



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Nicholas Kakai (Deceased) (Succession Cause 2183 of 1995)
[2025] KEHC 16189 (KLR) (Family) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2183 OF 1995
CJ KENDAGOR, J
NOVEMBER 10, 2025
IN THE MATTER OF THE ESTATE OF NICHOLAS KAKAI (DECEASED)**

BETWEEN

**ALICE BASWETI NAITERA 1ST APPLICANT
JOHN OGACHI 2ND APPLICANT
SIMON OMBATI 3RD APPLICANT
CHRISTOPHER GICHENGO 4TH APPLICANT**

AND

MERCY WANJIRU NAITERA RESPONDENT

RULING

1. The deceased died intestate, and Letters of Grant of Administration intestate were issued to Alice Basweti Naitera and Mercy Wanjiru. The grant was confirmed, and the distribution of the estate was that the property Nairobi/Block 79/346, Njiru Plot, be sold and shared equally among the deceased's children and his widow (Alice). The other listed asset was the death gratuity, which was to be shared equally.
2. The Certificate of Confirmation of Grant indicated that two law firms were appointed as joint trustees for the sale of the entire estate.
3. There were proceedings in the matter and orders issued on 28th January, 2014 that directed Alice (the 1st Applicant) to vacate the house to facilitate renovations and access for viewing, in order to enable the sale of the property and the subsequent equitable distribution of the proceeds among the beneficiaries.



4. There were no further proceedings after a Ruling delivered on 15th June, 2015 that declined to review the orders issued directing the 1st Applicant to vacate the house.
5. The matter has now been reactivated by an application dated 4th December, 2025, by the Applicants, who are the widow and three children of the deceased, against the 2nd administrator (child of the deceased) as the Respondent.
6. The application seeks the following orders;
 - i. That the honourable court does issue an order reopening the court file closed on 21st September, 2022;
 - ii. That the honourable court be pleased to direct that the widows shares and her three children from the sale of Buruburu house amounting to accumulative sum of Kshs.5,150,000/= be deposited in her advocate's account;
 - iii. That the honourable court make orders that the applicant provide accounts for the rental proceeds from the Buruburu house from the year 2015 to date;
 - iv. That upon compliance with the under uncer (iii) above the proceeds be shared equally among the beneficiaries as per the confirmed grant;
 - v. That the application also account for the proceeds of the sale of the Njiru property;
 - vi. That the applicant/her servants, agents, the police Ruiru, be reserved from harassing the widow and her children over the succession matter which falls under the purview of the crime;
 - vii. Any other relief the honourable court may deem that to grant.
7. The Respondent has opposed the application and filed an affidavit dated 7th April 2025. This ruling is on the application. Both parties filed submissions, which I have duly considered.

Applicants' case

8. The Applicants argue that once the 1st Applicant vacated the property Nairobi/Block 79/346, Njiru Plot, the Respondent took possession of the house and rented it out at a rate of Kshs. 90,000/- per month. According to the Applicants, the Respondent later sold the property for Kshs. 10,000,000/= and as a result, each beneficiary is entitled to Kshs. 1,287,000/=.
9. The Applicants assert that the Respondent is pressuring them to accept a payment of Kshs. 2,575,000/- by involving the police in a false allegation of forgery related to the sale of another property, Ruiru/ Ruiru East Block 3/15550. The Applicants contend that the title for this property was used as security for a hospital bill incurred at Nairobi Hospital during the deceased's lifetime.

Respondent's case

10. The Respondent gave the following breakdown of accounts for the sale of the property Nairobi/Block 79/346, Njiru Plot;
 - i. Sale at Kshs. 10,300,000/=
 - ii. Kshs.700,000/- paid to the advocate as fees for acting in the succession cause;
 - iii. Kshs.179,599/= as fees to advocate for acting for sale of the house;Total = 879,500/=



- iv. Leaving balance of Kshs. 9,420,500/= (10,300,000 – 879,500)
11. The Respondent denied renting out the house, as alluded to by the Applicants.
12. Further, she stated that she had to renovate the house and improve the same before sale and that she recouped her expenses from the sale price together with expenses for security personnel.
13. The Respondent accused the Applicants of being economical with the facts regarding the sale of the property Ruiru/Ruiru East Block 3/15550, which she maintained is part of the estate but was fraudulently sold by the Applicants, who obtained another Grant to the deceased's estate in P&A 336 of 2012.

Analysis and determination

14. I find the issues for determination to be as follows;
 - i. Whether the respondent should be ordered to file accounts for the proceeds of the sale of Nairobi/Block 79/346, Njiru Plot, or to deposit the proceeds.
 - ii. Whether there were any rental proceeds from the property Nairobi/Block 79/346, Njiru Plot that the respondent should file accounts over.
 - iii. Whether the issue raised over the property Ruiru/Ruiru East Block 3/15550 can be litigated in the current application.
 - iv. Who should bear costs.

Whether the respondent should be ordered to file accounts for the proceeds of the sale of Nairobi/Block 79/346, Njiru Plot, or to deposit the proceeds.

15. The Certificate of Confirmation of Grant indicates that the property, Nairobi/Block 79/346, Njiru Plot, was to be sold and the proceeds shared equally. The Applicant vacated the property so that the sale could be effected.
16. There is also confirmation from earlier decisions in the matter that renovations were to take place. A valuation was conducted, and the Respondent acknowledged that, due to the renovations, the property fetched a higher sale price of Kshs.10.3 million.
17. However, the Respondent has not provided any evidence of the sale transactions, nor when it was sold, nor proof of the sale proceeds or the payments made to the advocate, amounting to Kshs.879,500/=-, which is said to have been paid as legal fees. She has also not presented any evidence of the renovation costs nor indicated the amounts involved.
18. The proceeds are supposed to be shared equally among all parties, less any costs incidental thereto.
19. The Court can only order the payment of the proceeds shares once the incidental costs have been included. The Applicants have indicated an amount of Kshs.5,150,000/-, representing the total value of their shares (4 beneficiaries), but the incidental costs have not been included. There is also no justification from the Respondent for how the sum of Kshs.2,575,000/= constitutes their combined share. The prayer for the filing of accounts with regard to the proceeds of the sale is therefore justified.

Whether there were any rental proceeds from the property Nairobi/Block 79/346, Njiru Plot, that the respondent should file accounts over.



20. There is no evidence adduced by the Applicants to support that there was any rental income generated by the property, Nairobi/Block 79/346, Njiru Plot. The law of evidence states that he who alleges must prove.
21. This prayer fails.

Whether the issue raised over the property Ruiru/Ruiru East Block 3/15550 can be litigated in the current application.

22. The affidavits present conflicting arguments regarding the property Ruiru/Ruiru East Block 3/15550. The Respondents accuse the Applicants of fraudulently selling this property, thereby denying the other beneficiaries (the Respondent's siblings) from benefiting from the sale. The 1st Applicant, on the other hand, argued that she could not provide evidence regarding the sale of the property, as it had been handed over to Nairobi Hospital as security for medical expenses for her child during the deceased's lifetime.
23. The affidavits indicate that the disagreement regarding this property may be clouding the distribution of proceeds from the Buruburu house. The Respondent's side asserts that the Applicants have already benefited from the sale of the Ruiru property and that they were excluded from its benefits.
24. The Respondent submitted a gazette notice related to a different probate case - Nairobi P&A 336 of 2012. The copy of the register confirms that the Ruiru property was registered in the deceased's name, was subsequently transmitted to the Applicants following the succession process, and now has a new registered owner. The succession case 336 of 2012 was filed after the current succession case. The matter at hand on this property, Ruiru/Ruiru East Block 3/15550, is intertwined with a separate case, which limits this court's ability to address the issues over it which have been raised during the hearing of the current application. As such, this court cannot address the issues presented regarding this Ruiru property, as no formal process for inclusion in the deceased's estate has been presented before it. The Court will only be able to consider the issues of this Ruiru property once it is formally moved. The respondent may also pursue the issues in succession case 336 of 2012 or through any other legal avenues.
25. Disposition;
 - i. The application is partly allowed.
 - ii. The Respondent is directed to file the accounts detailing the proceeds from the sale of Nairobi/Block 79/346, Njiru Plot, through an Affidavit within 60 days of this ruling. Upon filing, the case will be listed for further directions.
 - iii. If the accounts are not submitted within the specified period, the amount of Kshs.5,150,000/- will be considered as the Applicants' share and is to be paid to the applicants' lawyer upon the lapse of time.
 - iv. Each party shall bear own costs of the application.
26. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10TH DAY OF NOVEMBER, 2025.

.....
C. KENDAGOR

JUDGE



In the presence of:

Court Assistant: Beryl

Parties absent

