

REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT MERU
SUCCESSION CAUSE NO. E002 OF 2021
IN THE MATTER OF THE ESTATE OF ALOISE RENTARE NYAMU

SADIA NYAMU.....1ST

APPLICANT

JAMES MUGAMBI KABERIA.....2ND

APPLICANT

VERSUS

SECONDINAH KANINI NYAMU.....RESPONDENT

RULING

1. For determination is the Notice of Motion dated 16/10/2025 pursuant to **Sections 45 and 47 of the Law of Succession Act and Rules 49, 59 and 73 of the Probate and Administration Rules**, seeking that:

1. Spent

2. This Honourable Court be pleased to issue a temporary injunction restraining the Respondent, her agents, servants, or any persons claiming through her, from entering upon, leasing, cultivating, collecting rent, receiving income, or in any other way intermeddling with the following properties forming part of the estate of the deceased pending the hearing and determination of this application and/or confirmation of grant:

1) Mikinduri/Athwana/879

- 2) Mikinduri/Athwana/779**
- 3) Nairobi/Block 79/532 Buruburu**
- 4) Plot No. 107 - Umoja Innercore, Sector V**
- 5) Meru North/Antuamburi/7283**
- 6) Meru North/Antuamburi/7465**
- 7) Meru North/Antuamburi/4033**
- 8) Meru North/Antuamburi/6102**
- 9) Tigania/Antuamburi/7608**
- 10) Tigania/Akaiga/1897**
- 11) Tigania/Akaiga/4087**
- 12) Tigania/ Akaiga/8763**
- 13) Tigania/Akaiga/3799**
- 14) ABSA Bank Account No. 0824803056**
- 15) ABSA Bank Account No. 2037668519**
- 16) Pension and other benefits from KRA**
- 17) Ushuru Sacco Shares**
- 18) All other assets forming part of the estate.**

3. The Respondent be cited and summoned to appear before this Honourable Court to show cause why she should not be found guilty of intermeddling with the estate of the deceased.

4. The Honourable Court do issue preservation orders to safeguard the above-listed assets pending confirmation and distribution of the estate.

5. The Officer Commanding Station (OCS) Mikinduri Police Station and/or any other relevant station be directed to ensure compliance with the Court's orders. This Honourable Court do issue any further orders and directions it deems just and expedient for the proper administration of the estate.

6. Costs of this application be provided for.

2. The application is premised on the grounds that the Respondent, without any lawful authority, has taken possession of and/or continues to occupy, lease or farm on several parcels of land forming part of the estate. The Respondent has further permitted various persons to occupy, cultivate and collect income from the estate properties, without authority of the Applicants, which amounts to intermeddling with the estate, and unless she is restrained, she will continue to unlawfully benefit from the estate to the detriment of the lawful beneficiaries.

3. The Respondent swore a replying affidavit on 11/12/2025 in opposition to the application. She averred that the application was a replica of her summons dated 13/8/2025, and thus res judicata. The application was equally incompetent as no evidence had been tendered in support of the wild allegations of intermeddling. Besides, the lessees entered the land during the lifetime of the

deceased and pay rent directly into the estate account in compliance with the orders of the court of 17/11/2022. The Applicants irregularly attempted to lease the land to new tenants whereas the current lessees had already paid rent to the estate account.

4. The application was canvassed by way of written submissions, which were only filed by counsel for the Applicants.

Determination

5. Having considered the application, the response and the submissions on record, I find the issue for determination to be whether the threshold for the grant of the temporary injunction has been met.
6. The conditions for grant of temporary injunction were set out in the *locus classicus* case of **Giella v Cassman Brown [1973] EA 358** as follows; ***“An applicant must show a prima facie case with probability of success, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, when the court is in doubt, it will decide the application on the balance of convenience.”***
7. The Applicants accuse the Respondent of intermeddling with the estate of the deceased, by continuing to misappropriate income

from the estate to the detriment of the rightful beneficiaries. Section 45 of the Law of Succession Act expressly outlaws any intermeddling with the estate of the deceased.

8. On 17/11/2022, this court (E.M Muriithi J) directed that an estate account be opened for purposes of deposit of the income accruing to the estate, in a bid to avert any wastage or dissipation thereof. The court further ordered that should any party be found to have misappropriated any income accruing from the estate, such misappropriation will be taken into consideration during distribution of the estate in tandem with the provisions of section 42 of the Law of Succession Act. In issuing an order for the maintenance of the prevailing status quo, the court expounded that, ***“Before the hearing and determination of the question of the capacity of the parties as Administrators and or heirs is determined, the status quo shall be maintained to the effect that the Administrators and the objector will maintain possession of Estate assets and declare such rents as accrue for deposit in to a joint account in the names of counsel for the parties, subject to an order for account upon judgment on the objection and or distribution of the Estate, as the court may direct after hearing the evidence.”***

9. I note the existence of the temporary injunctive orders issued on 11/11/2025, in respect of the application dated 13/8/2025, which is a replica of the instant application.

10. I find that the instant application is incompetent, res judicata and an apparent abuse of the court process, as it seeks to irregularly re-litigate issues which have already been conclusively addressed by this court.

11. The upshot from the foregoing analysis is that the application dated 16/10/2025 is in want of merit and it is hereby dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 12TH DAY OF MARCH, 2026.

S.M. GITHINJI

JUDGE

In the Presence of:-

Mr. Ongeru for the Respondent

Mr. Musyoki for the Applicant