



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mbuthia (Deceased) (Probate & Administration  
E1438 of 2023) [2026] KEHC 3567 (KLR) (Family) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3567 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**PROBATE & ADMINISTRATION E1438 OF 2023**

**H NAMISI, J**

**MARCH 18, 2026**

**IN THE MATTER OF THE ESTATE OF GEORGE GIKUMBU MBUTHIA (DECEASED)**

**BETWEEN**

**EVANS MBUTHIA ..... 1<sup>ST</sup> ADMINISTRATOR**

**IRENE NJAU M'LINGINE ..... 2<sup>ND</sup> ADMINISTRATOR**

**PETER MUNGE MURAGE ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**PETER MBUTHIA NJUGUNA ..... 1<sup>ST</sup> OBJECTOR**

**PAULINE WANJIRU ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. Before the Court is Summons dated 1 July 2025, brought by the Administrators pendente lite of the Estate of George Gikubu Mbuthia. The Applicants seek a partial confirmation of the limited Grant issued to them on 2 May 2025, specifically to authorize the distribution of Kshs 5,450,000/= recovered from tenants of the Deceased's property in Eastleigh.
2. The application is vigorously opposed by two of the Deceased's children, Peter Njuguna and Pauline Wanjiru, who allege serious administrative malpractices, conflicts of interest, and a fundamental disregard for corporate law principles.
3. The Deceased was a prominent individual whose life was punctuated by extensive legal battles to protect and recover his vast property interests. He passed away on 7 November 2023, leaving behind a contested Will dated 15 June 2023. The initial stages of this cause have been characterized by deep-



- seated familial suspicion and litigation regarding the validity of that Will, with the Objectors asserting that the document is incomplete, having sneaked in missing pages during subsequent filings.
4. To preserve the estate from wastage during this period of uncertainty, this Court, on 2 May 2025, issued a Grant of Letters of Administration pendente lite to Irene Njau M'lingine (the Deceased's companion/wife), Evans Mbuthia Njuguna (a son), and Peter Munge Murage (the Deceased's Advocate). The primary mandate of these Administrators was to collect income and secure the estate's records. Pursuant to these orders, the Administrators opened an estate bank account at Stanbic Bank and successfully recovered Kshs 5,450,000/= in rental arrears from tenants of Land Reference No. 36/1/27 in Eastleigh.
  5. The current Summons seeks the following principal reliefs:
    - a. Partial confirmation of the grant to facilitate the distribution of Kshs 800,000/= to each of the five recognized beneficiaries.
    - b. Authority to pay administrative running costs of Kshs 50,000/= each to Irene Njau and Evans Mbuthia.
    - c. Approval to settle liabilities, including office rent for Palace Investments Limited ("the Company") at Hughes Building (Kshs 579,551/=) and a legal fee deposit for MMC Asafo (Kshs 300,000/=).
  6. The Objectors, Peter Njuguna and Pauline Wanjiru, challenge this Application on grounds of intermeddling, breach of fiduciary duty, and a violation of the separate legal personality of the Deceased's companies.
  7. The Applicants anchor their request on section 71(3) of the *Law of Succession Act*, which allows for the confirmation of a Grant before the expiration of 6 months if the Court is satisfied that there are no dependants, or that all dependants of full age consent, and that it is expedient in all circumstances of the case so to direct.
  8. The first hurdle for the Applicants is the requirement of consent. It is clear from the record that two dependants of full age, the Objectors/Respondents, have not only withheld their consent but have filed detailed objections to the proposed mode of distribution. In *In re Estate of Oscar Duncan Beuttah* [2021] eKLR, the Court dismissed an application for early confirmation because the beneficiaries had not unanimously consented, even where urgent financial needs like school fees and medical bills were cited. This Court must strictly adhere to the requirement that where beneficiaries of full age exist, their consensus—or a lack of valid reason for their dissent—is central to the Court's discretion.
  9. The Applicants argue expediency based on the medical needs of Nancy Wairimu Mbuthia. However, the Objectors point out that no medical evidence or doctor's report has been furnished to the Court to substantiate this claim of urgency. In *In re Estate of Michael Kimando Mwangi (Deceased)* KEHC 6430, the Court allowed partial confirmation for school fees and medical bills, but only because the need was demonstrably urgent and the application was not opposed. Here, the medical emergency is a contested fact, and without the safeguard of medical reports, the Court cannot use its expediency power to override the statutory 6-month waiting period, particularly when the Grant itself is a limited one pendente lite.
  10. Furthermore, a Grant pendente lite issued under Rule 10 of the Fifth Schedule is inherently preservative. As held in *Oduor Hawi Ambala v Marvin Opiyo Ambala* eKLR, such an administrator has the rights of a general administrator other than the right of distributing the estate. To grant partial confirmation for a distribution of nearly the entire liquid asset of the estate while the validity of the



Will and the true executors are still the subject of litigation would be to fundamentally alter the nature of the Grant.

11. A significant portion of the proposed distribution involves the payment of Kshs 579,551/= to Amalgamated Properties Limited for office rent arrears at Hughes Building. The Applicants admit that these arrears were incurred by Palace Investments Limited (“the Company”), a company they describe as being controlled by the Deceased.
12. The doctrine of separate legal personality, as established in the seminal case of *Salomon v Salomon & Co Ltd* AC 22, remains a pillar of Kenyan law. A company is a distinct legal person, separate from its shareholders and directors. This distinction is of paramount importance in succession proceedings. In *In re Estate of Boniface Mutinda Kabaka (Deceased)* [2021] KEHC 12031, the Court emphasized that the probate court’s jurisdiction is limited to the distribution of the shares held by the deceased in a company, not the management of the company’s assets or the settlement of its liabilities. The Court held that claims relating to company assets or liabilities must be ventilated in a Commercial Court, as the probate court cannot lift the corporate veil of its own motion.
13. The evidence presented by the Objectors shows that they are directors of the Company. They allege that the Administrators invaded the company premises and negotiated a surrender of the lease without a board resolution or the consent of the other directors. The Acknowledgment Note executed by Irene Njau and Evans Mbuthia on 5 September 2024, whereby they undertook that the Company’s rent arrears shall be paid by and or recovered from the Estate, is a prime example of administrative overreach.
14. Administrators of a personal estate cannot, without the authority of the company’s board or a court order lifting the veil, assume the company’s liabilities. To permit the estate to pay the Company’s debt would be to effectively treat the Company as the alter ego of the Deceased without the necessary legal findings to support such a conclusion. If the Company is a separate legal entity, it must satisfy its own debts from its own assets. The Administrators’ attempt to indemnify the landlord using the Deceased’s personal funds is a misapplication of the estate’s resources and a breach of their fiduciary duty to preserve the net estate.
15. The Objectors raise a chilling allegation: that the Administrators have already withdrawn Kshs 150,000/= from the estate account without the leave of the Court. This fact is largely admitted by the Applicants, who characterize the withdrawals as advances for running costs.
16. Section 45 of the *Law of Succession Act* is uncompromising: no person shall, for any purpose, take possession of or dispose of any free property of a deceased person except as authorized by the Act or by a Grant. In *In re Estate of Mbiyu Koinange (Deceased)* [2020] KEHC 9629 (KLR), Muchelule J. (as he then was) observed that any act of paying out or distributing estate property without a court order constitutes intermeddling. The administrators of a multi-million-shilling estate must understand that they are under the immediate control of the Court. The Stanbic account was opened specifically to safeguard the estate funds pending litigation; for the Administrators to unilaterally debit that account for their own expenses is a flagrant violation of the Court’s orders.
17. Furthermore, the standard of accountability for a personal representative is high. In *In re Estate of Kitele Kitingu (Deceased)* eKLR, the Court held that rendering accounts is a statutory requirement and a failure to do so transparently is a ground for revocation of the grant. The explanation offered by Evans Mbuthia—that the Kshs 50,000/= was for transport and meetings—is devoid of the particularity required for special damages. As noted in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* eKLR, special damages must be strictly proved with credible evidence. The Administrators have failed to provide a single receipt or invoice to justify the expenditure of Kshs 150,000/=.



## Conflict of Interest and the Role of the Firm MMC Asafo

18. The Objectors seek the recusal of the firm Muriu Mungai & Company Advocates (MMC Asafo) and the Administrator Peter Munge Murage. They allege that Mr. Munge previously acted for Housing Finance Company (HFC) Limited—the very judgment debtor the Deceased was fighting to recover property from. More critically, they state that MMC Asafo is currently representing the Petitioners against the Objector in the Court of Appeal.
19. The law on conflict of interest for Advocates has been significantly bolstered by established jurisprudence. In *Leonard Gichora Kiiu v Peter Gicharu Ngige* [2021] eKLR, the Environment and Land Court removed a firm of Advocates because their prior 15-year relationship with the petitioners made it impossible for them to represent the opposing company objectively. The Court emphasized that an Advocate's fiduciary duty includes a duty of loyalty and confidentiality that prevents them from trading on information obtained from a former client.
20. While Peter Munge argues that he was a close friend of the Deceased, the reality remains that his firm is currently a litigant adversary to Peter Njuguna in a related appeal. This creates an insurmountable structural conflict. An Advocate representing the estate is, in essence, representing the interests of all beneficiaries. If that Advocate is simultaneously litigating against one of those beneficiaries in another Court, the perception of bias is inevitable. As held in *Kalpana H. Rawal v Judicial Service Commission* eKLR, the test is not whether the Judge or Advocate is biased, but whether a fair-minded and informed observer would conclude that there is a possibility of bias.
21. Moreover, the demand for a Kshs 300,000/= deposit for legal fees is premature. In *In re Estate of Mbiyu Koinange*, the Court was categorical: "Advocates fees are not debts of the estate... The fees for advocates appointed by the beneficiaries should be settled by the beneficiaries".
22. While a sole Advocate for the estate may be entitled to costs, these must be taxed in the usual manner at the conclusion of the proceedings. To authorize a substantial cash deposit now, especially given the unresolved conflict issues, would be an abuse of the estate's liquidity.
23. A final, yet fundamental, flaw in the proposed distribution is the exclusion of the children of the late Leah Wanjiru and the missing Stephen Mbuthia. The Applicants' draft consent only provides for five beneficiaries. The Objectors have provided CR12 records and Chiefs' letters confirming that Leah and Stephen were recognized children of the Deceased with their own heirs.
24. Section 38 of the [Law of Succession Act](#) provides that where an intestate (or the residue of a testate estate) is to be shared, it must be divided equally among the children. Article 27 of [the Constitution](#) prohibits discrimination on any ground, including the status of a parent. To permit a partial distribution that selectively favours some siblings while disinheriting the issue of others would be a travesty of justice and a violation of the mandatory requirements of Rule 26 of the Probate and Administration Rules.
25. The Application for partial confirmation of the Grant dated 1 July 2025 fails on multiple fronts. It fails the statutory test of section 71(3) due to the lack of consensus among the dependants and the failure to prove medical urgency with credible evidence. It fails the test of corporate law by attempting to charge the estate for the liabilities of Palace Investments Limited, a separate legal person. It fails the test of fiduciary duty due to the unauthorized withdrawal of funds and the exclusion of rightful heirs. Finally, it fails the test of legal ethics due to the profound conflict of interest involving the estate's chosen advocate.
26. This Court must safeguard the estate from the "family coup" described by the Objectors. A limited Grant pendente lite is not a mandate for the Administrators to treat the estate as their private bank



account or to settle old scores with corporate landlords. The recovery of Kshs 5.45 million is the only positive aspect of the administration thus far; that money must remain intact until a transparent and lawful mode of distribution is agreed upon or ordered by this Court.

27. In the premise, the Summons dated 1 July 2025 is hereby dismissed in its entirety. The Administrators, Irene Njau M'lingine and Evans Mbuthia Njuguna, are hereby ordered to deposit the sum of Kshs 150,000/= back into the Stanbic Bank account within 14 days of this Ruling.
28. The Administrators are directed to file, within 21 days, a full and accurate inventory of all assets collected, including an account of the rental income received from the Kirinyaga land (LR No. KIINE/KIBINGOI/NGUGUINI/1785) and the status of the files removed from Hughes Building.
29. The Administrators are directed to include the children of the late Leah Wanjiru and the missing Stephen Mbuthia in all future distribution proposals to ensure compliance with section 38 of the [\*Law of Succession Act\*](#).
30. Each party shall bear its own costs of this Application.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicants: Mr Opole

For the Respondents: Peter Njuguna in person

Pauline Mbuthia in person

Court Assistant: Lucy Mwangi

