



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER E129 OF 2021

**IN THE MATTER OF THE ESTATE OF THE LATE
ALFAYO MWENDWA (DECEASED)**

VERSUS

**RACHEL MILOYO MUDINYU
HARRIET KASIRA MUDINYU
APPLICANTS
PEDDY NIGIDE MUDINYU**

-VERSUS-

**OSSALLA MWENDWA
EDWARD MWENDWA**

RESPONDENTS/ADMINISTRATORS

KALEB MWENDWA ADAMBA

RULING

1. This ruling follows a Notice of Motion dated 11th February 2025 by which the Applicant seeks these reliefs;-

1. Spent.

2. Spent.

3. THAT this Honourable Court be pleased to include PEGGY NIGIDE MUDINYU, the 3rd Applicant herein as an Administrator alongside the current ones (*sic*).

4. THAT the Honourable Court be pleased to grant orders 7 and 8 as sought in the Application dated 25th May 2023.

2. The Application is premised on grounds set out on the body thereof and affidavit evidence of the 3rd Applicant. She avers that on 31st January 2025 the 1st and 2nd Respondents who are also Administrators of the Estate herein visited a parcel of land known as **Nakuru Municipality Block 2/138** belonging to the Estate in the company of an Engineer. They found her outside her unit on the property.
3. The two Administrators are said to have informed the 3rd Applicant that the structures on that property were to be demolished to pave way for a storeyed building with several apartments to be constructed thereon. She laments the failure to consult her, having been recognized by the court's Ruling dated 16th January 2025 as a Beneficiary of the Estate. According to the 3rd

Applicant, the Respondents have always been hostile to her and are not involving her in the process of distribution of the Estate of the deceased who was her father.

4. In the premises the 3rd Applicant *inter alia* wants an order restraining the Respondents' conduct and her appointment as an Administratrix of the Estate.
5. The 2nd Respondent swore and filed an Affidavit in reply traversing the 3rd Applicant's averments. He denies making a visit to the stated property as alleged or at all. He states that he as well as his siblings have no plans to demolish the subject property since the Estate of the deceased is yet to be transmitted to identified lawful Beneficiaries. It is averred that any demolition would have to adhere to various laws relating to tenancy, public health and the Building Code.
6. The 2nd Respondent observes that the 3rd Applicant occupied a unit on the contentious property after the deceased's burial and at the request of her mother. The Administrators of the Estate are therefore justified to want the 3rd Applicant's occupied unit of the property

preserved pending conclusion of the Succession Cause, adds the 2nd Respondent.

7. The 3rd Applicant answered the Respondents' averments *vide* a further affidavit sworn on 22nd April 2025. While reiterating the contents of her affidavit in support of the Application, she exhibits photographs purporting to show construction work on the stated property **No. Nakuru Municipality Block 2/138**. She complains that the source of funds utilized in the construction and how the new developments would benefit her are not explained. The 3rd Applicant fears that the Respondents are plotting to evict her from the subject property.
8. Learned Counsel for the parties filed Written Submissions which I have read through against the rival affidavit evidence. At the outset the Respondents attack the Application for being brought as a "Notice of Motion" contrary to **Rules 49, 59 and 63(1) of the Probate and Administration Rules** which *inter alia* require such an application to be filed as a Summons.
9. The Respondent also fault the 3rd Applicant for seeking prayers 7 and 8 of an application dated 25th May 2023

yet the Application had been consolidated with others and disposed of by a Ruling delivered on 16th January 2025 annulling/revoking the Grant herein.

10. The 3rd Applicant's submissions do not allude to these objections of the Respondents, perhaps because the parties' submissions may not have been exchanged. It is important for parties to always serve each other with their filings so that none is caught by surprise.
11. Be that as it may, I shall first determine the Respondents' Objection. Indeed, the law provides for such Application to be brought by Summons as pointed out by the Respondents. By dint of **Article 159(2)(d) of the Constitution**, however, courts are required to dispense justice without undue regard to technicalities. Instituting the Application through a Notice of Motion has not prejudiced the Respondents who were still able to respond appropriately. No prejudice was also occasioned by making the Application under a wrong provision of law. The Court is still able to do substantive justice.
12. The Objection is therefore dismissed.

13. On the merits, it is important to preserve the deceased's Estate pending conclusion of the Cause. The Respondents seem to admit interference with the 3rd Applicant's occupation of a unit of the disputed property by purporting to "preserve" it pending distribution of the Estate. As the 3rd Applicant is already in occupation and is a Beneficiary of the Estate, *status quo* ought to be maintained until final orders as to transmission of the Estate.
14. A good case would appear to have been made for inclusion of the 3rd Applicant as an Administratrix of the Estate because of her apparent non-involvement in administration of the Estate (see the judicial determination in **Re Estate of Gladys Muthandu Katula *alias* Muthondu Katuna (Deceased) [2023]KEHC 21239 (KLR)** among other relevant decisions cited by the 3rd Applicant's advocates). The Court however, thinks that this would cause further delay in the finalization of the matter. What is fair for all Beneficiaries is expedited distribution of the Estate.

15. The 3rd Applicant is also seeking prayers 7 & 8 in another Application dated 25th May 2023. The Respondents contend in their submissions that this Application was consolidated with others and disposed of in the Ruling dated 16th January 2025. According to the Respondents, that application is *res judicata* in the circumstances.
16. The court only determined an Application dated 22nd February, 2023 for annulment/revocation of the Grant herein. The records shows no order of consolidation and there is no judicial pronouncement on other then pending Applications including the one dated 25th May, 2023.
17. In the result, this Application is dismissed.
18. To expedite conclusion of the matter, the Administrators are directed to file and serve an Application for Confirmation of the Grant within 14 (Fourteen) days from the date hereof.
19. *Status quo* is ordered to be maintained pending Confirmation of Grant and/or final transmission of the

Estate. Being a family matter, no order is made as to costs.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 10th of November, 2025.

In the presence of:

Ms Omwenyo Advocate for the Administrators

Ms Temba Advocate for the Objectors/Applicants

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.