



REPUBLIC OF KENYA



In re Estate of Antony Kamau Mwangi (Deceased) (Succession Cause E895 of 2025) [2025] KEHC 18415 (KLR) (16 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE E895 OF 2025
HK CHEMITEI, J
DECEMBER 16, 2025
IN THE MATTER OF THE ESTATE OF ANTONY KAMAU MWANGI (DECEASED)
IN THE MATTER OF
CATHERINE WANJIRA KAMAU & PHILIP MWANGI KAMAU ... APPLICANT**

RULING

1. This ruling relates to the application dated 6th November, 2025 filed by the Applicants, Catherine Wanjira Kamau and Philip Mwangi Kamau, seeking for ORDERS THAT:-
 1. Spent.
 2. The honourable court grants the Petitioners access to the deceased's bank account namely, Sumac Microfinance Bank Limited Account No. 1005XXXXXX0075 Nakuru Branch.
 3. The monies held in the Deceased's Sumac Microfinance Bank Limited Account No. 1005XXXXXX0075 Nakuru Branch be transferred to the deceased's wife and petitioner Catherine Wanjira Kamau's Bank Account at Sumac Microfinance Bank Limited Account at Sumac Microfinance Bank Limited Account Number 1005XXXXXX1126 Nakuru Branch.
 4. Costs of the application be in the cause.
2. The application is supported by joint affidavit sworn by Catherine Wanjira Kamau and Philip Mwangi Kamau on 6th November, 2025.
3. They aver inter alia that the deceased passed away intestate on 19th October, 2025, at Avenue Healthcare in Nairobi. The applicants are the widow and son of the deceased, who also left behind two daughters, namely Everline Wangu Kamau and Caroline Muthoni Kamau, all of whom are beneficiaries of the estate.
4. Before his death, the deceased executed two sale agreements, both dated 11th November, 2024, with Pinecrest Paradise Investment Company Limited for the purchase of Apartment A0803 and



Apartment B0303 at Grosvenor Residences, Nairobi. The agreed purchase price for Apartment A0803 was Kshs. 8,000,000/=, of which the deceased had already paid Kshs. 2,550,000/=, leaving an outstanding balance of Kshs. 5,450,000/= payable to the vendor. The agreed price for Apartment B0303 was Kshs. 7,800,000/=, out of which Kshs. 2,530,000/= was paid prior to his demise, leaving Kshs. 5,270,000/= still owing. Under Clauses 3.1(6) and 3.16 of both agreements, the deceased was required to pay a further installment of Kshs.775,000/= and Kshs.752,500/=, respectively, on or before 31st December, 2025, with additional payments scheduled for April, 2026 and August 2026.

5. The applicants urgently require funds from the estate to meet these contractual obligations and avoid default. They therefore seek access to the deceased's Sumac Microfinance Bank Limited Account Number 1005XXXXXX0075 – Nakuru Branch, to facilitate the pending payments. They have already petitioned this court for a grant of probate, but given the time required for issuance and confirmation of the grant, there is a real and imminent risk of failing to meet the payment schedules in the meantime. Accordingly, they pray for leave of the court to access funds from the said bank account to discharge the outstanding payments relating to the two apartments.
6. The application is not opposed and the parties have not filed written submissions.

Analysis And Determination

7. I have looked at the application before this court and the main issue for determination is whether this court should grant the Applicants access to and permit transfer of the monies held in the deceased's Sumac Microfinance bank account to the widow's account for purposes of meeting contractual obligations arising from the sale agreements.
8. Although the application is unopposed, it is the duty of the court to nevertheless subject it to a merit evaluation in accord with the applicable laws and principles. Indeed, in Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR the Supreme Court of Kenya held that: "...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court..."
9. It is trite that upon the death of a person, his free property devolves upon his personal representatives to be administered in accordance with the *Law of Succession Act*, subject to the supervision of the court. Ordinarily, no person is entitled to deal with the estate of a deceased person before a grant of representation is issued, save as expressly permitted by law.
10. In the present matter, the funds sought to be accessed are held in a bank account in the sole name of the deceased. On the evidence before the court, those funds are required to meet instalment payments under subsisting sale agreements for apartments which, if successfully completed, will form part of the estate and ultimately to the benefit of all beneficiaries.
11. If the instalments are not paid as scheduled, the estate risks default, which may result in penalties as provided under Clauses 13 of the sale agreements dated 11th November, 2024. Such an outcome would diminish the value of the estate and prejudice the beneficiaries of the deceased's estate.



12. In my view, this court is empowered under Sections 47 and 83 of the *Law of Succession Act* and the inherent jurisdiction saved under Rule 73 of the Probate and Administration Rules, to grant such conditional leave as may be appropriate.
13. It is proven, vide the affidavit evidence on record that the deceased entered into the two sale agreements and paid substantial deposits towards the purchase of Apartments A0803 and B0303 at Grosvenor Residences, Nairobi; the outstanding instalments and the timelines for payment are clearly set out in the sale agreements; the funds required to service these instalments are presently held in the deceased's bank account at Sumac Microfinance Bank Limited, Nakuru Branch; and failure to meet the instalments is likely to lead to financial loss and diminution of the estate.
14. This court is satisfied that the application is merited. However, the same must be limited for now on the two apartments mentioned above and no other payments shall be made outside the said request.
15. In the premises the court directs that:-
 - a. The application dated 6th November, 2025 is allowed in terms of prayers 2, 3 and 4.
 - b. A special grant (*ad litem*) is hereby issued to Catherine Wanjira Kamau and Philip Mwangi Kamau limited to withdrawal of funds for purposes of paying the Kshs. 775,000/= and Kshs. 752,500/= due to Pinecrest Paradise Investment Company Limited on/ or before 31st December, 2025 with respect to the ongoing purchase of All that one (1) Bedroom Apartment Numbers A0803 on 3rd Floor of Block A, erected on Title Number Nairobi/Block 34/405 Westlands Road, Nairobi; and B0303 on 3rd Floor of Block B, erected on Title Number Nairobi/Block 34/ 405 Westlands Road, Nairobi.
 - c. The Applicants to file in this cause, within ninety (90) days a statement of account and supporting documentation demonstrating the amounts withdrawn and/or transferred from the deceased's account and their application towards payment of the instalments under the said sale agreements.
 - d. This matter be mentioned before the Deputy Registrar, within ninety (90) days of the date hereof, to confirm compliance with the orders above.
 - e. The cause be gazetted forthwith.
 - f. Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 16TH DAY OF DECEMBER 2025.

H K CHEMITEI

JUDGE

