



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ndotu Kyoyo (Deceased) (Succession Cause
662 of 2013) [2025] KEHC 5365 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5365 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 662 OF 2013**

EN MAINA, J

APRIL 30, 2025

BETWEEN

JOHN KIMAILI NDUTU 1ST PETITIONER

PATRICK MAKAU NDUTU 2ND PETITIONER

AND

ANTHONY KITAVI MULILU PROTESTOR

RULING

1. By the Summons dated 13th September, 2024 the Applicants sought orders that the Grant of Letters of Administration Intestate made jointly to John Kimaili Ndotu and Patrick Makau Ndotu on 2nd May 2024 be confirmed and that the estate of the deceased be distributed in the manner set out in the affidavit of Patrick Makau Ndotu and as consented to by the heirs. The Summons also sought an order that the 1st Administrator and his siblings/co beneficiaries being members of the deceased's 1st house do refund the 2nd Administrator his cost of processing the entire succession cause from the petition to date.
2. The Summons for confirmation is vehemently opposed by Anthony Kitavi Mulilu through a protest dated 22nd October 2024. The gravamen of his objection is that he is entitled to a share of the estate as a purchaser of a parcel of land from Wanza Ndotu (deceased) a wife of the deceased to whose estate these proceedings relate. He avers that the proposed mode of distribution is not equitable, is unfair and intended only to benefit the 1st Administrator. He contends that he has been in uninterrupted occupation of the portions of land which he purchased from Wanza Ndotu in 2008, 2012 and 2014. The portions measuring 3.015 Ha were hived off from LR No Wamunyu/Kaitha/436.
3. In reply Patrick Makau accused the protester of being an intermeddler in the estate for reason that he was neither a child, heir, dependent, beneficiary or creditor of the deceased nor a purchaser from the Administrators of the estate who have legal capacity to dispose the immovable assets of the deceased



estate. He deposed that the purported transactions, purchase and dealings with the said Wanza Ndotu and occupation of the property were illegal, unlawful, void for all purposes.

4. The Summons proceeded by way of written submissions.
5. I have considered the summons for confirmation, the protest filed thereto, the affidavits, the annexures, the submissions, cases cited, and the law.
6. The issue for determination is whether the protestor is entitled to a share of this estate by virtue of the sale agreements between him and Wanza Ndotu a widow of the deceased now also deceased; whether Wanza Ndotu had any legal capacity to dispose of the estate of her late husband at the time it is alleged she sold the land to the protestor.
7. There is no dispute that the deceased in these proceedings died intestate on 9th December 2002. It is also evident from these proceedings that the petition for letters of administration of his estate was first made on 30th August 2013 following which a grant was made initially to Wanza Ndotu and Daniel Ndotu. That grant was later to be revoked following the death of Wanza Ndotu in 2018.
8. The Protestor alleges to have purchased a part of the estate in 2008 and 2012 which is a period long before the succession cause was filed and when no grant of letters of administration had been issued. I agree that doing so rendered him an intermeddler as defined in Section 45 of the *Law of Succession Act* which states-
 - i. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - ii. Any person who contravenes the provisions of this section shall—
 - a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - b. be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
9. Section 82 of the Act also prohibits any dealings with the immovable property of the deceased before the grant is confirmed. In this case the grant had not even been issued and any dealings in the estate amounted to the offence of intermeddling as prescribed in section 45 of the Act. Any sale agreements pertaining to or dealings in the property was not just void but criminal.
10. I am persuaded by the holding of Musyoka J in the case of *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR where he stated-

“The effect of [section 45] is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”



11. Similarly, in the case of *Gitau and 2 others v Wandai & 5 others* [1989] KLR 23, Tanui J, stated-
- “According to Section 45 of The *Law of Succession Act*, Cap.160 intermeddling with the property of a deceased man consists of taking possession, disposing or otherwise intermeddling with any free property.”
11. More recently in the case of *Beth Mueni v John Kinyanjui Gakunga & John Muinde Gakunga* Civil Appeal No 140 of 2017 the Court of Appeal held that-
34. There is the final issue as to whether the sale of the estate property by beneficiaries without a grant could pass interest capable of protection under the Act. A person can only lawfully deal with the estate of a deceased person pursuant to a confirmed grant. Section 45 of the Act prohibits intermeddling with property of a deceased person. It follows, therefore, that the transactions entered into before receipt of the letters of administration were issued and confirmed, were invalid as they offended Sections 45 and 82 of the Act.
35. The trial court in holding that the Appellant was not an interested party as provided under Section 76 of the Act, was, in our view, not in error in fact or law, as it has been established that the sale transaction was void for want of consent from the Land Control Board, and also that the transactions were void as the same were done by the beneficiaries before the Letters of Administration were issued and confirmed. Indeed, the Appellant would be at liberty to see refund of the purchase price already paid from the respective beneficiaries.
36. In any event, on the issue that the Respondent sold the land before confirmation of the grant, the Appellant also had the duty to perform due diligence before proceeding with the transaction. The Appellant was well aware that the property belonged to the deceased, as she lived side by side with the Respondents.”
11. The conduct of the Protestor of purchasing property of a deceased person before a grant was issued let alone confirmed is no different from that of the appellant in the above appeal and accordingly those transactions are void. He is not an interested party as defined in the *Law of Succession Act* and cannot legally lay claim to any part of the estate.
11. In the premises the protest has no merit and it is dismissed. In the converse the Summons for confirmation is allowed and the estate shall be distributed as set out in the affidavit of Patrick Makau Ndotu sworn in support of the summons and as consented to by the beneficiaries. A certificate of confirmed grant shall issue.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2025.

E.N. MAINA

JUDGE

In the presence of:

Mr. Mbithi for the 2 Administrators/Respondents

No appearance for counsel for the Protestor

C/A: Miriam

