

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE E219 OF 2024

IN THE MATTER OF THE ESTATE OF WAKABA KAMAU ALIAS JOHN
WAKABU KAMAU ALIAS WAKABU KAMAU (DECEASED)

HANNAH NDUTA WARUI **1ST APPLICANT**
WAMBUI MUCHENE **2ND APPLICANT**

VERSUS

MARY WANENGI WAKABU **1ST RESPONDENT**
SUSAN NJERI MUNGAI **2ND RESPONDENT**
THOMAS KAMUYU **3RD RESPONDENT**
JAMES THUO WAKAVU **4TH RESPONDENT**
ELIZABETH WAMBUI WAKAVU **5TH RESPONDENT**
DAVID MUKANDA WAKABU **6TH RESPONDENT**

RULING

1. The Deceased herein passed away on 18 April 1981 in Nairobi County. Grant of Letters of Administration Intestate was issued to Hannah Nduta Warui and Wambui Muchene, the Applicants herein, on 17 June 2025. The same were due for confirmation on 13 October 2025. Along with the Applicants, the Respondents herein are also listed as Beneficiaries of the estate.

2. By Notice of Motion dated 18 August 2025, the Applicants seek the following orders:
 - (i) Spent
 - (ii) That the Respondents be compelled to deliver and deposit with the Deputy Registrar of this Honourable Court, within 14 days, the original title documents of the following properties belonging to the estate of the Deceased: DAGORETTI/RIRUTA/A/1855; TITLE NO T216 WAITHAKA and TITLE NO T160 WAITHAKA.
 - (iii) A temporary injunction be issued restraining the Respondents, their servants, agents or any other person acting under their instructions from selling, transferring, alienating, fencing, developing or in any way interfering with the following properties pending the hearing and determination of this Application and confirmation of grant: DAGORETTI/RIRUTA/A/1855; TITLE NO T216 WAITHAKA and TITLE NO T160 WAITHAKA
 - (iv) That a permanent injunction be issued compelling the Respondents to cease any ongoing acts of interference, alienation or development on the Deceased's properties;
 - (v) That the Officer Commanding Station (OCS) Dagoretti Police Station do supervise and ensure compliance with the orders issued herein;
 - (vi) That costs of the Application be provided for.

3. The Application is supported by an Affidavit sworn by the 1st Applicant, in which she avers that the Applicants initially filed a Citation against the Respondents. It is by virtue of the said Citation that the Grant of Letters of Administration issued to them. The Applicants are unable to proceed with the confirmation of Grant for reason that the titles of the 3 properties comprising of the estate of the Deceased are in the possession of the Respondents. The 1st Applicant avers that despite numerous requests to the Respondents, they

have refused to hand over the said titles. The Applicants now wish to have the titles deposited in Court to enable them proceed with administration of the estate.

4. Despite evidence of service, the Respondents have neither entered appearance nor filed any response to the Application.
5. With respect to confirmation of Grants, Section 71(1) of the Law of Succession Act provides as follows:

After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

6. Section 71(2)(c) provides:

Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control;

7. From the foregoing provisions, this matter is ripe for confirmation of Grant. The only setback is that the Applicants/Administrators are not in possession of the title documents. It is the basis upon which they have filed the current Application. I see no reason why they should not be granted the orders they

seek, since this would expedite the conclusion of a matter that ought to have been filed and concluded over 4 decades ago.

8. Section 45 deals with intermeddling with the property of a deceased person. It provides:

(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.

9. On the issue of intermeddling, Courts have said time and again that any person who without the authority of the Law of Succession Act or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or administrator of the extent of the assets he has intermeddled with. The Applicants allege that the Respondents, without the authority of law or grant of administration or

court, have taken possession of part of the estate property and are in the process of developing the same.

10. This Grant is yet to be confirmed and as such the restriction on distribution of estate's capital or immovable properties under section 55 and 82(b) (ii) of the Act applies. Accordingly, there is nobody yet with authority to occupy, develop or otherwise deal with the estate property.
11. In **GLADYS NKIROTEM'ITUNGA vs. JULIUS MAJAUM'ITUNGA[2016] eKLR**, the Court stated:

“Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR the court observed that:

“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. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

12. In MACHAKOS HIGH COURT CIVIL CASE NO. 95 OF 2001 **JOHN KASYOKIKIETI – vs- TABITHA NZIVULU KIETI & AOTHER** it was held that doing anything affecting the estate of a deceased person amounts to intermeddling. In the case cited, the court considered commencing a suit on behalf of the estate before obtaining a grant of representation to be an act of intermeddling with the estate.
13. For the foregoing reasons, the Application herein is allowed. I make the following orders:
- (i) The Respondents are hereby directed to deliver and deposit with the Deputy Registrar, within 14 days, the original title documents of the following properties belonging to the estate of the Deceased: DAGORETTI/RIRUTA/1855; TITLE NO T216 WAITHAKA and TITLE NO T160 WAITHAKA.
 - (ii) A temporary injunction be issued restraining the Respondents, their servants, agents or any other person acting under their instructions from selling, transferring, alienating, fencing, developing or in any way interfering with properties DAGORETTI/RIRUTA/1855; TITLE NO

T216 WAITHAKA and TITLE NO T160 WAITHAKA pending the confirmation of grant;

- (iii) The Officer Commanding Station (OCS) Dagoretti Police Station is directed to supervise and ensure compliance with the orders issued herein;
- (iv) Costs shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Applicants: Ms Abuga h/b Lynn Muchira

Respondents: N/A

Court Assistant: Lucy Mwangi