



Njeru v Administrators of the Estate of the Late Duncan Njeru Mutema (Civil Case 1909 of 1999) [2026] KEHC 6063 (KLR) (Family) (7 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

CIVIL CASE 1909 OF 1999

HK CHEMITEI, J

MAY 7, 2026

**IN THE MATTER OF THE ESTATE OF THE
LATE DUNCAN NJERU MUTEMU - DECEASED**

BETWEEN

PERIS WANJIRU NJERU APPLICANT

AND

**THE ADMINISTRATORS OF THE ESTATE OF THE LATE DUNCAN NJERU
MUTEMA RESPONDENT**

RULING

1. This ruling relates to the application dated 17th July, 2024 filed by the Applicant, Peris Wanjiru Njeru; seeking for Orders That:
 1. Spent.
 2. The honourable court be pleased to order the release of the funds deposited in th joint escrow account namely Kenya Commercial Bank Account No. 1135454329 Kencom House, Nairobi to the Applicant for purposes of constructing the Applicant’s house as ordered by this honourable court on 31st October, 2000.
 3. The court do grant any other orders as it may deem necessary.
 4. Costs of this application be provided for.
2. The application is based on the grounds thereof and supported by affidavit sworn by Peris Wanjiru Njeru on 12th March, 2024.



3. She avers inter alia that she is the widow and one of the administrators of the estate of the late Duncan Njeru Mutema who passed away on 16th June, 2015. In Civil Case No. 1909 of 1999, the court had directed her late husband to deposit a sum equivalent to 25% of Kshs. 7.5 million into a joint escrow account held in the names of her advocates and the advocates acting for the deceased. According to her, the funds were specifically intended for the construction of her residence on the Ngariama property, an obligation which the deceased failed to fulfill during his lifetime.
4. She further states that her advocates subsequently opened the joint escrow account and deposited the said funds, which she maintains were solely earmarked for the construction of her house. She contends that the monies in the Kenya Commercial Bank escrow account do not form part of the deceased's estate available for administration or distribution because the funds had already been set aside pursuant to a court order issued by Hon. Justice Rawal on 31st October, 2000.
5. She additionally deposes that the judgment giving rise to the escrow arrangement was never appealed against or otherwise challenged. She explains that despite the court orders directing the deceased to build her house, the same was never done, and she has continued living with her daughter. On that basis, she urges the court to find merit in the present application and allow it.
6. The application is not opposed and no written submissions have been filed.

Analysis And Determination

7. The application before this court seeks the release of funds held in a joint escrow account on the basis that the monies were specifically deposited pursuant to a subsisting court order issued on 31st October, 2000 for purposes of constructing the Applicant's house on the Ngariama property.
8. Although the application is unopposed, the court is nonetheless obligated to interrogate whether the orders sought are legally and factually merited; as was established in *Mohansons Food Distributors Ltd & another v Kenya Commercial Bank Limited & another* [2021] eKLR where the court stated as follows: “[8] Although the application is unopposed, it is the duty of the Court to nevertheless subject it to a merit evaluation in accord with the applicable laws and principles. Indeed, in *Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR the Supreme Court of Kenya held that: “...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter [Emphasis mine]. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”
9. The material placed before the court demonstrates that the judgment of Hon. Justice Rawal expressly declared the Applicant's beneficial interest in the matrimonial properties and further directed the deceased, Duncan Njeru Mutema, to apportion half of the Ngariama property to the Applicant. The judgment additionally established a trust relationship in respect of the identified properties and recognized the Applicant's entitlement arising from the matrimonial relationship and her contribution thereto.
10. The judgment delivered by Hon. Justice Rawal on 31st October, 2000 pronounced itself as follows: “... The only issue which needs determination is whether the marriage between the parties is subsisting or is irretrievably broken down. All the witnesses have unequivocally stated that the parties have separated



since long and the sons were seeking for provisions for settlement and maintenance of the mother. It is also unquestionable that since her departure from the matrimonial home, the defendant has not maintained her who also unreasonably told the court that if she was living separately, he is not bound to maintain her since the departure, the plaintiff has found her own way to fend for herself. She is getting old and has come before this court to claim that she has contributed to the properties and should get declaration to affirm that. The circumstances of the case lead to an irresistible conclusion that the marriage is no more since it has broken over time although the marriage is subsisting on paper. The defendant as thereon its sanctity out in the air by remarrying and staying with the new wife (sic) in the matrimonial home. Thus in my humble view the plaintiff has properly come before this court to claim her right as a married woman. Considering all the facts before me and submissions made, I declare that the parties own the land title No. Ngariama/Nyangoin/17 jointly and in equal shares that the defendant Duncan Njeru Mutema holds the same as trustee for the benefit of himself and the Applicant. I further declare that the property bearing L. R. No. Nbi/37/546 is owned jointly by the plaintiff and the defendant in the ratio of 75: 25 and Duncan Njeru Mutema holds the same as trustee thereof for the benefit of himself and the plaintiff. I further direct that the defendant shall apportion half of the Ngariama property to the plaintiff and shall build a house for her on that portion and pay $\frac{1}{4}$ of the rent income per month received from Nairobi property. The costs of these proceedings shall be borne by the defendant.”

11. Importantly, there is no evidence placed before the court showing that the said judgment was appealed against, reviewed, set aside or otherwise varied. Consequently, the decree remains valid, binding, and enforceable against the estate of the deceased.
12. The Applicant has stated that the escrow funds were deposited specifically to give effect to the court’s decree regarding construction of her residence. In those circumstances, the monies cannot properly be regarded as free assets available for distribution as part of the deceased’s estate. Rather, the funds constitute earmarked monies held subject to a pre-existing court-sanctioned obligation and constructive trust in favour of the Applicant.
13. The estate merely holds the funds subject to that obligation. To treat the monies as part of the distributable estate would defeat the express terms of the judgment and unjustly prejudice the Applicant’s accrued proprietary rights. Further, the fact that the deceased failed to implement the decree during his lifetime does not extinguish the Applicant’s entitlement, as obligations arising from a judgment survive against the estate of a deceased judgment debtor unless lawfully discharged.
14. Accordingly, the Applicant has established sufficient basis for the orders sought and the application dated 17th July, 2024 is allowed in terms of prayer 2 only.
15. Each party to bear its own costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 7TH DAY OF MAY 2026.

H K CHEMITEI

JUDGE

