



REPUBLIC OF KENYA



In re Estate of simeon Kimani Macharia (Deceased) (Succession Cause E1817 of 2021) [2026] KEHC 5648 (KLR) (Family) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5648 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E1817 OF 2021

HK CHEMITEI, J

APRIL 30, 2026

IN THE MATTER THE ESTATE OF SIMEON KIMANI MACHARIA (DECEASED)

BETWEEN

NANCY WAMBUI APPLICANT

AND

GEORGE KURIA MACHARIA RESPONDENT

RULING

1. This ruling relates to the applications dated 24th March, 2025 filed by the Applicant, Nancy Wambui; seeking for Orders That:
 1. Spent.
 2. This honourable court do issue an order restraining the Respondent from intermeddling with the estate property, namely, stall number D34 Quarry Road Market.
 3. This honourable court be pleased to issue an order directed at the Respondent for a refund of Kshs.288, 000/= to the Applicant being collected for the last 48 months.
 4. This honourable court do issue an order that she be allowed to resume possession of the estate property known as stall Number D34 Quarry Road Market and collection of rent.
2. The application is based on the grounds thereof and supported by affidavit sworn by Nancy Wambui on 25th March, 2025.
3. She avers inter alia that she is a beneficiary of the deceased's estate by virtue of being his spouse. The Respondent has unlawfully interfered with the estate by evicting her from the suit property, namely Stall No. D34 Quarry Road Market and has since assumed control thereof, including collecting rent.



Consequently, she seeks injunctive orders to restrain the Respondent from further intermeddling with the said estate property.

4. In addition, she prays for an order compelling the Respondent to refund a sum of Kshs.288,000/=, allegedly collected as rent over the past 48 months. She further seeks to be reinstated into possession of the stall and to resume the collection of rent therefrom.
5. The application is opposed vide replying affidavit sworn by George Kuria Macharia on 7th April, 2025.
6. He avers inter alia that the deceased was his younger brother and that he, together with his siblings, are the lawful survivors with an interest in the estate. He lists the deceased's surviving family members as their mother, Margaret Nyambura Macharia, and several siblings, and maintains that the Applicant was not married to the deceased under any recognized legal system. On that basis, he contends that the Applicant lacks capacity to benefit from or make claims against the estate.
7. He further argues that the Applicant's delay of 48 months in raising allegations of intermeddling undermines her claim and suggests an acknowledgment that she had no entitlement to the estate or its income. He denies collecting the alleged sum of Kshs. 288,000/= and asserts that any income derived from the stall, if at all, forms part of the estate and is not payable to the Applicant.
8. Additionally, the Respondent expresses concern over the alleged petition for grant of letters of administration filed by their mother, stating that he was neither served nor aware of the proceedings until accessing the court portal. He questions her capacity to administer the estate, citing ongoing proceedings seeking her appointment under guardianship.
9. Finally, he contends that there has been collusion between the Applicant and some of his siblings to use their mother as a proxy petitioner with the intention of controlling and benefiting from the deceased's estate, as had earlier been raised by their late father in prior objection proceedings.
10. The Applicant has filed written submissions dated 10th September, 2025 and the Respondent has filed written submissions dated 27th October, 2025.

Analysis And Determination

11. I have read the application before this court, the responses thereto and the rival submissions.
12. The main issue for determination is whether the Applicant has established the requisite locus standi as a spouse or beneficiary of the deceased's estate so as to sustain the present application.
13. In re Estate of Lawrence Nginyo Kariuki (Deceased) [2021] eKLR, the court stated as follows:

“The provisions governing intermeddling in the estate of a deceased person is Section 45 of the *Law of Succession Act*. This Section is worded: “No Intermeddling with property of deceased person”. The section provides that:

45.

- (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

This section needs no emphasis that taking possession of, disposing of, or otherwise intermeddling in any free property of a deceased person in ways that are not authorized by the *Law of Succession Act* or any other written law or by a grant of representation under the *Law of Succession Act* is a criminal offence punishable under Section 45 (2). The 1st Respondent in her submissions has cited *Benson Mutuma Muriungi v C. E. O, Kenya Police SACCO & another* [2016] eKLR where the court defined ‘intermeddling’ as follows:

“There is no specific definition of the term intermeddling provided in the *Law of Succession Act*. The Act simply prohibits taking possession of or disposing of, or otherwise intermeddling with, any free property of a deceased person by any person unless with express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as; “for any purpose” and “or otherwise intermeddle with” in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as; taking possession, or occupation of, or disposing of, transferring, 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* or any other written law. I do not pretend to close the list either or to make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law.”

14. In *In re Estate of Jackson Nicholas Kyengo Mulwa (Deceased)* [2021] KEHC 1545 (KLR) the court stated as follows: “...18. I have considered the pleadings and the submissions filed by the learned counsel. The issue that arises for determination in the instant application is whether the Applicant has laid sufficient evidence to prove that she is a dependent of the deceased. The determination of the rest of the issues will depend on the outcome of the resolution of the question of dependency. 19. Section 29 of the *Law of Succession Act* provides that: For the purpose of this part dependent means- a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death; b. Such of the deceased’s parents, step parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death...”
15. Under Section 29 of the *Law of Succession Act*, a spouse automatically qualifies as a dependent, while other categories must demonstrate maintenance by the deceased immediately prior to death.
16. The Respondent has expressly contested the existence of any lawful marriage between the Applicant and the deceased and the Applicant has not, from the material presented, placed before the court prima facie evidence of a legally recognized marriage whether statutory, customary or presumed. In the



absence of such proof, the Applicant's standing remains tenuous and as rightly observed in the law of succession, the question of dependency is foundational and dispositive of the other reliefs sought.

17. On the allegation of intermeddling, Section 45 of the *Law of Succession Act* prohibits any person from dealing with the free property of a deceased person without a grant of representation. The legal position is that any unauthorized occupation, leasing or collection of rent from estate property constitutes intermeddling.
18. However, the evidentiary burden lies on the Applicant to demonstrate that the Respondent has indeed taken possession of, or derived income from, the suit property. In this case, the Respondent has denied collecting rent and further asserts that the estate primarily comprises employment benefits yet to be released.
19. The Applicant's claim for Kshs. 288,000/= allegedly collected over 48 months is not supported by documentary evidence such as tenancy agreements, rent schedules or receipts. Consequently, the allegation of intermeddling, though serious in law, remains unsubstantiated on the evidentiary threshold required.
20. With regard to the injunctive relief and repossession orders sought, the principles governing such reliefs require the Applicant to demonstrate a prima facie case with a probability of success, irreparable harm and that the balance of convenience tilts in her favour. Given the unresolved and disputed status of the Applicant as a beneficiary, coupled with the lack of proof of occupation or income collection by the Respondent, the Applicant has failed to establish a prima facie case. Further, the claim for refund is in the nature of a special damage claim which must not only be specifically pleaded but strictly proved. In the absence of cogent proof of rent collection and entitlement thereto, the claim for refund cannot be sustained.
21. In light of the foregoing, the Applicant has failed to demonstrate locus standi as a dependent or beneficiary of the deceased's estate and has equally failed to prove the alleged acts of intermeddling or entitlement to the reliefs sought.
22. In the premises the application dated 24th March, 2025 is hereby dismissed for lack of merit.
23. Each party to bear its own costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 30TH DAY OF APRIL 2026.

H K CHEMITEI

JUDGE

