



REPUBLIC OF KENYA



**In re Estate of Nellie Waithira Kinuthia (Deceased) (Probate & Administration E587 of 2024) [2025] KEHC 10903 (KLR) (Family) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 10903 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
PROBATE & ADMINISTRATION E587 OF 2024  
CJ KENDAGOR, J  
JUNE 26, 2025**

**BETWEEN**

**ROWLAND THIONGO KINUTHIA ..... 1<sup>ST</sup> APPLICANT**

**ROSEBELL WAMBUI KARANJA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MATTHEW WAMBU KINUTHIA ..... 1<sup>ST</sup> RESPONDENT**

**THOMAS NGETHE KINUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**GEORGE MUIGAI KINUTHIA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased in this matter is the mother of the Petitioners and the Objectors. The Petitioners filed for letters of administration, and the Objectors lodged an objection, which is still pending.
2. This Ruling relates to an application dated 13<sup>th</sup> January, 2025 in which the applicants seek the following orders;
  - i. That this application be certified urgent and heard ex parte in the first instance;
  - ii. That pending the hearing and determination of this application and objection of probate of will, the Respondents be restrained by way of an interim injunction from collecting, receiving, or otherwise managing rental income derived from the properties of the estate of the late Nellie Waithira Kinuthia (deceased);
  - iii. That this honourable court do order the Respondents to render a full and accurate account of all rental income collected from the properties of the estate of the late Nellie Waithira Kinuthia from September 2021 to date;



- iv. That this honourable court do direct that any future rental income from the estate properties be collected by a joint interest-earning account held by both parties' advocates, or as the court deems fit or as pending the final determination of this Succession Cause;
  - v. That the enforcement of the orders be supervised by the OCS Kabete Police Station and the Area Chief, Kangemi Location;
  - vi. That the Respondents be ordered to deposit the sum of Kshs.8,000,000/=, being the estimated rental income collected to date, into a joint interest-earning account held by both parties' advocates, or as the court deems fit;
  - vii. That the costs of this application be provided for.
3. The Application is opposed.

### **The Applicants' case**

4. The Applicants argue that the Respondents have been collecting rental income from the estate properties without legal authority and have unjustly enriched themselves to the detriment of other beneficiaries.
5. The Applicants propose that the rental income should be deposited into a joint interest-earning account held by both advocates. They also ask the Court to compel the Respondents to provide an account of the estimated Kshs.8,000,000/= received from the estate's rental income, as well as to deposit the money into the joint interest-earning account.
6. The Applicants argue that future rental income should be collected by a neutral party and deposited into an escrow account pending the hearing and determination of the matter.
7. The Applicants urged the Court to determine that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had failed to respond to the application. They argued that this lack of response constituted an admission of the existence of rental income, which needed to be accounted for and properly managed.

### **The Respondents' Case**

8. The Respondent, on the other hand, asserted that the Applicants had failed to provide evidence of ownership as well as evidence of the monies remitted to the Respondents from the property in question.
9. The Respondents denied any allegations of meddling with the estate of the deceased. They contended that the orders being sought in relation to the Kshs.8,000,000/= are mandatory in nature. Consequently, they asserted that specific and compelling circumstances must exist to warrant the issuance of such orders.
10. The Respondents accused the 1<sup>st</sup> Applicant of appointing an agency to manage and control the alleged property on his behalf, disregarding the application currently before the Court.
11. The 1<sup>st</sup> Respondent maintained that the responses he had put in opposition to the application were on his behalf and behalf of the other two respondents as they share a common interest in the outcome of the succession matter.

### **Analysis and determination**

12. The issues for determination in this ruling are threefold;



- i. Whether there is income in the form of rental income coming from the deceased's estate;
  - ii. Whether there is evidence of intermeddling;
  - iii. What orders the courts should make concerning the deceased's estate.
13. Before addressing the main issues, the Court will consider the issue raised by both sides regarding the authority to represent the other co-applicants and co-respondents in the application. All three petitioners have jointly signed the Petition that initiated this Succession Cause, and the Notice of Appointment of Advocate has also been made for the two objectors jointly. Since the provisions of the Civil Procedure Rules apply only in exceptional circumstances, as outlined in Rule 63 of the Probate and Administration Rules - which does not include Order 1, Rule 13 of the Civil Procedure Rules concerning authority to plead - the Court will regard the affidavits submitted by each side as reflecting a consensus among the parties. The presumption would have been dispelled if any of the parties had filed parallel pleadings or pursued their interests separately. However, it is important to note that where such authority exists, it should be explicitly stated in the affidavits related to succession matters, as it cannot always be assumed that all parties are in agreement.
  14. The pleadings reveal that the deceased's estate includes several assets, notably the property Dagoretti/Kangemi/S.139, which is the focus of this application. Although some reference mistakenly capture it as 5139 instead of S.139, it is evident to me that both refer to the same property, and this oversight can be disregarded.
  15. The documents presented by both parties reveal the presence of structures within the property. However, they lack crucial details, such as the exact number of units available, the type of structures, and substantial evidence to validate the claimed rental income. This absence of information raises questions about the accuracy of the applicant's assertions regarding the income collected as well as the management of the property.
  16. It is a fundamental legal principle that the responsibility to substantiate claims rests with the party making the allegations. In this case, the Applicants bear the obligation to present compelling evidence that not only supports their assertions but also clearly illustrates that the actions of the Respondents fall within the legal definition of intermeddling. The Applicants have not discharged that burden.
  17. The application dated 13<sup>th</sup> January, 2025 is hereby dismissed for lack of merit.
  18. The parties appear to be competing for rent collection, and this escalating conflict is not in the best interest of the estate and the beneficiaries. The [Law of Succession Act](#) establishes a framework for the orderly administration of estates. Given that this is a family matter and considering the counter issues raised by each party in the current application, including the pending objection, I find the matter suitable for referral to Court Annexed Mediation.
  19. To protect the rental income from the property at Dagoretti/Kangemi/S.139, the Court orders that it be deposited into the deceased's account at Cooperative Bank Limited, Account No. 011 090 029 679 300. This Account is as indicated in the Will filed in Court. The property's management/caretaker is to be served with this order.
  20. Either party is at liberty to move the Court should any hitches arise concerning the designated bank account.
  21. Following the referral of the matter to Court Annexed Mediation, it will be mentioned before the Deputy Registrar for directions.



22. Each party shall bear own costs of the application.

23. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Cc Beryl

Mr. J. Kihara, Advocate for the Applicants/Objectors

Mr. Kuria Ndegwa, Advocate for the Petitioners/Respondents

