



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Athanas Lukas Mulunda Wandengu (Deceased) (Succession Cause E014 of 2024) [2025] KEHC 5212 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE E014 OF 2024**

S MBUNGI, J

APRIL 29, 2025

**IN THE MATTER OF THE ESTATE OF ATHANAS
LUKAS MULUNDA WANDENGU (DECEASED)**

BETWEEN

GLORIA OKATWA MULUNDA APPLICANT

AND

GEORGE VICTOR OMWAKWE MULUNDA RESPONDENT

RULING

1. What is before the court for ruling is two applications both dated 23.10.2024.
2. One of the applications is filed by Gloria Okatwa Mulunda seeking the following orders:-
 - i. That this honourable court does issue an order that a joint account be opened by Gloria Okatwa Mulunda and George Victor Omwakwe Mulunda the administrators herein for remittance of rent collected from the rental house on property known KAK Town Block 11/206 pending determination of the summons for confirmation of grant and distribution of the estate.
 - ii. That upon the distribution of the estate, the monies held in above mentioned joint account be distributed equally amongst all the beneficiaries.
 - iii. That this honourable court issue an order for preservation of the estate by issuing a temporary injunction restraining the respondent whether by himself or agents or employees or servants or other persons acting on his authority from alienating, leasing, cultivating or continuing with cultivation activities or planting or construction of any structures or carrying out any other development of any nature or in any other manner interfering with properties known as S/



Wanga/Buchifi/90 and S/Wanga/Buchifi/100 pending filing of a case in the Environment and Land Court.

- iv. That this honourable court does issue an order for stay of these proceedings pending hearing and determination of the ELC case to be filed by the Applicant herein.
 - v. That costs be provided for.
3. The 2nd application is filed by Beatrice Manyasi Mulunda, seeking the following orders:-
- i. Spent
 - vi. Spent
 - vii. That in the interim and pending the hearing and determination of the suit, the honourable court do issue an order directing that the Applicant has a life interest on the net intestate estate of Athanas Mulunda Wandengu (Deceased).
 - viii. That the honourable court be pleased to issue an order directing that the rental income be paid to the account to be provided by the Applicant as the surviving spouse of the deceased.
 - ix. That an order be issued allowing the Applicant to use the proceeds from the rental income for her medical expenses and daily needs.
 - x. The costs of the application be in the cause.
4. Both Applications are opposed, I have looked at the supporting affidavits in support of the Applications by the Applicants I have also looked at the replying affidavits sworn by the respondents respectively.
5. The parties agreed to dispose of the application by way of written submissions which they filed I have considered them.
6. I consider the two applications wholesomely for the issues are clear and intertwined.
7. A brief history of the matter is that Beatrice Manyasi Mulunda applicant in one of the Applications is a co-administrator with George Victor Omwakwe Mulunda of the Estate of Athanas Mulunda Wandengu they are a brother and a sister. Beatrice Manyasi Mulunda applicant in the other Application is the wife of the Late Athanas Mulunda Wandengu.
8. One of the issue of contestation at this point is who is to collect and manage the use of rental income from rental house KAK Town Block 11/206 pending the distribution of the estate.
9. Gloria Okatwa Mulunda one of the administrators wants the rent to be collected by herself and the co-administrator George Victor Omwakwe Mulunda and the same remitted to a joint bank account to be opened in their names and the same kept safely until distribution of the estate is done where the proceeds therein will be shared equally amongst all the beneficiaries.
10. The other issue of contestation is ownership of land parcel No. S.Wanga/Buchifi/90 and S/Wanga/Buchifi/100. George Victor Omwakwe Mulunda a co-administrator claims ownership of the two parcels of land saying he was gifted by their deceased father an assertion that Gloria Okatwa Mulunda refutes.
11. On her side Beatrice Manyasi Mulunda in application asked the court to direct that the rental income collected from KAK Town Block 11/26 be deposited in a bank account to be provided by herself and the proceeds therein be exclusively used by herself to cater for her medical expenses and daily needs for



she is the surviving spouse of the Deceased and by virtue of section 35 (1) of the Law of Succession Act she has a life interest over the deceased's estate. In her submissions he referred the court to the case of Justice W. Musyoka in the case of Estate of John Musambayi Katumanga

12. Gloria Okatwa Mulunda accuses George Victor Omwakwe Mulunda for mismanaging the rent collected and for failing to account for the same.
13. She further dismissed George Victor Omwake Mulunda averments that he uses the rent collected to wit medical, transport and other daily needs for their mother Beatrice Manyasi Mulunda asserting that it is the children including herself who takes care of their mothers needs.
14. Beatrice Manyasi Mulunda on her part submits that from 30th July, 2024 she ceased from enjoying the proceeds of the rent when Gloria Okatwa Mulunda was appointed as a co-administrator, for she has refused to cater for her needs and whilst when Gorge Victor Omwake Mulunda was collecting the rent her needs used to be taken care of by George Victor Omwakwe Mulunda using the rent collected.

Determination

15. The first issue to determine whether this court has jurisdiction to issue a temporary injunction restraining George Victor Omwake Mulunda from having and dealing on properties known as S/Wanga/Buchifi/90 and S/Wanga/Buchifi/100.
16. A law of succession court " probate court" only deals with distribution of free property of a deceased person.
17. Gloria Okatwa Mulunda submits that George Victor Omwake Mulunda fraudulently got himself registered as the owner of the two properties and thus they should revert to the estate of the deceased.
18. This does not have jurisdiction to make any order pertaining any property whose ownership is contested , this is the preserve of Environment and Land Court.
19. The request for injunction should be made at the Environment and Land court , therefor prayer 2 of Gloria Okatwa Mulunda is disallowed for this court does not have jurisdiction.
20. Similarly on her prayer to stay this proceedings pending hearing and determination of the ELC Case to be filed by herself cannot issue for its speculative what will happen if she does not file the same. Courts do no issue orders in vacuum or in vain.
21. On the issue of collection of rent and management its purely the role of Administrators section 83 of Law of Succession provides

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;



- e. 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; [Rev. 2012] cap. 160 Law of Succession 33 [Issue 1]
 - f. 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;
 - g. 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.
22. Beatrice Manyasi Mulunda is not an administrator of the estate of the deceased therefore she has no role in the administration of the estate, its my view that collecting and managing the use of the rent in issue part of Administrative duties of the administrators.
 23. Therefore Beatrice’s prayer that the court directs the rental income be paid to an account provided by her as surviving spouse to the deceased cannot issue for the court will be taking away the duties of the Administrators de void of any substantive application backed by cogent reasons to do so.
 24. On the prayer that this court directs that Beatrice has a life interest on the net estate of the deceased pursuant to provisions of Section 35 of Law of Succession Act, this is neither here nor there for the law is very clear on the aspect of surviving widow having a life interest.
 25. The law of succession is silent on what happens to a surviving spouse in terms of maintenance pending the distribution of the estate.
 26. I have read the decision by Musyoka -Judge in the case of Estate of John Musambayi Katumanga - Deceased (2014) eKLR I agree with the reasoning for a surviving spouse should not be left uncattered for at the death of the partner and a situation where the partner left behind Assets and secondly taking into account that the surviving spouse contributed amassing the wealth.
 27. Since the immovable property cannot be disposed off before the confirmation of a grant its my view that the surviving spouse should be allowed access to any money and use of any movable property in her/his day to day life to enable the spouse to merely lead life he/she was leading during the life of the deceased and also take care of the needs of the dependants whom the deceased was taking care of and beneficiaries who are minors.
 28. Therefore the upshot of the above is that there is need for Beatrice Manyasa Mulunda”widow” to access the proceeds of the rental income from KAK Town Block 11/26 and use to meet her daily needs like medical expenses ,transport and any other necessary need.
 29. All in all I find the two applicants partially successful with the applications and I make final orders as follows:-



- a. That a joint bank account be opened in the names of Gloria Okatwa Mulunda and George Victor Omakwe Mulunda the administrators herein for remittance of rent collected from the rental house property town as KAK Town Block 11/206.
- b. Part of the rental income collected from KAK Town Block 11/206 shall be used to cater for the daily needs of Beatrice Manyasi Mulunda.
- c. For purposes of accountability Beatrice Manyasi Mulunda shall be presenting a monthly budget to the administrators who shall then withdraw funds from the rental income from KAK Town Block 11/206 deposited in the joint bank account and give Beatrice Manyasi Mulunda for her use.
- d. The administrators shall keep proper record of the bank account for courts consideration when so required or at the time the court will be distributing the estate.
- e. This being a family affair each party shall bear its own cost of the Applications.
- f. Parties at liberty to apply for any further court intervention if need be.
- g. Mention on June 12, 2025 to take directions on the main petition or any other pending issue.
- h. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF APRIL, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Albright Sunguti

Ms Muturi holding brief for Nyongesa for Gloria Mulinda and some of the beneficiaries present online.

Mr. Wangosi for the protestor and the widow (Beatrice) and some of the beneficiaries present online.

