



**In re Estate of Francis Kamuyu Kamau (Deceased) (Succession Cause
278 of 2017) [2026] KEHC 608 (KLR) (Family) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 278 OF 2017
HK CHEMITEI, J
JANUARY 29, 2026
IN THE MATTER THE ESTATE OF FRANCIS KAMUYU KAMAU (DECEASED)
BETWEEN
VIRGINIA WANJIKU KAMUYU ADMINISTRATOR
AND
JOSEPH KAREGA KAMAU INTERESTED PARTY**

RULING

1. This ruling relates to the applications dated 4th April, 2024 and 22nd April, 2024.
2. The application dated 4th April, 2024 filed by the Applicant/ Interested party, Joseph Karega Kamau; seeks for orders that:
 1. Spent.
 2. Joseph Karega Kamau on his own behalf and also as the administrator of the estate of Serah Njoki Kamau (deceased), be enjoined in these proceedings as interested parties.
 3. There be a stay of execution of the order or confirmed grant given in this matter on 9. 3. 2021, pending the hearing and determination of this application.
 4. Upon granting prayer 2 above, the honourable court be pleased to review, set aside or vary the order made in this matter on 9. 3. 2021, as far as it affects the property Title No. Dagoretti/ Kangemi/328 and Dagoretti/Kangemi/330, of which one does not entirely form part and the other does not entirely form part of the estate of Francis Kamuyu Kamau, and affects the proprietary interest of the interested party.
 5. The cost of this application be provided for.



3. The application is based on the grounds thereof and supported by affidavit sworn and further supporting affidavit by Joseph Karega Kamau on 4th April, 2024 and 22nd August, 2024.
4. He avers inter alia that the orders made on 9th March, 2021 confirming the grant in respect of the estate of Francis Kamuyu Kamau (deceased) were issued without disclosure of material facts, namely that the estate of Sarah Njoki Kamau (deceased), his late mother and sister to the deceased, held a lawful one-third proprietary interest in Dagoretti/Kangemi/328 and Dagoretti/Kangemi/330 with Dagoretti/Kangemi/330 being her personal property and not part of the deceased's estate.
5. He contends that this non-disclosure and misrepresentation misled the court into distributing the entire properties as assets of Francis Kamuyu Kamau (deceased), thereby gravely prejudicing the beneficiaries of Sarah Njoki Kamau's (deceased) estate, exposing him to imminent execution, eviction and loss of possession and occasioning irreparable harm.
6. That he is a properly joined interested party with a direct beneficial interest in the estate of Francis Kamuyu Kamau (deceased) by virtue of his entitlement through the estate of Sarah Njoki Kamau (deceased) and that he has perused the summons for confirmation of grant and the supporting affidavits filed by the administrator. He avers that the confirmed grant and the summons for confirmation were founded on material non-disclosure and misrepresentation, particularly in relation to LR Dagoretti/Kangemi/328 and 330, in which the estate of Sarah Njoki Kamau (deceased) held a lawful one-third interest that was neither disclosed to nor considered by the court.
7. He relies on official searches and prior succession proceedings to demonstrate that the properties were jointly registered and that the administrator incorrectly presented herself as solely entitled, thereby misleading the court into distributing the entire interests to the estate of Francis Kamuyu Kamau (deceased).
8. He contends that this error fundamentally affected the confirmation process and prejudiced his proprietary rights, necessitating the court's intervention to review, rectify or set aside the impugned confirmation in order to reflect the true legal and beneficial interests of all parties. He urges the court to review, set aside or vary the said orders in the interests of justice, noting that no prejudice will be suffered by the respondent if the application is allowed.
9. The application is opposed vide grounds of objection dated 18th April, 2024 filed by Virginia Wanjiku Kamau, the administrator of the estate of Francis Kamau Kamuyu (deceased).
10. It is based on the grounds that the application is res judicata, the court having already determined a similar application by the same Applicant in a ruling delivered on 17th November, 2023, the Applicant lacks any legal interest in the estate of Francis Kamuyu Kamau (deceased) and is a stranger to the proceedings as previously found by the court, the application discloses no new or important matter capable of justifying a review; and that it has been mischievously brought without full disclosure of material facts, thereby abusing the court process, warranting its dismissal in limine and the discharge of any stay orders issued thereon.
11. The application dated 22nd April, 2024 filed by the Applicant/ Administrator, Virginia Wanjiku Kamuyu; seeks for orders that:
 1. Spent.
 2. Succession Cause No. 2561 of 2009 Estate of William Kamau Kamuyu, Succession Cause No. 278 of 2017 Estate of Francis Kamuyu Kamau and Succession Cause 308 of 2017 be consolidated and heard together for final disposal.



3. The confirmed grant in the Estate of William Kamu Kamuyu in Succession Cause No. 2561 of 2009 be rectified as follows:
 - a. The deceased persons and names Serah Njoki Kamau and Francis Kamuyu Kamau be expunged from the confirmed grant.
 - b. L.R. No. Dagoretti/Kangemi/329 to devolve absolutely to Virginia Wanjiku Kamuyu and Sarah Njoki Kamuyu.
 - c. L.R. No. Dagoretti/Kangemi/331 to devolve absolutely to William Kamau Kamuyu and Agnes Wambui Kamuyu.
4. The Administrators to the Estate of William Kamau Kamuyu in Succession Cause No. 2561 of 2009 do effect the transfers of the properties within seven (7) days of the orders to the beneficiaries and in default the Deputy Registrar to sign all the transmission documents to vest the properties to the intended beneficiaries.
5. The confirmed grant in the Estate of Francis Kamuyu Kamau in succession Cause No. 278 of 2017 be rectified as follows:
 - a. L. R. Dagoretti/ Kangemi/ 329, 331, 328 and 330 be expunged from the confirmed grant as not forming part of the Estate.
6. The grant in the Estate of Serah Njoki Kamau (deceased) in Succession Cause No. 308 of 2017 be confirmed as per the affidavit of Joseph Kamau Karega dated 7th October, 2020 save for the following properties to be shared equally as per the court's judgment by Hon. Justice Muigai dated 9th November, 2018.
 - a. Title No. Dagoretti/Kangemi/330 to be shared equally between Virginia Wanjiku Kamau and Joseph Karega Kamau.
 - b. Title No. Dagoretti/Kangemi/328 to be shared equally between Virginia Wanjiku Kamau and Joseph Karega Kamau.
7. For purposes of preserving the Estate of Serah Njoki Kamau (deceased), in Succession Cause 308 of 2017, a reputable Estate Manager (Messrs Property World Valuers Limited be and is hereby appointed to manage all the rental income from Dagoretti/Kangemi/330 and Dagoretti/Kangemi/328 pending the hearing and determination of the confirmation of grant and be authorized to share the same equally to Virginia Wanjiku Kamuyu and Joseph Karega Kamau.
8. Officer Commanding Station, Kabete Police Station to assist in execution of orders and in particular the estate agent to take over the management of Dagoretti/ Kangemi/ 330 and 328.
9. Joseph Karega Kamau to account for all the rent collected by him from Dagoretti/ Kangemi 330 and 328 from 9th November, 2018 to date for distribution as per the directions of Honourable Justice Muigai.
10. Costs of this application be borne by the Estate of Serah Njoki Kamau (deceased).
12. The application is based on the grounds thereof and supported by affidavit and further replying affidavit sworn by Virginia Wanjiku Kamuyu on 22nd April, 2024 and 16th October, 2024.



13. She avers inter alia that Dagoretti/Kangemi/328 and Dagoretti/Kangemi/330 have been the subject of prolonged and contentious litigation culminating in a judgment delivered on 9th November, 2018, and therefore require resolution consistent with that determination.
14. She accordingly, prays that the said properties be shared and adjusted in accordance with the proposed rectification relating to the estate of Sarah Njoki Kamau (deceased) and that all beneficiaries in the estate of Francis Kamuyu Kamau (deceased) benefit fairly through an equitable adjustment and rectification of the confirmed grant so as to conclusively settle the dispute and give effect to justice among all concerned parties.
15. That she is properly before the court and that any inconsistencies in earlier pleadings arose from advice of former counsel and should not be attributed to her. She contends that the respondent has deliberately confused the issues and abused the multiplicity of related succession causes, namely the estates of William Kamau Kamuyu (deceased), Francis Kamuyu Kamau (deceased) and Sarah Njoki Kamau (deceased), to frustrate administration, waste estate assets and disobey court orders, particularly by unlawfully collecting and withholding rental income from Dagoretti/Kangemi/328 and 330.
16. She maintains that the properties remain jointly registered and that only the correct fractional shares are available for distribution, with the estates devolving strictly in accordance with established succession principles and the judgment delivered on 9th November 2018, which directed equal sharing and defined management of the Dagoretti/Kangemi properties.
17. She also accuses the respondent of blatant contempt by defying those orders, refusing to transfer decreed properties and continuing to obstruct lawful administration. She urges the court to allow the application dated 22nd April, 2024 to conclusively resolve the dispute and enforce compliance with prior court determinations.
18. The application is opposed vide replying affidavit sworn by Joseph Karega Kamau on 22nd October, 2024.
19. He avers inter alia that the application is misconceived, abusive and intended to sanitize prior material non-disclosure and misrepresentation by the Applicant in relation to LR Dagoretti/Kangemi/328 and 330. He maintains that the three succession causes relating to the estates of William Kamau Kamuyu (deceased), Francis Kamuyu Kamau (deceased) and Sarah Njoki Kamau (deceased) are distinct, with different beneficiaries and proprietary interests.
20. He contends that consolidation would improperly collapse settled issues and undermine final judgments, particularly the rulings and judgment delivered in Succession Cause No. 2561 of 2009. He asserts that the Applicant knowingly concealed the fact that Dagoretti/Kangemi/330 formed part of the estate of Sarah Njoki Kamau (deceased) and that Dagoretti/Kangemi/328 was jointly owned in equal shares, yet proceeded to procure a confirmed grant in 2021 distributing the properties as though they solely belonged to the estate of Francis Kamuyu Kamau (deceased).
21. He further accuses the Applicant of manipulating court processes, disobeying court orders and pursuing contradictory positions across different causes to secure an unfair advantage and urges the court to dismiss the application as res judicata, premature and an abuse of process, while preserving the integrity of the existing grants and the lawful administration of the estate of Sarah Njoki Kamau (deceased).
22. The intended interested party has filed written submissions dated 7th November, 2025 and the Administrator has filed written submissions dated 11th November, 2025.



Analysis And Determination

23. I have read the application before this court, the responses thereto and the rival submissions.
24. In *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR) the court pronounced itself as follows: "... 37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court..."
25. In *KCB Bank Kenya Limited v Karigi t/a Mugendi Karigi & Co Advocates & another* [2023] KEHC 23858 (KLR) it was stated as follows: "... 15. Eventually, the role of the court is to administer justice. This can only be achieved when the court considers the arguments of both parties, weighing the pros and cons of the discretionary decision of the court to either side of the litigation divide. That is, the losses bound to be suffered by the Applicant as against the gains to the respondents and vice versa if the orders sought are either granted or denied. The court, in *RWW Vs. EKW* [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words: "The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent."
26. In *Nguruman Limited v Jan Bonde Nielson* [2014] KEHC 1718 (KLR) the court pronounced itself as follows: "... In *EAN Kenya Limited v. John Sawers & 4 others* (2007) eKLR Waweru J., had this to say on consolidation of suits:-
- ".....the test to be applied is not whether the parties are the same but whether the same or similar questions of law or fact are involved in the suits."
48. In applying the above test to the circumstances of this case, I reiterate that the only difference between the two suits herein is the description of the defendant, otherwise, the subject matter and the reliefs sought are basically the same. I also wish to point out that, on strict application of the law, Nakuru HCCC NO.120 OF 2010 is res sub judice Nakuru HCCC NO. 103 OF 2009.
49. Since counsels appear to have decided to litigate in bits, to obviate the possibility of another application challenging the propriety of Nakuru HCC NO.120 of 2010, I find and hold that a case for consolidation of the suits has



been made up. Consequently, I order that the two suits be consolidated for purposes of hearing and determination. 50. Noting the concerns raised in the plaintiff's submissions that the application herein is a scheme by the defendant to delay the hearing and determination of the suits, I direct the parties, with the help of the Registrar of this Court, to fix the matter for hearing within 60 days from the date hereof."

27. In re Estate of Julius Mimano (Deceased) [2019] eKLR, Judge Musyoka stated as follows: "The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the Law of Succession Act. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over the estate property when the same vests in the personal representative to hold on behalf of the beneficiaries."
28. The historical background in these three files in my view is not in dispute. All the properties in question as rightly submitted by the parties emanated from one source, namely the estate of the late William Kamau Kamuyu.
29. Justice Muigai whose ruling/judgement has been extensively discussed has not been set aside and it remains so.
30. Both parties agree that L. R. Nos. No. Dagoretti/Kangemi/328 and Dagoretti/Kangemi/330 do not form part of the Estate of Francis Kamuyu Kamau, the deceased herein. No appeal has been preferred against the judgment of Hon. Justice Muigai dated 9th November, 2018 as stated earlier.
31. The question of accounting by Joseph Karega Kamau is still a thorny issue and I find that he has deliberately refused to let the Respondent enjoy the rental income of the portion due to her. There is no apparent reason and he must comply.
32. Consequently, I find the two applications dated 4th April 2024 and 22nd April 2024 meritorious and proceed to allow the same as prayed.
33. Each party to bear their respective costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 29TH DAY OF JANUARY 2026.

H K CHEMITEI

JUDGE

