



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 445 OF 2015**  
**IN THE MATTER THE ESTATE OF GEOFFREY KAMONDE**  
**MUCHICHU *alias* GEOFFREY KAMONDE HARUN MUCHICHU**  
**(DECEASED)**

**ROSEMARY WANGUI KAMONDE ....**

**APPLICANT/ADMINISTRATOR**

**JAMES MBURU KAMONDE ..... 2<sup>ND</sup>**

**ADMINISTRATOR**

**VERSES**

**JUDY WAMBUI KABUCHO ..... 3<sup>RD</sup>**

**ADMINISTRATOR/OBJECTOR**

**AND**

**DR SIMON WAIHARO CHEGE ..... 1<sup>ST</sup>**

**CAVEATOR**

**JULIUS MUNGIRI KIIRU ..... 2<sup>ND</sup>**

**CAVEATOR**

**JUDGEMENT**

1. The deceased herein was a practicing advocate who passed away on 16<sup>th</sup> November 2014 intestate.
2. The Administrators herein were jointly granted letters of administration and subsequently each applied for the confirmation of the same dated 19<sup>th</sup> June 2017 and 25<sup>th</sup> July 2017 by the 1<sup>st</sup> and 3<sup>rd</sup> Administrators respectively and when the matter came up for directions the court ordered the same to be heard by way of viva voce evidence.
3. It is worthy to note from the outset the relationships between the parties herein. The 1<sup>st</sup> Administrator is the wife of the deceased having married her in the year 1975 while the 3<sup>rd</sup> Objector is their son.
4. On the other hand, the 2<sup>nd</sup> Objector is claiming to have married the deceased under the tenets of Kikuyu customary law and they stayed with him for a period of less than five years and were blessed with two children although the first one was hers and was adopted and accepted by the deceased.
5. The 1<sup>st</sup> Caveator on the other hand is the executor of the estate of the late Martin Wamatu Njoroge by virtue of Succession Cause No 2566 of 2005 and they were permitted by the court to dispose parcel number Kaimbaga /329 and the proceeds were collected by the deceased herein but was however not remitted.
6. The first administrator **Rosemary Wangui Kamonde** relied on her witness statements and various affidavits which were already on record. She said that she married the deceased

- in the year 1973 and they were blessed with six children although two have passed away.
7. She testified that she worked with the now defunct Kenya Post and Telecommunication Corporation where she retired in 1994 at the level of executive secretary.
  8. She said that all the properties were acquired during her time with the deceased and she heavily participated in the development of the matrimonial home among other assets.
  9. She said that she left staying with the deceased after some disagreement in 2008 and this paved way for the Objector to come and stay in her matrimonial home. She said that the Objector ought to move out of her matrimonial home.
  10. On liabilities she denied that the estate had any as she was not in the picture.
  11. **Dr. Simon Waiharo Chege** the second witness on behalf of the 1<sup>st</sup> Caveator testified that he was a medical practitioner and was bringing the matter on behalf of the estate of the late Wamutu.
  12. He gave chronology of how the deceased received a sum of Kshs. 34 million on behalf of the Wamutus estate after selling land parcel Number 04 Scheme Kaimbaga/329 to Ngere Tea Factory. After the payments to the Settlement Funds Trustees and other agreed creditors the amount which the deceased ought to have remitted was Kshs.31,104,000.
  13. He said that the above amount was not remitted by the deceased at the time of his death and therefore it became a

liability in the estate. He relied among others on the sale agreements as well as the bank statements in support of the claim.

14. The third witness **Philip Muchichu**, the deceased's brother confirmed that he had recorded his statement dated **16<sup>th</sup> June, 2022**, which he fully adopted and further confirmed that the 1<sup>st</sup> Objector was his late brother's wife and denied that Judy was the deceased wife.
15. The 4<sup>th</sup> witness **Amos Ndungu** the brother to Rosemary relied on his statement dated **16<sup>th</sup> February, 2020** and produced documents contained in his bundle. He denied that Judy was the wife to the deceased.
16. **Judy Wambui Kamonde** the Objector asserted that she was the deceased's wife and resided in Ngong and Karen. She stated that the deceased had adopted one of her children and had supported the children's education. She said that as a matter-of-fact LSK in which the deceased was a member supported her education.
17. She further said that she has been staying at parcel number Riruta/Dagoretti/1334 to-date together with her children from the time the deceased married her.
18. That Rosemary on the hand stayed in one of the rooms as well as the 3<sup>rd</sup> Objector. She accused Rosemary of selling some parcel of land and keeping the money.
19. When cross examined, she said that the deceased had built the matrimonial home with 1<sup>st</sup> Administrator Rosemary.

20. The parties after the conclusion of the matter filed written submissions with their attendant authorities.

### **ANALYSIS AND DETERMINATION**

21. I have read the applications before this court, the responses thereto and the rival submissions.
22. The issues for determination and which are germane as captured by the parties submissions include:-
- a. Whether the objection to the confirmation of grant is merited, and in particular, whether the Objectors have established valid and enforceable claims against the estate of the deceased.
  - b. Whether the deceased received and held the sum of Kshs. 31,104,000/= in a fiduciary capacity, and if so, whether the same remains unaccounted for and constitutes a liability of the estate.
  - c. Whether the alleged debts and liabilities against the estate have been sufficiently proved, having regard to the documentary evidence tendered, including bank statements, sale agreements, and correspondence, and the objections raised as to their authenticity and probative value.
  - d. Whether the Administrators failed to make full and frank disclosure of all material facts and liabilities relating to the estate, and the legal effect of any such omission on the confirmation of the grant.

- e. Whether the additional claims by other Objectors and creditors, including claims for rental income and loan advances, have been proved to the required standard and are payable out of the estate.
- f. Whether the objection proceedings are tainted by fraud, misrepresentation, or lack of authenticity of the supporting documents, as alleged by the Administrators.
- g. Whether the confirmation of grant ought to be deferred pending the ascertainment and settlement of all liabilities of the estate.
- h. Whether Judy Kabucho Kamonde established the existence of a valid Kikuyu customary marriage with the deceased, and consequently, whether she qualifies as a lawful spouse and beneficiary of the estate.
- i. Whether Rosemary Wambui Kamonde remained a lawful spouse of the deceased at the time of his death, notwithstanding the alleged separation, and the effect thereof on her entitlement.
- j. Who the rightful beneficiaries and dependants of the estate are, including the status and entitlement of the children from the respective unions and any alleged adopted child.
- k. Whether the matrimonial property, including the matrimonial home, forms part of the estate available for distribution, and if so, the extent of each party's beneficial interest therein.

- l. Whether the distribution of the estate, if undertaken, was conducted in accordance with the law, and whether any party was prejudiced or excluded.
  - m. Whether there exist outstanding debts and obligations that must be settled prior to distribution of the estate, and whether it is necessary to realize estate assets for that purpose.
  - n. What orders ought to issue in the circumstances, including whether to confirm, defer, or revoke the grant and any consequential directions as to accounts, redistribution, or administration of the estate.
23. In Oyomba v Oketch [2026] KEHC 3727 (KLR) the court observed as follows: “... **33. It is noted that the Appellant had filed a summons for revocation of grant before the trial court dated 21/12/2021 where he sought for the revocation of the grant that had been issued to the Respondent and that title to LR No. North Sakwa/Ajigo/802 be revoked and the same to revert in the names of the deceased Michael Owino Madala and be made available for distribution to the beneficiaries. The trial court therefore was mandated to establish whether the Appellant had satisfied conditions imposed by Section 76 of the Law of Succession Act which provides as follows:“ 76.A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party**

***or of its own motion-a)that the proceedings to obtain the grant were defective in substance;b)that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;c)that the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;d)that the person to whom the grant was made has failed, after due notice and without reasonable cause either - i) to apply for the confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; orii)to proceed diligently with the administration of the estate; oriii)to produce to the court, within the time prescribed, any such inventory or account of administration as required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or(e)that the grant has become useless and inoperative through subsequent circumstances...”***

24. In Cockar & another v Bano & 7 others [2026] KEELC 1583 (KLR) the court stated as follows: “...  
***78. Addressing the delicate interface between succession proceedings and disputes over property,***

***the court in In Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR observed as follows:“ Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and Administrators. 28. The Probate and Administration Rules recognize that, and that should explain the provision in Rule 41(3), which provides as follows - ‘Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the***

***determination of the question in proceedings under ... the Civil Procedure Rules ...' 29. Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above..."***

25. Upon consideration of the objection proceedings, I find that the Objectors have established, the existence of substantial and unresolved claims against the estate. The evidence tendered, particularly in respect of the alleged sum of **Kshs.**

**31,104,000/=** said to have been received by the deceased in his capacity as an advocate raises serious fiduciary concerns that cannot be wished away.

26. While the Administrators have challenged the authenticity and completeness of the bank statements and sale documentation, the cumulative material placed before the court, including subsequent supplementary affidavits, demonstrates that the issue is not frivolous. This court is under a duty to ensure that all liabilities of the estate are ascertained before distribution and any doubt as to the existence of such liabilities militates against confirmation of the grant.
27. In my considered view and based on the evidence of Dr Chege the Caveator, the documentation of the transaction thereof including the sale agreement of land parcel number Kaimbaga/329 settlement scheme which has not been disputed and the bank statements on record I find and hold that the deceased estate herein owes the estate of the late Wamutu the sum of Kshs.31,104,000 unless the contrary is proved.
28. There is no evidence other than the amount admittedly paid the SFT and other few creditors that the entire balance was remitted to the late Wamutus estate.
29. The supporting affidavit evidence, including testimony from persons directly involved in the transaction and office administration, corroborates the existence of financial dealings between the deceased and third parties.

30. Similarly, the claims relating to rental income and loan advances, though modest in comparison, are supported by direct testimony and contemporaneous acknowledgment. The Administrators' bare denial, without a corresponding reconciliation of accounts or production of complete financial records, falls short of displacing the Objectors' claims at this stage.
31. Similarly, I find that the claim by **Julius Mungiri Kiiru**, the second Caveator is valid. There is sufficient documentary evidence that he loaned the deceased USD 9800 as per the acknowledgement on record.
32. At the same time, he did collect rental charges on his behalf totaling Kshs.385,000 less 10% totaling Kshs.346,500, an amount which the Administrators have been unable to counteract by way of evidence
33. With regard to the competing spousal claims, I find that both Rosemary Wambui Kamonde and Judy Kabucho Kamonde have demonstrated, to varying degrees, entitlement as spouses of the deceased.
34. The evidence supports the existence of a prior statutory or church marriage between the deceased and Rosemary, which was never formally dissolved.
35. I do not however find any sufficient evidence of a marriage ceremony between the deceased and Judy. Although she claimed that the deceased made some payments to her parents in form of dowry there was no eye witness to that effect nor any documentary evidence.

36. Similarly, there is no evidence that the permanent house built by the deceased for Judy's parents constituted part payment of dowry. There was no evidence to that effect.
37. Neither was there any evidence that the deceased entered into any Kikuyu customary rites to suggest any formal marriage within the four or thereabouts years she stayed with the deceased.
38. In the absence of formal divorce, the legal implications of the second union meant that the deceased lacked the capacity to enter into another marriage.
39. The deceased and the Objector had one child whom I did not find any objection on the part of the Administrators or any other member of the family. The same goes with her other child whom she said that the deceased had accepted as his child.
40. For the above reason I find that it is only the two children who shall benefit from the estate as dependants and not the Objector Judy.
41. Rosemary and her children are considered beneficiaries as well with Rosemary having a life interest in the estate as a lawful wife.
42. There is no iota of evidence that the Objector in any manner or way participated in acquisition of any of the properties left behind by the deceased. Neither is there is any evidence of any improvement of any of the properties. The house she was residing in was the 1<sup>st</sup> Administrators'

matrimonial home to which she occupied after she had disagreed with the deceased and left for elsewhere.

43. From her testimony on record, she was employed from 1966 till 1994 when she was retrenched and, in my view, she contributed heavily towards the development and acquisition of the property as opposed to the Objector.
44. Based on the above observations the identity of the beneficiaries of the estate herein for avoidance of doubt are Rosemary and her household as well as the Objectors two children.
45. The provisions of Section 83(d) of LSA clearly outlines the duties of personal representatives. The provisions of Section 86 as well provides that liabilities ought to be settled as the grant is being confirmed.
46. The parties have submitted on how the liabilities ought to be settled by proposing sale of certain properties including some lands. For now, this court will not impose which specific parcel be disposed but shall grant them the opportunity to discuss.
47. I shall therefore grant the parties an opportunity to determine which of the mentioned properties they intend to dispose by first valuing it and subsequently making a formal application to the court. This must be done within 45 days from the date herein.
48. In the event of any disagreement then the court shall step in to ensure that the exercise is completed.

49. Subsequently and within the said period the parties shall file affidavits of mode of distribution taking into account the interest of the Caveators as a priority.

50. **In conclusion I hold that:-**

**(a) The beneficiaries to the estate herein are Rosemary Wangui Kamonde and her household as well as the two children of the Objector Judy Wambui Kabucho.**

**(b) The two Caveators herein have proved their claim and that this estate owes a sum of Kshs 31,104,000 to the estate of the late Martin Njoroge Wamutu and Kshs 346,500 and USD.9800 to the second Caveator Julius Mungiri Kiiru.**

**(c) The aforesaid sums under (b) above shall attract interest at courts rates from the date of filing of this cause till payment in full.**

**(d) The Administrators herein within 45 days from the date herein are at liberty to agree and value any of the estate properties for purposes of sale and satisfaction of the above liabilities.**

**(e) Parties are at liberty to apply.**

**(f) Costs in the cause.**

**Dated signed and delivered at Nairobi via video link  
this**

**23<sup>rd</sup> day of April 2026.**

**H K CHEMITEI**  
**JUDGE**