



**In re Estate of Eshutchi (Deceased) (Succession Cause E023 of 2023)
[2026] KEHC 2647 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E023 OF 2023
G MUTAI, J
FEBRUARY 25, 2026**

IN THE MATTER OF THE ESTATE OF DAVID ANTHONY ESHUTCHI (DECEASED)

BETWEEN

MICHELLE OLWERO ESHUTCHI 1ST ADMINISTRATOR

RICHARDS LITUNYA ESTUTCHI 2ND ADMINISTRATOR

AND

GRACE MARGARET ACHIENG WINJA RESPONDENT

RULING

1. David Anthony Eshutchi died on 25th September 2021. The cause of death was given in his death certificate as cardiopulmonary failure due to congestive cardiac failure due to intestinal lung disease. He was 53 years old at the time of his demise.
2. The grant in respect of his estate was issued on 12th April 2024 to Michelle Olwero Eshutchi and Richards Litunya Eshutchi, both of Nairobi. However, Grace Margaret Achieng Winja sought to have the grant revoked vide a summons for revocation of the grant dated 28th October 2024. In a ruling delivered on 14th February 2025, this court stated that there was insufficient evidence to show that Grace Margaret Achieng Winja was the wife of the deceased, and that she did not prove her allegation that there had been material non-disclosure. The court dismissed the summons for revocation of the grant for lack of merit and ordered that the administrators/respondents file a summons for confirmation of the grant within 30 days of the date of the ruling.
3. No summons has been filed to date. The administrators/applicants filed the chamber summons application dated 20th May 2025 seeking to have the transfers of motor vehicle registration numbers KCB 450J (Toyota Prado) and KCZ 450A (Toyota Vanguard) revoked, and for the ownership thereof to revert to the estate. The administrators also sought to have the impugned action declared as



- amounting to intermeddling, orders restraining the respondent from interfering, transferring, or using spending monies/funds proceeds belonging to the estate pending confirmation of the grant.
4. The administrators/applicants contended that the two motor vehicles were sold after the deceased died, and that their sale amounts to intermeddling under section 45 of the *Law of Succession Act*. They stated that the said action should not be condoned.
 5. An extract of the records of the National Transport and Safety Authority (NTSA) shows that motor vehicle registration number KCB 450 J was registered in the name of Mohamed Duba Galgalo on 2nd September 2019 and that the ownership changed on 17th November 2022 when it was transferred to one George Vincent Odunga, who the records show is the current owner of the same.
 6. On the other hand, motor vehicle registration No KCZ 450 A, Toyota Vanguard, was owned by David Anthony Eshutchi from 15th July 2020 up to 26th January 2022, when it was transferred to Grace Margaret Winja on 26th January 2022. The respondent then transferred it to George Muriithi Nyaga on 19th August 2022. Mr. Nyaga transferred it to Willow Motors Ltd on 1st February 2023. Willow Motors Ltd transferred to the current owner, Asher Ashkar Adgo, on 25th April 2023. Asher is stated to be the current owner.
 7. The respondent denies that there was intermeddling. In her affidavit, sworn on 23rd May 2025, she deposed that the two motor vehicles were sold during the lifetime of the deceased. She annexed a car sale agreement dated 31st August 2019, vide which the motor vehicle KCB 450 J Toyota Prado was sold by Grace Margaret Achieng Winja to Mohamed Duba for Kes 1,350,000.
 8. The second sale agreement is in respect of motor vehicle registration number KCZ 450 A. It was between the deceased, David Antony Eshutchi, and Geoffrey Osoro Mosiori and was entered into on 7th Wednesday 2022 (Sic). The consideration was Kes 1,700,000, which was apparently paid in full.
 9. The respondent contended that during the last days of his life, the deceased faced many health challenges, which led him to sell his properties and borrow from credit institutions such as Izwe Loans Ltd. She accused the applicants of frustrating her and failing to diligently collect the estate, and of introducing strangers as beneficiaries. She urged that the application was misconceived, unmerited, and bad in law, filed to frustrate her and delay the finalization of the succession proceedings and the distribution of the estate, and that the estate was in danger of being wasted as a result of the applicants' connivance and indolence.
 10. The application was canvassed by way of oral submissions on 30th September 2025. The submissions rehashed the contents of the affidavits. In my view, no value would be had in restating them here.
 11. The issue that the court is called upon to determine is whether there was an intermeddling with the free estate of the deceased.
 12. Section 45 of the Law of Successions Act states that:
 - “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall—



- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
13. As is evident, the Act does not define what “intermeddling” is; however, courts have considered the question of intermeddling in a plethora of decisions. I will refer to a few below.
14. In the case of *BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER* [2016]eKLR, the court stated as follows:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment, fine, or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”
15. In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR) Musyoka, J stated that:

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”
16. It is clear that no grant has ever been issued to the respondent. As earlier stated, the decedent expired on 25th September 2021. Naturally, having died, he would not have been able transmit any of his properties thereafter by way of transfer.
17. There appears to be no argument that KCB 450 J Toyota Prado and KCZ 450 A, Toyota Vanguard were owned by the deceased. The respondent contends that both were sold during the lifetime of the deceased. In support of the said averments, she annexed 2 sale agreements dated 31st August 2019 and 7th Wed 2022 (Sic!).
18. Of these 2 agreements and the resultant transfers, only that of 31st August 2019 could have occurred during the lifetime of the deceased. NTSA records show that the title to the said vehicle was transferred to Mohamed Duba Galgalo on 2nd September 2019, who then transferred it to George Vincent Odunga



on 17th November 2022. That being the case, I am unable to agree that there was intermeddling in respect of KCB 450 J, Toyota Prado.

19. Regarding KCZ 450 A, Toyota Vanguard, it is clear that there was no bona fide transfer. The title was transferred from the deceased to the respondent on 26th January 2022. At the time of the purported transfer, the deceased had been dead for 4 months. Outside of religious circles, where one is expected to trust and obey, and to believe without question, this court is unaware of any authenticated and believable accounts of resurrection, and of a deceased person getting revived, entering into contracts, and thereafter going back to his grave, to continue with his eternal repose. We don't live in the age of miracles, and this particular case can't be one.
20. In my view, the transfer was fraudulent. The respondent entered into a fraudulent transfer of a free asset of the estate and thereafter transferred it to different parties. Not having a grant, and in any case, no grant having been confirmed, she had no authority to do so. Her action clearly amounted to intermeddling. That being the case, I find and hold that the respondent intermeddled with the free property of the deceased.
21. The law views intermeddling harshly. It is a criminal offence. Upon conviction, one is liable to a fine not exceeding Kes 10,000 or to imprisonment for a term not exceeding one year, or both fine and imprisonment. In addition, the intermeddler is answerable to the administrator to the extent of the asset which she has intermeddled.
22. I am not convinced that the needs of the respondents justified intermeddling. In case of hardship, she should have approached the court for appropriate relief.
23. KCZ 450 A Toyota Vanguard was unlawfully transferred by a person who had no authority to do so. In my view, the said transaction was void ab initio and of no effect whatsoever. My finding is grounded on the common law principle of nemo dat quod non habet; that is, no one gives what they do not have. I find and hold that all the subsequent transfers of the said motor vehicle are void and of no effect. It is therefore necessary that the ownership of the said motor vehicle be restored to the estate.
24. This court has jurisdiction under Section 47 of the Act and Rule 73 of the Probate and Administration Rules to issue necessary and expedient orders. This matter calls for the exercise of such jurisdiction.
25. Having found as above, the orders that commend themselves to me are the following
 - a. I find and hold that the respondent, Grace Margaret Achieng Winja, intermeddled with the free estate of the deceased by selling motor vehicle registration number KCZ 450 A, Toyota Vanguard, after the deceased died;
 - b. I find and hold that the said Grace Margaret Achieng Winja is answerable to the administrators for the full value of the said motor vehicle;
 - c. I declare the sale of the motor vehicle registration number KCZ 450 A, Toyota Vanguard, void ab initio and direct and order the National Transport and Safety Authority to restore ownership to the estate of David Anthony Eshutchi forthwith; and
 - d. I convict the respondent of intermeddling and order her to attend court personally on 4th March 2026 for purposes of mitigation and sentencing.
26. The family court does not ordinarily award costs. However, given the conduct of the respondent, I grant the cost of the application to the administrators.
27. Orders accordingly



DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr. Kori, for the Petitioners/Applicants;

Mr. Muye, holding brief for Mr. Mutubia, for the Respondent; and

Hamisi – Assistant Court.

