

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 2261 OF 2011

IN THE MATTER OF THE ESTATE OF ANTONY

NAHASHON NGUNJIRI - DECEASED

IRENE WANGUI NGUNJIRI

OBJECTOR/APPLICANT_

VERSUS

CATHERINE NJERI NGUNJIRI 1ST

PETITIONER/RESPONDENT

CAROLINE WAMBUI NGUNJIRI 2ND

PETITIONER/RESPONDENT

HARIT A. SHETH 3RD

PETITIONER/RESPONDENT

AND

JOSEPH KAMAU KIMANI 4TH

RESPONDENT

SAMUEL KIBURU KIMANI 5TH

RESPONDENT

RULING

1. This matter relates to the estate of the deceased, Antony Ngunjiri, who passed away on 21st September, 2011. The pleadings indicate that he died testate, having executed a Will dated 7th October, 2008. In this Will, he appointed Catherine Njeri Ngunjiri, Caroline Wambui Ngunjiri and Harit A. Sheth as Executors and Trustees.
2. The Executors initiated the probate matter, which has not yet been concluded. Several interlocutory applications have been filed and determined, and presently, an application dated 11th September, 2025 is pending determination by this Court.
3. The application is filed by Irene Wangui Ngunjiri (Applicant), the widow of the deceased and seeks the following orders;

(a) Spent;

- (b) THAT the 4th and 5th Respondents be joined as parties in the cause;**
- (c) THAT pending the hearing and determination of this summons, the 4th and 5th Respondents, by themselves or their agents, be restrained by way of injunction from intermeddling with the estate of the above-mentioned deceased and in particular from entering, remaining on, occupying, further construction on and/or in any other way or manner interfering and/or dealing with Land Reference Number 7976/4 on Mirema Drive;**
- (d) THAT pending the hearing and determination of these succession proceedings and subsequent distribution of the estate thereof, the 4th and 5th Respondents, by themselves or their agents, be restrained by way of injunction from intermeddling with the estate of the above-mentioned deceased and in particular from entering, remaining on, occupying, further construction on and/or in any other way of**

manner interfering and/or dealing with Land Reference Number 797611 on Mirema Drive and/or preventing the said Applicant from the peaceful occupation and use on the said parcel of land.

4. The application names the Executors as respondents (1st to 3rd Respondents), including Joseph Kamau Kimani and Samuel Kiburu Kimani (4th and 5th Respondents. The 4th and 5th respondents raised a Preliminary Objection through a notice dated 30th September, 2025 and the same is the subject of this ruling. The Preliminary Objection invites the Court to strike out the application dated 11th September, 2025 on the following grounds;

- i. THAT according to the rule in Trouistik International Union v. Mbeyu (1993) KLR 230, only a legal representative can sue on behalf of an estate and the Applicant is not one;***
- ii. THAT the Applicant is a beneficiary of an estate which is not administered and her right is only according to the rule in The Commissioner of Stamp Duties v. Hugh Duncan Livingston***

(Australia) [1964] UKPC 45, is to have an estate administered properly. She has no proprietary interest in the assets of the deceased including L.R. No. 7976/4, which she can enforce through the said application.

5. The Preliminary Objection is contested by the Applicant, and her position is supported by the 1st to 3rd Respondents.
6. The 4th and 5th Respondents argue in their submissions that only a legal representative has the capacity to initiate proceedings to protect the estate and that, therefore, only the 1st to 3rd Respondents have the locus to invoke the Court's jurisdiction for the protection of the estate's assets.
7. The Applicant argues that, being a spouse of the deceased, she is an automatic beneficiary of the estate with an identifiable stake or interest in the estate, thereby entitling her to approach the court for orders to preserve it.
8. The 1st to 3rd Respondents submitted that the Court's jurisdiction to preserve an estate is not confined to the

personal representative(s) but extends to any person with a legitimate interest in the property of the deceased.

Analysis and determination

9. From the pleadings and submissions presented by the parties, I am convinced that the grounds raised in the Preliminary Objection constitute a point of law. See ***Mukisa Biscuits v West End (1969) EA 696.***

10. The issue for determination is whether the Applicant in the Summons dated 11th September, 2025 has the requisite capacity to present the application seeking preservation of the estate, and whether, accordingly, the application is properly before the Court.

11. The application dated 11th September, 2025 seeks injunctive orders against the 4th and 5th Respondents to refrain from intermeddling with the estate asset known as LR 7976/4 located on Mirema Drive. It also seeks to restrain them from interference with the Applicant's occupation and use of the aforementioned parcel pending the hearing and determination of the probate proceedings.

12. The application terms the purported construction activities by the 4th and 5th Respondents as intermeddling, which she claims threatens to disinherit her and the beneficiaries of the estate. **Section 45** of the **Law of Succession Act** prohibits intermeddling.
13. **Section 3** of the **Law of Succession Act** defines personal representatives as the executor or administrator. Under **Section 82** of the **Act**, a personal representative, subject to any limitations set by the grant issued, has the authority to enforce, through legal action or otherwise, all causes of action that either survive the deceased or arise out of his death for his personal representative.
14. In this matter, the 1st to 3rd Respondents serve as the personal representatives of the deceased, as per the grant of probate issued to them. The record also shows that the three Respondents and the Applicant have previously actively engaged in contested proceedings in the same estate. In the current pending application, they are aligned against the position taken by the 4th and 5th Respondents.

15. It is important to highlight at this point that the application has been filed within the probate proceedings. The Applicant's interest in the estate is unmistakably defined, as she is stated to be the widow of the deceased, and her name is included in the Will as a beneficiary. She states that she occupies the subject property, identified as the matrimonial home.
16. The Applicant, being a beneficiary and filing the application in a probate matter already commenced, where the executors have a grant of probate, distinguishes it from the case of *Trouistik International Union vs Mbeyu (1993) KLR 230*, which was cited by the 4th and 5th Respondents. That case addressed whether a widow of a deceased man could file a lawsuit under the **Law Reform Act** for tort without first obtaining letters of administration.
17. The present application is brought under **Section 47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules**. **Section 47** of the **Law of Succession Act** vests jurisdiction in the High Court to hear any applications, determine disputes

under the **Act**, and issue necessary decrees and orders as may be expedient. **Rule 49** provides that applications be filed by summons when no other provision applies. While **Rule 73** affirms the Court's inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

18. ***In re Estate of Benson Maingi Mulwa (Deceased) [2021] KEHC 6181 (KLR)***, Odunga J, as he then was, stated as follows.;

“41. In my view since intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate. It is therefore not mandatory that such an application be made by the administrators or with consent or authority of the other beneficiaries since a beneficiary is properly entitled to protect his or her interest in the estate.”

19. A similar conclusion was arrived at by Muigai, J. ***In re Estate of the Late Laban Mutua Mulwa (Deceased) [2023] KEHC 18817 (KLR).***

20. I concur with the determinations in the cited authorities. Whether the application for intermeddling has merit is a separate matter; however, any beneficiary or person with a legitimate interest in a deceased person's estate may apply to the probate Court and participate in the estate's probate proceedings. In this case, the Applicant is the deceased's widow, and she is listed as a beneficiary in the Will. She has the legal capacity to file the application dated 11th September, 2025. Accordingly, the application is properly before the Court.

21. The Preliminary Objection fails and is dismissed. Costs shall abide by the outcome of the application dated 11th September, 2025.

22. Orders accordingly.

DATED, DELIVERED and DELIVERED at NAIROBI through the Microsoft Teams Online Platform on this 11TH day of MAY, 2026.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Mwathe, Advocate for Applicant

No attendance for the Respondents

RULING