

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**MILIMANI LAW COURTS**

**MISC. APPLICATION NO. HCFMISC E239 OF 2025**

**IN THE MATTER OF THE ESTATE OF NIRMALA**  
**NANOO TRIBHOVAN PADIA (DECEASED)**

**KIRAN NANOO PADIA .....**

**APPLICANT**

**VERSUS**

**ARCHER & WILCOCK ADVOCATES .....**

**RESPONDENT**

**RULING**

1. Before this Court is the Applicant's **Summons dated 11<sup>th</sup> July 2025**, brought under **Rule 49 of the Probate and Administration Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, Section 47 of the Law of Succession Act, Section 47 of the**

**Advocates Act**, and all other enabling provisions of the law.

2. The Applicant seeks, *inter alia*, orders compelling the Respondent to release several documents relating to the estate of the late **Nirmala Nanoo Tribhovan Padia (Deceased)** including:

*i. The original Will of the late Nirmala Nanoo Tribhovan Padia*

*ii. Copy of National Identity Card and KRA PIN certificate of Nirmala Nanoo Tribhovan Padia (Deceased)*

*iii. Original certificate of Death of Nirmala Nanoo Tribhovan Padia*

*iv. Original Title deeds in respect to the properties INO Nirmala Nanoo Tribhovan Padia (deceased) for Nyeri Municipality Block 1/1681, 1/1682, 1/1683 and 1/1684*

*v. Original Sale agreements relating to the properties in (iv) above and*

*vi. A statement of account of the amounts held by the Respondent on account of purchase price*

***in respect to the sale of the properties under  
(iv) above***

3. The Applicant also seeks orders directing the Respondent to file and serve an Advocate Client Bill of Costs for taxation and to account for estate assets that may have been sold to third parties and to disclose any amounts paid to them thereof.
4. The application is supported by the Supporting Affidavit of Kiran Nanoo Padia sworn on 11<sup>th</sup> July, 2025 and the annexures thereto.
5. The application is opposed through the Grounds of Opposition and Replying Affidavit sworn by Jimmy Rayani, Advocate on 3<sup>rd</sup> February, 2026 on behalf of the Respondent.
6. The Court has also considered the written submissions filed by the Applicant.
7. By way of background, the deceased, **Nirmala Nanoo Tribhovan Padia**, died on **12<sup>th</sup> April, 2024** leaving behind a written Will dated **15<sup>th</sup> March, 2021**. Under the said Will, the deceased appointed her children

**Kiran Padia and Meenaxi Noorani as executors and trustees** of her estate.

8. It is not disputed that the Respondent firm drafted the said Will and retained the original.
9. Following the death of the deceased, the Applicant instructed the Respondent to prepare a **Petition for Grant of Probate with Written Will**. The Respondent prepared the Petition but the same was **never executed nor filed** because the Applicant declined to sign it. The Applicant later terminated the Respondent's instructions and appointed **CKM Advocates LLP** to take over the matter.
10. By letters dated **5<sup>th</sup> March, 2025 and 6<sup>th</sup> March, 2025** the Applicant and his new advocates requested the Respondent to release the estate documents in its possession.
11. The Respondent declined to release the documents, asserting a *lien* for unpaid professional fees amounting to Kshs.922,500/= plus VAT. Subsequently, the Respondent filed an Advocate-Client Bill of Costs in

**HCCOMM MISC E661 of 2025**, which is currently pending taxation.

12. Aggrieved by the continued retention of the documents, the Applicant filed the present application.

### **Determination**

13. After reviewing the pleadings and submissions, the Court finds that the following issues arise for determination:

- I. Whether this Court has jurisdiction to grant the orders sought in the present application;**
- II. Whether the Respondent can lawfully retain the estate documents on the basis of an advocate's lien;**
- III. Whether the Respondent should render an account in respect of transactions relating to estate property.**

**Whether the Court has Jurisdiction to Grant the Orders Sought;**

14. The Respondent herein has suggested that the dispute essentially concerns professional fees and should therefore be addressed through taxation proceedings. However, the present application concerns the administration of the estate and access to documents necessary for the filing of probate proceedings.
15. **Section 47 of the Law of Succession Act** grants the High Court jurisdiction to determine all disputes arising in relation to the administration of estates. In ***Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1***, the Court of Appeal emphasized that jurisdiction is the foundation upon which judicial authority rests. In matters relating to succession, the High Court exercises wide supervisory jurisdiction over estate administration.
16. In ***re Estate of Wahome Njoki Wakagoto (Deceased) [2013] eKLR***, the court held that **Section 47 of the Law of Succession Act** confers wide discretionary powers upon the Court to make orders necessary for the proper administration of estates.

17. The Court therefore finds that it has jurisdiction to determine the present application.

**Whether the Respondent can lawfully retain estate documents based on an Advocate's Lien;**

18. The Respondent contends that it is entitled to retain the documents pursuant to an advocate's *lien* for unpaid professional fees.

19. The law recognizes that advocates may exercise a retaining *lien* over a client's documents pending payment of fees, with a limitation that it cannot be used to hold documents needed for Court proceedings.

20. In the present case, the Respondent seeks to retain the original Will and other documents necessary for probate. The retention of the original Will effectively prevents the executor from initiating probate proceedings. Such a consequence would frustrate the administration of the estate and prejudice beneficiaries.

21. This Court therefore finds that although the Respondent may pursue its fees through taxation

proceedings, the assertion of a *lien* cannot justify the continued retention of documents essential to the administration of the estate.

22. The Applicant is named as an executor under the deceased's Will dated **15<sup>th</sup> March, 2021**. An executor derives authority from the Will itself and is responsible for ensuring that the estate is administered in accordance with the deceased's wishes.

23. **Rule 7 of the Probate and Administration Rules** requires that the original Will be produced when applying for probate. Without the original Will, the executor cannot move the Court. Similarly, the death certificate is required, as are copies of proof of assets.

24. The Court herein finds that the Applicant, as a named executor, is entitled to access the documents necessary to commence probate proceedings.

**Whether the Respondent Should release the asset documents and account for transactions relating to the estate property;**

25. The issue of retention of the original titles is not acknowledged by the Respondent, but from the analogy the applicant has given, there is a reasonable belief that the Respondent had secured all the necessary documents from the applicant for purposes of the probate. They were deposited for the purposes of the probate filing. The Respondent, while acknowledging the existence of some transactions, also makes reference to the documents.

26. Since the costs issue remains disputed between the parties and an advocate-client bill of costs has been filed by the respondent, the respondent cannot coerce the applicant to enter into an undertaking to secure the release of the documents. The advocate's fees become payable only after the taxation process for contested costs. Until then, the respondent cannot purport to exercise a right of lien.

27. The Applicant alleges that the Respondent has conducted sale transactions concerning estate property without providing accounts of the said transactions. The Respondent acknowledged

involvement in a sale transaction but contends that the transaction is ongoing. However, the Respondent did not disclose which specific property the transaction/s relate to, and no additional details have been provided.

28. Advocates who handle client funds hold such funds in trust and must account for them when required. The Court determines that the matter concerning the estate accounts is best addressed within the Probate proceedings, as the intricacies surrounding estate accounts are more suitably resolved alongside the formal Probate process rather than in this miscellaneous cause. Besides, it is contingent on the Applicant securing the estate-related documents in the Respondent's possession to ascertain their status.

29. In the result, the Court finds merit in the Applicant's application and makes the following orders:

***a. The Respondent shall release to the Applicant or his advocates the following documents:***

***i. The original Will of the late Nirmala Nanoo Tribhovan Padia***

- ii. The deceased's death certificate*
  - iii. The deceased's identity documents*
  - iv. The original title deeds for Nyeri Municipality Block 1/1681, 1/1682, 1/1683 and 1/1684*
  - v. All sale agreements and any other document in their possession that relates to the estate of Nirmala Nanoo Tribhovan Padia, deceased.*
- b. The Respondent shall pursue recovery of its legal fees through the Advocate-Client Bill of Costs in HCCOMM MISC E661 of 2025.*
  - c. The costs of this application are awarded to the Applicant.*

30. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI**

through the Microsoft Teams Online Platform on this **23<sup>RD</sup>** day of **MARCH, 2026.**

.....

**C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

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