



**In re Estate of the Late Titus Mugo Kimani (Deceased) (Probate & Administration 006 of 2021) [2025] KEHC 7474 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7474 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
PROBATE & ADMINISTRATION 006 OF 2021**

**EM MURIITHI, J**

**MAY 30, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE TITUS MUGO KIMANI (DECEASED)**

**BETWEEN**

**NICHOLAS MWANGI MUGO ..... 1<sup>ST</sup> APPLICANT  
THOMAS MUTHEE MUGO ..... 2<sup>ND</sup> APPLICANT  
FRANCIS KIMANI MUGO ..... 3<sup>RD</sup> APPLICANT  
CHARLES MAINA MUGO ..... 4<sup>TH</sup> APPLICANT  
PETER WABETTAH MUGO ..... 5<sup>TH</sup> APPLICANT**

**AND**

**LUCY NYAGUTHII MUGO ..... 1<sup>ST</sup> RESPONDENT  
BENJAMIN MUTHEE MUGO ..... 2<sup>ND</sup> RESPONDENT  
CYRUS MURIITHI MUGO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is a ruling on an application dated 3/12/2024 for the hearing of two applications dated 15/4/2024 and 18/10/2024 seeking respectively an order for committal to civil jail of the respondents for failure to comply with the order of the Court made on 25/3/2024 to furnish an inventory of assets of the deceased and an order for police investigations into alleged intermeddling by the respondent co-administrators by transfer of estate property before the grant of Letters of Administration.
2. The Orders of the Court made on 25/3/2024 were as follows:

“Conclusion and Disposition

37. The orders sought by the applicants are as follows:



- a) That the Respondents be ordered to file in this Honourable Court a full inventory of the estate of the deceased and deposit the instruments of title in court.
  - b) That this Honourable Court do issue an order for removal of Lucy Nyaguthii Mugo as an Administrator of the deceased's estate due to unfaithfulness and breach of duty as required of her.
  - c) The orders of the Honourable court be complied with within seven (7) days of the making thereof in default of which criminal proceedings do issue against the Respondents in line with Section 45 of the *Law of Succession Act*.
38. Given all I have said above, I think the appropriate orders to give in the circumstances of this case are as follows:
- a. The 1st and 2nd respondent shall file in this Honourable Court a full inventory of the estate of the deceased and deposit all the instruments of title into court within thirty (30) days.
  - b. The administrators shall remain as agreed by consent on 15/2/2022 with the variation that no administrative estate transactions may be effected without the signatures of all three administrators.
  - c. The interim orders issued by the court shall remain in place pending a viva voce hearing on the issue of the transfer of Title Number Mombasa/Block XIII/53. Such hearing shall be conducted within 90 days from the date hereof and parties are at liberty to file witness statements in connection with the said transaction.
  - d. Liberty to apply is granted
  - e. Orders accordingly

Dated at Kerugoya this 25th day of May 2023”

Richard Mwongo

Judge”

Application for contempt dated 15/4/2024

3. The Court had by its directions of 12/11/2024 extended the time for filing the documents in compliance with the order of 23/5/2023 that –

“Court:

1. The respondents undertake and shall deposit the documents comprised in the Court order dated 23rd May 2023 within 14 days of today failing which they will not be granted further audience.”



1. In compliance with the order of 25/3/2025 and response to the application of 15/4/2024, the Respondent filed an inventory dated 14/3/2025 as follows:

“Inventory Of Assets

I, Lucy Nyaguthii Mugo a female adult of sound mind and disposition of P.O. Box 113-10230 Sagana, residing and working for gain at Sagana within the Republic of Kenya do make oath and state as follows:

1. That this is a true inventory and account of assets belonging to the estate of the late Titu Mugo Kimani-deceased.
    - a) Title number Kiine/Rukanga/932.
    - b) Title number Kiine/Sagana/388/226
    - c) Title number Magumoni/Itugururu/750
    - d) Title number Kiine/Thigirichi/778
    - e) Title number Kiine/Rukanga/931
    - f) Title number Mwerua/Kagio/1275
    - g) Title number Kiine/Thigirichi/692
    - h) Motor vehicle registration number KBV 5310
    - i) Motor vehicle registration number KCG 279R.
  2. The original titles and logbook of the deceased's properties have been forwarded by our Advocates to the Deputy Registrar Kerugoya High Court for. custody a ordered on 25th May 2023 save for titles for parcels of land numbers Mwerua/Kagio/1275, Kiine/Thigirichi/692 whose original titles and logbook for motor vehicle KCG 279R 1 could not trace.”
5. By a Supplementary Affidavit sworn on 23/4/2025, the applicant replied to the Inventory and asserted that that the Respondents had failed to include some properties as follows:

“Supplementary Affidavit

I, Nicholas Mwangi Mugo, of TEL;0702584047 in the Republic of Kenya, hereby conscientiously declare solemn oath and state as follows:

1. That I am the applicant herein and therefore competent to swear this affidavit.
2. That this affidavit supplements the supporting affidavit i swore on 15th April, 2024.
3. That the replying affidavit sworn by the respondents have left out some properties. (Annexed and marked NMM 1is a copy of the properties left.)
4. That the respondents have colluded with some beneficiaries to withdraw monies from bank and Sacco accounts belonging to the deceased thus disinheriting some beneficiaries.



5. That the respondents have also fraudulently transferred some properties to strangers without the consent of all beneficiaries and without the succession case being completed.
  6. That the respondents have intermeddled with the estate of the deceased and therefore ought to be committed to civil jail and removed as co-administrators of the deceased estate.”
6. The Respondent has complied, albeit late, with the order of the court by filing an inventory. If it is contended that the inventory is not complete, the applicant may raise the issue as it has been done in the Supplementary Affidavit, file proof of ownership by the deceased and/or also make the properties part of the times who ownership is under investigation. The court cannot compel the production of documents which the party does not have. It is for the person alleging non-inclusion of some property to show that the properties being to the deceased and that they have been left out of the inventory/schedule of assets.
7. Consequently, the application for contempt dated 15/4/2024 is held in abeyance until it can be shown that the Respondents have failed to produce inventory of assets which were in their possession at the time of the filing of Inventory of Assets dated 14/3/2025.

#### **Application dated 18/10/2024**

8. The application of 18/10/2024 sought orders in specific terms as follows:
- “1. That the Honourable Court be pleased to order the C.C.I.O Kirinyaga County to investigate the following account: KCB A/C No 071231848886 and Account No 1105299449 KCB Bank Account No 047117343403 Equity Bank Acc.0470192706152, Co-operative Bank A/C No 01109307257000 and Account No 01109016069, Shares in Blue Osmium Ltd Company No PVT-RXU R5QK, Barclays Bank shares, National Printers & Publishers shares, Kenya Power & Lighting Company Shares, Life Insurance with CFC Insurance and British American Insurance, 2NK Sacco Account belonging to the deceased, Kasamuthi Travellers Sacco, Finac Investment Ltd, Post Bank Account No KMRBBSA DO4284 Market Branch, Ngong/Ngong/6236, Mombasa/Block,XIII/63, Kiine/Thigirichi/406, Kiine/Sagana/1265 and KBZ 361 K.
  2. That the Honourable Court be pleased to grant any other order it may find fit.
  3. The cost of this application be in the appeal.”
9. Despite opportunity by leave to file and adjournments granted by the Court for that purpose on 12/11/2024 and 24/3/2025, the Respondents to file respond to the application by Replying Affidavit/ Grounds of Opposition to the application, the Respondents have failed to answer the application, and Ruling was reserved.

#### **Determination**

10. The Court has statutory duty to protect the estate of a deceased in terms of section 45 of the [\*Law of Succession Act\*](#). Where there are administrators already appointed the dealing with such property cannot be intermeddling unless it is shown that the administrators are acting outside the authority of the Grant.



11. In this case, there are three administrators appointed by the Court from the two respective houses of the Deceased. The Court must not allow a party to obtain orders aimed at punishing or causing hardship to the other house or party or gain an unfair advantage over the other party.
12. However, the issue of illegality alleged in the transfer of the estate assets is central to the role of the Court under section 45 of the *Law of Succession Act*, and the Court has wide powers under section 47 of the Act to deal with such matters of preventing loss, waste or other damage of the deceased's assets subject of the succession proceedings.
13. Consequently, the Court will make an order for investigation of alleged transfer of property and other intermeddling by dealing with the estate of the deceased outside the provisions of the grant and the law on administration, which investigations should inform further orders of the Court in discharge of its mandate as a succession court.
14. The issue of removal of the respondents as co-administrators taken in the Supplementary Affidavit had been raised in the application addressed by the Court in the ruling of 25/3/2025 with the appointment of the applicant as a third administrator. There being no application for review based on new evidence, the Court is not able to make orders thereon.

#### **Orders.**

15. Accordingly, for the reasons set out above, the Court makes an order for police investigation into the matter of the alleged intermeddling with the assets of the deceased as prayed in prayer No 1 of the Summons dated 18/10/2024.
16. The Applicant shall at the first instance pay any necessary fees payable for searches, documentation and any certification as may become necessary in the course of the investigations, subject to directions at the party or parties to bear the costs at the hearing.
17. Mention for compliance and directions 3/7/2025.

Order Accordingly.

**DATED AND DELIVERED THIS 30TH DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **APPEARANCES:**

Mr. Waithaka for the Petitioner.

Ms. Kimotho for the Applicant.

