

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 3329 of 2003
IN THE MATTER OF THE ESTATE OF FRANCIS
MWANZA KIETI (DECEASED)

RULING

INTRODUCTION

1. The Application for determination is dated 30th April 2024 and is presented by **STANLEY KIETI MWANZA**, the 1st Administrator under Section 74, Section 47 of the Law of Succession Act and Rule 49 and 73 of the Probate and Administration rules. The application seeks the following orders-

- a) Spent
- b) THAT the Court do issue an order to the effect that the 2nd Administrator does sign all the relevant documents to effect, transfer and transmission of the parcels of land known as Machakos/ Mua Hill/ 1094, Machakos/ Mua Hill/ 1096, Machakos/ Mua Hill/ 1103 and Machakos/ Mua Hill/ 1104 which form part of the estate to the rightful beneficiaries.
- c) THAT in the event of default on the part of the 2nd Administrator, the Court do order for the 2nd Administrator to hand over the original ownership documents to Deputy Registrar for signing of all the

relevant transfer documents to effect transfer and transmission of the properties of the estate

d) THAT the costs of this application be in the cause.

2. The application is supported by the affidavits of the applicant sworn on 30th April 2024, 26th May 2025 and 18th July 2025. The respondent, the 2nd administrator, opposes the application and has sworn affidavits on 12th February 2025 and 4th July 2025.

3. The bone of contention is that the 2nd Administrator has declined to finalise transmission of parcels of land emanating from the subdivision of MACHAKOS/ MUA HILLS / 257 to beneficiaries of the estate. He states he will only facilitate the transmission once he is reimbursed the costs he has incurred (legal and surveyor fees). The applicants are adamant that the fees being claimed are fictitious, inflated and were incurred by the respondent unilaterally and in his personal capacity.

4. The application was canvassed via written submissions. The Submissions of the applicant are dated 21st October 2025.

He frames the issues for determination as

a) Whether the 2nd Administrator acted *ultra vires* his powers in the management, subdivision and

- registration of the estate property.
- b) Whether his refusal to execute transfer documents and release title deeds amounts to a breach of his fiduciary duty as a co- administrator.
 - c) Whether the legal and survey expenses claimed are proper estate liabilities or personal to the 2nd administrator
 - d) Whether the Court should authorize the Deputy Registrar to execute the transfer and transmission documents to give effect to the confirmed grant.
5. It is submitted that in acting unilaterally the respondent acted *ultra vires* his powers as co administrator and reference made to the decision in **Re Estate of Mbuu Mutua alias Mbuu Mwaka (Deceased) [2022] KEHC 10245 (KLR)** and that any costs incurred are personal to him and not to the estate.
6. On the 2nd issue it is submitted that the refusal to facilitate transmission amounts to intermeddling and reference made to the decision in **Benson Mutuma Muriungi v CEO Kenya Police Sacco & Anor [2016] eKLR** and **Re Estate of Godfrey Wanyeki Kimeriah (Deceased) [2023] KEHC 23949 (KLR)** on acts that constitute intermeddling and the attendant consequences.
7. The applicant urges the Court to invoke its wide supervisory powers under Section 47 of the Law of Succession Act and

Rule 73 of the Probate and Administration rules to make orders that meet the ends of justice.

8. On the 3rd issue it is submitted that the debts incurred unilaterally are not estate liabilities and therefore the respondent is personally liable. Reference is made to the decision in **Re Estate of the Late John Bartilol (Deceased) [2025] KEHC 4372(KLR)(4th April 2025)** . It is further submitted that the costs were not incurred with authority of the Court and reference made to the decision in **Re Estate of peter Macharia Marianjugu (Deceased) [2023] KEHC 18736 (KLR) (19TH June 2023)** and **Re Estate of Mary Karugi Mwangi (Deceased) [2022] KEHC 13070 (KLR) (22nd September 2022)**
9. On the final issue it is submitted that there is judicial precedent of the Court to authorize a Deputy registrar to execute documents where an administrator fails to do so. Reference is made to the decision in **Re Estate of Kiura Kathagana (Deceased) (Succession Cause No. 385 of 2007) [2023] KEHC 19084 (KLR) (14th June 2023) (Ruling).**

10. The applicants conclude their submissions by

conceding that the beneficiaries are prepared to pay 'genuine' costs but resist the attempt by the respondent to muscle them.

11. The respondent's submissions are dated 10th November 2025. He frames the issues for determination as-

- a) Whether the Respondent acted in good faith in taking up the role of the administration of the estate when the applicant refused to participate in the administration of the estate.
- b) Whether the respondent ought to be reimbursed the sums he expended while properly administering the estate.
- c) Whether this Honourable Court should then allow this instant application by authorizing the deputy registrar to execute the transfer of transmission documents.

12. On the 1st issue, it is submitted that the respondent acted in good faith and with the intention of complying with Section 83(g) of the Law of Succession Act, he is therefore entitled to a reimbursement of costs incurred in transmitting the estate. It is submitted that there is no dispute that he incurred the costs he is claiming and therefore he ought to be reimbursed.

ANALYSIS AND DETERMINATION

13. Having considered the pleadings and submissions filed herein alongside the applicable law, I find the issues for determination are-

- a) Whether the Probate Court is the proper forum to determine the dispute between the parties
- b) What if any are the orders that this Court can make to facilitate transmission of the estate to the beneficiaries of the estate
- c) What are appropriate orders as to costs.

14. As emphasized in the *locus classicus* decision in **The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited (1989) KLR 1-**

Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

15. The bone of contention herein is the recovery costs by the respondent for expenses incurred by him in subdivision of one of the assets of the estate; MACHAKOS/ MUA HILLS/ 257. There is a plethora of Court decisions on the limits of the mandate of the jurisdiction of the probate Court, which are, to appoint administrators of the estate of a deceased person, identify beneficiaries, delineate free estate of the

deceased person, determine the share of the respective beneficiaries. One such decision is **re Estate of Christopher Matata Musyoka (Deceased) [2025] KEHC 3211 (KLR)**.

16. The respondent is claiming reimbursement from the beneficiaries and not the Estate. Under Section 71 of the law of Succession Act, the window for recovering debts from the estate closed with the issuance of the certificate of confirmation of grant. What this means is that at the time of the Confirmation of the Grant, the administrator (s) should make provision for the costs of transmission of the estate (See Section 83 (c) of the Law of Succession Act).

17. Where the administrator fails to make provision for costs of administration his recourse would be either to arrive at a consensus with the other beneficiaries on how to cover those costs, or where he acts unilaterally as in this instance proceed to seek the intervention of the Court in exercise of its civil jurisdiction. Because in so far as the probate court is concerned, upon issuance of the Certificate of Confirmation of Grant it is rendered *functus officio* with the exception of applications for rectification and

rectification of grant.

18. This Court is therefore not the forum where the parties will resolve whether or not the respondent should be reimbursed the costs of administering the estate.

19. The 2nd issue, is the appropriate orders that the Court should make towards the transmission of the estate of the deceased. From the pleadings it is evident that the administrator is yet to finalise transmission. Section 83 (g), (h) and (i) require that administration of the grant be finalised within 6 months and that the administrator furnish the Court with a full and accurate account of the completed administration.

20. In proceeding to meet the costs of transmission, the respondent took a risk that the beneficiaries would act civilly and reimburse him the costs. It appears that the applicant and other beneficiaries are not so minded. He will therefore have to adopt an extractive approach to recover his money. This debt notwithstanding does not absolve or delay his statutory obligation to finalise transmission within 6 months of issuance of grant.

21. The orders that are appropriate under the

circumstances are to compel the administrators to finalise the transmission of the Estate in accordance with the Certificate of Confirmation of Grant issued on 30th January 2012 and rectified on 16th June 2014. Accordingly, the application dated 30th April 2024 is allowed on the following terms-

- a) The Administrators will finalise the transmission of the estate within 90 days, in particular the 2nd Administrator will sign all the relevant documents to effect, transfer and transmission of the parcels of land known as Machakos/ Mua Hill/ 1094, Machakos/ Mua Hill/ 1096, Machakos/ Mua Hill/ 1103 and Machakos/ Mua Hill/ 1104 which form part of the estate to the rightful beneficiaries.
- b) The Administrators will furnish the court with a full and accurate account of the Completed administration within 120 days.
- c) To ensure compliance with (a) above the 2nd Administrator will execute documentation necessary to transmit the estate to the beneficiaries within 21 days from the date hereof failure of which the Deputy Registrar, Family Division Milimani Law Courts to do so in his stead.

22. Mention on 24th June 2025 to confirm compliance and take further directions

23. Parties at liberty to appeal. The party exercising right of appeal to do so within 30 days

24. Each party to bear their own costs

It is so ordered.

SIGNED, DATED and DELIVERED VIRTUALLY at
NAIROBI this **13TH** day of **February, 2026**.

**P .M NYAUNDI
HIGH COURT JUDGE**

In the presence of:

Fardosa Court Assistant

Mugo for 2nd Administrator

Ms. Nzili for 1st Administrator/Applicant