



REPUBLIC OF KENYA



**KENYA LAW**  
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**Thuranira v Mutai & another (Civil Appeal CE621 of 2021)  
[2025] KEHC 16256 (KLR) (Civ) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL CE621 OF 2021**

**TW OUYA, J**

**NOVEMBER 6, 2025**

**BETWEEN**

**KENNETH KINYUA THURANIRA ..... APPELLANT**

**AND**

**KELLEN KAGWIRIA MUTAI ..... 1<sup>ST</sup> RESPONDENT**

**MWALIMU NATIONAL SACCO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the whole ruling of the honourable B. Kimemia, Chairperson  
of the Cooperative tribunal in Nairobi delivered on 2nd September 2021)*

**JUDGMENT**

1. The appeal herein was lodged vide a memorandum of appeal dated 27<sup>th</sup> September 2021 on grounds that:
  - i. The learned chairperson erred in law and fact in failing to appreciate the law and precedent which expressly governs the manner in this specific area;
  - ii. The learned Chairperson ignored the law and precedent and thus reached a legally wrong decision;
  - iii. The learned chairperson ignored the evidence and submissions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in arriving at the decision that was eventually rendered;
  - iv. The learned chairperson took into account the extraneous matters that have no bearing on this matter and consequently arrived at a wrong decision;
  - v. The learned chairperson erred in fact and law in wading into estate administration issues which are beyond the jurisdiction of the tribunal and therefore arrived at the wrong decision;



- vi. The learned chairperson erred on law and in fact in finding the existence of a dispute contrary to the express provisions of the law and consequently arrived at a wrong decision.
  - vii. The learned Chairperson erred in law and in fact in awarding the funds in question for succession by the Respondent.
2. Therefore, the Appellant prayed that the ruling delivered on 2<sup>nd</sup> September 2021 be set aside and that the court order that the 2<sup>nd</sup> Respondent do release the shares and other investment funds to the appellant in accordance with the law.
  3. The appeal emanates from an application, dated 12<sup>th</sup> May 2021, for an injunction where the 1<sup>st</sup> Respondent sought for orders that the tribunal issues a temporary injunction restraining the 2<sup>nd</sup> Respondent from releasing monies consisting of the savings and benefits due to the late James Kimathi Earnest Thurania to the 2<sup>nd</sup> Respondent.
  4. The application was premised on the grounds set out in the affidavit of Kellen Kagwiria Mutai where it was deponed that she is the legal wife of the deceased and was granted letters of administration ad litem by the court. She further averred that they got married in the year 2002 and they had three children together. It was deponed that the Appellant is a brother to the deceased and has his own family to take care of. Therefore, he will not have the interests of the deceased's children at heart despite him being nominated by the deceased. Therefore, the appellant urged that she was better placed to take care of the needs of the children.
  5. The application was opposed by the Appellant through the Replying Affidavit dated 23<sup>rd</sup> June 2021. It was deponed that the deceased was a member of the 1<sup>st</sup> Respondent but the Appellant was not as a result, the dispute was not between members of the Sacco in their individual on competent nature and thus the tribunal lacked jurisdiction to entertain the dispute.
  6. The Appellant further deponed that he had been lawfully nominated as a beneficiary of the deceased brother, which nomination was done in accordance with the laws and by laws of the 2<sup>nd</sup> Respondent. Moreover, the Appellant was not married legally married to the deceased, who in fact, had disputed the paternity of the children prior to his death.
  7. Upon considering the pleadings and the submissions, the trial court allowed the prayer for injunction on the basis that the estate of the deceased run the risk of being wasted if the injunction was not granted.
  8. Dissatisfied and aggrieved with the decision of the tribunal, the appellant lodged the instant appeal.
  9. By order of the court, the appeal was canvassed through written submissions.
  10. The appellant's submissions were premised on the fact that the honourable tribunal erred in disregarding a statutory provision on nomination of beneficiaries as provided in Section 39 of the Cooperative *Societies Act* as the deceased had duly nominated the appellant as his beneficiary. The tribunal ought not have enjoined the nominee from receiving the funds subject of the nomination as it has already been satisfied that the Appellant had legally been nominated by the deceased. Furthermore, it is an established principle of law that monies that are subject to nomination under Section 39 of the Cooperative *Societies Act* and the Sacco by laws do not form part of the estate of the deceased that would vest in the personal representative to be distributed to the beneficiaries of the estate of the deceased. Therefore, the tribunal considered extraneous matters in enjoining the nomination of the Appellant.
  11. Citing the case of Re Estate of Alice Mumbua Mutua (deceased) [2017], it was further submitted that the tribunal erred in wading into estate administration issues which are beyond the jurisdiction of the tribunal. In any case, the 1<sup>st</sup> Respondent never produced any evidence challenging the nomination



of the Appellant as the legally appointed nominee of the deceased person contrary to the decision in *Benson Mutuma Muriungi v C.E.O Kenya Police Sacco & another* [2016].

12. The appellant therefore prayed that the ruling of the tribunal be set aside and that the 2<sup>nd</sup> Respondent be ordered to release the shares and other investment funds to the Appellant in accordance with the law.
13. The Respondent submitted that the tribunal had the jurisdiction to determine the dispute pursuant to section 76 (1) (b) of the Cooperative *Societies Act*. Reliance was placed on the case of *Alex Malikhe Wafubwa & 7 others v Elias Nambakha Wamita & 4 others* [2012] eKLR. The Respondent therefore urged that the ruling by the honourable tribunal be upheld.
14. The first issue for determination is whether the tribunal had the jurisdiction to determine the dispute herein. Section 76 of the *Co-operative Societies Act* is the principal section that hems the scope of disputes which fall within the jurisdiction of the Co-operative Tribunal. It provides that:

76.

- (1) If any dispute concerning the business of a co- operative society arises:-
  - (a) among members, past members and persons claiming through members, past members and deceased members; or
  - (b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or
  - (c) between the society and any other co-operative Society; it shall be referred to the Tribunal.
- 2) A dispute for the purpose of this section shall include -
  - (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
  - (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.
  - (c) a claim by a Sacco society against a refusal to grant or a revocation of license or any other due, from the Authority.

15. To answer the question whether the dispute herein concerns the business of the society hence falling within the jurisdiction of the tribunal, it is crucial to critically examine the nature of the issues in dispute. I note that the dispute before the tribunal was the question of whether the 2<sup>nd</sup> Respondent could release the deceased's benefits to the duly nominated beneficiary at the expense of the 1<sup>st</sup> Respondent's personal representative.

16. Section 76 (2) of the Act defines a dispute for purposes of the Section to include:

a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.

17. I note that the 1<sup>st</sup> Respondent herein is a personal representative to the deceased member. Therefore, the tribunal was properly seized with jurisdiction to determine the claim.



18. Also, pursuant to Section 80 (4) of the Cooperative *Societies Act*, the Chairperson of the tribunal has jurisdiction to deal with temporary injunctions. It is the issuance of the temporary injunction that is the subject of this appeal.
19. In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
  - (a) a) establish his case only at a prima facie level,
  - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
  - (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.
20. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.
21. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage.
22. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.
23. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) remarked thus:

“The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
24. Applying the above principles to the instant case. The 1<sup>st</sup> Respondent contended that as the personal representative to the deceased, she was better placed to make a decision regarding the distribution of the deceased's estate in the interest of the deceased's children. Unlike the appellant whom she perceived did not have interests on behalf of the children of the deceased. I note that the 1<sup>st</sup> Respondent, did not give any cogent reason why she perceived that the Appellant would be incapable of safeguarding the interests of the deceased's child.
25. As a personal representative of the deceased estate, the 1<sup>st</sup> Respondent only had legitimate control over property that forms part of the deceased's estate. The property that the 1<sup>st</sup> Respondent is claiming is property under statutory nomination. Musyoka J in the persuasive decision of *In the Matter of the Estate of Carolynne Achieng' Wagah (Deceased)* Nairobi High Court Succession Cause No. 1374 of 2004, stated the law as follows:

“It is the law that funds the subject of a nomination do not form part of the nominators estate, and therefore such funds cannot pass under the will of the deceased or vest in his



personal representative. Such funds are not subject to the succession process, and should be dealt with in accordance with the law governing nomination. Nominations are statutory, in the sense of them being specifically provided for by a particular statute.”

26. In the case of *Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & another* [2016] KEHC cited by the Appellant, the court persuasively remarked that:

“In Kenya nominations are prescribed in statutes; statutory nomination. They are permissible mainly in savings and investments in cooperative societies and provident or pension schemes. For example, nominations under the *Co-operative Societies Act* are statutory. Section 39(1) of the *Co-operative Societies Act* provides that upon the death of a member, a co-operative Society may transfer the share or interest of the deceased member to: a person nominated in accordance with the Act or the rules made under it; or if, no person has been nominated, to such person as may appear to be the personal representative of the deceased member. The monies due to the deceased member will only be paid over to the personal representative of the deceased member where there is no valid nomination in place. Accordingly, the property which is subject of a statutory nomination is not free property of the deceased member; it does not pass or vest in the personal representative of the deceased member or to the estate; it passes directly to the nominee. Such property under statutory nomination is administered in accordance with the relevant Act and the regulations thereto. And when such monies are paid in accordance with the nomination by-laws of the Sacco, the payment is not in violation of the law.”

27. The 1<sup>st</sup> Respondent therefore did not establish any prima facie case with a probability of success since statutory nominations are not considered as part of the deceased’s estate that vests on his personal representative or executor.

28. Regarding the issue of irreparable injury that cannot be compensated by damages. Nomination of beneficiaries in a cooperative society is a sacrosanct act that can only be vitiated on proof of fraud, mistake, misrepresentation or coercion. I note that the 1<sup>st</sup> Respondent did not challenge the validity of the appellant’s nomination as beneficiary of the deceased. Further, she did not provide any evidence to suggest that the nomination of the appellant as the deceased’s beneficiary was tainted with fraud or coercion. Also, she has not demonstrated that the deceased was under a mental incapacity at the time that he nominated the appellant as his beneficiary with the 2<sup>d</sup> Respondent. Without such evidence, the fears by the 1<sup>st</sup> Respondent were merely speculative and unfounded.

29. In the *Nguruman Case supra*, the Court of appeal stated that:

“Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant.”

30. As observed above, the 1<sup>st</sup> Respondent’s fears about the manner in which the appellant will exercise his powers as a nominee were merely speculative. Therefore, she failed to demonstrate that she would suffer irreparable injury if the injunction is not granted.

31. The upshot of the matter is that the appeal succeeds and the ruling of the honourable tribunal dated 22<sup>nd</sup> September 2021 is set aside with costs to the appellant.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. T. W. OUYA**



**JUDGE**

