



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Nicholas Mworja Mwereria (Deceased) (Succession Cause  
143 of 2009) [2025] KEHC 11692 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11692 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 143 OF 2009  
SM GITHINJI, J  
JULY 31, 2025**

**IN THE MATTER OF THE ESTATE OF NICHOLAS MWORJA MWERERIA (DECEASED)**

**BETWEEN**

**ELVIN KOOME MWORIA ..... 1<sup>ST</sup> BENEFICIARY**

**BETTY KAJUJU MUTWIRI ..... 2<sup>ND</sup> BENEFICIARY**

**AND**

**KENNETH KIMAITA ..... INTERESTED PARTY**

**AND**

**BISHOP WILLIAM MURIUKI ..... PETITIONER**

**AND**

**KENNETH KIMAITA ..... INTERESTED PARTY**

**RULING**

1. For determination is the Chamber Summons dated 24/10/2024 seeking that:
  1. Spent
  2. This Honorable court be pleased to bar Mosmark Agencies from collection of rent payable from B11/165 by tenants forthwith.
  3. This Honorable court issues an Order to all tenants in B11/165 to remit all rent to Equity Acc. No 104XXXXXXXXXX by 10<sup>th</sup> of every month beginning on or before 1<sup>st</sup> December 2024.
  4. This Honorable court issue an order to Safaricom Ltd to remit all quarterly Safaricom mast fees to Equity Acc. No. 104XXXXXXXXXX held by B11/165 beneficiaries by the end of every



quarter by the 10<sup>th</sup> day of the last month as all the beneficiaries are of age and able to run their own affairs.

5. This Honorable court be pleased to make an order that the share due to the estate is 1/6 share at B11/165 as was held by Nicholas Mworira at the date of his demise and it is a 1/6 share of the rent from the said premises that is due to the estate as per the lease transferred by the deceased in 2003.
  6. This Honorable court be pleased to make an order that I do not have the mandate to control 5/6<sup>th</sup> a share of the property B11/165 since the deceased had transferred to the beneficiaries, only 1/6<sup>th</sup> a share is still pending distribution.
  7. This Honorable court do and hereby issue an order in regards to property Block 1/348 which was to cater for the deceased grandchildren's school fees until they attain the age of majority. As it stands all except 2 have attained the age of majority [S.V.K. and S.M.K.]. My prayer is this property's income be shared to all children of the deceased as follows:
    1. Richard Munene – 15%
    2. John Kimathi – 15%
    3. Betty Kajuju – 15%
    4. Eric Koome – 15%
    5. Kenneth Kimaita – 15%
    6. 5% for school fees to the 2 grandchildren until they all are 18 years. [S.V.K. and S.M.K.].
    7. 20% for electricity, water and other maintenance.
  8. This Honorable court issue an order that all rent income from B1/348 be deposited to a joint account to be held by the 5 beneficiaries and the Executors to be shared on monthly basis as per prayer No. 5 of the Will of the deceased. The Executor to execute the distribution of the funds beginning on or before 1<sup>st</sup> December 2024.
  9. The Honorable court issue appropriate orders for equal distribution of B1/44 with the effect as per No. 2 of the Will as some beneficiaries have been left out namely Betty Kajuju and Richard Munene.
    1. That Richard is sickly and requires lifelong medications to sustain himself and he is entitled to a share.
    2. Betty has never received any share from B1/144, B1/348 and B11/165 and has every right as a shareholder as to all the properties as other beneficiaries.
  10. This Honorable court be pleased to issue an order that all rent income from 1137 and 1138 be deposited to a joint account held by the Executors of the Will as per clause No. 7 of the will and all tenants in Block 1137 and 1138 to furnish the executors with rent payment receipts or records from 1<sup>st</sup> January 2024 to date for reconciliation.
  11. Cost of this application be provided for.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by Bishop William Muriuki, the applicant on even date. He averred that at the time of his demise, the deceased retained only 1/6 share of L.R No. Meru Municipality B11/165 and the remainder of the



property is held by the persons specified in the green card. He urges the court to compel all the tenants of B11/165 to remit the rent income to Equity Bank Account No. 104XXXXXXXXXX which is held by him and the beneficiaries of the said property, for accountability. The Mosmark Agencies unduly delays in remitting the rent accruing from B11/165 to the beneficiaries' accounts, making it difficult to account and keep track of the income. Mosmark Agencies has, without any justification, failed to remit rent income from B1/348 and 1135, 1137 and 1138 remain unaccounted for. Safaricom Limited has blatantly failed to remit the money owing to B11/165 beneficiaries even after being served with a court order, yet the utility bills continue to accumulate. Kaaga home belonging to the co-executor and Kenneth Kimaita has a pending electricity bill of Ksh. 198,094, the annual rent charges for B1/44 have not been paid for 3 years and it is evident that the beneficiaries are unwilling to make the payments.

3. Kenneth Gitobu Mworira swore a replying affidavit on 11/11/2024 in support of the application. He averred that they were all of age and able to run their own affairs as far as B11/165 is concerned. He accused Betty Kajuju of misappropriating monies from B11/165 to the detriment of the other beneficiaries under the guise of paying for the 1<sup>st</sup> Executor's caregiving services.
4. The applicant swore a further affidavit on 28/3/2025 in support of his application.
5. Betty Kajuju Mutwiri swore a further affidavit on 8/5/2025 where she deposed that she had a power of attorney over her mother's property and not the property under administration, and she took care of her mother's medical bills and upkeep. She accused the applicant of failing to render accounts of all monies received and spent from August 2024 to date despite several requests from the beneficiaries.
6. The application was canvassed by way of written submissions which were duly filed.

#### **Determination**

7. Having considered the application and the affidavits on record, the issue for determination is whether the application is merited.
8. In appointing Mosmark Agencies to collect the rent income from B11/165, 1/44 and B1/348, the court [E. Muriithi J] noted in its ruling dated 25/4/2024 that; "In order to move this matter towards closure so that the wrangles between the parties herein can be finally put to rest, this court will, in the interest of justice and in the intervening period, allow Mosmark Agencies to continue collecting rent from the suit property and Meru Municipality Block 1/348 - On Kenyatta Highway Adjacent To Block 1/44 pending the finalization of the distribution of the estate to the beneficiaries. The respondents are hereby called upon to move with speed to conclude the administration process in accordance with the orders of the court of 28/9/2023."
9. It is now more than a year after the court directed the applicant herein and his co-executor to finalize the administration of the estate so that the beneficiaries can have full autonomy of their bequests. The applicant has admitted that the co-executor is sickly and requires continuous medical attention and round-the-clock car. Those expenses, without a doubt, must be borne by the estate. Betty Kajuju has engaged the services of Oncall Caregivers to take care of Janet Karegi Mworira, the co-executor of the Will, and the issue whether the fees charged by said caregiver is exorbitant is neither here nor there.
10. In addressing the question that some beneficiaries had since attained the age of majority and were capable of managing their own affairs, this court vide its ruling dated 21/11/2024 was of the considered view that, "The remedy is in the giving effect of the terms of the Will in an expedited fashion so that the bequests can take effect for the benefit of the beneficiaries."



11. The deceased herein had categorically outlined how the estate properties would be distributed to the beneficiaries, and how the rent income therefrom would be expended. It has been deponed that all the grandchildren have since attained the age of majority save for two who still require school fees.
12. In his said Will, the deceased directed as follows in relation to Plot Nos. 1137 and 1138; “The executors are directed to collect rent and share. Use the same to educate my grandchildren until the last of such grandchild is 18 years. The property however will go to all my children in equal shares subject to the above directions.”
13. It is therefore prudent that the rent income from Plot Nos. 1137 and 1138 be deposited in a joint account in the name of the Executors, which will cater for utility bills, the medical needs of Janet Karegi Mworja, the co-executor and the school fees for the 2 minors until they attain the age of 18.
14. I find that the beneficiaries entitled to L.R No. Meru Municipality Block 11/165 ought to get their bequests and the rent income accruing therefrom. To that end, I find justification in the proposal by the applicant to have the rent income collected from that property deposited directly to the Equity Bank Account No. 104XXXXXXXXXX held by persons beneficially entitled to it under the Will, so that they can properly appropriate the income after due payment of utility and other related bills. The applicant have exhibited steps he has taken towards the completion of the administration of the estate. He has obtained consent from the County Government of Meru to replace the name of the deceased in the lease to Meru Municipality Block 11/165 with the persons beneficially entitled under the Will. That is commendable and a step closer to finalization of the administration of the estate.
15. The upshot from the foregoing is that the application dated 24/10/2024 is allowed in the following terms:
  1. Mosmark Agencies is hereby barred from collection of any rent from the estate properties.
  2. The rent proceeds collected from Meru Municipality Block 1/348 shall be deposited into a joint account in the names of the 5 persons beneficially entitled thereto under the Will.
  3. All the rent income from Meru Municipality Block 11/165 shall be deposited in Equity Bank Account No. 104XXXXXXXXXX for use by the persons entitled thereto under the Will.
  4. The rent proceeds from Meru Municipality Block 1/44 Kenyatta Highway shall be deposited in a joint account held by Richard Munene Mworja, John Kimathi Mworja, Erick Koome Mworja, Kenneth Kimaita Mworja and Betty Kajuju, who are beneficially entitled thereto under the Will.
  5. Safaricom Ltd is directed to remit all quarterly Safaricom mast fees to Equity Acc. No. 104XXXXXXXXXX held by B11/165 beneficiaries by the end of every quarter, by the 10<sup>th</sup> day of the last month.
  6. An order is hereby issued that the share due to the estate is 1/6 share of Meru Municipality Block B11/165 as was held by Nicholas Mworja, the deceased herein, at the date of his demise and it is a 1/6 share of the rent from the said premises that is due to the estate as per the lease transferred by the deceased in 2003.
  7. The beneficiaries to forthwith avail the necessary documents to the applicant to ensure that the transmission of their bequests is effected.
  8. The applicant is reminded of his duty under Section 83 of the Law of Succession Act to expeditiously complete the administration of the estate.



9. Mention on 8<sup>th</sup> December, 2025 to ensure compliance.

**DATED AND DELIVERED AT MERU THIS 31<sup>ST</sup> JULY, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Mutunga for one beneficiary Betty Kajuju Mutwiri

Others are absent

They be notified.

