



REPUBLIC OF KENYA



**In re Estate off the Late Waithaka also known as Wamboi (Deceased) (Succession Cause 27 of 2019) [2026] KEHC 3339 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 27 OF 2019**

**JM NANG'EA, J**

**MARCH 3, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE \_\_ EWW( ALSO  
KNOWN AS) EWW (ALSO KNOWN AS) EWW \_\_ (DECEASED)**

**BETWEEN**

**MARGARET WANGUI ADEGO ..... APPLICANT**

**AND**

**DOUGLAS GAKUO WAITHAKA ..... 1<sup>ST</sup> RESPONDENT**

**LUCY NJOKI WAITHAKA ..... 2<sup>ND</sup> RESPONDENT**

**DORIS WANJIRU WAITHAKA ..... 3<sup>RD</sup> RESPONDENT**

**KENNEDY NJOROGE WAITHAKA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. For determination are Applications dated 13/2/2024, 23/4/2024 and 24/4/2024. On 16/7/2025 the court directed the Applications to be disposed of together by means of written submissions.
2. By Chamber Summons application dated 13/2/2024 the Applicants seek these orders;
  1. Spent.
  2. Spent.
  3. Spent.
  4. Spent.
5. Pending the conclusion of the administraton and final distribution of the estate, this Honourable Court be pleased to issue a permanent injunction jointly restrarining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from any actions of intermeddling in the deceased's estate or otherwise



disrupting the smooth running and administration of the deceased's estate, including but not limited to:

- a. Taking any adverse actions against the administrators of the deceased's estate, its employees or agents.
  - b. Harassing, intimidating, threatening, or in any other way interfering in any manner whatsoever with the quiet and peaceable occupation of the estate's lessees, tenants or licensees currently occupying the estate's properties;
  - c. Freezing or in any manner whatsoever interfering with the bank account number 8XXXXXXXXX7 in the name of Fieldfare Management Limited held at NCBA Bank Plc, Nakuru Branch or any of the estate's other assets.
6. Pending the conclusion of the administration and final distribution of the estate, this Honourable Court be pleased to order that the Applicants and the 1<sup>st</sup> Respondent as administrators of the estate to:
- a. open an account in the joint names of the administrators for the collection of the estate's income and to settle the estate's expenses and liabilities;
  - b. be nominated as the only signatories to manage and operate that account jointly as administrators to the absolute exclusion of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents; and
  - c. transfer the monies contained in the bank account number 8XXXXXXXXX7 in the name of Fieldfare Management Limited held at NCBA Bank Plc, Nakuru Branch to the newly opened joint account in the name of the administrators.
7. Pending the conclusion of the administration and final distribution of the estate, this Honourable Court be pleased to order that the Applicants immediately withdraw the sum of KES 2,3 10,820.00 (Kenya Shillings Two Million Three Hundred and Ten Thousand, Eight Hundred and Twenty) from the bank account number 8XXXXXXXXX7 in the name of Fieldfare Management Limited held at NCBA Bank Plc, Nakuru Branch as a refund to the Applicants for the expenses that the Applicants incurred in maintaining the estate from 10<sup>th</sup> December 2022 to date.
8. In the alternative to prayer 6 above, that this Honourable Court be pleased to order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be held jointly and severally liable to the administrators of the deceased's estate for all the legitimate expenses and liabilities incurred by the estate from 10<sup>th</sup> December 2022 to date, which amount to KES 2,310,820.00 (Kenya Shillings Two Million Three Hundred and Ten Thousand, Eight Hundred and Twenty);
9. Pending the determination by this Honourable Court of the prayers sought by the Applicants in prayers 7 and 8 above, this Honourable Court be pleased to order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents jointly deposit the sum of 2,310,820.00 (Kenya Shillings Two Million Three Hundred and Ten Thousand, Eight Hundred and Twenty) in court, or in a joint interest-earning account to be opened in the names of the Parties' Advocates on record, as security for performance should this Honourable Court grant prayers 7 and 8 above as prayed for by the Applicants;
10. Pending the conclusion of the administration and final distribution of the estate, this Honourable Court be pleased to confirm the accounts prepared by the Applicants and order that they are a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings to the date of this Application;



11. In the alternative to prayer 10 above, that this Honourable Court be pleased to order and appoint a reputable auditor not appointed by any of the Parties, or one appointed by reference by the Chairman of the Institute of Certified Public Accountants of Kenya (ICPA K), to confirm and certify that the accounts presented by the Applicants are a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings to the date of this Application;
  12. This Honourable Court be pleased to order the final distribution of the deceased's estate as agreed unanimously by all the beneficiaries at a meeting held on 30<sup>th</sup> June 2021, and in the terms of the annexed draft agreement; and
  13. The cost of this Application be provided for.
3. The 1<sup>st</sup> Applicant in the Summons who is also an Administrator of the Estate of EWW (deceased) swore an affidavit in support of the Summons purportedly with the authority of the 2<sup>nd</sup> Applicant who is also an Administratrix of the same Estate.
  4. Telling the court that the parties hereto are all children of the deceased, the Applicants aver that Grant of Letters of Administration herein dated 27/8/2019 was confirmed on 15/2/2021 and Certificate of Confirmation of the Grant issued. According to the Applicants, there has since been partial distribution or transmission of the Estate.
  5. It is further stated that on 18/1/2019 the beneficiaries met up in Nakuru and agreed to incorporate a limited liability company and open a bank account in the company's name into which earnings from the Estate would be deposited. The Company called Fieldfare Management Limited was thereafter incorporated on 7/2/2019 with beneficiaries of the Estate as directors and shareholders with equal shares. A follow up meeting held on 30<sup>th</sup> June 2021 in Nairobi is said to have secured agreement on a formula guiding distribution of the Estate. The Administrators of the Estate then instructed the law firm of Martin Maitha & Associates Advocates to draft an agreement in terms of the meeting resolutions and prepare land transfer instruments.
  6. The Applicants continue to depose that on 19/8/2021 the Advocates communicated that the 2<sup>nd</sup> Respondent had resiled from the agreement and declined to execute prepared transfer forms. An attempt was made to resolve the impasse by hiring of auditors to carry out forensic examination of the Estate's Accounts before distribution of shares.
  7. The Applicants allege that the 2<sup>nd</sup> Respondent, however, unilaterally engaged Adamjee & Company Auditors against the agreement reached by all the Beneficiaries. The 1<sup>st</sup> Applicant nevertheless participated in good faith in the audit commissioned by the 2<sup>nd</sup> Respondent by availing records necessary to undertake the audit.
  8. According to the Applicants, the Auditors issued a final report dated 28/9/2022 indicating that as at 30<sup>th</sup> June 2022, the Estate had lost Kshs. 32,410,694/-. The 2<sup>nd</sup> Respondent allegedly demanded refund of fees she had paid the Auditors from her personal resources. She also accused the Applicant and some other Beneficiaries of causing the loss of Kshs. 32,410,694 unearthed by the Auditors.
  9. The Applicants deny the claim of mismanagement of the Estate contending that it is the 2<sup>nd</sup> Respondent who failed to work together with the other Beneficiaries.
  10. In a meeting the 2<sup>nd</sup> Respondent allegedly convened on 26/11/2022 attended by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents and which the Applicants declined to attend, representatives of the Auditors who were in attendance reportedly revised the loss the Estate had suffered to a higher figure of Kshs. 57,415,371



as at 30/6/2022. On the basis of these findings, the 2<sup>nd</sup> Respondent as well as the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents purported inter alia to issue a resolution of the family's company halting withdrawals from the company's account with NCBA, Nakuru Branch. The Applicants lament that the resolutions had the effect of hampering administration of the Estate, particularly in meeting statutory obligations. The Applicants complain that they had to personally shoulder the burden of maintaining the Estate, spending a total of Kshs. 2,310,820 in this regard.

11. The court is told that despite the 2<sup>nd</sup> Respondent's conduct with support from the other Respondents, the Applicants are still willing to complete administration of the Estate and have prepared and exhibited accounts pursuant to Section 83(h) of the *Law of Succession Act*. They nevertheless blame the 2<sup>nd</sup> Respondent and her co-Respondents for the state of affairs of the Estate.
12. The 2<sup>nd</sup> Respondent opposes the Application by an affidavit in reply. She first attacked the Application as an abuse of the court process contending that it is purportedly brought with the authority of the 2<sup>nd</sup> Applicant who died before the Application was brought.
13. Stating that she is a beneficiary of the Estate by virtue of being one of the deceased's children, the 2<sup>nd</sup> Respondent accuses the Estate's Administrators who include the Applicants of breach of trust by grossly wasting and mismanaging the Estate. She avers that she has consistently expressed her concerns in various family meetings but no amends were made. In particular, the 1<sup>st</sup> Applicant allegedly collected rent from tenants and in conjunction with other Administrators failed to render proper accounts.
14. The 2<sup>nd</sup> Respondent further states that following concerns by her and other beneficiaries, it was resolved to conduct a forensic audit of the Estate's affairs. Together with the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the 2<sup>nd</sup> Respondent is said to have been tasked to identify a suitable Auditor and negotiate payable fees. They settled on Adamjee Mohison & Company Auditors who rendered a forensic report showing massive losses in the sum of Kshs. 57,415,377.50. According to the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Applicant is unhappy with the disclosure hence the apparent animus towards her.
15. The 2<sup>nd</sup> Respondent confirms that she and others did indeed cause stoppage of withdrawals from the Estate's Bank Account because of the anomalies.
16. The 2<sup>nd</sup> Respondent denies intermeddling with the Estate, asserting that her only interest is to preserve the Estate for the benefit of all Beneficiaries.
17. Among other averments the 2<sup>nd</sup> Respondent contends that although she may not oppose payment of proven Estate liabilities, she is averse to giving the Applicants what she describes as a "a free reign".
18. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents also swore and filed separate affidavits in reply to the Application. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents find common ground with the 2<sup>nd</sup> Respondent alleging that the Applicants are mismanaging the Estate in breach of the trust bestowed upon them. The 4<sup>th</sup> Respondent does not, however, oppose the Summons.
19. The Interested Party supports this Application as well as the Motion dated 24/4/2024.
20. On her part, the 2<sup>nd</sup> Respondent (M) brings her own Chamber Summons Application dated 23<sup>rd</sup> April 2025 seeking these orders;-
  1. Spent.
  2. That this Honourable Court be pleased to grant the Applicant authority and mandate to engage the Kenya Revenue Authority on the outstanding VAT and Income tax issues of the deceased's estate, with leave to procure the services of an appropriate Tax consultant.



3. That the surviving administrators be ordered to pay for the Tax Consultant's services and all verified tax debts of the estate from the funds held in the estate's NCBA Account opened in the name of Fieldfare Management Ltd.
  4. That upon the estate's tax issues being conclusively resolved, the 1<sup>st</sup> Respondent be ordered to issue ETR receipts to the VATable tenants of the deceased's estate.
  5. That a rebuttable property manager, agree upon by all the beneficiaries, be appointed to manage the collection of the rental income accruing to the estate.
  6. That the 1<sup>st</sup> Respondent be ordered to file in court a full and accurate inventory of the assets of the deceased as well as a full and accurate account of all his dealings therewith from the date of Grant of Letters of Administration to date.
  7. That the 1<sup>st</sup> Respondent be restrained from collecting rent directly from the estate's tenants..
  8. That costs of this application be provided for.
21. The Application is supported by Ms affidavit which underscored her previous contentions regarding alleged mismanagement of the Estate.
22. 1<sup>st</sup> Applicant (DGW) brought the Notice of Motion dated 24/4/2024 for orders as below;
1. Spent
  2. Spent
  3. Spent
  4. Spent
  5. Order restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from freezing or otherwise interfering with bank Account 8XXXXXXXXX7 with NCBA. Nakuru, in the name of Fieldfare Management Limited or any other asset of the Estate.
  6. Permanent injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from any acts of intermeddling with the Estate pending conclusion of administration of the Estate.
  7. Pending finalization of Administration of the Estate the Administrators of the Estate to open a central account in their joint names through which to collect revenue and defray liabilities.
  8. Applicants be ordered to immediately withdraw a sum of Kshs. 2,310,820/= from the family's company account as refund for the Applicants for costs they incurred on behalf of the Estate since 10<sup>th</sup> December 2022.
  9. Alternative to 6) above, the Applicants be allowed to recover the expenses from the Estate.
  10. In the meantime, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the Application be ordered to deposit the above stated sum of Kshs. 2,310,820/= into court or a joint interest earning in the name of advocates.
  11. That the accounts prepared by the Applicants be confirmed as full and accurate account of dealings with the Estate.
  12. The court does not appoint an independent reputable Auditor to look into and certify the Accounts rendered by the Applicants.



13. The court does order final distribution of the Estate in terms of the parties' agreement at the said meeting held on 30/6/2021.
14. That the beneficiaries be ordered to take up their shares as per the certificate of confirmation of Grant and the meeting of 11/1/2024.
15. That the Deputy Registrar be ordered to sign transmission forms if the beneficiaries failed to.
16. Costs be provided for.
23. The 1<sup>st</sup> Applicant in his Affidavit Supporting the Application maintains their position as expressed in the Application dated 13/2/2024. The Applicants complain that the Respondents are interfering with their mandate of administering the Estate and completing the transmission process.
24. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents oppose this Application by affidavit evidence in reply. Their contentions generally mirror their arguments in relation to the other Applications before the court.
25. The parties filed written submissions through their respective Counsel. I have read through the submissions against the rival affidavit evidence and the record.

#### **Chamber Summons Application dated 13/2/2024 and Notice of Motion dated 24/4/2024**

26. I shall first deal with these Applications brought by the same applicants for similar more or less the same reliefs. The Applicants submit that the court has no jurisdiction to delve into matters raised by the Respondents for the reason that a Succession Court is only concerned with preservation and eventual distribution or transmission of the Estate upon Confirmation of Grant of Letters of Administration. It is contended that Section 47 of the [Law of Succession Act](#) does not grant the court sweeping power that extend to resolving disputes involving third parties. The court is told that this statutory provision only saves inherent powers of the Court to do justice especially in situations where there are no express governing provisions of the law.
27. The Respondents are also accused of intermeddling with the Estate contrary to the provisions of Section 45 of the [Law of Succession Act](#). It is claimed that they are interfering with the Administration of the Estate as agreed by all the Beneficiaries.
28. The Respondents deny the allegation of intermeddling and in turn protest that the Applicants are not being transparent and accountable in their management of the Estate as alleged in their affidavit evidence.
29. The court agrees that its role herein is to pressure the deceased's Estate and finally order transmission in favour of identified Beneficiaries. Where interests of third parties are involved, the Administrators are lawfully authorised to protect the interests of the Beneficiaries in any litigation outside the Succession Court.
30. In the instant matter, the Grant of Letters of Administration herein was confirmed on 15/2/2021. This means that the free property of the deceased was ascertained and beneficiaries bequeathed their shares as found by the court. The only task remaining is for the Administrators to render final accounts of their administration of the Estate pursuant to the provisions of Section 83 of the [Law of Succession Act](#) to enable closure of the file. Only then may the court issue any other order(s) or directions to facilitate successful transmission of the Estate.
31. What is the situation as per these Applications? The Applicants inter alia want authorisation of withdrawal of funds in the account of a limited liability formed after confirmation of the Grant, appointment of an Auditor to examine the Estate's accounts; opening of an account in the names of the



parties' advocates to handle the Estate's funds; an order restraining freezing or other interference with the family's Company's bank account and an order restraining the Respondents from intermeddling with the Estate.

32. To the extent that the court is being invited to issue orders in relation to funds belonging to a limited liability company or to appoint third parties to examine the Company's accounts, the court has no jurisdiction so to do. Beneficiaries of an Estate, however, have the legitimate right or interest in the management of the Estate so long as their involvement does not amount to intermeddling which is a criminal offence. I don't see evidence of intermeddling contrary to the contentions in this regard.
33. For the foregoing reasons and in light of the fact that the Grant of Letters of Administration herein has been confirmed, I decline to grant the orders sought. The Applications dated 13/2/2024 and 24/4/2024 are dismissed with no order as to costs.

#### **Chamber Summons dated 23/4/2024**

34. Among other orders, the Applicant craves authorisation to engage the Kenya Revenue Authority on outstanding Value Added Tax(VAT) owed by the Estate; the Administrators being ordered to pay due taxes from funds held by the family company (Fieldfare Management Limited) and appointment of a Manager to deal with collection of rental income accruing to the Estate.
35. For the same reasons given in relation to the Applications dated 13/2/2024 and 24/4/2024 supra, the court has no jurisdiction to make such orders in the circumstances of this matter. I, however, concur that the Administrators of the Estate need to render an account of their management of the transmission process of the Estate with a view to closure of the long pending matter or issuance of any further necessary orders.
36. In the premises, the Administrators of the Estate are ordered to render true and accurate written account of their transmission of the Estate in accordance with the Certificate of Confirmation of Grant dated 15/2/2021, within 60 days from the date hereof. A copy of the report shall be provided to all the Beneficiaries of the Estate by 2/6/2026 when the matter is fixed for mention. The parties to this Application shall also bear their own costs of the Application.
37. Ruling accordingly on the three Applications.

**RULING DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF MARCH, 2026.**

**J. M. NANG'EA - JUDGE**

In the presence of:

Mr. Waithaka Advocate for Mr. Mwamba Advocate for 1<sup>st</sup> Administrator

Mr. Maitha Interested Party, present

Ms Njoroge Advocate for the 2<sup>nd</sup> Administrator, present

Ms Njoki Advocate for Mr. Mburu Advocate, present

Kennedy Waithaka (Beneficiary)

