



**In re Estate of Ann Mbinya Kamwanza (Deceased) (Succession Cause E038 of 2023) [2025] KEMC 293 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEMC 293 (KLR)

**REPUBLIC OF KENYA  
IN THE MAKINDU LAW COURTS  
SUCCESSION CAUSE E038 OF 2023  
YA SHIKANDA, SPM  
DECEMBER 2, 2025**

**IN THE MATTER OF THE ESTATE OF ANN MBINYA KAMWANZA (DECEASED)**

**BETWEEN**

**JANE MUNYIVA MUTISO ..... 1<sup>ST</sup> ADMINISTRATOR**

**RAYMOND KAMWANZA NDOLLO ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**CHRISTOPHER KIAMBA MAINGI ..... ADMINISTRATOR**

**RULING**

**The Application**

1. Before me is a summons for confirmation of grant dated 19/3/2025. It was brought by the 3<sup>rd</sup> Administrator pursuant to the provisions of section 71(3) of the *Law of Succession Act* and Rule 40(2) of the Probate and Administration Rules. The application was premised on the ruling of this court that was made on 27/2/2025 vide which the initial grant of representation was revoked and the court made a new grant in the name of the initial administrators as well as the applicant herein. In the ruling aforementioned, the court directed the parties to agree on the mode of distribution of the estate of the deceased herein and file an application for confirmation. It was directed that the application be filed within 60 days from the date of the ruling and that if the parties failed to agree, either party would file the application for confirmation and serve the same upon the adverse party.
2. It would appear that the parties failed to agree and that is why the 3<sup>rd</sup> Administrator filed the application. The application basically seeks that the grant be confirmed in terms of the proposal given by the applicant. The application is supported by the affidavit sworn by the 3<sup>rd</sup> Administrator/ applicant. In the supporting affidavit, the applicant proposed that he be allowed to hold the estate of the deceased in trust for the children of the deceased.



### **Response By The 1<sup>st</sup> And 2<sup>nd</sup> Administrators/respondents**

3. The Respondents opposed the application by filing a notice of objection as well as an affidavit of protest. The gist of both the notice of objection and affidavit of protest is that the 3<sup>rd</sup> Administrator never contributed to the acquisition of the property and that as such, the property cannot be termed as matrimonial property. That since it is not matrimonial property, the 3<sup>rd</sup> Administrator ought to be excluded from the sharing the property. The respondents proposed that the property devolves to them to hold in trust for the children of the deceased.

### **Response To The Protest**

4. In response to the protest, the applicant filed an affidavit stating that he had legal custody of the children of the deceased and that he was not out to enrich himself. The applicant deposed that he wanted to hold the assets for the benefit of his daughters. The applicant further deposed that him and the deceased had an arrangement on how to handle their family affairs and that the respondents cannot purport to be privy to such arrangements. He further deposed that the issue of matrimonial property could only be raised by the deceased and not the respondents herein. The applicant contended that the respondents do not have the best interests of the children at heart and have ill intentions. He urged the court to dismiss the protest and confirm the grant as prayed.

### **Main Issues Or Questions For Determination**

5. Having perused the application, I find that the main issues or questions for determination are as follows:
  - i. How should the estate of the deceased herein be distributed?
  - ii. What other orders should the court make if need be.

### **Submissions By The 3<sup>rd</sup> Administrator/applicant**

6. In his submissions, the applicant supported the application and his proposal. The applicant argued that this being a succession cause, the issue of matrimonial property does not arise. That there are no divorce proceedings between the applicant and the deceased and there is no matrimonial property dispute between the deceased and the applicant either pending or determined. The applicant submitted that the issue of non-financial contribution by the applicant is not for this forum.

### **Submissions By The 1<sup>st</sup> And 2<sup>nd</sup> Administrators/respondents**

7. The respondents also filed written submissions. They relied on the notice of objection and affidavit of protest. The respondents submitted that the applicant had concealed material facts and made false statements aimed at misleading the court for his own benefit. That the applicant failed to disclose ongoing criminal investigations involving the 2<sup>nd</sup> administrator and the dispute concerning the custody of the children of the deceased. The respondents argued that the conduct of the applicant amounts to an abuse of the court process. That the property forming the estate of the deceased was not matrimonial property but belonged to the deceased. The respondents argued that it was unlawful to place the control of pre-marital assets under the control of the applicant. The respondents urged the court to do the following:
  - a. Dismiss the summons for confirmation of grant;



- b. Declare that the property forming part of the estate of the deceased do not form part of matrimonial property and should be excluded from distribution to the applicant;
- c. Order a fresh lawful distribution of the estate where the same devolves to the administrators to be held in trust for the minor children until the last born attains the age of majority.

### **Analysis And Determination**

8. Section 71 of the Law of Succession provides as follows:
  1. 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.
  2. Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-
    - a. if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
    - b. if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
    - 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; or
    - d. postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:
9. Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.
 

(2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.

  3. The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-
    - a. that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
    - b. that it would be expedient in all the circumstances of the case so to direct.
  4. Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that-
    - a. there is no dependant, as defined by section 29, of the deceased other than the petitioner;



- b. no estate duty is payable in respect of the estate; and
- c. it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation”.

10. Section 35 of the Law of Succession provides in part:

- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
  - a. the personal and household effects of the deceased absolutely; and
  - b. a life interest in the whole residue of the net intestate estate:

11. Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

- (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

12. Section 41 of the same Act provides:

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

13. The foregoing reveals that the spouse and children of the deceased always have prior right to the intestate estate ahead of all other relatives. This is determined by marital status and stations of consanguinity of the beneficiaries. The relatives only inherit in the order in which they are related to the deceased. There is a misconception by the respondents that the applicant cannot inherit simply because he did not contribute financially to the acquisition of the property forming the estate of the deceased. That the property cannot be termed as matrimonial and as such, the applicant ought to be excluded. This is a succession cause and not a dispute over distribution of matrimonial property after divorce. The question of whether or not the property forming part of the estate of a deceased person is matrimonial does not arise in these proceedings. In any event, such dispute arises between spouses (or former spouses) and not a spouse and parents-in-law. To that extent, I find that the protest by the respondents is greatly misplaced and must of necessity be disregarded or dismissed.

14. The disputants agree or rather propose that the estate should devolve to the children of the deceased and that the same should be held in trust. Their point of departure is with respect to who should hold the property in trust for the children of the deceased. I have already alluded to the fact that in matters succession, the applicant would rank first in priority. It would appear that the respondents



and applicant have personal irreconcilable differences and want to turn these proceedings into a battle ground for their feuds. Even in terms of parental responsibility, the applicant comes first, unless there are exceptional circumstances that would disqualify him. From the protest and submissions by the respondents, it would appear that they are bitter simply because the applicant may not have contributed to the acquisition of the property forming the estate of the deceased.

15. That is understandable but the law does not discriminate in that manner as far as succession is concerned. If their reasoning is to be adopted, it would mean that widows who do not contribute to the acquisition of property registered in the names of their husbands should be disinherited. What if (God forbid) it was the applicant who had predeceased the deceased herein and left behind property. How would the respondents feel if the parents of the applicant sought to disinherit the deceased on the ground that she did not contribute to the acquisition of the property? The argument by the respondents is unfounded and has no basis in law.
16. There is no dispute that the applicant is the widower of the deceased and father to the children of the deceased. The parties have indicated that there is a pending dispute over the custody of the children. That may be so but it does not change the fact that the applicant is the father of the children and has superior parental responsibility over them. The applicant has made it clear that he wishes to hold the property in trust for the children. I see absolutely nothing wrong with the proposal. Their differences notwithstanding, the law favours the applicant over the respondents. There is no evidence or even an allegation that the applicant is incapable of administering the estate for the benefit of the children. What is being played out is personal vendetta between the parties. My duty is to ignore the feud and distribute the estate according to law.
17. Nothing has been exhibited to court to show that the respondents are better placed to administer the estate for the benefit of the rightful heirs. Although the applicant and the respondents are joint administrators, they do not see eye to eye. If their feuds are allowed to play out in these proceedings, the children, who are the rightful beneficiaries, are bound to suffer. The court cannot desist from confirming the grant simply because the parties are not in agreement. Given the circumstances, it will not be prudent to order for joint holding of the property in trust for the children. Ordering so will frustrate the administration of the estate because of personal disputes between the administrators. That will not be in the best interest of the children herein. I will proceed to confirm the grant on terms stipulated herein below.

## **Disposition**

18. Consequently, I make the following orders:
  - a. The summons for confirmation of grant dated 19/3/2025 is hereby allowed in the following terms:
    - i. Land parcel number Mavoko Town Block 2/21721 shall be registered in the name of Christopher Kiamba Maingi who shall have a life interest in the same and shall hold it in trust for the children namely CHristal Nthenya Kiamba And Ann Mbinya Kiamba A.k.a. Angel Munyiva until they attain the age of majority. The children shall have equal shares in the property;
    - ii. The applicant shall open a joint fixed deposit bank account in his name and that of the Court Administrator, Makindu Law Courts for purposes of depositing the sum of Ksh. 1,050,000/= due and owing to the estate of the deceased from Kenya Projects Limited, Mombasa. The said bank account should be opened within 30 days from



today. The sum of money shall be held in trust for the children hereinabove mentioned, who shall have equal shares in the same;

- iii. In the alternative to (ii) above, there shall be a change of holders and signatories to the bank account referred to as the Late Ann Mbinyo Kamwanza Children Fund Cooperative Bank of Kenya Stima Plaza Branch Account Number 01150274674200. Accordingly, the Court Administrator, Makindu Law courts shall be included as a joint account holder and signatory within 30 days from today, whereupon the sum of money shall be deposited therein.
- b. Given the relationship between the parties and the fact that children are involved, the costs of this application shall be in the cause;
- c. A mention date shall be given to confirm the opening of the bank account or addition of the Court Administrator as a joint holder, as the case may be, and for further orders.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 2<sup>ND</sup> DAY DECEMBER, 2025.**

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**

