



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
APPELLATE DIVISION
CIVIL APPEAL NO. E006 OF 2022 CONSOLIDATED WITH
E004 OF 2022

IN THE MATTER OF THE ESTATE OF KASSAM
ABDALLA HUSSEIN

FATUMA DIMA HIRBO,.....
APPLICANT

VERSUS

ABDALLA SHARIFF HUSSEIN.....
.....RESPONDENT

RULING

A. Introduction

1. Before court for determination is the applicants Notice of motion application dated 7th November 2025, brought pursuant to **Article 159 of the Constitution, Order 22 of the civil procedure rules 2010, Section 1A and 1B of**

the Civil Procedure Act, Chapter 21 laws of Kenya and all other enabling provisions of law. The applicant seeks for orders that;

(a) Spent

(b) That this Honourable court be pleased to order KCB Bank Ltd to transfer all monies held in KCB joint account No 1168686652, Ongata Rongai Branch to KCB joint account No. 1339501635 Moyale Branch.

(c) That this Honourable court be pleased to order the respondent to deposit Kshs.199,365/= into KCB joint account No 1339501635, Moyale Branch being proceeds of rent the respondent admitted to be in his possession in case.

(d) That the OCS Ogata Rongai Police station be ordered to assist the Petitioner in obtaining the following items from the respondent;

- i) Title deed to land parcel In Ongata Rongai**
- ii) Original certificate of death of the deceased Kassim Abdalla Hussein**
- iii) Original certificate of Marriage of the Applicant and the deceased, Kassim Adballa Hussein**

iv) Original birth certificate for Najma Hage Kassim.

v) Five-seater sofa set, one coffee table, a bed and two mattresses.

(e) That the tenant, if any, of the Estate property being Plot No NGONG/OLEKASASI TOWNSHIP/438 at Rongai be compelled to pay rent to KCB joint account No 1339501635, Moyale branch.

(f) That costs of this application be provided for.

2. The said application is supported by the grounds stated on the face of the said application and the supporting affidavit the applicant, dated 7th November 2025, and is opposed by the respondent who relied on his replying affidavit dated 18TH December 2025.

B. Pleadings

3. The applicant averred that respondent had been previously appointed as an administrator of the estate herein, through a judgment dated 31.08.2020 delivered by **Hon A.D. Wako Principal Kadhi**, in **Moyale Kadhi's Court Succession cause No 36 of 2019**, but being dissatisfied by the said decision, she had filed this appeal, which was successful and pursuant to the judgment delivered on 6th March 2025, she

and one ***Najma Hage Kassim***, were duly appointed to take over the said role, and no Appeal had been filed to challenge the said judgment and/or stay orders issued.

4. In order to streamline the estate affairs, they had opened a new joint account at KCB Moyale Branch, Account number 1339501635, and were desirous of having the tenant occupying the estate property at Ongata Rongai to deposit rent into the said account, but he was being threatened by the respondent with eviction, should he do so to the detriment of the other estate beneficiaries. Further the respondent had held onto crucial estate documents outlined in prayer (d) of the said application and it was in the interest of justice to have him directed to release the same for good order and smooth running of the estate affairs.
5. This application had been filed in good faith, would promote good order in managing the estate and thus urged the court to allow the same.
6. In response, the Respondent relied on his comprehensive replying affidavit dated 18th December 2025, where he deponed that he was dissatisfied and aggrieved by the judgment/decree issued by this court on 6th March 2025, and had preferred an appeal to the court of Appeal-Nyeri. He had simultaneously filed an application for stay pending appeal, which was awaiting determination. It would therefore be prudent to await the said decision to avoid a situation where conflicting court orders would be issued.

- 7.** Secondly, he urged the court to note that the deceased mother and other siblings had deep personal differences with the Applicant and therefore did not trust her to manage their rightful share of the estate. It is for this reason, that they had insisted that he should remain as an administrator of the estate to maintain good order and transparency in the said estate management. With regard to *Kshs.199,365/=*, he had deposited the said sum in the joint account held at KCB Ongata Rongai and if there were any discrepancy, he was ready and willing to account for the same.
- 8.** Finally on the applicants demand that he releases the documents and items as stated in prayer (d) of the said application, the respondent stated that the applicant had filed a similar application dated 28.04.2021 before the Hon Kadhi, in Moyale seeking similar orders and a ruling was delivered on 20.07.2022 declining the said prayer. Further he clarified that the documents sought for were not in his possession and therefore could not be directed to produce what he did not have. He also admitted that the applicant sofa set was stored in his house, and that the applicant was free to go pick the same at her own convince and cost.
- 9.** The Respondent thus urged the court to find that the application under determination was filled in bad faith, with the sole aim of disinheriting the other beneficiaries, did not disclose any proper cause of action and urged the court to dismiss the same

C. Analysis and Determination

10. I have considered motion dated 7th November 2025, its supporting affidavit, and the response filed. I have also considered the submissions filed, the decisions relied on and find that the issues that arise for determination is whether;

(a) All estate sums held at KCB, Ongata Rongai should be transferred to the joint account held at KCB Moyale,

(b) The Respondent should account for Kshs.199,365/= estate money admitted as being under his custody and be directed to deposit the same into the administrators account opened at KCB, Moyale.

(c) The Respondent should hand over the documents and items demanded for in pray (d) of the said application

(d) The tenant on the estate property in Rongai be directed to deposit rent into the new administrators account held at KCB, Moyale.

(e) Who should bear the costs of this suit.

11. The appeal herein has been determined and the issue subsequently raised in this application can be determined based on **section 47 of the succession Act, Cap 160**, which provides that;

“The high court shall have jurisdiction to entertain any Application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

And, **Rule 73 of the probate and Administration Rules** which provides further cushion to the court to expeditiously deal with its proceedings. The said rule provides that;

“Nothing in these rules shall limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

12. First and foremost the pray (d) cannot be dealt with by this court as it is res judicata, having been previously determined by the Honourable Kadhi vide his ruling dated 20th July 2022 against which no appeal was filed. Secondly on whether the respondent has account for **kshs.199,365/=** which he admitted was under his custody before the trial court, the said respondent deponed that he had already deposited the said sum into the joint account held at KCB, Account No 1168686653, Ongata Rongai Branch. Whether the said averment is true or not is something which can be independently determined and account's taken in line with **section 83 of the of Succession Act, Cap 160 laws of Kenya**

13. Finally on whether the new account opened at KCB Moyale be regarded as the new estate account and not the previous account jointly operated by the parties herein at KCB Ongata Rongai. It is often stated that, “**Power abhors a vacuum**”. The respondent has been removed as an administrator of the deceased estate and running the affairs of the said estate cannot stall pending determination of his appeal filed at the court of Appeal. His excuse that other family members do not trust the applicant also hold not weight and are averments made without proof.
14. No harm will therefore be occasion if the new account is used to run the estate affairs as the law still demands that the said new administrators account for estate proceeds.

E DISPOSITION

15. I do therefore find that the Notice of Motion Application dated 7th November 2025 is partially merited and the same is allowed in terms of prayer (b) and (e).
16. All other prayers therein fail and are dismissed.
17. Each party will bear their own costs given that this is a family matter.
18. It is so ordered.

Dated, signed and delivered virtually at Marsabit this **11th** day of **MAY 2026**.

FRANCIS RAYOLA OLEL
JUDGE

Delivered on the virtual platform, Team this **11th** day of **MAY, 2026**.

In the presence of: -

N/AApplicant

N/ARespondent

Mr. JarsoCourt Assistant