



REPUBLIC OF KENYA



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In re Estate of Samuel Ngwadu Munga (Deceased) (Succession Cause E019 of 2023) [2026] KEHC 1074 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEHC 1074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E019 OF 2023**

G MUTAI, J

JANUARY 26, 2026

IN THE MATTER OF THE ESTATE OF SAMUEL NGWADU MUNGA (DECEASED)

BETWEEN

BERUWA STEPHEN MUNGA APPLICANT

AND

MWAKA SAMUEL MUNGA 1ST RESPONDENT

JOHN SAMUEL MUNGA 2ND RESPONDENT

MEMUNGA SAMUEL MUNGA 3RD RESPONDENT

MARGARET KANGA GWADU 4TH RESPONDENT

LINA SAMUEL MUNGA 5TH RESPONDENT

BERUWA SAMUEL 6TH RESPONDENT

RULING

1. The deceased whose estate is the subject of these proceedings is Samuel Ngwadu Munga. The deceased person died on 1st January 2016 at Kinango, Kwale County. The cause of death, as stated in the death certificate, is liver infection.
2. In the letter, written “to whom it may concern,” the chief of the Gandini location, Kinango, Umazi Mwangolo, the deceased, is stated as having had 2 wives, Ms Esther Mkambe Munga (who was deceased at the time the chief’s letter was written) and Ms Mwaka Samuel Munga. Esther had 8 children: Shedrack Ndegwa Munga, William Madafu Samuel, Edward Bwana Munga (who was deceased at the time the letter was written), Gideon Samuel Munga, Alex Njeka Munga, Salome Samuel, Beruwa Stephen Munga, and Elijah Samuel Munga. As of 23rd June 2022, the said individuals (save for those who were then deceased) were all adults aged 43 to 67. The second wife, Mwaka, has 7 children, all living and aged between 28 and 45 years at the time the chief’s letter was written. Their names are



John Samuel Munga, Chimanga Samuel Munga, Memunga Samuel Munga, Munga Samuel Munga, Margaret Kanga Gwadu, Lina Samuel Munga, and Beruwa Samuel.

3. The beneficiaries were unable to agree on who would administer the estate. Thus, despite the deceased's death on 1st January 2016, no grant in respect of his estate was sought for a considerable period of time. Vide a summons dated 16th March 2023, Beruwa Stephen Munga sought a special citation to issue to Mwaka Samuel Munga, John Samuel Munga, Memunga Samuel Munga, Munga Samuel Munga, Margaret Kanga Gwadu, Lina Samuel Munga, and Beruwa Samuel. In the affidavit in support of the summons, Mr Evans Kazungu, learned counsel for the applicant, deposed that all the heirs of the decedent, save the respondents, consented to the applicant filing the application.
4. The applicant, through his counsel, was apprehensive that the estate whose value was given as Kes 22,00,000 remained un-administered to the detriment of the beneficiaries. It was contended that the respondents' refusal was unreasonable and not in the best interests of the deceased's estate.
5. Upon being served, the respondents appointed the firm of OM Robinson & Co. Advocates to oppose the application.

Mediation

6. On 20th November 2023, the matter was referred to court-annexed mediation. The mediation was partly successful. The partial mediation settlement agreement states that the deceased left behind a will, which was in the possession of the applicant's counsel. The will notwithstanding, it was agreed that Beruwa Stephen Munga and Chimanga Samuel Munga would be administrators of the estate of the deceased. The parties agreed on what constituted the deceased's estate and who his beneficiaries were.
7. The parties could not, however, agree on assets listed as "other deceased's assets". In the view of the applicant, there hadn't been a satisfactory explanation by the respondents. On the other hand, the respondents contended that the applicant and his brother, Gideon, did not provide sufficient accounting for income from the canoe, rental rooms, houses, and water. These matters were left to the court to determine.
8. The partial mediation settlement agreement was adopted by this court on 16th April 2024. A hearing regarding the issues that weren't agreed upon was scheduled for 6th May 2024.
9. The matter was heard in open court. Witnesses testified and were cross-examined. I shall set out briefly the witnesses' respective evidence.

Evidence adduced in court.

10. The first witnesses to be heard were those of the respondents.
11. The first was Chimanga Samuel Munga. In his testimony, he admitted that he used to operate his father's canoe, and that its proceeds would go to his Mother. The shop was under the control of Munga Samuel Munga until it collapsed. Its profits used to go to their mother. Although he admitted buying a boat, he denied using his father's money to buy it.
12. Mr Chimanga testified that they got Kes 100,000 for their father's funeral and Kes 300,000 from JCC, a church. Although they conceded that Kes 300,000 was used during the funeral, he wasn't certain how it was spent. Mr Chimanga accused Mr Stephen Munga of using funeral money to buy 10 new motorcycles. Regarding trees that had allegedly been cut, he couldn't provide proof that any had been cut.



13. The second witness was Ms Lina Samuel Munga. Ms Lina resides in Tsunza in Kwale County. She testified that at the time of his demise, the deceased's phone had Kes 20,000. She handed the phone to Beruwa, who kept it for a while before returning it to her. When she got it back, the phone had zero balance. She testified that she could tell what was in the phone M-Pesa account because their father had given her the PIN. She further testified that she was the only one who knew his PIN.
14. Beruwa Samuel was the 3rd witness. He is from the 2nd family and resides in Tsunza, Kwale County. He testified that his father sold 10 acres of land to Guriro Ltd, who paid him with an "envelope full of money". He testified that the father didn't bank the money. It was his evidence that if he had, he would have been told. He accused Beruwa Stephen Munga of taking the money, although he admitted that he didn't actually see him do so, nor did he produce evidence of the sale of land. When re-examined, he claimed that their father put the money in a safe, which had a spare key kept by Stephen.
15. Munga Samuel Munga was the 4th witness. He, too, resides at Tsunza. Mr Munga had a shop gifted to him by his father in the will. He admitted withdrawing Kes 30,000.
16. The last witness was Memunga Samuel Munga. She testified that Kes 30,000 was taken from the deceased while he was alive from the place he had hidden it under the mattress. She accused Beruwa Stephen Munga of taking Kes 30,000 that the deceased had kept under the mattress and another Kes 100,000, neither of which he had returned.
17. The applicant called 5 witnesses. The first witness was Mwashanga Bichaka Bemupa, a fisherman from Kinango. He testified that he used to work for the deceased and that the fishing business earned Kes 19,000 to 20,000, which he would deliver to the deceased. After the deceased's death, he delivered the proceeds to the deceased's 2nd wife. He also testified that the deceased instructed him to involve Beruwa Stephen Munga in the business. He accused the deceased's children, from the second house, of not wanting him and of terminating his employment upon the deceased's demise.
18. The second witness for the respondents was Omari Suleiman Mwakanga. He, too, is a resident of Tsunza in Kwale County. Mr. Mwakanga is now retired. Before his retirement, he used to harvest mangroves. He testified that he rented 1 boat from the deceased for Kes 2,000 per month and that even after the deceased died, he paid Mwaka, his 2nd wife, the same amount per month for 2 months.
19. The third witness was Gideon Samuel Munga. He resides in Port Reitz and works for the Ministry of Agriculture. He is the deceased's son. He testified that Lina, his stepsister, gave him a phone that belonged to his father. He kept it for more than a month. He didn't know its PIN and didn't use it. He denied any involvement in the loss of the alleged money.
20. Mr. Beruwa Stephen Munga, the applicant, was the fourth witness. He is the bursar of Tsunza Secondary School and has worked there for 14 years. He testified that his father owned 3 boats and livestock. He further testified that during his father's lifetime, he recorded his father's business income. He continued to do so for 2 years after his father's death. The father was also involved in the water-selling business. The deceased had 20 goats, 30 sheep, and 30 cows. He accused the 2nd house of selling the livestock. Mr. Beruwa stated that there were construction materials belonging to JCC for the construction of the pastor's house. What remained was delivered to him for safekeeping. He denied using the remaining materials.
21. The last witness was Ms Martha Kaluma Jefwa. She testified that Beruwa Stephen Munga used to collect the business income until he was stopped by the second house. The deceased had livestock, including 35 cows.



Submissions of the Parties

22. The submissions of the respondents are dated 24th March 2025. The respondents contended that the applicant intermeddled with various assets of the deceased, including Kes 100,000 collected from Guriro Ltd for funeral expenses, 10 blue gum trees, felled and sold to Tsunza Secondary School, and myriad other assorted items. They contended that Beruwa Stephen Munga intermeddled with the estate of the deceased.
23. Counsel submitted that under Section 45 of the *Law of Succession Act*, intermeddling with the estate of a deceased Person was both a civil and criminal offence. Counsel referred to the case of *Jeremiah Kamau Gitau & 2 others v Wandai & 5 others* [1989] KEHC 75 (KLR) and *In Re The Matter Of The Estate Of David Julius Nturibi M'ithinji(deceased)* [2012] KEHC 2517 (KLR). On the standard of proof, it was submitted in reliance on the case of *re estate of In Re Estate of Bant Singh Chana (Deceased)* [2014] KEHC 7572 (KLR) that: -
- “ 4. The application is premised on Section 45 of the Act. The said provision creates criminal offences for intermeddling. The threshold for proof of intermeddling is very high. Accusations of intermeddling amount to alleging that some person has committed criminal acts. Such accusations must be grounded on concrete and credible evidence.”
24. During his submissions, counsel for the respondents, Mr Malombo, stated that Mr Beruwa brought 10 motorcycles, which he couldn't possibly have done given his employment as a bursar. Further, Mr Beruwa opened a bank account at Equity Bank, deposited a large amount of money, and bragged about it openly in the village.
25. It was further submitted that Mr Beruwa knew the PIN of the deceased and used it to withdraw Kes 20,00 from his phone. Further, Beruwa took Kes 30,000 intended for the deceased's treatment. Lastly, it was contended that the deceased received Kes 900,000 from Guriro Ltd, which he kept in a timber box in his room; the keys to which were in Beruwa's possession. It was submitted that only Beruwa had keys to the said room. Thus, the loss of the said money could only be ascribed to him
26. The respondents thus urged this court to find that there had been intermeddling and to punish the applicant for it.
27. On the other hand, the applicant's submissions are dated 11th March 2025. Counsel for Beruwa Stephen Munga identified the sole issue for determination as whether the respondent intermeddled with the estate of the deceased.
28. The applicant's counsel relied on the decision of the court in the case of *In re Estate of M'Ngarithi M'Miriti* [2017] KEHC 7904 (KLR), where intermeddling was defined as
- “ (5) Before I delve into the distribution of the estate, I should first settle the issue of intermeddling. Courts have said time and again that any person who without the authority of the *Law of Succession Act* or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or administrator of the extent of the assets he has intermeddled with...”



29. Mr Lumatete Muchai, SC, submitted that no evidence was produced in support of the allegations that Beruwa took Kes 900,000 and another Kes 30,000 belonging to the deceased. He further submitted that he could not have sold blue gum trees to Tsunza Secondary School, as he is on its tender committee and couldn't trade with the school. No evidence was produced in any event.
30. Mr Muchai, SC, submitted that, on the other hand, the deceased had a canoe business whose proceeds went to the respondents/applicants and that the said parties were in charge of livestock and that they disposed of the same, leaving only 7 cows and 20 sheep. The proceeds of the sale had not been disclosed.
31. Based on the foregoing and relying of the cases of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR) and *Morris Mwiti Mburugu v Denis Kimanthi M'Mburugu* [2016] eKLR, Senior counsel submitted that it was in fact the respondents who had intermeddled with the estate of the deceased and that they should be compelled to render an account of the proceeds of the sale and the money they acquired from the deceased's businesses.
32. He prayed that the respondents/applicants be compelled to render an account of the deceased's assets and proceeds of the sale of livestock and canoe business. He further prayed that the deceased's estate be preserved.

Analysis

33. I have considered the evidence tendered and the submissions of the parties. In my view, the partial mediation settlement dealt with the substantial matters. Parties appear to agree that there has been intermeddling; they can't seem to agree as to who, between them, intermeddled and in respect of which properties.
34. I agreed with the parties that the sole question before me is whether there has been intermeddling. If there has been, the next issue is what should the court do against the party that did so?
35. Section 45 of the *Law of Succession Act* provides 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.”
36. An intermeddler is a person who involves himself in actions not authorized by the *Law of Succession Act* in respect of the assets of the deceased person, by, for example, taking possession, selling, transferring, renting, or destroying the deceased's property. Any person, including a family member, can be intermeddle with an estate of a deceased person. Section 45(2) of the *Law of Succession Act* makes it a criminal offense punishable by imprisonment, a fine, or both.



37. In the case of Gladys Nkirote M’itunga v Julius Majau M’itunga & 3 others [2016] KEHC 621 (KLR), the court stated that:-

“Whereas the law of succession does not define what intermeddling with the property of the deceased is, there are ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of Benson Mutuma Muriungi Vs. C.e.o. Kenya Police Sacco & Another [2016] eKLR, the court observed that:

“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 that will dissipate, 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.”

38. In the case of In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR), it was held 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.”

39. Since intermeddling is a criminal offence, it follows that the standard of proof is very high. In the case of In Re Estate of Bant Singh Chana (Deceased) [2014] KEHC 7572 (KLR), it was held that: -

“...The threshold for proof of intermeddling is very high. Accusations of intermeddling amount to alleging that some person has committed criminal acts. Such accusations must be grounded on concrete and credible evidence.

40. Has the evidentiary burden been met in his case? Against the applicant, it is alleged that he took Kes 900,000 from Guriro Ltd, which the deceased had placed in the deceased’s safe, that he withdrew money from the deceased’s mobile money account, embezzled Kes 30,000 intended for treatment of the deceased, and that he could not account for Kes 100,000 donated by JCC.

41. Intermeddling is a grave matter. The evidence presented by the respondents required corroboration by oral and documentary evidence. In my view, no credible corroborative evidence was produced. I say so for the following reasons: -

- a. No evidence of the sale of land was produced, nor of the payment of the said amount to the deceased. Even if they produced, there are no exhibits of the deceased’s bank account, which could rule out the deposit of funds there. The oral evidence was nothing but pure conjecture;



- b. Regarding the mobile money account, no statement from Safaricom was produced to show that money was withdrawn after the deceased died. The witness's statement was uncorroborated. Given that the witness was the only one who knew the deceased's PIN, it is difficult to believe that the applicant could have withdrawn the money;
 - c. The respondents called no witness from JCC so that they could cast light on the alleged donation;
 - d. Regarding the sum of Kes 30,000 allegedly intended to pay hospital bills, there was no credible evidence either.
42. In a similar vein, I am not convinced that the respondents intermeddled with the free estate of the deceased. The number of livestock ebbs and flows over time. In my view, the deceased's wife required upkeep, and it would be unreasonable to assume that she could have lived her life without any income. Given the likely domestic setting of the second wife of the deceased. Her husband was, in all likelihood, the family breadwinner.
43. Both houses appear to have drawn incomes from the estate without proper accounting. Given the paucity of records, it would be most difficult to determine what each beneficiary has drawn from the deceased's estate. Such an exercise may actually exacerbate a bad situation and lead to injustice or unjust outcomes.

Determination and Final Orders

44. The upshot of the foregoing is that I find no merit in the allegation of intermeddling lodged by the parties against each other. My respectful view is that the parties are engaged in meaningless strife between members of the two houses rather than addressing the urgent business of administering the estate, devolving it to the beneficiaries, and winding it up.
45. What orders should the court issue in the circumstances of this case? In my view, the appropriate orders are those that will create harmony in the family and facilitate the restoration of the family ties.
46. I order that Beruwa Stephen Munga and Chimanga Samuel Munga take out the petition for grant of letters of administration/grant of probate within 30 days of the date hereof.
47. I implore them to concern themselves with the important business of administration. In my view, the Latin maxim "de minimis non curat lex" should be of salutary value to them; when faced with an estate whose value is estimated as being worth Kes 22,000,000, 6 kgs of roofing nails, and 5 kgs of nails shouldn't cause strife.
48. This being a family matter, I order that the parties bear their respective costs.

DATED AND SIGNED IN MOMBASA, THIS 26TH DAY OF JANUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Ziwa, holding brief for Mr Lumatete, for the Applicant;

Mr Malombo, for the Respondents; and

Ms Bancy - Court Assistant.

