

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COM M E R C I A L A N D T A X D I V I S I O N
HCCOMM NO. E462 OF 2023 (OS)

IN THE MATTER OF A CLAIM BY HABEL KAGEMA KAIBERE AS
ADMINISTRATOR OF THE LATE ESTATE OF MISCHECK KAIBERE
KAGEMA SEEKING DECLARATIONS AGAINST EQUITY BANK
LIMITED ON TERMS OF ORDER 37 RULE 3 OF THE CIVIL
PROCEDURE RULES

-BETWEEN-

HABEL KAGEMA KAIBERE.....PLAINTIFF/APPLICANT

-VERSUS-

EQUITY BANK LIMITED.....DEFENDANT/RESPONDENT

-AND-

JAMES KAGEMA MWANGI (Administrator of the
Estate of the late John Mwangi Kagema).....1ST INTERESTED PARTY

MORRIS KIOKO MUINDI (Administrator of the
Estate of the late Lizzie Wachinga Kaibere).....2ND INTERESTED PARTY

JUDGMENT

1. The plaintiff filed Originating Summons dated 7th September 2023 pursuant to the provisions of Section 3A of the Civil Procedure Act and Order 37 Rules 1(f) & (g) and 3 of the Civil Procedure Rules, 2010. The plaintiff sought a declaration that the funds held in the specified bank accounts belong to the Estate of the late Mischek Kaibere Kagema and an order that the said accounts be unfrozen and the plaintiff, as the Administrator of the Estate, be granted access to the funds for the purpose of distributing them to the beneficiaries of the said Estate in accordance with the Certificate of Confirmation of Grant issued for the Estate.

2. The application is supported by an affidavit sworn on 7th September 2023 by Mr. Habel Kagema Kaibere, the sole surviving Administrator of the Estate of the late Mischeck Kaibere Kagema. Mr. Kaibere averred that he is the sole surviving Administrator of the Estate of his late father, Mischeck Kaibere Kagema. He stated that initially, he, his late uncle John Mwangi Kagema, and his late sister Lizzy Wachinga Kaibere were appointed co-administrators of the Estate pursuant to a Grant of Letters of Administration issued on 9th May 2014, which was confirmed by the Nairobi High Court on 1st November 2017.
3. He deposed that in 2017, the three Administrators opened a joint account at Equity Bank Limited, Fourways Branch, to receive rent from one of the Estate's properties, which account was in 2022 transferred by the said bank to another account. He stated that the accounts were intended solely for Estate-related funds, pending confirmation of the Grant. Mr. Kaibere stated that after the demise of his co-administrators in 2018 and 2020, he attempted to access the accounts but was informed by the defendant that the accounts had been frozen and could only be accessed via a Court order. He claimed that the Estates of his deceased co-administrators have no claim to the funds, hence he has involved their respective Administrators in the Summons to clarify their positions.
4. In opposition to the instant Originating Summons, the 2nd interested party filed a replying affidavit sworn on 29th November 2023 by Mr. Morris Kioko Muindi, the 2nd interested party herein. Mr. Muindi averred that he is the Administrator of the Estate of his late wife, Lizzie Wachinga Kaibere. He disputed the claim that the late co-administrators had no interest in the joint accounts, stating that his late wife was one of the Administrators of the Estate of the late Mischeck Kaibere Kagema, alongside John Mwangi and the plaintiff.

5. He asserted that as a beneficiary, his late wife was entitled to a portion of the Estate, and as such, the Estate of Lizzie Wachinga has an interest in the rent deposited in the Equity Bank accounts, as she was registered as a joint owner of property Title Number I.R 36/1142/III Eastleigh Estate, which has since been sold and the proceeds distributed among the beneficiaries. He asserted that the funds in the Equity Bank accounts should be shared equally among the seven beneficiaries listed in the Grant attached to the plaintiff's application.
6. The Originating Summons herein was canvassed by way of written submissions. The plaintiff's submissions were filed on 8th July 2025 by the law firm of P.M. Kimani & Company Advocates, whereas the 2nd interested party's submissions were filed by the law firm of Kiio Mumo & Company Advocates on 9th July 2025. Notably, from the Court record and the Case Tracking System, the defendant and the 1st interested party did not participate in these proceedings.
7. Ms Nduta, learned Counsel for the plaintiff submitted that the instant Originating Summons seeks Orders directing the defendant to release the monies held in the two subject bank accounts to the Administrator, for distribution to the beneficiaries in accordance with the Certificate of Confirmation of Grant issued in **Nairobi High Court Succession Cause No. 291 of 2014** in the Estate of the late Mischeck Kaibere Kagema. She argued that the said Certificate of Confirmation of Grant identified the beneficiaries of the said Estate, including the late Lizzy Wachinga Kaibere, whose sole Administrator and beneficiary is the second interested party, Morris Kioko Muindi.
8. Ms Nduta stated that it is not disputed that the 2nd interested party is entitled to an equal share of the funds held in the accounts in line with the Certificate of Confirmation of Grant. She further stated that the plaintiff, having now

obtained the proceeds of the two accounts, is obligated to account to all beneficiaries, including the 2nd interested party, and to file a statement of accounts.

9. Mr. Mumo, learned Counsel for the 2nd interested party submitted that the Estate of the late Lizzie Wachinga has a legal and beneficial interest in the funds held in Equity Bank Account Numbers 0010166121450 and 010038504257, being rental income or proceeds from Estate assets. He asserted that equity demands that no beneficiary should be prejudiced before full administration of the Estate.
10. Mr. Mumo contended that the 2nd interested party raised concerns that the plaintiff acted unilaterally by engaging the defendant without involving or informing the other co-administrators or interested parties, contrary to the requirement that Administrators should act jointly and transparently. He submitted that no substantive orders should issue before full disclosure and a comprehensive accounting of all monies held in the said accounts is undertaken. Counsel urged this Court to decline granting final orders pending such disclosure. He also urged this Court to direct the applicant to disclose all dealings with the defendant bank and to give directions on the equal distribution of the funds among the seven beneficiaries named in the confirmed Grant, including the Estate of the late Lizzie Wachinga Kaibere.

ANALYSIS AND DETERMINATION.

11. Upon consideration of the Originating Summons herein, the grounds on the face of it and the affidavit filed in support thereof, the replying affidavit by the 2nd interested party and the written submissions by Counsel for the plaintiff and the 2nd interested party, the issue that arises for determination is whether the plaintiff has made out a case to warrant being granted the orders being sought herein.

12. It is not in dispute that the monies held in Equity Bank account numbers 0010166121450 & 010038504257 emanate from assets of the Estate of the late Mischeck Kaibere Kagema. The evidence on record shows that the accounts were opened by the duly appointed Administrators of the Estate for the specific purpose of receiving rental income from Estate property, pending and subsequent to confirmation of the Grant of Letters of Administration issued on 9th May 2014. The said Letters of Administration were confirmed on 1st November 2017 and from a perusal of the same, it is evident that it identifies the beneficiaries of the Estate of the late Mischeck Kaibere Kagema, including the late Lizzy Wachinga Kaibere.
13. From the documents filed herein, no evidence has been placed before this Court showing that the Confirmed Certificate of Grant has been challenged, varied, or set aside. Following the demise of the two co-administrators and in the absence of a different Grant of Letters of Administration from the Succession Court, the plaintiff became the sole surviving Administrator of the Estate of the late Mischeck Kaibere Kagema. In the premise, this Court is persuaded that the plaintiff is clothed with the legal mandate to collect, preserve, and ultimately distribute the assets of the Estate of the late Mischeck Kaibere Kagema in accordance with the Confirmed Grant.
14. The freezing of the subject bank accounts by the defendant bank, pending a Court Order, effectively stalled the administration of the Estate and the distribution of funds to the beneficiaries. In that regard, the plaintiff was justified in approaching this Court for directions under Order 37 Rule 1(g) of the Civil Procedure Rules, 2010, which states that -

the determination of any question arising directly out of the administration of the estate or trust.

15. This Court has also considered the concerns raised by the 2nd interested party, Morris Kioko Muindi, as the Administrator of the Estate of the late

Lizzy Wachinga Kaibere. His contention that the Estate of the late Lizzy Wachinga has a beneficial interest in the funds is well founded, and indeed, it is not disputed by the plaintiff. Both parties are in agreement that the 2nd interested party is entitled to an equal share of the funds in accordance with the Certificate of Confirmation of Grant. The dispute herein does not relate to ownership of the funds as between beneficiaries, but rather to the process of access, disclosure, and accounting.

16. On the allegation that the plaintiff acted unilaterally, this Court is mindful that Administrators hold estate property in a fiduciary capacity and are under a strict duty to act transparently and to account to all beneficiaries. While the plaintiff moved the Court without the participation of the other parties, he nonetheless joined the Administrators of the Estates of the deceased co-administrators to these proceedings, thereby allowing them to be heard. More importantly, the plaintiff has conceded in his affidavit in support of the Summons herein that he is under an obligation to render a full account of all monies received and to distribute the same strictly in accordance with the confirmed Grant.
17. In the circumstances, this Court is satisfied that the funds in the subject bank accounts belong to the Estate of the late Mischeck Kaibere Kagema and that continued freezing of the accounts serves no lawful purpose, save to delay the administration of the Estate. Given the fiduciary nature of the plaintiff's role and the legitimate concerns raised by the 2nd interested party, the release of the funds must be accompanied by safeguards to ensure transparency and accountability.
18. Accordingly, this Court finds that the plaintiff has made out a proper case to warrant being granted the orders sought in the Originating Summons.
19. In the end, I find that the Originating Summons herein are merited. I make the following orders –

- i) A declaration is hereby made that the funds held in Equity Bank account numbers 0010166121450 & 010038504257 belong to the Estate of the late Mischeck Kaibere Kagema;**
- ii) An order is hereby made that the said accounts be unfrozen and the plaintiff, as the Administrator of the Estate, be granted access to the funds for the purpose of distributing them to the beneficiaries of the said Estate in accordance with the Certificate of Confirmation of Grant issued;**
- iii) The plaintiff is hereby directed to render a full and proper account for all monies released from the subject accounts to all beneficiaries, file a statement of accounts within a reasonable time, to be filed in Nairobi High Court Succession Cause No. 291 of 2014, and thereafter distribute the funds to the beneficiaries strictly in accordance with the Certificate of Confirmation of Grant; and**
- iv) Each party shall bear his own costs.**

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 20th day of February 2026. Judgment delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

No appearance for the plaintiff/applicant

No appearance for the 1st interested party

Mr. Mumo for the 2nd interested party

Ms B. Wokabi – Court Assistant.