

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. E901 OF 2024
IN THE MATTER OF THE ESTATE OF SIMANI SANGALE
- DECEASED

AND
IN THE MATTER OF AN APPLICATION BY STANLEY
KIHIKO MUTUNGU, ADVOCATE, SEEKING TO BE
RECOGNIZED AND LISTED AS A CREDITOR OF THE
DECEASED'S ESTATE.

RULING

1. The late **Simani Sangale** died testate, and a Petition for Probate with Written Will dated 28th October, 2024 was filed by the Executors.
2. A Grant of Probate with Written Will was issued on 6th October, 2025 and is pending confirmation.
3. What is presently before the Court is an application dated 5th August, 2025 filed by Stanley Kihiko Mutungi, Advocate. The application seeks the following orders: -
 - (i) ***Spent;***
 - (ii) ***Pending the interpartes hearing and determination of this application, the***

honourable court be pleased to issue orders restraining the executor and the executrix of the estate of the deceased, namely, Davide Amiani Sangale and Jean Musembi Sangale, their agents, employees or any persons acting on their behalf from interfering with occupation, possession and quiet enjoyment of the tenancy over the premises situated on L.R. No.1870/24/IV, Westlands occupied by the Applicant and the Applicant's law firm, Ms Stanley Henry Advocates;

(iii) The Applicant, Stanley Kihiko Mutungu, through his law firm, Stanley Henry Advocates, be listed as a creditor of the estate of the deceased in respect of all unpaid legal fees and expenses accrued by the deceased in the sum of Kshs.6,495,627/= and an order do issue directing the executor and executrix to pay the same out of the estate of the deceased prior to confirmation and distribution of the estate.

4. The application is opposed by the executors and the beneficiaries of the estate.
5. The executors filed a replying affidavit dated 15th August, 2025, and Patrick Munyedi Sangale, one of the beneficiaries, filed a replying affidavit dated 24th November, 2025 which indicates that he deponed the same on his behalf and on behalf of three other beneficiaries, Suzanne, Linda and Dinah Sangale.

The Applicant's Case:

6. The Applicant contended that through his law firm, Ms Stanley Henry & Co. Advocates, he maintained an advocate-client relationship with the deceased, having provided legal representation in various matters extending across multiple legal areas.
7. The Applicant stated that, out of the legal representation, he claimed Kshs.6,495,627/= as legal fees, which he maintained were unpaid.
8. In further documentation and submissions to the Court, the Applicant provided nine Bills of Costs as evidence of

claims filed in the Commercial and Civil Divisions of the High Court in Nairobi. The Applicant submitted that based on the outstanding legal fees, he should be recognized as a creditor of the estate and that these fees be paid from the deceased's estate.

9. The applicant further asserts that he has been a tenant in one of the properties belonging to the deceased, specifically on L.R. 1870/20/IV, since 2008. He contends that the executors of the estate have commenced legal proceedings to levy distress for alleged rent arrears, which he argues that the rent claim is unfounded and lacks merit.

The Respondent's Case:

10. The executors contended that the Applicant was masquerading as a creditor while neglecting to fulfill his

rental obligations for the property in question, where he resides as a tenant.

11. Further, the executors asserted that the Applicant's tenancy claim falls outside the jurisdiction of the probate court.

12. The executors denied that the Applicant had represented the deceased or his estate in any capacity and also submitted that the claim for legal fees was unsubstantiated, premature and brought in the wrong forum.

13. They argued that the application is aimed at derailing the administration of the estate.

Analysis & Determination:

14. I have considered the application, affidavits and submissions by the parties. The issues for determination are as follows: -

a) Whether the Applicant should be admitted into the proceedings as a creditor of the estate;

b) Whether the Court should issue the injunctive orders sought.

15. The Applicant claims that the deceased owed him legal fees; however, at the time he filed the application, he had not presented any remuneration agreements nor lodged any suit in respect of the claim for the legal fees.
16. In the absence of an agreement, any disputes regarding legal fees are addressed in accordance with the procedure set forth in Paragraph 13 of the Advocates Remuneration Order, which provides for the filing of a bill of costs for consideration.
17. The applicant subsequently transmitted the nine bills of costs filed at the High Court. The bills, however, do not establish the finality of the determination of the legal fees claim. A certificate of taxation does.
18. The determination of the legitimacy or otherwise of the legal fees claims is not within the jurisdiction of the probate Court. Being adverse claims against the deceased's estate lodged after his death and being contested, it is essential that these claims are resolved in the proper forum before the Probate Court can issue orders regarding those claims and the estate.

19. The threshold is that the Probate Court must be satisfied that the claimed debt against the estate is an established liability. In *Alexander Mbaka v Royford Muriuki Rauni 7 others 2016 KEHC3224 (KLR)* Mabeya J held as follows;

“To my mind what the court was saying in the said case is that, the role of the family court is well set out in the Act, to ascertain the assets, the liabilities, if any, the beneficiaries and determine the mode of distribution an estate period. It is only where one has an established claim against the estate that has already crystalised that he can litigate it before a family court. That claim is to be considered as a liability to the estate. This court, in my view cannot be called upon to ascertain whether or not one has a right to an estate of the deceased where such a right has not yet crystalised. The right must first be shown to have crystalised before the family court can entertain it as a liability in succession proceedings.”

20. In this case, admitting a contested and untaxed claim for costs risks exposing the estate to unverified claims.
21. At this stage, I agree with the respondents that the application to be admitted as a creditor is premature.
22. Regarding the injunctive orders, there is evidence of the tenancy relationship. The Applicant maintained that he has been in occupation of the rental unit since 2008. There is evidence that the Applicant and the deceased were involved in litigation over the tenancy as far back as 2021 **(CMCC 7967 of 2021)**.
23. The Applicant has linked the issue of rent distress to the payment of legal fees from the estate. I find that this was a façade. Tenancy matters are governed by a distinct legal framework and do not fall under the jurisdiction of the probate Court. An administrator acts as a personal representative of the estate and has the authority to collect estate assets. Should any disputes arise, such as the present one over rent, the legal

representative can sue or be sued, and this must be in the appropriate legal forum.

24. Based on the evidence presented and after careful consideration, I conclude that the issues related to tenancy, as well as the determination of the legitimacy of the claimed fees, fall outside the jurisdiction of this Court. The injunctive orders cannot issue.

25. The application dated 5th August, 2025 lacks merit and is hereby dismissed. I make no order as to costs.

26. The administrator is free to move forward with the confirmation of the grant.

27. Orders accordingly.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 29TH day of APRIL ,2026.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Wesonga Advocate for the Executors

No attendance for the Appellant

RULING