



**Gathuna & 2 others (Suing as Administrators of the Estate of Jane Wanjuhi Kinyanjui - Deceased) v Muturi Kamande t/a Muturi Kamande & Co. Advocates (Civil Suit E083 of 2024) [2025] KEHC 1205 (KLR) (Civ) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1205 (KLR)

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

**CIVIL**

**CIVIL SUIT E083 OF 2024**

**RC RUTTO, J**

**FEBRUARY 28, 2025**

**BETWEEN**

**ARTHUR NDUNGU MBUGUA GATHUNA ..... 1<sup>ST</sup> APPLICANT**

**SERAH NJAMBI GACEKE ..... 2<sup>ND</sup> APPLICANT**

**JAMES KIBERA MACHARIA ..... 3<sup>RD</sup> APPLICANT**

**SUING AS ADMINISTRATORS OF THE ESTATE OF JANE WANJUHI  
KINYANJUI - DECEASED**

**AND**

**MUTURI KAMANDE T/A MUTURI KAMANDE & CO.**

**ADVOCATES ..... RESPONDENT**

**JUDGMENT**

1. The Applicants moved the court by way of an Originating Summons dated 20<sup>th</sup> February 2024 seeking the following orders:-
  - a. Muturi Kamande & Co. Advocates t/a Muturi Kamande to furnish a true statement of accounts for Kshs 15, 429, 839/= held on behalf of Jane Wanjuhi Kinyanjui (deceased) being net proceeds from the sale of land to Peter Muigai Kihui that was received between 28<sup>th</sup> September 2021 and 27<sup>th</sup> November 2021.
  - b. Respondent to pay costs of the application.
2. The Originating Summons is supported by the Affidavit of James Kibera Macharia. It is further based on the following summarized grounds that: the applicants being legal representatives of the deceased



under a grant made on 16<sup>th</sup> January 2024, are under a duty to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate statement of all dealings therewith up to the date of the account; the Respondent, who had an advocate client relationship with the deceased received Kshs 17, 000, 000 on behalf of the deceased in the sale of her property and has only accounted for Kshs 1,570,161 leaving Kshs 15, 429, 839 unaccounted for; the net proceeds of Kshs 15, 429, 829 from the sale of the deceased's property constitutes part of her free property.

3. The Respondent opposed the Application by filing a Replying Affidavit sworn on 6<sup>th</sup> May 2024 by Mutui Kamande. He urged the court to dismiss the application on the grounds that the Respondent firm represents Arthur Ndungu Mbugua Gathuna, the 1<sup>st</sup> Applicant, who, through a separate Affidavit, has denied authorizing the filing of the Originating Summons. The Respondent further contended that the application was filed without the authority of the 1<sup>st</sup> Applicant and her sister, the sole beneficiaries of the deceased's estate, to whom the Respondent firm has already accounted for the proceeds from the sale of the subject land.
4. Additionally, the Respondent filed a Notice of Motion Application dated 19<sup>th</sup> July 2024, seeking to have the Applicants' Originating Summons struck out with costs to the Respondent. The grounds supporting the Notice of Motion application are that the 1<sup>st</sup> Applicant has disowned the summons, stating that he did not consent to its filing, and that the issue of the subject asset should be addressed in High Court Succession Case No. E552 of 2022, rather than in separate proceedings.
5. The court directed that the Originating Summons and the Respondent's Application be heard through oral and written submissions.

### **Applicants' submissions**

6. In their submissions to the Originating Summons, the Applicants relied on their written submissions dated 1<sup>st</sup> October 2024, in which they outlined the background of the summons and distilled four key issues for determination namely: a) whether the Respondent received the sum of Kshs 17, 000, 000 on behalf of the deceased; b) whether the Respondent has provided a true account of the proceeds from the sale of the deceased's property; c) whether the Respondent is under a legal obligation to account for Kshs 15, 429, 839 being part of the deceased's estate and; d) whether the Applicants are entitled to the reliefs sought including costs.
7. Counsel for the Applicants submitted that they are seeking a straightforward order which is to compel the Respondent to furnish a true statement of account for the money received on behalf of the deceased's estate. Counsel argued that, under Order 52 Rule 4 of the Civil Procedure Rules, the court has the power to grant such an order. Further, it was submitted that there is evidence of the Respondent's receipt of the sale proceeds, and therefore, the balance of Kshs 15,429,829 must be accounted for. Failure to provide a true account of this balance, counsel argued, constitutes a breach of a fiduciary duty. Given that the Respondent has failed to account for a substantial portion of the deceased's funds, counsel urged the court to grant the orders sought, including costs of the Application.
8. In submitting on the Respondent's Application, the Applicants' counsel delimited three issues for determination, namely: a) whether the Originating Summons should be struck out; b) whether the consent given by the 1<sup>st</sup> Applicant was limited to Succession Cause No. E552 of 2022 and; c) whether the issues raised by the Originating Summons are appropriately addressed in these proceedings or in the succession cause.
9. Relying on Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules, which vest the High Court with jurisdiction to entertain any application and resolve disputes



concerning estate administration, counsel for the Applicants submitted that the summons properly falls within the court's jurisdiction. Counsel further urged that the court has inherent powers to issue necessary orders to ensure justice in estate management. The Applicants submitted that beneficiaries have a statutory right to demand an account of the estate's assets from the administrators and that the court may compel such an account at any stage. Additionally, the Applicants argued that the consent given encompassed all necessary actions to protect the estate and was not expressly limited to the succession cause alone. Reference was made to the case of *Re Estate of Geoffrey Mwangi Chege (Deceased)*, Succession Cause No. 905 of 2015.

10. The Applicants emphasized that the issues raised in the Originating Summons pertain specifically to the Respondent's accountability for certain funds and, therefore, warrant an independent judicial inquiry.
11. The Applicants' counsel submitted that the Respondent is in a conflict of interest as he holds estate funds in the capacity of a debtor while simultaneously claiming to represent one of the beneficiaries, a 20 year old young man. This, they argued, constitutes a breach of Rule 9 of the Advocates (Practice) Rules. Additionally, they emphasized that the other beneficiary, a 10 year old girl, has her best interests safeguarded by the administrators, who, as joint trustees, are duty bound to protect her inheritance by seeking a full account of the estate's assets.
12. The Applicants urged the court to allow the Originating Summons and to dismiss the Respondent's Application with costs.

### **Respondent's submissions**

13. The Respondent relied on its submissions dated 4<sup>th</sup> October 2024. Counsel for the Respondent argued that the Originating Summons lacks a proper foundation, particularly since it was purportedly filed by three Applicants, including the 1<sup>st</sup> Applicant, who has disowned it. He contended that the authority produced as evidence was issued in relation to High Court Succession Cause E552 of 2023 and not for the commencement of the present suit.
14. Additionally, the Respondent submitted that the firm of Harry Karanja & Co. Advocates does not represent the 1<sup>st</sup> Applicant, as his legal counsel is Muturi Kamande & Co. Advocates, who have fully accounted to him regarding the subject matter of this suit. The Respondent referred to annexure ANI1, which contains an inventory listing the deceased's assets and the proceeds from the sale in question. He further argued that, since the Respondent firm has admitted to holding Kshs 13,000,000, the existence and location of the asset are known.
15. The Respondent also pointed out that the succession cause was filed in 2023, whereas the present case was filed in 2024, further that both suits concern the same subject matter. He contended that this amounts to duplication of suits and an unnecessary waste of judicial time, warranting the striking out of the application. Finally, the Respondent submitted that he is waiting for directions from the succession cause regarding the money held. He urged the court to dismiss the Originating Summons with costs and to allow the application dated 19<sup>th</sup> July 2024.

### **Analysis and Determination**

16. I have carefully considered the Applications before me and the rival submissions made by the parties herein. The main issues for determination that arise are: -
  - a. Whether the Originating Summons is proper before this court.
  - b. Whether the orders sought in the Originating summons are merited.



- i. Whether the originating summons is proper before this court
17. This issue, as raised by the Respondent in its application dated 19th July 2024, is two-fold. First, the Respondent contends that the 1<sup>st</sup> Applicant did not authorize the firm of Harry Karanja & Co. Advocates to file the summons on his behalf, as he is already represented by the Respondent's firm. Second, it is argued that the orders sought can only be granted by the Succession Court and not this court.
18. Regarding the representation of the 1<sup>st</sup> Applicant by the firm of Harry Karanja & Co. Advocates, the 1<sup>st</sup> Applicant asserts that he did not authorize the said firm to initiate the present suit on his behalf. A review of the Authority to Act annexed to the affidavit in support of the Originating Summons (JM-1) suggests that the Authority to Act dated 1<sup>st</sup> January 2024, was signed by the 1<sup>st</sup> Applicant. However, in his affidavit sworn on 19<sup>th</sup> July 2024 in support of the Respondent's application, the 1<sup>st</sup> Applicant clarifies that the Authority to Act was granted in reference to High Court Succession Cause No. E552 of 2022. The authority to act in question reads: -

“I Arthur Ndungu Mbugua Gathuna, an administrator of the estate herein of C/O HKLaw P.O. Box 100798-00101 Nairobi do hereby confirm that I have authorized and given power to James Kibera Machariato appear, plead and act for me in court with respect to this matter and all connected lawsuits and to swear affidavits, statements and pleadings on my behalf necessary for the suit herein”

19. The 1<sup>st</sup> Applicant does not dispute issuing the Authority to Act but contends that it does not extend to the present suit before this court. However, the wording of the Authority to Act suggests otherwise. The document, dated 1<sup>st</sup> January 2024, expressly states that the 1<sup>st</sup> Applicant authorizes the 3<sup>rd</sup> Applicant to act on his behalf in all connected lawsuits, including the present matter. Since there is no claim challenging the validity of the Authority to Act, the document dated 1<sup>st</sup> January 2024 remains valid. Consequently, with respect to the first limb of the issue, the Originating Summons is competently filed before this court by all the Applicants.

## **ii) Whether the orders sought in the Originating summons are merited**

20. On the second limb of the issue herein: whether the orders sought in the Originating Summons can be granted by the succession court and not this court, the Applicants seek to compel the Respondent to furnish a true statement of accounts for Kshs 15,429,839, being proceeds from the sale of a parcel of land held on behalf of the deceased. The Respondent, however, contend that they have already informed the 1<sup>st</sup> Applicant of the status of the proceeds, clarifying that they hold only Kshs 13,000,000. Additionally, the Respondent argue that even if an explanation regarding the funds were necessary, the matter should be addressed in the Succession Court rather than in the present suit. The Applicants on the other hand assert that this court has jurisdiction to entertain the application under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules.
21. The existence of a succession case is not disputed. The Respondent has presented before this court Exhibit AN1, an affidavit in support of the petition for letters of administration intestate, which remains valid and has not been challenged. The affidavit acknowledges that one of the deceased's assets namely, the proceeds from a land sale is in the Respondent's custody.
22. The Administrators have filed a separate application before this court, seeking orders to compel the Respondent to furnish a statement of accounts. This request is made in fulfillment of their duties under Section 83 of the *Law of Succession Act*. However, since one of the Administrators' key



responsibilities is to render a full and accurate account of the administration of the estate within six months of the confirmation of the grant, it would be more appropriate for such orders to be sought before the Succession Court, which has jurisdiction over the administration process.

23. This court acknowledges that it has the inherent power to grant the orders sought. However, given the existence of an ongoing succession case in the High Court, where the Administrators are already required to account for the deceased's estate, the Succession Court is best placed to issue any necessary orders on the administration of the estate. The Applicants have not provided any justification for filing a separate suit despite the existence of the succession case.
24. Furthermore, given the fiduciary relationship that existed between the deceased and the Respondent, the Applicants also have the option of seeking recourse from the Advocates Disciplinary Tribunal of the Law Society of Kenya in the event of any misconduct, particularly if the Respondent has failed to account for the funds held, in contravention of Rule 13(1) of the Advocates (Accounts) Rules. Filing a separate suit in a court other than the Succession Court is therefore an abuse of the courts process and would not be the appropriate course of action in these circumstances.
25. I therefore down the judicial tools in this matter at this stage and direct that the Applicant file the present application before the Succession Court for determination.
26. Accordingly, the Originating Summons dated 20<sup>th</sup> February 2024 is struck out. Each party to bear its own costs of the Originating Summons and the Application dated 19<sup>th</sup> July 2024.

Orders accordingly.

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025**

FOR APPLICANTS:

FOR RESPONDENT:

COURT ASSISTANT:

