



Njogu v Kiguta; Wawira & another (Caveator) (Succession Cause E006 of 2023) [2025] KEHC 4883 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE E006 OF 2023
EM MURIITHI, J
APRIL 25, 2025**

BETWEEN

SARAH WANJIRU NJOGU APPLICANT

AND

SUSAN NYAMBURA KIGUTA RESPONDENT

AND

PAULINE WAWIRA CAVEATOR

CATHERINE NJERI KINYUA CAVEATOR

RULING

1. The Court has considered the application for review dated 24/3/2025, where the Applicant seeks specific orders:
 - “1) Spent.
 - 2) That this honourable court do review the orders given on 8th December 2024 vide Summons dated 8th April 2024 in respect to school fee and maintenance of her children.
 - 3) That cost of the application be in cause.”
2. The application is supported by the Supporting Affidavit of the Applicant indicating the history of the application as follows:
 - “1) That I am the applicant herein hence competent to swear this affidavit.



- 2) That I filed the Summons for special grant dated 8th April 2024 seeking for the court to allow me to have access over funds in the deceased's account to cater for maintenance and school fee for my minor children.
- 3) That the court directed that the parties do file affidavits in respect to required school fee/maintenance of which I filed my affidavit dated 6th December 2024.
- 4) That the court ordered that each family was to get Ksh.200,000/- for the initial urgent needs as the deceased' bank accounts statements had not been applied for.
- 5) That the respondent advocates have now supplied the bank statement accounts which show that there are available funds to cater for maintenance and school fees for the children (annexed and marked 'SNK1" are copies of the bank statement)
- 6) That the above aid amount of Ksh200,000/= was only used to cater for school fee arrears of Ksh152,550/=:, Ksh.20, 000/= and Ksh.13,360 for Kassy Leslie, Teslie Njeri and school related expense respectively leaving some arrear unpaid and accumulating arrear (annexed and marked 'SNK2' is a bundle of receipt)
- 7) That I am praying the Honourable court to review the orders in respect to the amount of Ksh.200,000/= and consider the above said affidavit dated 6th December 2024.”

3. The application is supported by the two caveators who seek the release of money in respect of maintenance of their respective children. For the 1st caveator, the Replying Affidavit of 7/4/2025 urges that the amount previously released was too low without indicating the exact needs of her child as follows:

- “2. That I am the caveator herein hence competent to swear this affidavit.
3. That the Application dated 24th March, 2025 has been read to me and the contents therein have been well explained by my counsel on record and I do wish to put forth my response.
4. That following the Petitioner's summons for special grant dated 8th April 2024 the parties filed their respective replying affidavits.
5. That I filed my Replying Affidavit dated 16th April 2024 and a Supplementary Replying Affidavit dated 29th November 2024.
6. That on 8th December 2024 the court issued directions that each family be entitled to withdraw an amount not exceeding Kshs.200,000/=.
7. That the amount given to each family was indeed minimal and it has been a challenge to cater for all the expenses associated with fees and maintenance of the Caveator's Son - Arnold Kabuga Munene.
8. That the said amount was not sufficient to cover the expenses and repay my debts as had been laid out in my Supplementary Replying Affidavit dated 29th November 2024 let alone any further occurring expenses related to the fees and upkeep of my son with the deceased.



9. That I am not opposed to the Court reviewing the orders in respect to the amount of Kshs.200,000/= but I pray that the court takes into consideration all parties and their accumulated expenses.”
4. For the Second Caveator, by Replying Affidavit of 27/11/2024 a sum of Ksh.342,500 is sought to meet various needs including annual school fees and house rent for the child as follows:
- “ 1. That I was a lawful wife to the deceased herein and was blessed with an issue with the deceased one Travis Kinyua Kabinga, a beneficiary to the estate.
 2. That the said beneficiary aged 6 years is a school attending issue whose expenses continue to outdo my means since I am unemployed. (Annexed and marked CNK-01 & 02 are copies of fee structure and rental expense for the said beneficiary)
 3. That I pray the said expense be drawn from the estate for the best interests of the beneficiary.
 4. In sum total I pray Ksh 111,500/=, annually be drawn from the estate for school fees plus Ksh 240,000/= as annual rental expenses for the beneficiary thus total of Ksh342,500/=. I undertake to cater for the food, clothing, entertainment and health for the issue.
 5. That the DNA tests ordered and report filed in court confirmed with certainty of the beneficial relationship of the issue with the deceased as his biological son.
 6. That I pray the application be allowed as prayed.
 7. That what is deponed to herein is true to the best of my knowledge, information and belief save where otherwise stated.”
5. The application is opposed by the Replying Affidavit sworn on 10/4/2025 by the Petitioner raising the issue of lack of account for the monies already released to the parties and the lingering dispute as to the rightful heir of the deceased as follows:
- “ 1. That I am the Petitioner/ Respondent herein hence competent to swear this affidavit.
 2. That I am the wife of the deceased having gotten married to the deceased way back in year 1999 which was later solemnized under the then African Christian Marriage and Divorce Act 2014. (attached is a copy of the Marriage Certificate and an Affidavit sworn by the deceased marked WN 1 and WN 2 respectively).
 3. That the Application by Susan Nyambura Kiguta is without basis and the same ought to be dismissed with cost.
 4. That the orders sought are against the spirit of the Succession Act as regards the administration of an estate
 5. That the principle as regards drawing of funds from an estate is that until the dispute revolving around the rightful heirs are settled, any withdrawals should only be made on the basis of well authenticated, deserving and supported instances.



6. That accountability on the use of funds from a deceased estate before confirmation of grant is paramount.
7. That in the present case, the court should not allow the applicant and other claimants to draw funds without proper accounting and with supported claims.
8. That if any funds are to be paid, it should be done directly to the school upon a properly authenticated documents and accounting on the use of funds should also be delivered to court.
9. That the application is based on a petition for Special Grant which has not been issued.
10. That the order for release of Ksh. 200,000/= to each house was issued as an intervention measure and the Applicant cannot continue relying on the said order for further funds.
11. That it is important that the issues as to whether all the persons involved are indeed beneficiaries are determined before the estate is distributed.
12. That the Applicant has filed this application as a widow of the 'deceased when in-fact she is not a widow as I was married to the deceased under a system that does not recognize another wife.
13. That I intend to file an objection to the application for Special Grant.
14. That at the onset, I wish to state that the issue as to whether Maxine Wanjiku is a child or a beneficiary of the deceased is still contentious.
15. That she is not one of the children who were subjected to D.N.A.
16. That besides the Applicant seeks for funds without any documents in support and that the few that have been filed are not clear.
17. The exhibit SNK 3(a) does not state what year is referred to whole SNK 3 (b) is a bundle of documents which are not clear and with different figure.
18. That while Ksh.200,000/= was distributed no account was delivered on how the same was spent.
19. That the court will note that some of the money indicated in the Affidavit as required school fees sworn on 6th December, 2024 was for intended school fees.
20. That I have also looked at the same affidavit where the Applicant seeks for house rent but I wish to state that maintenance of children is a shared responsibility and the applicant cannot wholly rely on the estate.
21. That the applicant had also included in the Affidavit money expended towards the DNA tests but I believe the same was not to be reimbursed from the estate.
22. That as regards Lixie Elsie Wambui the applicant seeks for money for diapers, nanny and work which is outrageous and should not be drawn from the estate.
23. That there is no evidence of Welfare Clinics or Medications requirements.



24. That it is also outrageous and ridiculous that the applicant in her application sought Ksh.6,000/= as arrears of rent where there is no evidence of such and then she also has duty to also meet her responsibility as parent.
25. That it would not be proper to disburse funds from the estate without proper supporting documents and with put substantiated claims and survivorship.
26. That the court will note that some claims of survivorship are yet to be determined and some interests are yet to be determined.
27. That the court had only released the Ksh.200,000/= to an intervention measure.
28. That court should note that some houses like the one of Pauline Wawira (the caveator) has only (1) child while I have (4) children but they all received KSH. 200,000/=.
29. That as regards Pauline Wawira Karani, I wish to state that her claim is without basis and is also based on false documents in that she has sworn to be widow of the deceased.
30. That I am aware of a children's Case No. 1106 of 2018 at Nairobi where she had clearly stated that they separated in the year 2006 (Attached is a copy of the plaint marked WN3).
31. That this is also an issue that ought to be determined first.
32. That she equally has not given an account of how the Ksh. 200,000/= was spent.
33. That she has not also supported her claim for release of funds.
34. That as regards Catherine Njeri Kinyua she has also not supported her claim for an annual rent of Ksh 342,000/=)
35. That she claims for an annual rent of Ksh. 240,000/= and I wish to respond that the responsibility to children should also be shared.
36. That the claim has no basis and should be dismissed with costs to myself.
37. That I have filed my Affidavit of Means.”

6. the Petitioner's Affidavit of Means sworn on 10/4/2025 indicates the various needs of her own children without expressly seeking payment of any monies in that regard, as follows:

- “ 1. That I am the wife to the deceased.
2. That we have (4) issues of marriage namely:
 - i. Sydney Njoki Munene.
 - ii. Shantel Njeri Munene.
 - iii. Doreen Wanja Munene.
 - iv. Brian Maina Munene.



3. That Shantel Njeri is a student at Kiaritha Secondary School (Attached is a copy of the school proforma for the year 2025 marked WK 1)
 4. That Brian Maina is a student at Good Shepherd School (Attached is the fee proforma to, the year 2025 marked WK Z)
 5. That after the death of my husband Doreen Wanja dropped out of the school of KCA University where she had enrolled for a degree in and is still intent of finalizing the cause (attached is a copy marked WK 3).
 6. That Sydney Njoki Munene was also to proceed on to a degree for International Business and Management with International Foundation upon completion of a Diploma but did not do so for lack of School fees after the father died (attached are copies of the Application Form and Offer Letter Marked WK 4 and WK 5)”
7. The Court has considered the oral submissions made by Counsel for the Parties and finds merit in the propositions that the court ought to protect the estate of the deceased and monies should not be released from estate accounts without accountability and the Court should strive to hear and determine the dispute as to the right beneficiaries and, therefore, make distribution of the estate assets only to the deserving heirs.
 8. The Court, however, also takes into account the needs for maintenance of the children of the deceased which is a continuing need. The only reservation that may be taken is as regards the child whose entitlement to inherit as dependant is in question. In the interests of the welfare of the child, the Court will allow her provision in the interim, subject to recovery from the provision made for her mother’s house upon hearing of the dispute.
 9. These circumstances command a priority hearing for the determination of the rightful heirs of the estate of the deceased. The Court must not supervise the depletion of the estate before a formal substantive grant of Letters of Administration has been made, and confirmed to allow the distribution of the Estate. Although the estate is able to pay as per bank accounts statements produced, the Court cannot continue to issue orders for the release of monies on an interim or special grant basis without progress towards the hearing and final determination of the dispute between the parties.
 10. The Court is under section 45 and 47 of the law of Succession Act obliged to protect the state from waste and it cannot, therefore, authorize waste of the asset by premature and dubious payments to persons who may end being excluded as beneficiaries of the estate.
 11. In addition, there is a standing duty of account for all persons who deal with the estate of a deceased person in terms of section 45 of the Law of Succession Act. Of course, in accordance with the section 42 of the Law of Succession Act, the monies paid out the parties will be considered as follows:

“ 42. Previous benefits to be brought into account

Where—

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or



- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

12. Consequently, in the best interests of the welfare of the children of the Deceased the court will make provision for the payment of the expenses related to their education/ school directly to the respective schools. As regards the child Maxine Wanjiku whose right as a beneficiary/dependant/heir is still contentious, the Court will at this stage allow provision for her from the estate for her best interest, subject to recovery from the mother’s house in accordance with section 42 (b) of the Law of Succession Act should be determined at the hearing not to be entitled to provision form the estate of the deceased.
13. The Court shall allow only an upkeep of Ksh.20,000/- per child per month for the three months following the making of this order. The Court accepts that both parents have parental responsibility to provide for a child and the applicants cannot claim the whole maintenance needs from the estate of the Estate.
14. The parties in this dispute shall render an account to the Court and the other parties as its dealings with the sums of monies hitherto advanced to the party within a period of 30 (thirty) days.
15. The arrangement in this ruling shall subsist for a period of three months only, within which time the dispute as to the rightful heirs of the deceased will have been heard and determined, or until further orders of the Court, as necessary.
16. The Court shall proceed on priority basis to hear and determine the objections to the administration in the nature of application for revocation of Grant and subsequently any protests to distribution of the estate as may be taken in the estate. For this purpose, directions as to hearing shall be taken on a date to be fixed.

Orders

17. Accordingly, for the reasons set out above, the Court makes the following orders on the application dated 24/3/2025:
 1. The Court makes an order for the payment from the estate of the Deceased the sums of Ksh.20,000/- per child per month for the next three months commencing the 1/5/2025 making a total of sixty thousand (Kes.60,000/-) for each child. The total sums taking into account the children per house shall be paid at once upfront to the respective mothers of the Children. No further amounts will be paid from the estate account in respect of the child maintenance without orders of the court.
 2. The school fees and related costs payable to the respective schools where the children attend shall be paid from the estate of the Deceased directly to the schools/colleges upon invoice in respect of each of the child in the matter.
 3. The parties in this dispute shall each render an account to the Court and the other parties as to its dealings with the sums of monies hitherto advanced to the party within a period of thirty (30) days.



4. The matter shall be mentioned on 6/5/2025 for purposes of ascertaining compliance and taking directions as to the full hearing of the Petition and applications for revocation of Grant therein.
 5. Liberty to apply.
18. There shall be no orders as to costs.
- Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Macharia Wambui for Catherine Njeri Kinyua and holding brief for Mwai for Applicant

Ms. Wanjiru for Petitioner

Ms. Ndung'u for 1st Caveator

