



In re Estate of Samuel Karime Kimani (Deceased) (Probate & Administration E1173 of 2023) [2025] KEHC 681 (KLR) (Family) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E1173 OF 2023
H NAMISI, J
JANUARY 31, 2025**

BETWEEN

LOICE WANGUI KARIME 1ST APPLICANT

JOSEPHINE MUTHONI KARIME 2ND APPLICANT

AND

GIDEON KIMANI KARIME RESPONDENT

RULING

1. On 4th December 2023, the Respondent herein and Prisila Nyambura Karime (now Deceased) were granted Letters of Administration Intestate of the estate of the Deceased. They were the Deceased's widow and son, respectively. In their Petition, the Respondents named six Beneficiaries of the estate, including the Applicants herein, who are daughters of the Deceased. Priscila Nyambura Karime passed away in March 2024, leaving the Respondent as the sole Administrator.
2. The Applicants herein filed Summons for Revocation dated 20 June 2024. The same is yet to be determined. Parties were sent to mediation, with a view to finding an amicable solution. Regrettably, the mediation did not yield any results.

Present Application

3. By Summons dated 25 September 2024, the Applicants seek the following orders:
 - i. Spent
 - ii. Pending the hearing and determination of the succession proceedings, this Honourable Court do order that a Bank Account in the name of the Estate of Samuel Karime Kimani be opened



forthwith in a reputable bank, into which all income generated from the estate's assets shall be deposited.

- iii. That preservative orders be issued restraining and/or stopping the Administrator, Gideon Kimani Karime, whether by himself or through his agents, from intermeddling with the estate or utilizing its assets to the detriment of lawful beneficiaries.
 - iv. That all tenants occupying the following properties and any premises under the deceased's estate be ordered to pay or deposit their rent into the estate's bank account namely:
 - a. Title Number Nairobi/Block 136/19604
 - b. Title Number Nairobi/Block 136/19605
 - c. Title Number Nairobi/Block 136/590
 - d. Title Number Nairobi/Block 136/591
 - e. LR . NO. 36/11/1032 situated at Eastleigh, Section 2, 8th Street
 - f. Mathaithi Building, A2 Kiserian Town
 - g. Kariobangi Stall – Open Air Market Stall no. 176
 - h. Title Number Limuru/Kamirithu/T.286
 - v. That Gideon Kimani Karime, being an administrator of the estate, render a just and true account of his handling of the estate's assets, including any funds received and spent, for the period running from 1st May 2023 to date, within Fourteen (14) days of this Court's order.
 - vi. That the Respondent be ordered to produce and avail in Court bank statements for all the deceased's bank accounts from the date of appointment to date and should there be any finding of misappropriation of the estate's accounts, that the Respondent be ordered to reimburse such amounts to the estate.
 - vii. That the Summons for Revocation of Grant filed herein on the 23rd day of June 2024, be admitted for hearing as a priority to prevent dissipation of the estate.
 - viii. That Mary Waithera Karime, a beneficiary currently occupying the family home in Karen, Lower Plains, House Number 092, allow full access to the Applicants of the family home, farmlands, and other properties of the deceased at all times.
 - ix. That this Honourable Court issue an order for reasonable provision for Josephine Muthoni Karime, a person living with a disability, from the estate of the deceased.
 - x. That the Court direct the administrators to make immediate and adequate provision for the maintenance, medical care, and support of Josephine Muthoni Karime and her children, all of whom are disabled, especially in light of Josephine Muthoni Karime's current financial distress.
 - xi. That the costs of this application be provided for in the Cause.
4. The Application is supported by the Affidavit sworn by Applicants and premised on the grounds on the face of it. The Applicants grievance is that since the demise of the Deceased herein, the Administrator and other Beneficiaries, namely Mary Waithera Karime and Henry Miringu Karime, have had exclusive use and control of the Deceased's assets, whilst excluding the Applicants, yet they are equally lawful beneficiaries. The Applicants accuse the Administrator and the named Beneficiaries of intermeddling with the free assets of the Deceased by applying the proceeds of the rental income to their



own use. The Applicants have been denied full access to their parents' home in Karen Lower Plains. The Applicants annexed copies of bank statements relating to an account named Gideon Kimani Karime – Rent Collection held at Co-operative Bank of Kenya Ltd.

5. The Applicants averred that the Administrator/Respondent has failed to notify the Court of the demise of the second Administrator and even refused to share a copy of her Certificate of Death.
6. Further, the Applicants aver that the 2nd Applicant is a person living with a disability and was completely dependent on their parents for financial support during their lifetime. The 2nd Applicant also has two children who are living with disabilities thus in need of funds to meet their medical bills. She averred that for 13 years preceding the death of her parents, she had been providing accounting services to them in exchange for their financial support. She would receive Kshs 35,000/= per month to cater her family's needs.

The Respondent's Case

7. The Respondent filed a Replying Affidavit dated 11 October 2024. He averred that during the mediation, he provided true and accurate accounts of the monies collected. Further, the Respondent averred that the account opened at the Co-operative Bank of Kenya was as a result of resolutions made at a family meeting on 27 April 2024. The Respondent denied that he is intermeddling with the estate or that he is benefitting exclusively from the same.
8. The Respondent did not touch on the issue of the upkeep of the 2nd Applicant.
9. The Applicants did not file a Further Affidavit to controvert or respond to the issues raised by the Respondent in his Replying Affidavit.
10. Parties did not file any submissions herein and relied on their respective Affidavits.

Analysis and Determination

11. I have carefully read the Application and respective Affidavits. To my understanding, the following are the issues that require consideration and determination:
 - i. Whether there is intermeddling in the Estate of the Deceased;
 - ii. Whether the Respondent should be ordered to account for the funds and or proceeds collected or received from the Estate of the Deceased;
 - iii. Whether the 2nd Respondent is entitled to upkeep from the estate pending confirmation of the Grant of Letters of Administration.
12. The Application herein is made under Sections 26, 27, 45, 47 and 55 (1) of the *Law of Succession Act*. Sections 26 and 27 relate to provision for dependants not adequately provided for by Will or on intestacy. Section 45 protects the property of a deceased from intermeddling, while section 55(1) provides that there will be no distribution of capital assets before confirmation of Grant. The question that arises, therefore, is whether the Respondent/Administrator is guilty of intermeddling by distributing capital assets before confirmation of Grant.
13. Section 83 of the Act enumerates the duties of the personal representative as follows:

Personal representatives shall have the following duties—

 - a. to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;



- b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - d. to ascertain and pay, out of the estate of the deceased, all his debts;
 - e. within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - g. within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
 - h. to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - i. to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.
14. The Applicants claim that the Respondent is collecting rental income from the estate, misappropriating the same and/or using it together with the other Beneficiaries to the exclusion of the Applicants. In their view, the manner in which the Respondent is handling the estate is tantamount to intermeddling. Consequently, they pray that the Respondent be ordered to provide true and accurate accounts of how the funds collected are being utilised. The Applicants provided a copy of Account Statements for July 2024 from Co-operative Bank of Kenya and Equity Bank.
15. In response thereto, the Respondent provided a statement of the income collected and expenses incurred. The Applicants did not challenge the contents of the statement. Neither did they challenge the assertion by the Respondent that the bank accounts were opened in full concurrence by the family of the Deceased.
16. It is trite that he who alleges must prove. The Applicants are required to tender evidence in support of their allegations. They must prove that the Respondent's actions fall within the ambit of the list of acts that can be defined as intermeddling.
17. In the case of *Benson Mutuma Muriungi v C. E. O, Kenya Police SACCO & another* [2016] eKLR, the court defined 'intermeddling' as follows:

“There is no specific definition of the term intermeddling provided in the *Law of Succession Act*. The Act simply prohibits taking possession of or disposing of, or otherwise



intermeddling with, any free property of a deceased person by any person unless with express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as; “for any purpose” and “or otherwise intermeddle with” in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as; taking possession, or occupation of, or disposing of, transferring, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act* or any other written law. I do not pretend to close the list either or to make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law.”

18. I have considered the allegations by the Applicants and explanation by the Respondent. As provided in section 83, duties of the personal representative include collection of rent and payment of expenses incurred by the estate. Though the Respondent has provided a statement indicating the sums collected and paid out, there is no clear explanation for the sums paid out. The descriptions of the entries are either vague or missing altogether. Some monies withdrawn by the Respondent have no explanatory notes. The Respondent must table before the Court full, accurate accounts in respect of the operations of the estate from the date of death of the Deceased so as to satisfy this court and the Beneficiaries on how the funds withdrawn were utilised. In the absence of these, the Respondent may be guilty of intermeddling.
19. On the issue of upkeep for the 2nd Respondent and her family, I note that the Respondent did not address this issue in his Replying Affidavit. From the copy of Minutes attached, it would seem that the issue was not discussed at the family meeting on 27 April 2024 yet the 2nd Applicant was in attendance. Similarly, the 2nd Applicant has not mentioned whether she raised the issue at the said family meeting.
20. Sections 27 and 28 of the Act provide as follows:

Section 27.

In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.

Section 28.

In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

 - a. the nature and amount of the deceased’s property;
 - b. any past, present or future capital or income from any source of the dependant;
 - c. the existing and future means and needs of the dependant;
 - d. whether the deceased had made any advancement or other gift to the dependant during his lifetime;
 - e. the conduct of the dependant in relation to the deceased;
 - f. the situation and circumstances of the deceased’s other dependants and the beneficiaries under any will;



- g. the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.
21. The 2nd Applicant averred that she and her two children were dependent on the Deceased for their upkeep. She stated a figure of Kshs 35,000/- per month and provided copies of the Disability Registration Certificates for the three. In their Supporting Affidavit, the Applicants averred as follows:
14. That, as advised by our Advocates, M/s Ameka & Co. Advocates, which advice we verily believe to be correct, the spirit behind sections 45 and 82 of the Law of Succession Act is to preserve the property of a deceased person until the beneficiaries and their respective shares are identified, ascertained, and distributed.
18. That any payments made to beneficiaries should be subject to consensus or the determination of this Honourable Court.
22. As rightly stated by the Applicants themselves, for payments to be made to beneficiaries, the consent of the Beneficiaries would be required. In this instance, neither the Respondent nor the other Beneficiaries have given their consent to what would amount to partial distribution of the estate. Partial distribution unless consented to was rightly declined by the court in *In re Estate of Gerishon Kamau Kirima (Deceased) [2015] eKLR* where it was noted inter alia that:-
- “I am therefore of the view that Mr.Wanjau is only entitled to the payments that were consented upon by all the beneficiaries and the interests of justice cannot be served by partial distribution of the estate to one beneficiary whatever his circumstances, unless the beneficiaries consent, as they have previously done, to such partial distribution.”
23. From the foregoing and in the circumstances of this cause, I find that the prayer to release monies forming part of the estate of the deceased pending confirmation of the grant, which amounts to partial distribution cannot be granted at this stage on the material placed before this Court.
24. In the premise, I partially allow the Application and make the following orders:
- i. The Respondent is hereby ordered to account for all funds and/or proceeds collected and/or received from the Deceased's estate since his demise on 1 May 2023 and how the said funds have been utilised, spent and/or preserved;
- ii. The said accounts are to be presented to this Court within 30 days of the date hereof;
- iii. Failure to account as ordered in (i) above, the Respondent shall refund to the estate all and any of the proceeds withdrawn from the Deceased's accounts and/or misappropriated from the entire estate;
- iv. This being a family dispute, each party is ordered to bear own costs.

DATED AND DELIVERED AT NAIROBI THIS 31 DAY OF JANUARY 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Ms. Ameka.....for the Applicants

Ms. Nganga.....for the Respondents

Libertine Achieng.....Court Assistant

