

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
SUCCESSION CAUSE NO 5 OF 2010
IN THE MATTER OF THE ESTATE OF WILBERFORCE
SIKUKU SIMIYU (DECEASED)

HARON SIKUTA SIKUKU.....1ST
PETITIONER

NAOMI NAFULA SIKUKU.....2ND
PETITIONER

DARAH NAKHABI SIKUKU.....3RD
PETITIONER

VERSUS

WEST KENYA CO. LTD.....
....RESPONDENT

RULING

1. The petitioners filed a Chamber Summons dated 31/1/2025, seeking an order for the Managing Director of the respondent to attend court and show cause why he cannot release payment at West Sugar Co Ltd, as per the payment statement for the period from 26/7/2009 to 1/8/2009, according to the certificate of confirmed grant.

2. The petitioner argues that the amounts held by the respondents were distributed to them according to the confirmed grant; however, the respondent failed to release the deceased's funds without providing any reason.

3. The respondent, in its replying affidavit dated 7/5/2025, stated that the deceased was a farmer who supplied the respondent with cane. The Farmer Cane Payment Statement for

the deceased, covering the period from 26 July 2009 to 1 August 2009, shows that Kshs 601,675 was owed to the deceased. They issued a cheque on 7/8/2009 to the deceased, unaware that he had passed away. Subsequently, they received a letter from the deceased's family stating that the amount should be paid to Moses J. Sikuta to assist with funeral expenses. The respondent thus cancelled the cheque issued to the deceased and issued a new cheque to Moses J. Sikuta. The letter requesting that the funds be transferred to Moses J. Sikuta was signed by Imelda N. Waswa, who had previously been an administrator of the deceased's estate. Therefore, the respondent maintains that it was not holding any amount payable to the deceased, as it had already released that amount to the deceased's family.

4. The petitioner filed a supplementary affidavit stating that Moses Juma Sikuta was an uncle to the deceased and not a beneficiary of the deceased's estate. They also argued that the respondent had no legal right to alter the cheque issued to the deceased to the said Moses Juma Sikuta, who lacked the legal capacity to receive the funds. They claim that the letter presented to the respondent was fabricated to defraud the deceased's estate and that it cannot serve as a substitute for a grant of letters of administration. The issuance of the cheque to a third party who was not the legal representative constituted interference with the deceased's estate.

ANALYSIS AND DETERMINATION

5. I have considered the submissions by the parties, and the only issue before the court is whether the respondent should comply with the certificate of grant.

6. It is acknowledged that the amounts paid by the respondent in 2009 were disbursed prior to the filing of the petition for the grant of letters of administration before this court. The letter mentioned by the respondent cannot serve as a substitute for a grant of letters of administration. Section 45 of the Law of Succession Act states as follows:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

7. The court in **Veronica Njoki Wakagoto (Deceased) [2013] eKLR** which interpreted the provision that:

“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless

such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

8. Acts that constitute intermeddling were listed in *re Estate of M’Ngarithi M’Miriti [2017] eKLR:*

*“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, **paying out**, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of **the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased** are also acts of intermeddling in law..”*

[Emphasis added]

9. It is evident that the respondent engaged in intermeddling by making payments due to the deceased to a third party, Moses Juma Sikuta. Without the grant of representation from this court, the respondent's actions amounted to intermeddling, and they cannot justify this by citing a letter requesting the transfer of funds to a third party.

10. Consequently, I find merit in the petitioners' application. The respondent has failed to demonstrate why it did not release the funds to the petitioners in accordance with the certificate of confirmed grant.

**Dated, Signed and Delivered at BUNGOMA this 27TH day
of October 2025**

**R.E. OUGO
JUDGE**

In the presence of:

Mr. Were

Respondent

Wilkister

- For the Applicants

- Absent

-C/A

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