
34. The application is otherwise dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS

30TH DAY OF OCTOBER 2025.

H K CHEMITEI.

JUDGE

