

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. E039 OF 2024

IN THE MATTER OF THE ESTATE OF ERASMUS IGUKU
KINYUA (DECEASED)

ALLEN KARIUKI IGUKU

JULIUS WAHOME IGUKU

APPLICANTS

RULING

1. By a General Summons dated 24.9.2025, the Applicants sought the following reliefs:

THAT the court do grant order authoring release of monies from the deceased's bank accounts held at

- (a) Equity Bank Account Erasmus Iguku Kinyua No. 1150162315079
- (b) Biashara Sacco Fixed Deposit Account Erasmus Iguku Kinyua No. 64323-19-00538.
- (c) Biashara Sacco Business Account Erasmus Iguku Kinyua No. 0064-32-30915
- (d) Equity Bank Account Mukaro Electrical Services No. 1150261489554
- (e) Faulu Account: Mukaro Electrical Services No. 1006247958

2. The purpose of the need for the monies was stated to be settling debts owed to creditors. Some creditors were reported to have threatened legal action.
3. The alleged creditors are as follows:
 - a) ASL Limited Wire & Cable Ksh. 2,626,887.82
 - b) Cable Connect Limited Ksh. 2,241,607.43
 - c) Metro Concepts East Africa Ksh. 177,050.10
 - d) Hybrid Electricals Ksh. 743,700.00.
4. It was deposed in the joint supporting affidavit of the Applicants that the funds were necessary to ensure continuity of Mukaro Electrical Services Limited to prevent financial loss and protect the interest of the beneficiaries. there was no nexus drawn between the alleged creditors and the deceased.
5. The other question was the payment of school fees, like one Ann Wanjiru Iguku of Riara University, as well as to cater for the legal fees incurred in the estate. This limb was allowed for one trimester. There is no new application for special limited letters.
6. To be able to understand the nexus between the application and the law, it is important to problematize, conceptualize, and contextualize the background to the filing of the application. The deceased died due head injury secondary to blunt force trauma. The first administrator is a person of

interest under sections 203 and 204 of the Penal Code. Consequently, the estate is stayed pending the determination of the interest of the first administrator in view of the provisions of Section 96 of the Succession Act. The said act provides as follows:

1) Notwithstanding any other provision of this Act, a person who, while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person, and the persons beneficially entitled to shares in the estate of the murdered person shall be ascertained as though the murderer had died immediately before the murdered person.

2) For the purpose of this section the conviction of a person in criminal proceedings of the crime of murder shall be sufficient evidence of the fact that the person so convicted committed the murder.

7. Section 82(d) of the Law of succession act cap 160 provides for the powers of personal representatives:

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in *them, as they think best*:

...

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation: (emphasis added)

8. It is therefore necessary that administrators put together the list of all creditors and find the net estate before settling some debts. It is thus necessary to gather the estate and ascertain all debts without preferential. The sky will not fall if the estate is still unadministered. The creditors have a right to raise their stake to be dealt with in confirmation.
9. the duties of the administrators were addressed in the case of **In Re Estate of Barasa Kanenje Manya (Deceased) (Succession Cause 263 of 2002) [2020] KEHC 1 (KLR) (30 July 2020) (Ruling)** the Court stated as follows:

Section 79 of the Law of Succession Act should be read together with sections 82 and 83 of the Act, which set out the powers and duties of administrators. Once the assets of the deceased were vested in the administrators, the administrators would then be entitled to exercise the powers conferred upon administrators by section 82, and they were subject to the duties that were imposed by section 83. The powers included powers to enter into contracts with respect to assets of the estate, to sue and be sued with regard to estate assets, among others. Entering into contracts over estate assets would include converting estate assets by way of sale. However, section 82(b)(ii) of the Act outlawed the sale of immovable assets of an estate before the grant had been confirmed. That would mean that any

such sale would be unlawful and unenforceable unless it happened with the leave of the court.

10. The court has carefully perused the annexures to the Application. The deceased passed away on 19 December 2021. There is no evidence placed before the court to demonstrate that the expenses alleged to be outstanding arose in circumstances so urgent as to warrant the intervention sought.
11. Further, there is no material to show that the said expenses have crystallised and are presently due and payable, or that they are demanding immediate settlement. No evidence has been tendered to establish that failure to settle wages or other liabilities would result in the wastage of the estate or occasion prejudice to the beneficiaries by diminishing or jeopardising their inheritance
12. The expenses are not such that they cannot await the completion of the succession herein. I note that the court has already granted access to some funds to cover Ann Wanjiru Iguku's university school fees. I disallow the Application. Each party will bear its own costs.
13. The administrators must find a way of proceeding without the first administrator, who has clouds of section 96 of the Succession Act hanging over her. Given the provisions of section 35 of the Law of Succession Act, parties may need to to reflect.

Determination

14. In the upshot, I make the following orders:

- a. The Summons General dated 24.9.2025 lacks merit and is dismissed.
- b. Directions will be issued shortly.

DELIVERED, DATED and SIGNED at **NYERI** on this **17th** day of **February, 2026**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. Mshilla for the Applicants

Court clerk - Michael