

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT PROBATE AND ADMINISTRATION CAUSE NO.**

**62 OF 2002**

**IN THE MATTER OF THE ESTATE OF JOSEPH MUNENE MAINA**

**(DECEASED)**

**BEATRICE MURUGI MUNENE.....**  
**APPLICANT**

**VERSUS**

**MARY WANJIKU GAKUU .....**  
**RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated **8<sup>th</sup>**

**October 2025** by which the Applicant **BEATRICE MURUGI MUNENE** who seeks the following orders;-

**“1. SPENT**

**2. Pending the hearing and determination of THIS application and/or the main application dated 11<sup>th</sup>**

**June 2025, this Honorable Court do issue an interim conservatory order restraining the Intended Respondent, her agents, servants or any person acting on her behalf from collecting, receiving, demanding or in any way interfering with the collection of rent from the estate properties of the deceased;**

**3. That this Honourable Court do appoint a neutral rent**

**receiver/agent, to be agreed upon by the parties or otherwise appointed by the Court, to collect, manage and remit all the rent from the estate properties pending the determination of the main application;**

**4. That the Intended Respondent be compelled to immediately remit to the Applicant her rightful share of**

**rent arrears already collected from the estate properties,**

**pending the final distribution; and**

**5. That costs of this application be in the cause.”**

2. The application was supported by the affidavit of even date sworn by the

Applicant.

3. The Respondent **MARY WANJIKU GAKUU** opposed the application by

way of the Replying Affidavit dated **10<sup>th</sup> November 2025**.

The

application was canvassed by way of written submissions. The

Applicant

filed the written submissions dated **8<sup>th</sup> October 2025** whilst

the

Respondent relied upon her written submissions dated **10<sup>th</sup>**

**November**

**2025.**

**BACKGROUND**

4. This succession cause relates to the estate of the late **JOSEPH**

**MUNENE**

**MAINA** (hereinafter ‘the Deceased) who died intestate on **27<sup>th</sup>**

**September 2001.** A copy of the Death Certificate Serial No. **636072**

is in the Original file.

5. There has been much litigation in this cause which culminated in the

Mediation Settlement Agreement which was filed in the High Court on

**23<sup>rd</sup> October 2021.** (see Annexure '**BMM2**' to the Notice of Motion

dated **11<sup>th</sup> June 2025.**) By that Mediation Agreement it was agreed

that Beatrice Murugu (the Applicant) and **Mary Wanjiku Gakuu** (the

Respondent) be appointed as the joint administrators for the estate

6. The Applicant avers that she is a widow of the Deceased and a joint

administrator of the estate. The Applicant complains that the

Respondent who is the co-administrator has unilaterally taken control of

all rent collection to the exclusion of the applicant.

7. The Applicant states that she is an elderly widow, frail in health who

requires medical care. That she is apprehensive that the actions of the Respondent may lead to the dissipation of the estate to the prejudice of the Applicant and the other beneficiaries. Hence the present application seeking to have the rental income collected by a neutral agent.

8. The Respondent opposed the application. She states that the parties

initially agreed that the Respondent take up the day to day running of the estate due to the frail nature of the Applicant. The Respondent asserts that all the rental income collected is used for the benefit of the estate i.e paying rates.

9. The Respondent opposes the suggestion that a neutral agent be engaged

to collect rents as this would only add to the estates expenses.

### **ANALYSIS AND DETERMINATION**

10. I have carefully considered the application before this court, the reply

filed thereto as well as the written submissions filed by both parties.

11. The Applicant sought conservatory orders to restrain the Respondent

and her agents from collecting rents from the estate properties.

12. In order for an injunction to be issued, the applicant must satisfy the

three requirements as was laid out in the case of **Giella v Cassman**

**Brown [1973] EA 348** where the court held that an applicant must demonstrate that they have a **prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in their favour.**

13. In the case of **Nguruman Limited Vs Jan Bonde Nielson & 2 Others**

[2014] eKLR, the **Court of Appeal** expounded on the decision in

**Giella** as follows:-

**“In an interlocutory injunction application, the applicant has**

**to satisfy the triple requirements to;**

- a. Establish his case only at a prima facie level,**
- b. Demonstrate irreparable injury if a temporary injunction is not granted, and**
- c. Alleviate any doubts as to (b) showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct, and logical hurdles that the applicant is expected to surmount sequentially.”**

14. In **Mrao Ltd v First American Bank of Kenya Limited and 2**

**Others [2003] eKLR** the **Court of Appeal** described a 'prima facie'

case as:-

**“a case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter.”**

15. The Applicant has alleged that the Respondent has more or less pushed

her out of the management of the estate. She states that the Respondent has been unilaterally collecting the rental income and has

failed to account for the same to the other beneficiaries. She expresses

the apprehension that the estate may be dissipated.

16. The Applicant has not tendered any proof of the alleged misuse of the

rental income. There is no evidence of diversion of any of the said

rental income.

17. By her own admission and based on the attached medical documents it

is clear that the Applicant is an elderly woman who is frail and quite ill. Given her condition, it would be quite difficult for her to play an active role in the management of the estate.

18. I find that the Applicant has failed to establish a prima facie case to

warrant issuance of the conservatory orders.

19. Having said that **Section 83** of the **Law of Succession Act Cap 160**

**Laws of Kenya** sets out the duties of personal representatives of an

estate.

**Section 83(e)** provides that an administrator has a duty to

**“(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full accurate account of all dealings therewith upto the date of the account.”**

20. The Respondent concedes that she has been managing the estate

including collecting and dealing with the rental income. She expresses

her willingness to render accounts of her management of the estate this

far. I am not inclined to grant the prayer for an appointment of an

agent to collect the rental income as I do agree with the Respondent that

to do so would only increase expenses of the estate.

21. **Section 47** of the Law of Succession Act and **Rule 73** of the Probate

and Administration Rules give the probate court wide discretionary

powers. **Section 47** of the Law of Succession Act provides:

**The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.**

**Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.**

**Rule 73** of the Probate and Administration Rules provides that:-

**Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”**

22. Finally I dismiss this application in its entirety. However I do direct that

the Respondent file within **sixty (60) days** full and accurate accounts

of her management and dealings with the estate. This being a family

matter each side will bear its own costs.

**Dated in Nyeri this 20<sup>th</sup> day of February, 2026**

.....  
**MAUREEN A. ODERO**  
**JUDGE**