



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Mathew Kamiri Karanja (Deceased) (Succession Cause
E035 of 2023) [2025] KEHC 9510 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E035 OF 2023**

A MSHILA, J

JUNE 27, 2025

**IN THE MATTER OF THE ESTATE OF MATHEW KAMIRI KARANJA
(DECEASED)**

BETWEEN

VINCENT CHEGE KAMIRI APPLICANT

AND

JOSEPH NGUGI KAMIRI RESPONDENT

RULING

1. Before court is the application by way of Chamber Summons dated 26th April, 2023 and brought under Section 45 of the *Law of Succession Act*, Rule 49 of the Probate and Administration Rules, 1980; Sections 1A, 1B & 3A of the *Civil Procedure Act*, Cap 21 and all other enabling provisions of the law. The Intended Executor/Applicant sought for orders:-
 - a. Spent
 - b. That pending the hearing and determination of this application or any such time and duration as this Court will deem fit, this Honourable Court be pleased to issue an order restraining the Respondent by himself, his agents or servants, employees or any other assigns or representatives to stop interfering and specifically, stop any form of construction work that he is undertaking on the property known as Githunguri/Riuki/1369.
 - c. That an order do issue restraining the Respondent by himself, his agents or servants, employees or any other assigns or representatives from intermeddling in any way with the estate of the deceased pending the hearing and conclusion of the main succession cause.
 - d. That an order do issue directed at the OCPD, Githunguri Police Station, to supervise the compliance of the orders.



- e. That this Honourable Court be pleased to make such other and/or further orders as may appear to this Court to be just and convenient.
2. The application is premised on the grounds that the Respondent is intermeddling with the deceased property being Githunguri/Riuki/1369 where he is building a permanent structure at the prejudice of the other beneficiaries.
3. The application is supported by the affidavit of VINCENT CHEGE KAMIRI one of the beneficiaries of the deceased's estate who deposed that the deceased herein died on 16/7/2018. The deceased was said to have left a WILL with the Applicant as the executor where all the deceaseds' assets were bequeathed to all the beneficiaries save for Githunguri/Riuki/1369 where the Respondent has his temporary residence. He informed the Respondent not to proceed with any dealings on the said property pending the succession process but the Respondent ignored him and proceeded to develop a permanent structure hence intermeddling with the deceased's property. The orders sought should be granted to avert prejudice on the other beneficiaries as well as stop further intermeddling.
4. The Respondent did not respond and/or oppose the Applicant's application.
5. Subsequently, the application was heard by way of written submissions. The Applicant submits that the Respondent is intermeddling with the deceased property by building a permanent structure on a parcel of land not allocated to him in the WILL. Reliance was placed in the case of *Re; estate of M'Ngarithi M'Miriti (2017) eKLR*. The Respondent was said to lack authority to undertake any actions including construction on the deceased's property. The court was urged to issue preservation orders against the Respondent as the land on which he is building has not been allocated. Reliance was placed in the case of *In re Estate Edward Murithi Mutegi (Deceased) (2021) eKLR*. The Respondent's actions were said to be unlawful. The OCPD was said to supervise the compliance orders so as to ensure that the ends of justice are met.

Issues For Determination

6. Having considered the application and the Applicant's submissions, the main issues for determination are whether the Respondent is intermeddling with the estate of the deceased and whether the court should issue the preservation orders sought.

Analysis

7. The applicant herein alleges that the respondent is intermeddling with the estate of the deceased by constructing a permanent structure on LR. Githunguri/Riuki/1369 hence seeks that the respondent be restrained from dealing with the said deceased's estate.
8. A Probate Court has powers under Section 47 of the *Law of Succession Act* as well as Rule 73 of the Probate and Administration Rules to grant temporary injunctions. See the case of *Floris Piezzo & Another -vs- Giancarlo Falasconi (2014) eKLR*.
9. Section 47 of the *Law of Succession Act* provides as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”



10. Further, Rule 73 of the Probate and Administration Rules provides as follows:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

11. The principles guiding the handling of Applications for temporary injunctions are now well settled in the case of *Giella vs. Cassman Brown & Co. Ltd* (1973) EA 358. Similarly, the Court of Appeal in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* (2014) eKLR stated as follows:-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) if any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent.

12. The Court of Appeal, in the case of *Mrao Ltd v First American Bank of Kenya and 2 others* (2003) KLR 125, defined a prima facie case as follows:

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.

13. The applicant herein was appointed the executor of the deceased's will dated 16th November, 2012. That on 27th April, 2023, the applicant filed his Petition for Probate of written will which was accompanied by a Chamber Summons application seeking orders of restriction and preservation of the deceased's estate as against the respondent who is being accused of intermeddling with the parcel of land being Githunguri/Riuki/1369 where the respondent is said to be constructing a permanent building on a piece of land belonging to the deceased but is not distributed in the will as such the applicant claims that the respondent should await its proper distribution.

14. Section 45 of the *Law of Succession Act* prohibits intermeddling with the estate of a deceased person.

15. See the case of *Re Estate of M'Ngarithi M'Miriti* (2017) eKLR, where Gikonyo J. described “intermeddling” as follows:-

“Whereas there is no specific definition provided by the Act for the term “intermeddling”, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free



property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

16. In the circumstances, this court finds that there is need to preserve the parcel of land known as Githunguri/Riuki/1369 as the same was left out of the will as such the said parcel of land is yet to vest on any beneficiary. The respondent is hereby restricted from intermeddling with the said parcel of land by building a permanent structure thereon. However, status quo should remain as the respondent is said to already be residing on the parcel of land until its final distribution.
17. In the end therefore, the applicant is found to have demonstrated the existence of a prima facie case warranting grant of the orders sought.
18. In respect of whether the applicant will suffer irreparable harm that cannot be compensated by way of damages, the applicant claims that the parcel of land on which the respondent is being accused of building a permanent building is one that the deceased left out as he was preparing his will as such the parcel of land is pending distribution. In any case the parcel of land is said to belong to all the deceased’s beneficiaries equally.
19. See the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* (2014) eKLR where irreparable loss was discussed thus:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

20. Bearing the above, this court finds that the respondent building a permanent structure on a parcel of land which is yet to be distributed, will cause harm to the other beneficiaries as they are equally entitled to the said deceased’s property as such the respondent should await distribution of the said property.
21. Lastly, the balance of convenience is found to tilt in favour of the applicant as there is need to stop intermeddling and preserve the property of the deceased which is pending distribution to its rightful beneficiary. The beneficiaries stand to suffer the greater risk if the orders sought are not granted as they stand to lose their stake on the deceased’s property.
22. See the case of *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* (2018) eKLR where the court held as follows:

“The meaning of “balance of convenience” in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show



that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

23. In the upshot, I find that the applicant has satisfied the requisite conditions for the grant of a restraining order for the preservation of Githunguri/Riuki/1369 pending its distribution.

Findings And Determinations

24. From the afore-going reasons this Court makes the following findings and determinations;
- a. That pending the filing of the Intestate Petition the Respondent is hereby issued with an order restraining him by himself, his agents or servants, employees or any other assigns or representatives stopping them from interfering and specifically, stop any form of construction work he is undertaking on the property known as Githunguri/Riuki/1369 .
 - b. Petition for Intestate Letters of Administration be filed within 45 days hereof for the un-administered property of the deceased.
 - c. Mention 17/11/2025 for compliance.
 - d. The Applicant shall have costs of this application

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 27TH DAY OF JUNE, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Mussa - for the Applicant

Joseph – present in person

