



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Mary Nyambura Mbugua (Deceased) (Succession Cause E186 of 2024) [2025] KEHC 7449 (KLR) (27 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7449 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E186 OF 2024**

SM MOHOCHI, J

MAY 27, 2025

IN THE ESTATE OF MARY NYAMBURA MBUGUA (DECEASED)

BETWEEN

ANTHONY NJUGUNA NDUNGU APPLICANT

AND

JANE NJERI 1ST RESPONDENT

ANNE WANGARI 2ND RESPONDENT

JOHN KAMUNYA 3RD RESPONDENT

AND

MACKAY ONGUDI INTERESTED PARTY

RULING

1. Before me are two interlocutory Applications by Antony N. Ndungu the 1st one dated 26th February 2025 and the 2nd Application dated 5th March 2025, the 1st Application is filed pursuant to Section 1A, 1B & 3A of the Civil Procedure Act, Section 45 & 47 of The Law of Succession Act, Cap 160, Rule 73 of the Probate and Administration Rules, Legal Notice No.104 of 1980 and craves the following relief(s);
 - i. Spent
 - ii. That, an Order of injunction be issued restraining, stopping, preventing, intercepting. and/or prohibiting the Respondents herein, their agents, beneficiaries and/or their proxies from interfering, transferring, utilizing the monies, funds and/or proceeds belonging to the Estate of the Deceased pending the Confirmation of Grant of letters of administration issued in this succession cause.



- iii. That, an Order be issued directing the Respondents and/or the Interested Party herein to deposit/continue depositing monies, funds or proceeds generated from the Deceased's properties into the Deceased's Equity Bank Account being A/C No. 013019130xxxxx pending the Confirmation of Grant of letters of administration issued in this succession cause.
 - iv. That, an Order be issued to the Respondents and the Interested Party herein directing them to provide a statement of accounts of all the Monies, funds or proceeds collected from the properties of the Deceased since the demise of the Deceased on the 10th of January, 2024.
 - v. That, the costs be in the cause.
2. The 2nd Application is filed pursuant to Section 1A, 1B & 3A of the Civil Procedure Act, Section 45 & 47 of The Law of Succession Act, Cap 160, Rule 73 of the Probate and Administration Rules, Legal Notice No. 104 of 1980 and craves the following relief(s);
- i. Spent
 - ii. That, the Orders issued on the 3rd of March, 2025 be and is hereby reviewed and set aside.
 - iii. Spent.
 - iv. That, an Order of injunction be issued restraining, stopping, preventing, intercepting, and/or prohibiting the Respondents herein, their agents, beneficiaries and/or their proxies from interfering, transferring, utilizing the monies, funds and/or proceeds belonging to the Estate of the Deceased pending the Confirmation of Grant of letters of administration issued in this succession cause.
 - v. That, an Order be issued directing the Respondents and/or the Interested Party herein to deposit/continue depositing monies, funds or proceeds generated from the Deceased's properties into the Deceased's Equity Bank Account being A/C No. 013019130xxxxx pending the Confirmation of Grant of letters of administration issued in this succession cause.
 - vi. That, an Order be issued to the Respondents and the Interested Party herein directing them to provide a statement of accounts of all the Monies, funds or proceeds collected from the properties of the Deceased since the demise of the Deceased on the 10th of January, 2024.
 - vii. That, the costs be in the cause.
3. The two Applications are anchored on the following grounds and respective supporting affidavits that, the Applicant is a beneficiary to the Estate of the deceased and also one of the intended Administrators of the Estate.
4. That the Deceased passed away on the 10th of January, 2024 and the Applicant and the Respondents herein filed a Petition for the Grant of Letters of Administration on the 3rd of December, 2024 seeking to be administrators. The Matter is currently at the Gazettement stage.
5. That at all material times, the Deceased had multiple properties generating income on a monthly basis being:
- a. Municipality/ Block 24/4xx;
 - b. Nakuru Municipality Block 24/4xxx;
 - c. Nakuru Municipality Block 29/5xx (RONDA);
 - d. Nakuru Municipality Block 24/4xxx;



- e. Nakuru Municipality Block 3/1xx;
 - f. Nakuru Municipality Block 24/xx;
 - g. Mitimangi/Mbaruk Block 8/11xx (xxx D)
6. That the Interested Party herein had and has always been the agent responsible for the collection of the monies/funds/proceeds generated from the said properties listed in paragraph 4 of this Application.
 7. That once the monies/funds/proceeds are collected, the Interested party herein would then ensure that they are deposited into the Deceased's Equity Bank Account being Number 013019130xxxxx.
 8. That upon the Deceased's demise on the 10th day of January, 2024, the Applicant and the Respondents herein opened an Account at the National Commercial Bank of Africa (NCBA) for purposes of re-directing all the monies/funds/proceeds collected by the interested party to be deposited in the said Account for safe-keeping and accountability.
 9. However, on diverse dates such as the 3rd of December, 2024 8th January, 2025, 13th of January, 2025, 13th of February, 2025 and finally on the 17th of February, 2025, the Applicant noted that the Respondents herein have been withdrawing some of the said funds without his knowledge or confirmation without reason or cause or a colour of right.
 10. That the actions of the Respondents culminate to intermeddling pursuant to Section 45 of the Law of Succession Act.
 11. The Applicant is apprehensive that the Respondents herein are acting against the interest of all beneficiaries and against the Law by illegally siphoning monies/funds/proceeds of the Estate before confirmation of grant is complete or without the appropriate leave of Court.
 12. There has been no inordinate delay in bringing this Application before the Court, and it is in the best interest of Justice that this Application is allowed.
 13. That on or about the 26th of February, 2025, the Applicant herein filed an Application dated the 26th of February, 2025 seeking for preservatory Orders against the Respondents and third-party herein over monies/funds/proceeds generated from the Deceased Estate and requested that the Court Orders that the same be deposited into the Deceased's Equity Account Number 013019130xxxxx ONLY and no other account.
 14. That the Deceased's properties generating monies/funds/proceeds are;
 - a. Municipality/ Block 24/4xx;
 - b. Nakuru Municipality Block 24/4xxx;
 - c. Nakuru Municipality Block 29/5xx (RONDA);
 - d. Nakuru Municipality Block 24/4xxx;
 - e. Nakuru Municipality Block 3/1xx;
 - f. Nakuru Municipality Block 24/xx;
 - g. Mitimangi/Mbaruk Block 8/11xx (xxx D)
 15. That the Respondents opened a NCBA Account with A/C No. 9003610017 for purposes of collecting the monies/funds/proceeds from the above properties and have now withdrawn all the funds for their own selfish and self-serving interest to the detriment of all other beneficiaries.



16. The NCBA account had over half a million shillings and was meant to be used as a platform to collect all the monies/funds/proceeds of the deceased estate. The Respondents have now withdrawn all the funds and the balance left is just a mere Kshs. 14,541/- only.
17. That the Interested Party herein as the agent of the Deceased in-charge of collection of the monies/funds/proceeds generated from the properties listed under Paragraph 2 has been compromised and no longer makes any further deposits.
18. That the Respondents were meant to act as custodians of all other beneficiaries but have in-fact used the opportunity to squander and embezzle all of the funds of the Deceased's estate to the beneficiaries' detriment.
19. That this Honourable Court has directed that parties file submissions and parties are to return on the 27th of May, 2025 for Ruling. The date for Ruling is unreasonably too far whilst the Respondent continue to squander, embezzle and use funds of the Deceased estate generated from the said properties listed under paragraph 2 above.
20. That it would be prudent and safe in the interest of Justice that the said funds being collected as of now by the Interested Party be deposited into the Deceased's Equity Account No. 013019130xxxxx until the said Application is dealt with and confirmation of grant is issued.
21. That failure to grant the said interim Orders, the said Application shall be rendered nugatory and an academic exercise, since the Respondent herein shall in no way be able or have any other means to repay all the monies/funds/proceeds they've been siphoning/embezzling and continue to do so from the properties of the Deceased without a colour of right to the detriment and peril of all other beneficiaries.
22. There has been no inordinate delay in bringing this Application before the Court, and it is in the best interest of Justice that this Application is allowed.
23. It is imperative that this Honourable Court grants the said Orders and allows the said Application in the interest of Justice.

Respondent's Case

24. The Application is opposed by the 1st Respondent who has the authority to swear the affidavit on behalf of the 2nd and 3rd Respondents herein.
25. That, it is true that our deceased mother passed away on the 10 January, 2024 and the Respondents with the Applicant, agreed to petition for the grant of letters of administration to the estate of the deceased pursuant to which, we asked the Applicant herein to find an advocate to kickstart the process and inform us of the process.
26. That, however we were not aware that he had already instructed an advocate and that the petition had actually been filed until he orally mentioned it to us and gave us the case number pursuant to which we instructed our present advocate to peruse the file and come on record on our behalf.
27. That, it was shocking to see their signatures on the petition annexed to the Applicant's application only to realize that the signature bit in the petition has been pasted there from another document and reasons whereof, they will be seeking for the original petition to be produced in Court by the Applicant.
28. That, it became apparent that the signatures had been cut out from other Court pleadings that they had signed in Nakuru CM ELC NO. 210 of 2019 in which we, together with the Applicant herein, are a party to.



29. That, the petition, as filed, does not depict a true inventory of all the assets and liabilities of the deceased and neither does it depict the true value of the estate.
30. That, a number of assets and liabilities have been left out of the petition including:
 - a. Miti Mingi/mbaruk Block 3/15xx(xxx)
 - b. Gilgil/gilgil Block 1/203xx (xxx)
 - c. Miti Mingi Mbaruk Block 3/16xx (xx)
 - d. Naivasha Ol Jorai Phase 2/12xxx
 - e. Miti Mingi/mbaruk Block 3/1xx
 - f. Miti Mingi/mbaruk Block 3/9xxx
 - g. Miti Mingi/mbaruk Block 8/1xx (xxx)
 - h. Gilgil/gilgil Blo...
31. That, further to paragraph 13 above, the rentals for Nakuru Municipality Block 7/606 were being collected by the interested party upon the demise of the deceased up to sometime in December, 2024 before the Applicant herein embarked on collecting the rent directly and/or through his illegally appointed agents known as Stamwa Commercial Agency.
32. That, the property known as Nakuru Municipality Block 24/39 does not belong to the deceased and hence does not form part of the estate.
33. That, it is true that they all, including the Applicant herein, opened a joint account number 900XXXXXX17 at NCBA Bank upon the demise of their late mother wherein all the income generated from her properties were to be deposited and which proceeds were to be utilized for maintenance of all her assets and payment of her liabilities.
34. That, the said account was opened sometime in January 2024 and where after we gave the Applicant herein the mandate to manage all the properties and ensure that all the rentals were paid on time and deposited in the joint account. (Attached herein and marked as "JN 4" is a copy of the said NCBA Joint account statement).
35. That, to this extent the interested party also gave the Applicant some of the rentals directly in the faith that he would deposit them into the joint account but some of the monies were never deposited.
36. That, being the youngest brother, we also entrusted the Applicant with the responsibility of maintaining all the assets of our late mother and pursuant to this, we allowed him to make withdrawals from the account with the faith that he was utilizing the monies for the intended purpose.
37. That, however, when they decided to have a meeting of accounts in December, 2024, they realized that the Applicant had been making withdrawals of monies from the joint account and yet, he could offer no justification as to where the said monies were utilized.
38. That, as such, they will be seeking for accounts of the monies utilized by the Applicant from the joint account and the rentals received by the applicant which were never deposited in the joint account.
39. That, in addition to clause 19 hereinabove, they will also be seeking accounts for the rentals being collected directly by the Applicant.



40. That, in an attempt to mitigate the issues, they agreed in the meeting that all the rent collection would go to the NCBA joint account and Kshs. 200,000/- from the monies received from Nakuru Municipality Block 7/606 every month would go towards paying the loan our mother had taken to develop the said property.
41. That, this was before the Applicant went rogue and embarked on a series of legal suits against us including this current application as well as Nakuru ELC Case No. E012 of 2025 where the subject matter of the suit is the property known as Nakuru Municipality Block 7/606.
42. That, also not true that proceeds would always be deposited into the deceased's Equity Bank Account as the deceased would dictate where the monies would be deposited from time to time including her M-Pesa.
43. That, upon the demise of their late mother, the proceeds would be deposited into the joint account as was agreed and accepted by all of them including the Applicant.
44. That, they have, at no point, withdrawn any monies from the joint account without justification as it was evident that the monies were meant to maintain all the assets of their late mother.
45. That, they are willing to provide a true and accurate statement of account of all the proceeds from the properties which they withdrew.
46. That, they it is evident that the Applicant has approached this Court with unclean hands as it is him who has embarked in a series of illegal and fraudulent transactions including altering the title deeds of properties belonging to their late mother, collecting rentals unprocedurally and without their authority, filing multiplicity of baseless suits and interfering with peaceful occupation of the tenants in the properties.
47. That, they from the fore-going, it is evident that the Applicant's application for injunction and other Orders should not see the light of the day as this will be tantamount to asking the Court to aid an illegality.
48. The Respondents pray that the Applications be dismissed with costs.

Analysis and Determination

49. The Applicant's written submissions dated 25th May 2025 and further Affidavit dated 22nd May 2025 are hereby disregarded for having been filed out of time
50. A Succession Court cannot issue Orders in a vacuum and it is only upon the making of a grant that parties are identifiable and are known to the Court for any interlocutory injunctive reliefs are sought that being the case and having considered the lengthy pleadings by the parties this Court as it always maintains that it is in the best interests of the late Mary Nyambura Mbugua that a grant be made and that Personal representative forthwith be appointed to be responsible as the succession commences.
51. The Court clearly notes the divergence subsisting amongst the Administrators noting that the Court makes grants and issues them to persons deemed responsible enough to oversee the affairs of the deceased person and ultimately to undertake the distribution. A personal representative must undertake his work inline with the law of succession Act, for example, to oversee settlement of debt and distribution of the estate to the beneficiaries.
52. Any monies collected and/or withdrawn from the estate by any beneficiary shall be recoverable as any other outgoing before the final distribution.



53. The Court notes the early vicious battles over rental income and control of various properties of the deceased by different beneficiaries, cautioning them that cumulatively such battles shall not benefit anyone of them ultimately and that this is indicative that this succession may drag in Courts for many years, parties are further cautioned herein that the deceased person cannot be said to be “resting in peace” while her estate is subject to multiple cases by those who it was intended to ultimately benefit.
54. Section 66 of the Law of Succession Act bestows this Court with the discretion to as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made. The Court in exercise of the said discretion is mandated to accept as a general guide the following order of preference; -
- a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part v;
 - c. the public trustee; and
 - d. creditors:
55. This Court finds no merit in the Applications dated 26th February 2025 and 5th March 2025 and accordingly dismiss the same.
56. Having observed that it shall be in the best interests of All to forthwith make a grant of letters of administration intestate. The Petition to making of a grant intestate dated 29th November 2024 is hereby allowed, I invoke the discretion bestowed on this Court by Section 66 of the Law of Succession Act and appoint the following as a joint administrator;
- a. Jane Njeri Nyambura,
 - b. John Kamunya,
 - c. Anne Wangari Scyrus &
 - d. Anthony NjugunaNdung'u
57. Furthermore, in the interests of all and in order to expedite the administration and settlement of this probate and to avoid unnecessary protraction I hereby make the following orders;
- i. The Administrators are here by ordered to each account for any monies belonging to the estate of the deceased in their possession since the demise of the deceased to date, within the next sixty (60) days.
 - ii. The Administrators are hereby ordered to file a joint Summons for Confirmation of Grant listing ALL assets of the deceased and providing a clear proposed distribution mode, within the next sixty (60) days.
 - iii. An Order is hereby issued directing that all monetary proceeds belonging to the estate of the deceased shall forthwith be deposited at the NCBA bank limited Account with A/C No. 9003610017 in the names of the Joint-Administrators.
 - iv. The Interested Party shall forthwith deposit All monetary proceeds belonging to the estate of the deceased the NCBA bank limited Account with A/C No. 9003610017 in the names of the Joint-Administrators.



- v. The Interested Party shall within the next Sixty Days file an affidavit articulating his interest in the estate of the deceased.
- vi. I am inclined to grant the costs to the Respondents.

It is so ordered

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 27TH DAY OF MAY, 2025

MOHOCHI S.M

JUDGE.

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