

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. E003 OF 2025
IN THE MATTER OF THE ESTATE OF FRANKLIN
MBUBA NDII (DECEASED)

**EQUITY BANK (KENYA)
LIMITED.....APPLICAN
T**

VERSUS

**DOREEN KAWIRA MBUBA and
LISA KAWIRA
MBUBA.....RESPONDENTS/ADMINS**

R U L I N G

1. The estate of Mbuba Franklin Ndii was distributed by this court vide a confirmed Grant dated 21st November 2025.
2. On 26th January 2026, the administrators of the estate Doreen Kawira Mbuba and Lisa Kawira Mbuba filed an application dated 21st January 2026

seeking a substantive order that the court issue a conservatory order to preserve the *status quo* of the bank account 0010101203065 held at Equity Bank, Ngara Branch.

3. The Applicants explained in the supporting affidavit why they required the account to remain open for a limited period pending the payment of expected dividend into that account as they finalize the setting up of the family trust as per the confirmed grant.

4. The 1st Administrator deponed at paragraph 7 of her supporting affidavit that they were in consultation with the Respondent Bank which had explained the Bank Policy and agreed that such policy could only be waived for the limited purpose through an express and unequivocal court order allowing the bank to retain *status quo* of the account.

5. The Administrators' Counsel appeared before this court on 17th March 2026. He was allowed to urge the Application upon demonstrating that the Respondent Bank had been served and that the said Bank was not opposed to the Application.

6. The court issued the conservatory order.

7. Upon receipt of the conservatory order, the Respondent Bank filed (through Thiongo Law Advocates) the present Application dated 9th April 2026 under certificate of urgency seeking the following orders.

- (i) That this Application be certified as urgent and heard ex-parte in the first instance.
- (ii) That there be a temporary stay of execution of the Conservatory Order issued on 17th March 2026 for the preservation of *status quo* of the bank account number 0010101203065 held at the Applicant Bank

pending the hearing of this Application *inter parties*.

(iii) That the Conservatory Order issued on 17th March 2026 be lifted and/or set-aside and the Applicant Bank be discharged unconditionally.

(iv) That costs of the Application be provided for.

8. The Application was based on the grounds that:-

(i) That the Certificate of Confirmation of Grant was issued on 21st November 2025 and the same was authenticated by the court as a genuine copy of the court records.

(ii) That the Administrators of the estate of the deceased through their advocates on record instructed the Applicant Bank to comply with the medical emergency of the beneficiary of the estate.

- (iii) That subsequently, the Bank proceeded to comply with the provisions of the Certificate of Confirmation of Grant with respect to the subject account number 0010101203065 and closed the subject account in the month of January 2026 in line with the Central Bank of Kenya Prudential Guidelines 22/8.
- (iv) That in the circumstances, the Application dated 21st January 2026 and the subsequent conservatory order issued on 17th March 2026 have been overtaken by events since the subject account number 0010101202365 was closed in January 2026 following the transfer of the resultant shares to the beneficiaries with the assistance of the administrators in line with the Certificate of Confirmation of Grant.

(v) That any execution proceedings instituted against the Applicant would be detrimental and prejudicial to its business and operations.

9. At the hearing of the Application on 22nd April 2026 Ms. Kyevea appeared holding brief for Ms Thiong'o for the Applicant Bank while Mr. Mwendani appeared for the Respondent. Both Counsel were in agreement that the Conservatory order issued by the court on 17th March 2026 was incapable of being implemented by the Bank as the same had been overtaken by events since the account in question had been closed by the date of the order.
10. This court consequently lifted the conservatory order. For clarity of the record, this court's conservatory order dated 17th March 2026, be and is hereby set aside and the Respondent Bank is duly discharged from the order.

11. With Respect to costs, Ms. Kyeveva urged that they be granted costs of their Application. She urged that their Application was necessitated by the orders served upon the Bank. That it had been communicated to the estate that the account was going to be closed.
12. Mr. Mwendani on the other hand urged that the Administrators approached the court on the advice of the responsible Bank Manager and that the Respondent Bank after being served the Application neither responded nor appeared before the court at the hearing to clarify the position.
13. The only issue for my determination is whether the Applicant should be awarded costs of its Application date 9th April 2026.
14. Section 27 of the Civil Procedure Act provides:-

“27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or

judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such."

15. The Supreme Court in ***Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others*** [2014] eKLR held that:

"The award of costs would normally be guided by the principle that 'costs follow the event'... However, the vital factor in setting the preference is the judicious exercise of discretion by the court..."

16. In ***Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another*** [2016] eKLR, Mativo J. (as he

then was) outlined factors to consider in awarding costs as follows:-

“the court is entitled to look at inter alia (i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances which led to the institution of the proceedings, (iv) the events which eventually led to their termination, (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution. In other wards the court may not only consider the conduct of the party in the actual litigation, but the

matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.”

17. In this, case and as per the chronology of events already stated, it appears that the Respondent Bank (Applicant) and the Respondents (Administrators) had been in communication respecting the subject account leading to the Application for the Conservatory Orders granted by the court; and which have now been set aside.
18. The Respondent Bank did not respond to the Application. The record shows that it was served. This court is of the view that had the Respondent Bank responded to the Application dated 21st January 2026 and offered the explanation now being offered in its Application, the Conservatory Order would not have issued. It also follows that

the present Application would not have arisen. It is also instructive that the parties compromised the Application without hesitation and mitigated any further costs.

19. In the exercise of my discretion, I find that the Applicant though successful, cannot be granted costs for an application that arose out of the Applicant's own omission.

20. For the above reason, I decline to grant costs. Each party shall bear their costs in the Application. Orders accordingly.

**Ruling delivered, dated and signed at Chuka
this 27th day of April, 2026.**

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**R. LAGAT-KORIR
JUDGE**

**Ruling delivered in the presence of Ms Murage
holding brief for Ms. Kyeva for the Applicant and**

**Mr. Mwendani Franklin for the Respondent.
Muriuki (Court Assistant).**

ORIGINAL