

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CASE NO. E041 OF 2025**  
**IN THE ESTATE OF NZIOKA JOHNSON MATHEKA**  
**(DECEASED)**

**MBULWA NZIOKA ..... PETITIONER/1<sup>ST</sup>**  
**APPLICANT**

**HEZRON NZIOKA ..... 2<sup>ND</sup>**  
**APPLICANT**

**LINET KWAMBOKA ..... 3<sup>RD</sup>**  
**APPLICANT**

**VERSUS**

**RUTH MUENI KYENGO ..... 1<sup>ST</sup>**  
**RESPONDENT/OBJECTOR**

**GEORGINA MUNYIVA**

**MATHEKA..... 2<sup>ND</sup>**  
**RESPONDENT/OBJECTOR**

**BENSON NZIOKA**

**MATHEKA ..... 3<sup>RD</sup>**  
**RESPONDENT/OBJECTOR**

**RULING**

1. Before this court for determination are two applications for determination

2. The first application is dated 12<sup>th</sup> May 2025 filed by the 1<sup>ST</sup> Applicant accompanied by the affidavit sworn by the said applicant. The Applicant seeks the following orders;-

a. Spent

b. That the court be pleased to order the reinstatement of Linet Kwamboka Nyabuto, the 2<sup>nd</sup> Wife of the deceased, back to the matrimonial house at Kasolongo village, Kithangaini location within Machakos County where she was left by her husband, the deceased.

c. That the court be pleased to direct that all the rent from the rental houses of the deceased be deposited in a joint account of Mbulwa Nzioka, Ruth Mueni Kyengo and Linet Kwamboka Nyabuto pending the hearing of the cause and the final distribution of the assets of the estate herein.

d. Spent

e. Spent

f. That the court be pleased to issue an order prohibiting and restricting any disposal, development, damage and or intermeddling of whatever nature of the deceased's estate by Ruth Mueni Kyengo; the respondent, any other deceased's family member and or any other interested party herein pending the hearing of the cause herein and final distribution of the estate.

3. The grounds in support of the application are premised on the assertions that the Applicant, being the biological

mother of the deceased, the late Matheka Nzioka alias Johnson Matheka Nzioka, is fully conversant with the facts surrounding his estate. It is averred that the deceased passed away on 16<sup>th</sup> February 2025, leaving behind two spouses, Ruth Mueni Kyengo, the 1<sup>st</sup> wife with whom he had two children and Linet Kwamboka Nyabuto, the 2<sup>nd</sup> wife, who at the time of the deceased demise was pregnant with the deceased's child.

4. The Applicant contends that the 1<sup>st</sup> Respondent had been separated from the deceased for approximately twenty years prior to his death. During that period the deceased cohabited with the 2<sup>nd</sup> wife at their matrimonial home situated at Kasolongo Village, Kithangaini Location, within Machakos County. It is further asserted that the 1<sup>st</sup> Respondent neither resided in nor contributed to the construction of the said matrimonial home, which was put up after the parties had already separated.
5. The Applicant further alleges that immediately following the death of the deceased, the 1<sup>st</sup> Respondent forcefully evicted the 2<sup>nd</sup> wife from the matrimonial home, installed new employees, and locked the premises, thereby denying her and other family members access thereto. It is averred that the 1<sup>st</sup> Respondent also took possession of all ownership documents relating to the deceased's assets and assumed exclusive control over the estate, including rental properties from which she collects and exclusively utilizes rental

income without accounting to or sharing the same with other beneficiaries.

6. The Applicant further depones that during his lifetime, the deceased had made arrangements for her upkeep by directing the caretaker of the rental premises to remit to her a monthly sum of Kshs. 20,000/= , in addition to a similar monthly amount that the deceased personally provided. Since the 1<sup>st</sup> Respondent assumed control of the rental income, the Applicant avers that she has neither received financial support for her upkeep and medical care, nor have other beneficiaries benefited from the estate.
7. It is also deponed that attempts to convene family meetings to deliberate on the administration and distribution of the estate have been frustrated by the 1<sup>st</sup> Respondent, who has declined to attend or participate. The Applicant further avers that even after intervention by the OCS Kasolongo Police Station, the 1<sup>st</sup> Respondent allegedly refused to engage, thereby frustrating amicable resolution of disputes regarding the estate and access to the matrimonial home.
8. The Applicant outlines the beneficiaries of the estate as herself, the two widows and the deceased's children. She further enumerates the assets forming the estate, including several parcels of land, motor vehicles and bank accounts. She asserts that the 2<sup>nd</sup> wife, being pregnant with the deceased's child, requires immediate reinstatement into the

matrimonial home for her shelter and that of the unborn child.

9. The Applicant therefore expresses apprehension that unless the court intervenes, the 1<sup>st</sup> Respondent, either alone or with other interested parties, may continue to intermeddle with the estate and possibly dispose of its assets to the detriment of the rightful beneficiaries. She therefore seeks orders for the reinstatement of the 2<sup>nd</sup> wife into the matrimonial home, the deposit of rental income into a joint account in the names of the three principal parties pending distribution and the issuance of preservation and restriction orders to safeguard the estate from interference pending the hearing and determination of the until the succession cause. She maintains that the grant of the orders sought will not prejudice any beneficiary, but will instead preserve the estate and promote equitable distribution of the estate.
10. The 1<sup>ST</sup> Respondent opposed the application by way of a replying affidavit sworn on 5<sup>th</sup> June 2025. She states that she is the lawful wife of the deceased, having contracted a marriage under Kamba Customary Law in 1999 which was subsequently solemnized through a church ceremony on 29<sup>th</sup> November 2003 as evidenced by a marriage certificate annexed to her affidavit.
11. She vehemently disputes the status of Linet Kwamboka Nyabuto, asserting that she was never married to the deceased, is unknown to her and cannot be considered a

beneficiary of the estate but instead an intermeddler. She avers that proof of marriage lies in the production of a valid marriage certificate, which the said Linet has not provided and that any claim of marriage cannot be sustained.

12. The 1<sup>st</sup> Respondent further denies having separated from the deceased stating that no evidence of separation or divorce has been tendered. On the contrary, she depones that she and the deceased jointly constructed their matrimonial home at Kasolongo Village, Masii Location, Machakos County in 2014 in accordance with Kamba customs and that she actively participated in the construction from the groundbreaking to completion and occupation.

13. She adds that they continued to publicly present themselves as husband and wife, and jointly attended family functions including their daughter's traditional dowry ceremony held at the matrimonial home in September 2018.

14. The 1<sup>st</sup> Respondent further avers that she played a central role in the burial arrangements of the deceased, having obtained the burial permit and subsequently the death certificate. She disputes the Applicant's allegation of eviction asserting instead that immediately after the funeral, it was the Applicant together with her adult children who attempted to evict her and her children from the matrimonial home.

15. She states that on 2<sup>nd</sup> March 2025, the Applicant's children threatened them and demanded that they vacate the premises, prompting her to report the matter at Kasolongo Police Station and obtain an OB extract. The 1<sup>st</sup> Respondent further depones that several attempts were made to resolve the dispute amicably through five meetings convened by the local Chief on 4<sup>th</sup>, 6<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> March 2025, but the meetings failed due to continued hostility from the Applicant and her children. She adds that owing to threats to her safety, local security authorities advised her to remain vigilant, leading her to engage private security services at significant financial cost.

16. In response to allegations regarding control of the estate, the 1<sup>st</sup> respondent asserts that it is in fact the Petitioner and her children who have unlawfully interfered with the deceased's properties and businesses. She specifically alleges that they took over the deceased's bar business in Umoja II, altered its pay bill number and operational details and redirected proceeds for their own benefit. She further claims that they seized control of rental income from a property in Umoja I, instructing tenants to disregard her and her children. According to the 1<sup>st</sup> Respondent, these actions were calculated to exclude her family from the estate and to deprive them of their lawful entitlements. She further accuses the Petitioner of attempting to disinherit her and her children, including

sending a threatening message through an emissary to her elderly mother demanding that she vacate the matrimonial home.

17. The 1<sup>st</sup> Respondent reiterates that she did not refuse to attend family meetings, pointing to the five meetings convened by the Chief as evidence of her willingness to participate in amicable resolution. She maintains that those meetings collapsed due to the conduct of the Petitioner and her children. She further states that whereas the Petitioner obtained a Chief's letter from Kasolongo with the intention of instituting succession proceedings, her own family obtained a separate letter from the Chief in Buruburu, Nairobi, where the deceased had resided for a substantial period prior to his death.

18. The 1<sup>st</sup> Respondent raises serious allegations of fraud, contending that between 3<sup>rd</sup> and 17<sup>th</sup> April 2025, the deceased's e-Citizen account was unlawfully accessed, his credentials altered and property documents retrieved without authorization. She alleges that these actions were undertaken with the intention of facilitating the filing of succession proceedings and suggest that the Petitioner may have been responsible for complicit in these acts. She further alleges continued acts of intermeddling by the Petitioner's family, including an incident on 12<sup>th</sup> May 2025 when the Petitioner's son allegedly broke into a property in

Masii Town and caused damage, an incident which was subsequently reported to the police.

19. The 1<sup>st</sup> Respondent also contends that she was neither consulted nor did she consent to the filing of the petition for letters of administration and that this fact was deliberately concealed from the court. She denies the allegations that she has intermeddled with the estate, stating that no evidence has been presented to substantiate such claims. Instead, she maintains that the Petitioner who has approached the court with unclean hands, having fraudulently concealed material facts and acted in bad faith with the intention of disinheriting her and her children.

### **The 2<sup>nd</sup> Application**

20. The second application is dated 20<sup>th</sup> August 2025 filed by the Respondents herein seeking the following orders;
- a. Spent
  - b. Spent
  - c. Spent
  - d. Spent
  - e. That an order do issue restraining the Applicants, by themselves, their agents or servants, employees or any other assigns or representatives from intermeddling in any way with the estate of the deceased pending the hearing and conclusion of the main succession cause.

- f. That the Applicants herein be directed to render a true account of the collection from rental income in respect of the Umoja I property within 14 days of this order.
  - g. An order do issue directed at the OCPD, Kasolongo Police Station to supervise the compliance of the orders above
  - h. The court be pleased to make such order and or further orders as may appear to this court to be just and convenient.
21. The application is supported by grounds set out in the supporting affidavit, premised on the 1<sup>st</sup> Respondent's/applicant assertion that she is the lawful wife of the deceased, having first contracted a marriage under Kamba Customary Law in 1998 which marriage was subsequently solemnized through a church ceremony on 29<sup>th</sup> November 2003. She avers that she is therefore entitled to protect and preserve the estate of the deceased. She further depones that the deceased died intestate on 16<sup>th</sup> February 2025 and that to date no Grant of Letters of Administration Intestate has been issued.
22. The 1<sup>st</sup> Respondent/applicant further depones that prior to the burial of the deceased, she obtained the burial permit in her name and, subsequently, procured the death certificate. She avers that immediately after the funeral, the 1<sup>st</sup> Applicant/Petitioner, together with her children, attempted to evict her and her children from their

matrimonial home at Kasolongo village. She states that on 2<sup>nd</sup> March 2025 the said children issued threats demanding that she vacates the premises and surrender the house keys, prompting her to report the matter at Kasolongo Police Station where an OB extract was issued.

23. It is further averred that the local area Chief convened five meetings on 4<sup>th</sup>, 6<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> March 2025 in an attempt to resolve the dispute, but the meetings bore no fruit due to continued hostility from the Applicants herein. As a result of the persistent threats and insecurity, the 1<sup>st</sup> Respondent/applicant states that she was advised by local security authorities to remain vigilant and was compelled to hire private security personnel to guard her home at considerable cost.

24. The Respondent/Applicant further alleges that on 10<sup>th</sup> May 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants/Respondents herein forcefully evicted her and her children from the matrimonial home on the basis that she was no longer recognized as the deceased's wife. She contends that the Applicants/Respondents herein, without any lawful grant of representation, have unlawfully intermeddled with the estate of the deceased in several ways. In particular, she alleges that the 1<sup>st</sup> Applicant/Petitioner and her children took over the deceased's bar business in Umoja II, Nairobi, denied her and her children access, altered its operating name, and redirected proceeds to a different paybill

account under their control. She further states that they assumed control over rental income from a property in Umoja I by instructing tenants not to engage with her or her children.

25. The Applicant further raises serious concerns that between 3<sup>rd</sup> and 17<sup>th</sup> April 2025, the deceased's e-Citizen account was accessed without authorization, his credentials altered and property documents retrieved, suggesting possible involvement by the Respondents and potential use of such documents in the present proceedings. She also alleges continued intermeddling with the estate including an incident where on 12<sup>th</sup> May 2025, when the Petitioner's son, Francis Mutongoi, allegedly broke into a property in Masii Town and caused damage, which was reported to the police. Additionally, she avers that the Respondents have introduced a third party into her matrimonial home, raising apprehension that her personal belongings, and ownership and documents, may be or are likely to be interfered with. She further states that on 18<sup>th</sup> August 2025, the 2<sup>nd</sup> Applicant chased away farm workers from the Kasolongo property, which incident was also reported to the police.

26. The 1<sup>st</sup> Respondent/applicant contends that the Applicants' continued use and control of the estate to her exclusion, in the absence of a grant of representation, constitutes unlawful intermeddling, impunity and an affront to justice.

27. The Petitioner/Applicants opposed the application through a Replying Affidavit sworn on 5<sup>th</sup> September 2025 by the 1<sup>st</sup> Applicant who states that she is the biological mother of the deceased, Matheka Nzioka alias Johnson Matheka Nzioka and is therefore well acquainted with the matters relating to his estate. She avers that the application dated 20<sup>th</sup> August 2025 is baseless, ill motivated, res judicata and further asserts that it is duplicative of her earlier application dated 12<sup>th</sup> May 2025.
28. She denies the allegations that the Respondents herein were evicted from the deceased's home, maintaining that they never resided there. Instead, she asserts that it was Linet Kwamboka Nyabuto, whom she identifies as the deceased's second wife, who lived in the matrimonial home and was evicted by the objectors/applicants immediately after the burial of the deceased. She further depones that, contrary to the allegations made, it is the objectors/respondents herein who forcefully removed her from the deceased's compound and reported her to Masii Police Station on false allegations of trespass.
29. She disputes claims that she failed to attend family meetings, stating that she was the one who requested the area Chief to convene meetings, but the objectors/respondents declined to attend. She adds that their conduct has been openly hostile, including the deployment of private security guards to bar her from

accessing her late son's home, despite her having had unrestricted access during his lifetime and even possessing duplicate keys, which were rendered useless after the locks were changed.

30. The 1<sup>st</sup> Petitioner further explains that visiting her son's home forms part of her grieving and healing process. She avers that the allegations of intermeddling levelled against her are false and instead reflect the conduct of the objectors/respondents who she accuses of unlawfully taking over and continuing to control the estate. She contends that this state of affairs compelled her to file an urgent application for letters of administration intestate. She maintains that it is the objectors/respondents who have exclusively enjoyed the estate to the detriment of other beneficiaries, with the assistance of police officers, and facilitated by their access to rental income.

31. She asserts that allowing the present application would occasion prejudice and injustice to her and other beneficiaries. She reiterates the contents of her earlier supporting affidavit dated 12<sup>th</sup> May 2025 and emphasizes that the present application is duplicative of matters already before the court. She also notes that the matter was referred to court-annexed mediation, but the process was frustrated by the objectors/respondents herein, who imposed unreasonable conditions regarding attendance, refused to proceed despite her compliance and whose

representative allegedly engaged in violent conduct while intoxicated, leading to adjournment of the session and eventual cancellation of a subsequent session. She maintains that she attended all mediation sessions in good faith but the same were frustrated by the objectors.

32. The 1<sup>st</sup> Petitioner further recounts that on 19<sup>th</sup> August 2025 while she and her family visited the deceased's home for prayers, the objectors/respondents caused police officers to arrest them on allegations of trespass, resulting in their detention. She adds that on 20<sup>th</sup> August 2025, the court issued orders allowing both parties access to the home upon notice, but the objectors/respondents have allegedly disobeyed by continuing to deny her access.

33. The 1<sup>st</sup> Petitioner reiterates that the 1<sup>st</sup> objector/respondent herein, Ruth Mueni Kyengo, is the first wife of the deceased with whom he had two children but avers that she had separated from the deceased for approximately twenty years. During that period the deceased married Linet Kwamboka Nyabuto and lived with her at the matrimonial home until his death. She maintains that the 1<sup>st</sup> objector/applicant never lived in the said home and alleges that following the deceased's death, she evicted the second wife, took over the premises, installed new employees, and restricted access to the property.

34. She further alleges that the 1<sup>st</sup> objector/respondent took custody of all ownership documents relating to the

deceased's assets, thereby limiting her ability to fully disclose the estate when filing the petition. She states that Linet Kwamboka Nyabuto has since given birth to a son of the deceased and requires access to the matrimonial home for herself and the child. She reiterates that the objectors/respondents do not reside at the matrimonial home but live in Nairobi and only visit occasionally.

35. The 1<sup>st</sup> Petitioner accuses the 1<sup>st</sup> objector/respondent of taking over the deceased rental properties, employing a new caretaker and collecting and exclusively utilizing rental income without accounting to other beneficiaries. She deponed that during the deceased's lifetime, arrangements had been made for her to receive Kshs. 20,000/= monthly from rental income for her upkeep, in addition to personal financial support from the deceased.

36. She further states that attempts to convene family meetings to resolve the dispute were unsuccessful due to the 1<sup>st</sup> objector/respondent's refusal to attend, even after intervention by the police. She outlines the beneficiaries of the estate, as herself, the two widows, the children of the deceased and the newborn son and enumerates the assets of the estate comprising various parcels of land, motor vehicles, bank accounts, and other properties.

37. The 1<sup>st</sup> Petitioner clarifies that the matrimonial home in question stands on land parcel number MASII/KITHANGAINI/144, which belongs to her late

husband, Nzioka Nduva and therefore does not form part of the deceased's estate. She concludes by asserting that the present application is a delaying tactic intended to obstruct the hearing of her earlier application while the objectors/respondents continue to benefit from the estate. She urges the court not to entertain the application, particularly in relation to property that does not form part of the estate.

38. The 1<sup>st</sup> Respondent further supported her application by filing a Further Affidavit sworn on 10<sup>th</sup> September 2025 in which she reiterates and affirms the contents of her earlier Supporting Affidavit sworn on 20<sup>th</sup> August 2025. She depones that following a complaint she lodged at Kasolongo Police Station on 18<sup>th</sup> August 2025, the 2<sup>nd</sup> Applicant, Hezron Nzioka, was charged before the Magistrate's Court at Wamunyu Law Courts in Machakos County in Criminal Case No. MCCR/E195/2025.

39. She states that on 20<sup>th</sup> August 2025, the said court issued orders directing, inter alia, that the accused report to the DCIO Mwala Sub-County every Friday of the month and that any party seeking access to the deceased's house or property must first report to the DCI Masii and the Area Chief in order to prevent a breach of the peace. She avers that despite these orders, the 2<sup>nd</sup> Applicant has continued to harass, threaten and intimidate her and her children,

including demanding that they vacate the matrimonial home, in blatant disregard of the court order.

40. She further depones that she lodged an additional complaint at Masii Police Station and that upon review of the police file, the Office of the Director of Public Prosecutions, Machakos County, confirmed the existence of the threats and recommended that the 2<sup>nd</sup> Applicant herein and his brother be charged with the offence of threatening to kill contrary to section 223(1) of the Penal Code. She states that on 8<sup>th</sup> September 2025, the said individuals were formally charged, as evidenced by the charge sheet annexed to her affidavit.
41. The 1<sup>st</sup> Respondent further depones that on the same date, the Chief Magistrate's Court vacated the earlier interim orders requiring parties to seek clearance from the DCI Masii and the Area Chief before accessing the deceased's home and property, pending the hearing and determination of the present suit.
42. In light of the foregoing, the 1<sup>st</sup> Respondent expresses apprehension that unless the court urgently intervenes, the estate of the deceased is at imminent risk of waste, alienation, dissipation and continued intermeddling to the detriment of the rightful beneficiaries. She therefore prays for injunctive relief restraining the Respondents, their agents or any persons acting on their behalf from entering, occupying, disposing of, alienating, or otherwise interfering

with the matrimonial home and the deceased's property pending the hearing and determination of the suit.

43. The Respondents also filed an Objection to making a Grant dated 5<sup>th</sup> June 2025. In the affidavit in support of the objection sworn by the 1<sup>st</sup> Respondent on behalf of the 2<sup>nd</sup> and 3<sup>RD</sup> Respondents, she disputes the status of Linet Kwamboka, asserting that she was never married to the deceased, is unknown to her and cannot be considered a beneficiary of the estate but is instead an intermeddler. She avers, on advice of counsel, that a valid marriage can only be conclusively proved by a marriage certificate, which Linet Kwamboka has not produced.

44. She further deponed that she actively participated in all funeral arrangements and burial rites as the deceased's wife, and was recognized by the extended family, as reflected in the funeral programme in which she was listed as the only wife and accorded the opportunity to address mourners. She adds that she obtained the burial permit in her name and subsequently procured the death certificate of the deceased.

45. She further depones that shortly after the burial on 28<sup>th</sup> February 2025, the Petitioner sought to obtain a Chief's letter with the intention of filing succession proceedings without involving her, prompting her family to obtain a separate letter from the Chief in Buruburu, Nairobi, where the deceased had resided for a substantial period.

46. The 1<sup>st</sup> Objector contends that she was neither involved in nor consent to the filing of the petition for letters of administration, and that this fact was deliberately concealed from the Court. She asserts that the Petitioner approached the Court with unclean hands having acted in bad faith and concealed material facts. She therefore urges the Court to uphold the objection.

47. On 17<sup>th</sup> September 2025, this court issued the following directions that;

*“1. To preserve the estate of the deceased all proceeds of the deceased being rental income or any income thereof be deposited into a joint account held by Ruth Mueni Kyengo, Mbulwa Nzioka and Catherine Ndanu pending the determination of the applications before court.*

*2. Parties were directed to file submissions in respect of the applications before court.”*

48. The petitioner filed two sets of submissions all dated 4<sup>th</sup> November 2025 addressing the objection to making of a grant and the pending applications. The Respondents filed their submissions dated 7<sup>th</sup> November 2025 in respect of both the pending applications and the objection to the petition for the grant of letters of administration intestate.

### **Petitioner’s/Applicant’s submissions**

49. The Petitioner/Applicant submits that she filed the Summons dated 12<sup>th</sup> May 2025 on the basis that the

Respondent had taken custody of all ownership documents relating to the deceased's assets and assumed exclusive control over the estate, including rental properties, from which she collects and utilizes rental income without accounting to or sharing with other beneficiaries. She avers that during his lifetime, the deceased had made provision for her upkeep through monthly remittances from rental income, which payments ceased following the Respondent's takeover. She further states that attempts to convene family meetings to amicably resolve estate related issues were unsuccessful due to the Respondent's refusal to attend, despite intervention even by the police.

50. The Petitioner outlines the beneficiaries of the estate and enumerates the assets comprising the estate, including various parcels of land, motor vehicles, and bank accounts. She expresses apprehension that unless the court intervenes, the Respondent and other parties may continue to intermeddle with and possibly dispose of the estate to the detriment of the beneficiaries. She maintains that the orders sought will not prejudice any party and that the application is in the interests of justice. The Petitioner/Applicant emphasizes that the primary purpose of the application is the preservation of the estate pending its fair distribution among all beneficiaries. She notes that certain prayers have already been granted, including certification of urgency and the opening of a joint account

for rental income, while others have been overtaken by events. She concedes that the prayer seeking reinstatement into the matrimonial home may not be sustainable within these proceedings in light of the contention that the property stands on land not forming part of the deceased's estate.

51. The Petitioner therefore submits that the remaining prayers for consideration are those seeking preservation of the estate and costs, and contends that there is no valid opposition to these prayers. She urges the Court to exercise its discretion in her favour and allow the application, arguing that the orders sought are necessary to safeguard the estate, prevent intermeddling, and ensure justice and fairness to all beneficiaries pending the determination of the succession cause, with costs to be borne by the Respondent.

52. The Petitioner further submits that the Notice of Motion dated 20<sup>th</sup> August 2025 and the Objection to the making of the grant dated 5<sup>th</sup> June 2025 are both devoid of merit and are strongly opposed as set out in her Replying Affidavits sworn on 5<sup>th</sup> September 2025 and 4<sup>th</sup> November 2025 respectively which she fully relies upon.

53. With regard to the Notice of Motion dated 20<sup>th</sup> August 2025, the Petitioner contends that the said application is baseless, frivolous, ill-motivated, made in bad faith, and amounts to an abuse of the court process. She specifically

argues that the property described as the matrimonial home at Kasolongo village, Masii Location, Machakos County, is situated on land parcel number Masii/Kithangaini/144, which belongs to the estate of the late Nzioka Nduva and not to the estate of the deceased herein. Consequently, she submits that the said property does not form part of the estate subject to these proceedings and therefore cannot be dealt with in this succession cause.

54. On that basis, the Petitioners asserts that this Honourable Court lacks jurisdiction to grant the orders sought in respect of that property in the present proceedings. She further submits that the claim that she is collecting rental income from the estate is unsubstantiated as no documentary evidence has been tendered to support such allegations and that the prayer seeking rendition of accounts must fail. For the same reasons, she argues that the prayer seeking police supervision of compliance is equally untenable. She maintains that the entire application dated 20<sup>th</sup> August 2025 is a delaying tactic intended to frustrate the proceedings, amounting to an abuse of the court process and a waste of judicial time.

55. Turning to the Objection to the making of the grant dated 5<sup>th</sup> June 2025, the Petitioners submits that the same has been fully addressed and rebutted in her Replying Affidavit sworn on 4<sup>th</sup> November 2025. She maintains that she is a

rightful petitioner in the estate and is properly before the court to ensure that justice is achieved for all beneficiaries.

56. In conclusion, the Petitioner urges the Court, in the interests of justice, to dismiss both the Notice of Motion dated 20<sup>th</sup> August 2025 and the Objection to the making of the grant dated 5<sup>th</sup> June 2025 with costs.

### **Respondent's/Objector's submissions**

57. The Objectors submit that their Objection to the Petition for grant of letters of administration and their Notice of Motion dated 20<sup>th</sup> August 2025 are meritorious and ought to be allowed, while the Petition and the Petitioner's application dated 12<sup>th</sup> May 2025 should be dismissed. They state that the Petition was filed on 13<sup>th</sup> May 2025 without their knowledge or involvement, thereby prompting them to file an Objection on 5<sup>th</sup> June 2025 on grounds that the proceedings were defective tainted by fraudulent concealment of material facts and in violation of their preferential right to apply for the grant under the Law of Succession Act.

58. The Objectors further explain that they filed a Replying Affidavit opposing the Petitioner's application and subsequently sought injunctive relief to restrain eviction, intermeddling, and dealings with the deceased's estate, including rental properties situate in Kasolongo and Umoja.

They sought police assistance to ensure enforcement of preservation orders.

59. The Objectors identify four key issues for determination. First, they contend that the 1<sup>st</sup> Objector, Ruth Mueni Kyengo is the lawful widow of the deceased and therefore entitled to priority in applying for the grant of letters of administration. In support of this position, they rely on a marriage certificate evidencing a church marriage solemnized in 2003, as well as the funeral programme, burial permit, and death certificate, all of which recognize her as the sole wife.

60. They further submit that Linet Kwamboka has failed to furnish any proof of marriage to the deceased and therefore does not qualify as a spouse or beneficiary within the meaning of Section 29 of the Law of Succession Act. In this regard, they place reliance on the case of **Wabule & 3 others versus Elegwa (Civil Appeal 20 of 2022)** to urge that a claim of marriage must be supported by cogent evidence. Consequently, they argue that the 1<sup>st</sup> Objector, ranks first in priority under Section 66 of the Act and is the person lawfully entitled to administer the estate.

61. Secondly, the Objectors submit that the Petition is fatally defective for failure to involve or obtain consent of persons with prior or equal right to administration, namely the widow and her children. They contend that the Petitioner failed to comply with Section 51(2)(g) of the Act

and Rule 7(7) of the Probate and Administration Rules, which mandate full disclosure of all beneficiaries and either their consent or notification. In support of this argument they rely on the case of **Re Estate of Wahome Mwenje Ngonor (Deceased) [2016] KEHC 2576 (KLR)**, to submit that the Petition was filed clandestinely and without disclosure, rendering it liable to revocation.

62. Thirdly, the Objectors argue that the Respondents have unlawfully intermeddled with the estate contrary to Section 45 of the Law of Succession Act. They submit that in the absence of a confirmed grant, no party is authorized to deal with the estate. Notwithstanding this, they allege that the Respondents have taken over estate businesses, collected rental income, and attempted to evict the lawful family, thereby interfering with estate property. They contend that such conducts amount to a criminal offence and are an affront to the rule of law.

63. Lastly, the Objectors submit that they have satisfied the legal threshold for grant of temporary injunctive relief as set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. They argue that they have established a prima facie case by demonstrating their status as lawful dependants and by evidencing unlawful conduct on the part of the Respondents. They further contend that they stand to suffer irreparable harm through eviction from the matrimonial home and continued dissipation of estate

assets, which harm cannot be adequately compensated by damages.

64. On the balance of convenience, the objectors submit that it tilts heavily in favour of preserving the estate and protecting the widow and beneficiaries pending determination of the succession cause.

65. In conclusion, the Objectors maintain that they are the rightful persons entitled to administer the estate, that the Petition is fundamentally defective and grounded on concealment of material facts, and that the Petitioners' actions amount to unlawful intermeddling. They therefore urge the Court to allow both the Objection and the application for injunctive relief with costs, in order to safeguard the estate and uphold the law.

### **Analysis and Determination**

66. The court is seized of three matters as follows: the Petitioners application dated 12<sup>th</sup> May 2025; the Respondent application dated 20<sup>th</sup> August 2025; and the Objection to the petition for grant of letters of administration intestate dated 5<sup>th</sup> June 2025.

67. Having carefully considered the pleadings, affidavits on record, and the rival submissions by the parties, the issues arising for determination may be condensed as follows:

- a. Whether this court should grant preservatory orders pending the hearing and determination of the succession cause.**
- b. Whether the conduct of the parties amounts to intermeddling with the estate contrary to the Law of Succession Act.**
- c. Whether the objection to the making of the grant raises sufficient grounds to warrant intervention at this interlocutory stage.**

68. At the outset, it is imperative to note that the matters presently before the Court arise at an interlocutory stage. The Court must therefore exercise restraint and avoid making final or conclusive findings on contested issues of fact and law that properly fall for determination during the substantive hearing of the succession cause.

69. In particular, issues relating to and touching on the identity of the lawful widow of the deceased, the status of alleged beneficiaries ownership of contested properties and the ultimate entitlement to the grant of letters of administration are matters that require full ventilation through evidence and where appropriate, oral testimony. At this stage, the court's role is limited to determining whether sufficient grounds have been laid to warrant the grant of interim reliefs aimed at preserving the estate and safeguarding the interests of the parties pending final determination.

70. Turning to the question of preservation of the estate, **Section 45 of the Law of Succession Act** expressly prohibits any person from taking possession of, disposing of, or otherwise intermeddling with the free property of a deceased person except as authorized by law. The provision is couched in mandatory terms and is intended to protect the estate from dissipation before a lawful administrator is appointed.

71. From the material placed before this court, it is evident that both parties have levelled serious accusations against each other regarding control and management of the estate. The Petitioner alleges that the 1<sup>st</sup> Respondent has taken possession of estate assets, including rental properties and is collecting and utilizing income therefrom to the exclusion of other beneficiaries. Conversely, the 1<sup>st</sup> Respondent contends that it is the Petitioners who have unlawfully taken over the deceased's businesses and rental properties and are benefiting therefrom without authority.

72. Without making any definitive findings on these competing claims, I am satisfied that there exists a real and ongoing risk of intermeddling with the estate. This risk is heightened by the fact that there is no confirmed grant of representation meaning, none of the parties currently has the legal authority to administer or deal with the estate. In

such circumstances, this court must intervene to preserve the estate and prevent further conflict.

73. With regard to the prayer for injunctive relief, the applicable principles are well settled in **Giella v Cassman Brown & Co. Ltd** (1973) EA 358.. The applicant must demonstrate a prima facie case, show that they stand to suffer irreparable harm that cannot be adequately compensated by damages, and, where in doubt exists, show that the balance of convenience tilts in their favour.

74. On a prima facie basis, both parties have demonstrated arguable claims to the estate. The 1<sup>st</sup> Respondent has produced a marriage certificate asserting spousal status while the Petitioner asserts her position as the deceased's mother and raises the existence of another widow and child. These are serious triable issues that warrant preservation of the subject matter pending determination.

75. On irreparable harm, I am persuaded that continued uncontrolled dealing with the estate assets particularly rental properties generating income poses a real risk of dissipation that may not be adequately remedied by damages. Equally, exclusion from the use or benefit of estate property pending determination may occasion hardship that monetary compensation alone may not cure.

76. The balance of convenience, tilts in favour of maintaining the status quo and ensuring that the estate is preserved found entitled.

77. With respect to the alleged matrimonial home, the court notes the contention that the property Masii/Kithangaini/144 belongs to a different estate. Without making a definitive finding on ownership, the court must exercise cautious and refrain from issuing orders that may affect property ultimately found not to form part of the deceased's estate. That issue can only be conclusively resolved at the substantive hearing.

78. Turning to the objection to the making of the grant, the Objectors have raised serious concerns regarding non-disclosure and lack of consent as required under Section 51 of the Law of Succession Act and Rule 7 of the Probate and Administration Rules. Such allegations, if proved, may have far reaching implications on the validity of the petition. However, at this interlocutory stage, the court is not in a position to conclusively determine the merits of the objection without affording all parties an opportunity to adduce evidence. The appropriate course is therefore to preserve the estate and allow the objection to be heard and determined substantively.

79. In light of the foregoing, the Court makes the following orders;:

- a. Pending the hearing and determination of the succession cause, all parties herein, whether acting by themselves, their agents, servants, family members or any person acting under their authority, are hereby restrained from intermeddling with the estate of the deceased. This includes selling, transferring, alienating disposing of or otherwise dealing with any estate property, as well as collecting, or utilizing estate income for personal benefit.
- b. All rental income and/or any other income derived from the estate shall continue to be deposited into the joint account in the names of Ruth Mueni Kyengo, Mbulwa Nzioka and Catherine Ndanu, as earlier directed by this court, pending further orders of the court.
- c. For purposes of transparency and accountability, any party who has received rental income or other proceeds of the estate shall, within thirty (30) days, file and serve a comprehensive statement of account detailing all such income received and the manner of its utilization from the date of the deceased's death to date.

d. The Objection to the making of the grant dated 5<sup>th</sup> June 2025 shall be canvassed and determined at the substantive hearing of the succession cause.

e. Costs of the applications shall abide the outcome of the main succession cause.

Orders accordingly

Dated, signed and delivered at Machakos this 7<sup>th</sup> day of May, 2026

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Applicant

.....Objector

Selina Court Assistant