

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
HIGH COURT SUCCESSION CAUSE APPEAL
NUMBER E001 OF 2023

IN THE MATTER OF THE ESTATE OF PHYLLIS
MUTHONI GACHII

GEORGE KIMANI-----

APPELLANT

VERSUS

KENNETH MWANGI GACHIE-----1ST

RESPONDENT

FAITH NJERI GACHIE----- 2ND

RESPONDENT

JUDGMENT

(Being an appeal from the decision of Honorable J. Ndengeri delivered vide Chief Magistrate Succession Cause No. 275 of 2025 on 24th January 2023).

1. Pursuant to the provisions of section 54 of the Law of Succession Act, (cap 160), Laws of Kenya, Rule 10 and 14 of the Fifth Schedule and Rule 49 of Probate and Administration Rules, the respondents petitioned the court for the following orders: -

a) That the court be pleased to grant them letters of administration ad litem to enable them pursue Chief Magistrate Civil Case No 246 of 2017; and

b) Costs be in the cause.

2. The application is supported by an affidavit sworn by the respondents wherein they aver that, they are children of the deceased herein who died on 18th January, 2021 at the age of 78 years.

3. That they require the letters for purposes of pursuing and defending the suit; Chief Magistrate Civil Case NO. 246 of 2017 at Naivasha to its amicable conclusion and in which the deceased was

a plaintiff. That full succession cause will take a very long time and delay the civil suit.

4. Upon considering the application, on 23rd of August 2021, Honorable L. Sarapai, Principal Magistrate, ordered that the application be certified as urgent and the petitioners serve G. Kimani Advocate who was on record for the deceased, (judgment creditor) in the subject suit and the matter be heard inter parties on 31st of August 2021.
5. The learned counsel, George Ndungu Kimani, was served with the application and he filed a notice of grounds of objection dated 26th August 2021. In a nutshell, he averred that the application was bad in law, un-procedural and abuse of the court process.
6. Further that the prayers sought therein are not available since they are; mischievous, untenable, superfluous, and misrepresentation of the true status of the deceased's estate.

7. He further averred that judgment in the subject suit was entered on 16th September 2029 and executed, therefore there was no urgency in the application. Further, that the firm of G. Kimani and Company has discharged the entire instructions of the deceased in line with the law and the deceased's desires. Further, the proceeds of judgment are part of the estate.
8. He averred that the applicants have deliberately concealed and misrepresented the assets, liabilities, and social status of the deceased's estate and that documentation in support of the applications are incomplete and mischievous. The learned counsel sought for leave to file further proceedings.
9. However, the respondents responded to the grounds of objection by filing a reply dated; 7th September 2021 and averred that after delivery of judgment in the subject civil suit, the firm of George Kimani and Co. Advocates became uncooperative,

developed hostility towards them, refused to remit the decretal amount, terming them as third parties in the suit.

10. Further, the said firm gave deterring and intimidating conditions for communication by charging Kshs 4,500 for every email communication received with the last email from the firm received on 10th January 2021. That subsequently, the firm did not respond to the email seeking for information on the decretal sum, costs, the mode of settlement of the award and legal fees.

11. The respondent averred that the deceased was declared unfit to testify on 24th June 2014 as she had lost cognitive functions wherein the 1st respondent obtained Powers of Attorney to represent her in the civil suit with effect from 25th July 2014 before the suit was transferred from Nakuru Law Court to Naivasha Law Court

12. Furthermore, the respondents have no knowledge whatsoever of any existing contingent fee or champerty agreement drawn between the deceased and the firm of Kimani in relation to the civil suit.

13. However, in response to the replying affidavit, the firm of George Kimani filed a replying affidavit dated; 15th September 2021. He reiterated the grounds of objection filed, save to add that, the estate of the deceased should be subjected to the usual ordinary full succession cause to enable accounting of all the assets and liabilities and involvement of all interested parties who will adduce evidence on any relevant issue as opposed to selective or partial target of deceased assets as evident in the instant application.

14. He further deposed that, the succession issues raised herein are subject to advocate/client confidentiality and can only be ventilated under

suitable law and court of jurisdiction and rightful purpose.

15. That the first respondent is the deceased's contact person and has all along been aware of the conclusion of the civil matter as early as 17th December 2020. Further the applicants seem bent to scandalize and embarrass the estate of the deceased for reasons unknown to them. That they are at liberty to ventilate their grievance at the right forum and time and prayed that the application be dismissed.

16. However, the respondents filed a further affidavit dated 28th October 2021 reiterating the matters deposed to their reply to the grounds of opposition filed by the learned counsel.

17. However, in response to specific matters raised by the law firm of Kimani and Company, the 1st respondent averred that although the counsel Mr. Kimani avers that he acted for the deceased in

several matters, he has not provided any proof thereof.

18. Furthermore, the family of the deceased are strangers to the allegations that the deceased gave the advocate instructions on how to deal with the proceeds of the civil suit. That, they stood with their ailing mother and are aware of the verbal communication between the deceased and the Law firm of Kimani that the deceased was to foot all the court and legal obligations, advocate's facilitation as the case progressed and final matters that arose in the civil suit only.

19. Further all other beneficiaries of the estate have given consent to the respondents to apply for grant of letters of administration ad litem. However, despite receiving the decree the firm of G. Kimani has declined to give details thereof and disburse the same and neither have the funds been received in bank account of the deceased. That the mere

deposit without transaction advice is not proof of funds transferred as claimed.

20. The 1st respondent further stated that, the firm of George Kimani has no power at all to take possession or dispose or otherwise intermeddle with the free property of the estate of the deceased. That the applicants have a right to access the documents and information held by the law firm of Mr. Kimani.

21. However, before the respondents' application was determined, the firm of George Kimani filed a notice of motion application, I note the same is included in the record of appeal at page 50 but it is incomplete as only one page is availed.

22. Be that as it may, from the prayers sought in the application on page (1) the firm of George Kimani is seeking to be enjoined in this matter as an interested party. Further, that the court strike out respondents' pleadings or part thereof contained in

the respondents' reply to preliminary objection dated 7th September 2021. Furthermore, the affidavit dated 28th October 2021, is scandalous, frivolous, offensive, fierce, defamatory, and adverse to the applicant and should be struck out.

23. Further, that all allegations raised by the respondents that are subject of the advocate/client relationship as enshrined in the Constitution and Advocates' Act be struck out and the court restrict itself to the issue in the succession cause of the estate of the deceased as they relate to the issue of limited grant.

24. Notably, the application is supported by an affidavit of the applicant George Kimani, whereby he reiterates what is already deposed to in other affidavits referred to herein.

25. That it is only fair and just that he and his firm be enjoined as parties in the case to protect the court and himself and avoid perpetration of illegality

against parties who have nexus with the estate of the deceased; be it creditors, legal representative or third parties and protect the integrity of the proceedings.

26. Mr. Kimani avers that he was invited in the proceedings by the court due to the knowledge and participation he has in this matter as an advocate but unfortunately the petitioners have gone ballistic, insulting and demeaning him and it will be unfair to entertain the wish and desires of the two unproved petitioners.

27. It suffices to note that the trial court ordered the parties to dispose of the matter by filing of submissions. I note from the record of appeal, the law firm of Kimani filed their submissions dated 4th August 2022 and the 2nd respondent filed submissions dated 18th August 2022. The firm of G. Kimani and Company filed further 3rd party submissions on 27th September 2022.

28. By a ruling delivered on 24th January 2024, the trial court allowed the application for issuance of grant ad litem and dismissed the notice of motion application seeking that the firm of G. Kimani be enjoined in the matter as an interested party, with costs.

29. It is against this decision that the appellant has filed the subject appeal based on the following grounds of appeal: -

a) The learned trial Magistrate grossly erred in not prioritizing hearing or determining the proposed interested party raised preliminary objection dated 6/12/2021 based on his firm George |N., Kimani & Co Advocates long standing Advocate-Client relationship between the deceased (Phylis Muthoni Gachii) and failed to appreciate salient reasons that had made the Honourable Sarapai learned Magistrate to suo motto invite the appellant in

the proceedings before the lower court inter alia

b) That the Honourable learned Magistrate erred in law and fact by making adverse orders of costs to the appellant oblivious of the act that the appellant was innocently invited to the succession cause on its own motion by Honourable Sarapai Magistrate by a court order dated 23/8/2021 and subsequently had to any how file position/status pleadings inter alia

c) That the Honourable learned Magistrate erred in law and fact by erroneously and subjectively imagining and or speculating the intention of Honourable Magistrate Honourable Sarapai upon “service” of the intended interested part and erroneously reasoned that appellant would have done a mere letter inter alia.

d) That the learned Magistrate erred in law and fact by leveraging in her ruling that 1st respondent was deceased without proof documents hence allowing a procedurally defective application.

e) That the Honourable learned Magistrate erred in law and fact by not addressing the issues of law and fact raised in the proposed interested party preliminary objection on jurisdiction dated 6/12/2021 but went ahead to determine the entire application notwithstanding the prayers to hear the preliminary objection first.

f) That the learned Honourable Magistrate erred in law and fact by entering a ruling dated 24/1/2023 in favour of the respondent despite an alert by the interested proposed interested party that there existed two conflicting versions of the chief letters dated 13/8/2021 and another dated 1/4/2022 which clearly

pointed at possible irregularities and miscarriage of justice inter alia.

g) That the learned Honourable Magistrate erred in law and facts by subjectively and without benefit of evidence recognizing the biological/paternity status and nexus of the respondent to the deceased without benefit of authentic documents or evidence and notwithstanding contradictions pointed in the proceedings in respect to the produced chief letter inter-alia

h) That the learned Honourable Magistrate erred in law and fact by issuing a limited grant in favour of the respondent despite demonstrations by the proposed interested party that execution in CMCC No 246 of 2017 had been completed hence prejudicing the status and integrity of the appellant and denying lawful forums to handle the matter.

i) That the learned Magistrate erred in law and fact by not recognizing that the appellant was an officer of the court who had been requested by court suo motto to volunteer information in the succession cause in whatever form be it pleadings, letter and or request hence it was grossly wrong to ignore the volunteered information/evidence and to make adverse orders against the appellant

j) That the learned Magistrate erred in law and in fact punitive orders and remarks and or on costs despite the appellant duty by invitation by the court through a court order to offer needed information inter alia

k) That the learned Honourable Magistrate erred in law and in fact by passively handling prejudicial contents made by the way of affidavits by respondents against the appellant by the respondents condescendingly abusing

an earlier existing client advocate relationship between the deceased Phylis Muthoni Gachii and the appellant an officer of the court inter alia.

l) That the learned Honorable Magistrate erred in law and in fact by hurriedly granted a limited grant to the respondent notwithstanding the information by the appellant that the orders would be superfluous to the extent that the lower court matter Naivasha CMCC No., 246 of 2017 had been executed and the deceased had unconditionally instructed on how the proceeds of the subject suit was to be handled inter alia

m) That the Honourable learned Magistrate erred in law and fact by granting prejudicial and superfluous orders dated 21/1/2023 despite existence or preliminary objection and factual information by the appellant inter alia

n) That the Honourable learned Magistrate erred in law and fact by not appreciating that contradiction in two versions of chief letters could only point to an irregularity and had faith particularly in existence of another succession cause on the same person namely succession cause No. E104 of 2022 Naivasha Magistrate Court inter alia

o) That the Honourable learned Magistrate erred in law and fact by striking out useful and factual information and pleadings from the appellant who was responding as per court order invitation to surrender vital information to avert any prejudice and miscarriage of justice in the succession cause.

p) That the Honourable learned Magistrate erred in law and act by glorifying the intention of the respondent to get ad litem grant but failed to appreciate the destructiveness and prejudice

of their adverse affidavits against an innocent appellant who was discharging a mandate by order of court to volunteer information as a counsel of deceased and officer of court

q) That the learned Magistrate erred in law and fact by ignoring substantive documents from appellant that the matter had been fully executed and contradicted herself by stating that the correspondents filed in court demonstrated that the firm of G.N Kimani intended to transfer the funds to the petitioners at one time which is totally misplaced and misdirection

r) That the learned Magistrate erred in her ruling by adversely and prejudicially considering issues beyond her jurisdiction and without benefit for advocate-client instruction and or evidence in commenting issues of payments

which the law do not grant her hence the entire ruling is abuse of judicial powers

s) That the learned Magistrate demonstrated open bias to the appellant and skewed appreciated misdirected and unlawful information from the respondent hence victimizing appellant who was brought into the proceedings by court order beyond his will inter alia

t) That the learned Magistrate failed to appreciate the spirit of article 159 of the constitution of Kenya and failed to allow the respondents to participate in their wider succession cause for purpose of cohesion but went ahead to grant a limited separate grant whereas a live full succession cause No. E104 of 2022 Naivasha was filed in court avoiding mention of CMCC No. 246 of 2017 where any

issues of clarification of estate ought to happen.

u) That the learned trial Magistrate erred by misapplying the law and facts before her in the subject succession cause

v) That the learned Magistrate erred by failing to appreciate the main issues that were brought as prayer before her vis-à-vis the emergent upon invitation of the appellant who was counsel for the deceased inter alia

w) That the learned Magistrate errantly failed to appreciate evidence or documents to prove death of deceased and entertained the entire application notwithstanding emergent salient information inter alia

x) Any other issue to be stated and advocated during the appeal

30. The appeal was disposed of vide filing of submissions. The appellant in submissions dated

12th May 2023. argued that the trial Magistrate erred in ordering him to pay costs in light of the circumstances therein. That he had no single interest in the proceedings but was invited by the court to shed light in the matter and offered an explanation in good faith, vide an objection dated 26th August 2021, notice of preliminary objection and subsequently a replying affidavit dated 15th September 2021.

31. Furthermore, that his application to be enjoined as a third party was to enable him offer necessary information and avoid prejudice on his part considering that the respondents' responses was detrimental to his firm's reputation. That being the deceased advocate he had nothing to gain from the lower court proceedings, Additionally, the trial in the lower court never proceeded to a defence or trial and was never made a party to the proceedings.

32. The appellant relied on the case of, Machakos HCC No. E007 of 2021 Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff) [2022] eKLR to content that where a court adds a party by invitation to a suit or proceedings that party cannot be said to have any direct or inherent interest and therefore no prejudicial orders of costs or otherwise can be given against the potential interested party.

33. The appellant submitted that the order to pay costs was punitive, oppressive, prejudicial and embarrassing and urged the court to vacate it.

34. The appellant further argued that the responses by the responses to his pleadings touched on the issue of the advocate-client relationship which the trial Magistrate dealt with in the last paragraph of the ruling. That the trial court lacked jurisdiction to deal with the issue. That the advocate complaint commission in the Advocates Act is the right forum

to deal with the issue and urged the court to dismiss the ruling.

35. The appellant further submitted that the application by the respondent was made in bad faith. That, the respondents had availed two (2) copies of the chief's letter leading to the exclusion of some beneficiaries of the deceased. That, the trial court processed two succession cases being Succession Cause No. E104 of 2022 and E275 of 2021, without being aware of the mischief and awarded the limited grant ad-litem in both matters.

36. Lastly, the appellant argued that the trial court awarded costs to the 1st respondent Kenneth Mwangi Gachie who had died despite being aware of his demise as evidenced by the proceedings of 11th October 2022.

37. Further, the trial court proceeded to award the grant ad litem to a deceased party. That, despite the death of the 1st respondent, the respondents

have not bothered to substitute the deceased party and in the circumstances the appeal should be upheld.

38. However, the respondents in submissions dated 19th September 2023, argued that under section 54 of the Law of Succession Act, the trial court has jurisdiction to issue the grant of letters of administration ad litem. Further, Paragraph 14 of the Fifth Schedule of the Law of Succession Act sets out the correct format to use in petitioning the court for granting limited grant ad litem.

39. That the respondents applied for grant ad litem to enable them pursue the decretal sum that was awarded to the deceased. However, the appellant opposed the same arguing that the judgment had already been executed and the decretal sum had already been paid to the deceased's accounts during her lifetime. However, the appellant did not

adduce any evidence to support this fact or shed light on how the judgment had been executed.

40. The respondents cited Section 107 (1) of the Evidence Act, (Cap 80) Laws of Kenya which provides that whoever alleges must prove and argued that the appellant has the burden to prove indeed the decretal sum was already disbursed to the deceased during her lifetime and there is no need for the court to issue the grant of letters of administration ad litem.

41. The respondents submitted that, it is only when the decretal sum is paid to the deceased or her estate that execution can be deemed to be concluded as was held in the case of *Naresh Rathod v Mohamed Dad Mohamed [2004] eKLR*.

42. Furthermore, the appellant's contention that the issues raised fell within the ambit of advocate-client relationship as he had instructions on how to deal with the decretal sum is misplaced as the decretal

sum fell within the estate of the deceased and is thus subject to the jurisdiction of the succession court.

43. The respondents submitted that the death of the 1st respondent before the grant ad litem was issued did not affect and/or stop the trial court from issuing the same. That there was no need to substitute the deceased petitioner taking into consideration that the Law of Succession Act does not provided for substitution in the particular circumstances of the instant case.

44. That the grant was properly issued to the 2nd respondent. Reliance was placed on the case of, *In re Estate of Chemwok Chemitei (Deceased) [2021] eKLR* where the High Court held that section 81 provides that where an administrator dies such power and duties vest in the surviving administrator and/or executor.

45. That since the 2nd respondent is alive and no grant had been issued, the trial court was correct in allowing the application and issuing the grant ad litem to the 2nd respondent.

46. On whether the trial court properly dismissed the appellant's application to be enjoined in the instant suit, the respondents quoted the Black's Law Dictionary 10th Edition on the definition of an interested party as "A party who has a recognizable stake (and therefore standing) in a matter"

47. That further, Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental freedoms practice and procedure Rules 2013) defines an interested party as -

"A person or entity that has an identifiable stake or legal interest in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigations."

48. That the afore definition was further expounded in the case of AMM vs JMN [2019] eKLR where the High Court held that an interested party is one who will be affected by the decision of the court when it is made, either way.

49. That in the instant suit, the trial court directed the respondents to serve the appellant so that the appellant could shed light on the decretal sum. However, the responses by the appellant did not yield any useful response to guide the respondents nor did it show any interest to warrant his joinder.

50. Furthermore, the Law of Succession Act and the Probate and Administration Rules do not provide for joinder although Rule 73 of the Probate and Administration Rules provides for the inherent power of the court to make any order for the interest of justice to be met.

51. The respondents submitted that in succession cases, persons who would be outright interested

parties are beneficiaries, spouses, children, creditors and any other person who has a legal claim to an estate. That the appellant did not fit into any of the categories and there was therefore no reason to enjoin him. They urged the court to dismiss the suit with costs.

52. At conclusion of the arguments by the parties, and in consideration of the appeal I note that the issue to determine is whether the trial court erred in allowing the respondents' application and dismissing the appellant's application with costs.

53. In that regard, it is notable that the respondents approached the court seeking for letters of administration *ad litem* to prosecute a suit.

54. The letters of administration *ad litem* are specialized, limited grants issued under sections 54 and 67 of the Law of Succession Act, to allow a person to represent a deceased party in a specific lawsuit or protect assets. They are temporary, do

not authorize estate distribution, and are granted when urgency prevents a full grant.

55. The main purpose is exclusively to enable the applicant to file, pursue, or defend a specific legal suit involving the deceased's estate and apply when a defendant or plaintiff dies during litigation, or to file a suit to preserve assets from waste, dissipation, or unlawful conveyance.

56. A formal application is made to the court, often supported by an affidavit demonstrating the urgent need to protect the estate. It lasts only for the duration of the litigation or until a full grant of representation is issued and once the lawsuit concludes, a formal petition for full administration must be filed for estate distribution.

57. In the instant matter, it is in evidence that judgment in the subject civil suit herein has already been delivered and a decree issued and that the decretal

sum is held by the firm of George Kimani & Co. Advocates.

58. The question that arises is whether there is any pending suit that could warrant grant of the letters of administration ad litem as sought by the respondents. From the evidence herein the answer is in the negative.

59. Furthermore, it suffices to note that before the trial court delivered the ruling in this matter the 1st respondent died and yet the respondents had applied for letters of administration ad litem jointly. The question is could the court deliver the ruling and grant the letters to one petitioner without regard to the demise of the other during the subsistence of the suit and substitution of the deceased petitioner?

60. The respondents argue that it is immaterial that the 1st respondent died and that the right accruing to

him devolved upon the 2nd respondent as an administrator. First and foremost, the 2nd petitioner is not an administrator. Furthermore, no orders can be issued to a deceased party. Even more so, where there is a joint petition, orders cannot be given to one petitioner. To that extent per se, the decision herein cannot stand.

61. Be that as it were, the learned counsel herein was invited into this matter and served with the petition/application filed by the respondents through an order of the court. The question is; what did that order direct G. Kimani to do. Was it clear that he was to respond as a party or not? To answer that question, regard must be held to the entire order.

62. It suffices to note that after the order was issued, the matter was stood over the matter to 31st August, 2021 for inter-parties hearing before court No. 2. Obviously inter-parties hearing could only

proceed if the learned counsel had filled a response to the petition/application.

63. According to the ruling of the court, the learned counsel could respond by merely writing a letter. However, it suffices to note that he was to be served with an application and under Order 51 Rule 14 of Civil Procedure Rules 2010 any respondent who wish to oppose any application may file any one or a combination of the following documents —

a. (a) a notice preliminary objection; and/or;

b. (b) replying affidavit; and/or

(c) a statement of grounds of opposition;

64. Be that as it were, when the learned counsel responded to the application vide preliminary objection and grounds of opposition dated 26th August, 2021, the petitioners filed a reply to the preliminary objection dated 7th September, 2021. Then parties continued to respond to each other's

documents wherein the learned counsel filed a replying affidavit dated 15th September, 2021 in response to the petitioners' reply to the preliminary objection.

65. A perusal of the documents in court reveals that there is no clear indication as to the identity; whether as an interested party or otherwise, which the learned counsel described himself in the documents he filed.

66. However, the proceedings of the court dated 31st August 2021 described him as a "defendant" and on 21st September, 2021, the court record indicates that; Mathenge appeared for G. Kimani who was described as a "respondent" and on 17th December, 2021 one Dorcas appeared for G. Kimani, described as the "respondent"

67. On 26th April 2021, the record indicates Kimani appeared for 3rd party and Mr. Kimani sought for a

hearing date for the preliminary objection dated 6th December, 2021 whereas Mr. Kisaka sought for a hearing date for hearing of “incomplete application and preliminary objection”. The court fixed the matters for hearing on 12th July 2021.

68. Eventually, the court gave directions that the matters be disposed vide filing of submissions that eventually gave rise to the ruling that has given rise to the appeal herein.

69. Based on the aforesaid, it is notable that at no time did the petitioner/applicant protest to the participation of the learned counsel in the proceedings. Therefore, the doctrine of estoppel applies.

70. The doctrine of estoppel is a legal principle preventing a party from contradicting their own previous actions, statements, or representations if another party has relied on them to their detriment.

Rooted in fairness, it stops someone from going back on their word (promissory estoppel) or denying a fact (estoppel by representation) to ensure justice.

71. Consequently, the petitioner/respondent cannot argue that the learned counsel had no *locus standi* or was an imposter.

72. Furthermore, I note the ruling by the learned trial magistrate stating that the learned counsel was served as a proposed interested party is not supported by any evidence or material on record.

73. The entire matter evolved when the court ordered the learned counsel be enjoined in the matter. In making an observation on the same, the trial court stated at paragraph 13 of ruling, stated that “how the petition morphed into..... is still baffling to this court”

74. The afore observation clearly indicates that whatever happened arose from the court order that brought the learned counsel in the matter.

75. It suffices to note that the learned counsel was to provide information concerning the estate, so the question is; how was he supposed to do so. Would he have participated without being a party to the matter?

76. Order 1 Rules 1 to 14, deals with parties to suits, including the joinder, misjoinder, and non-joinder of parties. These rules allow the court to add, strike out, or substitute parties to properly settle the dispute.

77. It suffices to note that parties can be joined to a suit through a formal application (motion for joinder) by an interested party or by a court order. Compulsory/Required Joinder involves parties necessary for a just adjudication, whose absence

might prevent complete relief or harm their interests.

78. Furthermore, parties with a stake in the outcome may apply to be joined, as shown in cases regarding public interest or statutory interpretations.

79. The primary goal of joinder is to ensure all relevant parties are present to achieve a fair, complete, and efficient resolution to the dispute.

80. It is on record that the respondents have filed a full succession cause therefore most of the issues herein relating to the succession can be canvassed in that cause. However, if the learned counsel has the deceased's funds from the subject suit herein, then the same need to be protected.

81. Pursuant to the aforesaid, I find that the impugned ruling of the trial court was erroneously arrived at and I accordingly set it aside. I order in the interest of justice that the decretal sum be "re-in fenced" and

deposited in an interest earning account. In the meantime, the petitioner /respondents do set down the main suit for hearing.

82. I order that each party do bear their own costs.

83. It is so ordered.

Dated, delivered and signed this 19th day of February 2026.

GRACE L. NZIOKA

JUDGE

In the presence of:

No appearance for the appellant.

Mr. Mackenzie for Mr. Kisaka for the respondent

Hannah: Court Assistant

