



REPUBLIC OF KENYA



**In re Estate of Julius Mworira (Deceased) (Succession Cause
E001 of 2025) [2025] KEHC 11605 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E001 OF 2025**

HM NYAGA, J

JULY 30, 2025

IN THE MATTER OF THE ESTATE OF JULIUS MWORIRA (DECEASED)

BETWEEN

ZIPPORAH NKIROTE MWORIRA PETITIONER

AND

EMILY DOLLY KAGWIRIA MWORIRA 1ST RESPONDENT

ANN FAITH KANANA MWORIRA 2ND RESPONDENT

JUDY WANJA MWORIRA 3RD RESPONDENT

AND

ROBERT MATUMBI MWORIRA OBJECTOR

MARY AGNES KENDI MWORIRA OBJECTOR

MICHAEL MUTUMA MWORIRA OBJECTOR

RULING

1. The deceased died on 5th January, 2024. The Petitioner filed a Petition for letters of administration intestate in respect to the deceased herein on 5th February, 2025.
2. Contemporaneously, the Petitioner filed an application dated 23rd January, 2025, in which she sought the following orders:-
 - a. Spent
 - b. That pending the hearing and determination of the Petition filed herewith, this Honourable court be and is hereby pleased to make an order directed to Equity Bank (Kenya) Limited, Meru Branch, directing the bank to disburse a sum of Kenya Shillings One Hundred and Forty Five



Thousand Only (Ksh. 145,000/-) be to the applicant on each month for her personal needs, use and care such as food, electricity bills, water bills, clothing and general upkeep in addition to payment of salaries for workers and other utilities.

3. On 4th March, 2025, the Objector filed an objection to the making of a grant and also filed a response to the application dated 23rd June, 2025.
4. When the matter was placed before the court, the court was made aware that there were previous matters touching on the estate of the deceased, namely:-

- a. Meru High Court Misc. Application No. E037 of 2024
- b. Milimani Chief Magistrates Court Succession Cause No. E47 of 2024

5. On 18th March, 2025, I gave directions that Meru High Court Misc. Application No. E037 of 2024 be consolidated with this Petition.

I further directed that the Succession Cause No. E047 of 2024 at Milimani be transferred to this court, also for Consolidation with this Petition.

6. The Petitioner then filed an application dated 30/4/2025 to review the orders that had been issued on 18/3/2025 but that application was dispensed with by my directions issued on 13/6/2025. The petitioner also filed a Preliminary Objection (PO) to the objection by the Objectors dated 27/3/2025.

7. Having considered the matter, the court directed that the said Preliminary Objection and the application dated 23/1/2025 be argued simultaneously. This ruling thus relates to the two issues above. I will deal with each separately.

8. The Preliminary Objection sought to have the Objection filed herein struck out on the following grounds:-

1. That the objection has been filed in violation and/or contrary to the provisions of Sections 67 (1), 68 (2) and 69 of the Law of Succession Act and Rule 17 of the Probate and Administration Rules which provides as follows respectively:-

Section 67 (1) of the Law of Succession Act provides that:-

"No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired (emphasis court)."

Section 68 of the Law of Succession provides that:-

Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.

Where notice of objection has been lodged under subsection (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.

Section 69 of the Law of Succession Act stipulates that:-



1. Where a notice of objection has been lodged under subsection (1) of section 68, or no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.
2. Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute."

Rule 17 of the Probate and Administration Rules states that:-

1. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.
2. A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
3. There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.
4. Upon receipt of an objection in triplicate within the period referred to in sub-rule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.
5. The registrar of the registry in which the objection is lodged shall forthwith upon the lodgment of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.
6. If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.



9. In her submissions in support of the preliminary objection the Petitioner submitted that it was clear that the Objection filed herein was premature and as such the same ought to be struck out.
10. To buttress these submissions the petitioner relied on the decision on Re Estate of Johnstone Ochwangi Marongo (deceased) 2022 eKLR, where it was held that:-

“It was not clear to this court if the Cause herein had already been advertised in the Kenya Gazette. Suffice it to state that the Petition for Grant of Letters of Administration Intestate had not been issued herein. In the absence of proof that the Cause herein had been advertised in the Kenya Gazette, this court found and held that the filing of the Objection as contemplated in Section 68 of the Laws of Succession Act was premature. In this regard, it fully associated itself with the holding in the case of In Re Estate of Quintus Ekessa – Deceased [2021] eKLR where the court therein held that as the pre-requisite gazette notice had not been issued, the objector therein had no basis for filing an objection and that in doing so, the same was premature, incompetent and improper before that court as the procedure prescribed in Sections 67, 68 and 69 of the Law of Succession Act was not complied with.”

11. In response, the Objectors submitted that Article 159(2) of the Constitution enjoins this court to administer Justice without undue regard to technicalities. That the key consideration is whether the Petitioner will suffer any prejudice should the Objection be deemed as duly filed. Reliance was placed on the decision in Re Estate of Hanningtone Mwasaru Mlughu(Deceased)(2024) KEHC 2698 (KLR), where the court held that:-

“From the foregoing it is quite clear that the Rules provide that objections may only be made after a notice of the filing of the petition has been published in the Kenya Gazette. Publication in the Gazette serves a very important public purpose; it notifies all those who have a claim against the estate of the filing of the petition and invites them to lodge their claims. Since succession is a Court process, and with a view to the best use of the Court’s limited time, Objectors, if any, are given 30 days to state their case. Filing objections before the publication in the Gazette would not result in the best use of the Court’s time, and it is for that reason that Courts have frowned on such actions.

In this case, the objection was filed about 2 weeks before the notice in the Kenya Gazette was published.

What should the Court do? Article 159(2) (d) of the Constitution of Kenya, 2010 lists as one of the principles that the Courts in Kenya should bear in mind when exercising judicial authority, that:-

“ Justice should be administered without undue regard to Procedural technicalities”

It is clear that the Objector acted with undue haste in filing her objection before its publication in the Kenya Gazette. That notwithstanding, was any injustice thereby caused? I am unable to think of any. The Petition was subsequently published on 6th April 2023. Anyone who could have objected to the grant got an opportunity to do so. This is what, in my view, distinguished this case from the circumstances in In re Estate of Quintus Ekessa (deceased) [2021] eKLR.



Our Lord, in Mark 2:27, tells us that “the Sabbath was made for man, and not man for the Sabbath.”

The spirit of the Saviour’s remarks also applies to the Rules of the Court. Rules serve a purpose: to ensure that all have access to justice irrespective of status and that litigants get fair hearings. I, therefore, find and hold that there is a valid objection before this Court.”

12. On the application of Article 159(2) of *the Constitution*, the Objectors cited Malika – Versus – Registrar of Lands (2024) KEHC 374(KLR) and Zacharia Okoth Obado – Versus Edward Akongo (2014) eKLR,
13. It is not in dispute that the objection by the Objectors to the making of the grant to the Petitioner was filed before the Gazette Notice was published. Is this then a reason to strike out the objection, as submitted by the Petitioner?
14. To answer this question, I will start from the very beginning, even before this cause was filed.
15. It is not in dispute that the Petitioner had moved the Milimani Commercial Court vide Succession Misc. Application No. E037 of 2024 where she obtained orders of letters of administration ad colligenda in respect to the estate herein, limited to her accessing Ksh. 1,600,000/= from the deceased’s bank account held at Housing Finance Company of Kenya (HFCK). The orders were that the said sum be released directly to Coptic Hospital or any other hospital.
16. From the pleadings and court record in Meru High Court Misc. Application No. E047 of 2024, it also emerged that the Petitioner had , prior to the death of the deceased sought to be appointed as a guardian to him under the *Mental Health Act*, vide Meru High Court Petition No. E013 of 2023. It is also evident from the court record in the said file that the issue of appointment of a guardian was hotly contested, and rested with the ruling by the court (Hon. Justice E. Muriithi) on 6th October, 2023.
17. I am in agreement that ideally, an objection to the making of a grant is expected to be made after a Notice has issued, but in this case given the background that I have set out, one can see the reason why the Objectors moved with haste to court with their objection.
18. It is noted that the Petitioner has to date not gazetted the cause as required, yet she has made an application that will substantially affect the estate. Should the Objectors sit back and await for the gazettelement? I think not.
19. I agree with the finding of the court in Hannington Mwasaru Case (Supra) that the court ought to look at the overriding cause, that of substantive Justice, without undue regards to technicalities. This is especially so, given the circumstances of the case herein. Just like the court found in Hannington Mwasau (Supra), I am unable to find any prejudice caused to the Petitioner by the filing of the Objection.
20. Given that the Petitioner had also sought other interim orders, which would affect the estate, they were entitled to come to court the minute they learnt of the cause. It is the Objectors who stand to suffer, as children of the deceased, if there is any order that affects the estate herein.
21. Consequently, I find that the failure to have the cause gazettelement was a deliberate act by the Petitioner, meant to keep the Objectors at bay as she seeks orders that affect the estate. It also appears like she did not inform or obtain the consent of her children who are all adults before she came to court, hence the objection. Although a widow/widower may rank higher in applying for letters of administration the practice that has emerged is that he/she has to obtain the consent of the adult children of the deceased. That practice is meant to avoid unnecessary battles over who should become an administrator.



22. I thus inclined to allow the Objection to stand and be deemed as duly filed.
23. The Petitioner is hereby directed to have the cause gazetted in the next 14 days of this Ruling. Thereafter, the court will deal with the Objection and any related matters.
24. In summary, the Preliminary Objection is dismissed with no orders as to costs.
25. I will now deal with the Application dated 23rd January, 2025.
26. The gist of the application is that the Petitioner/applicant is the widow of the deceased. That she is elderly and is unable to fend for herself. That there was a family meeting convened by the children of the deceased on 17th June, 2024 and that it was unanimously agreed that:-
 - a. The estate would advance the Petitioner a sum of Ksh. 145,000/= every month for her upkeep and payment of utilities. The sum would be withdrawn from the bank account by way of cheque
 - b. The funds for the Petitioners' upkeep would be drawn from the rental income of the estate paid to Equity Bank Meru Branch account No. 0140285462249.
 - c. The signatories to the bank account would be Robert Matumbi Mworira, Emily Dolly Kagwiria Mworira and the Petitioner herein.
 - d. Robert Matumbi Mworira would be the custodian of the cheque book.
27. The Petitioner/applicant further averred that pursuant to the said consent withdrawals for the months of August, September and October, 2024, were made. That for November Robert, the 1st objector declined to sign the cheque. That as a result of his unilateral decision, the applicant was unable to receive her monthly upkeep. The applicant further states that the said objector has abused his position to frustrate her, hence the application in court.
28. Emily Dolly Kagwiria Mworira, a daughter to the deceased, swore an affidavit in support of the application. She confirmed that the Petitioner is their mother and is elderly with no other way of provide for her daily needs. That the amount was agreed by all the parties and was not to run for two months. That the objectors are merely out to frustrate their own mother. She cited an instance where the 1st objector even attempted to prevent the Petitioner from using her car, forcing her mother, who is ailing, to report the matter to the police. That she does not understand why the 1st respondent would be so cruel to his own mother to want to see her suffer.
29. The Objectors opposed the application, under a replying affidavit sworn by the said Robert Mworira. He confirmed that the family did convene a meeting to discuss the estate and it was agreed that the applicant, Emily and himself would act as the joint administrators of the estate. That it was agreed that the rents would be deposited into an account and that the upkeep for the applicant would be limited to two months. That the family then agreed to appoint an advocate to handle the succession cause, but some beneficiaries refused to sign the consent. That therefore, he informed the family that he would not sign off any further funds prior to the filing of the Succession Cause.
30. The 1st objector further deponed that the applicant then secretly filed the case at Milliman Law Courts. That despite an order of the court that the parties be present, the applicant failed to notify them. The respondent further avers that the applicant should not be allowed to access any funds, as she has not accounted for the Ksh. 1,600,000/= ordered be utilized by the court at Milimani.



31. The respondent further avers that even before the deceased's death, the applicant had secretly moved this court under Petitioner No. E013 of 2023 under the *Mental Health Act*, but on the intervention of the objectors, the court appointed three co-managers.
32. The respondent further avers that the applicant has come to court with unclean hands and should not be rewarded for her mischief.
33. The advocates for the parties made oral submissions in respect to the application, in addition the written submissions filed.
34. Counsel for the applicant submitted that there being an agreement by all the parties as to the provision for that upkeep, then the 1st respondent was bound by it and he could not unilaterally alter it.
35. It is further submitted that the law applicable to the matter is the law of contract, and where all parties have agreed to a thing one party cannot unilaterally vary it. The applicant further submits that the 1st respondent is just flexing his muscles in order to frustrate his elderly mother, who participated in the acquisition of the property now belonging to the estate.
36. For the respondent it was submitted that going by the history of the matter, the applicant has acted in bad faith in that she secretly filed two matters in court. That the funds obtained through the order of the court in Nairobi have not been fully accounted for.
37. It is further submitted that by the fact that the applicant seeks funds from a particular account, that is paramount to partial distribution of the estate.
38. This is a rather unfortunate scenario, where a family of a deceased is poised to engage in a vicious fight over his estate. The same was noted very early by the court in High Court Petition No. E013 of 2023, when it stated as follows: -

“The family of the subject is divided right through the middle as regards the appointment of the applicant as the guardian of the subject and the manager of his property. The applicant has in examination before the court indicated that she cannot work with one of the children Robert Matumbi whom she accuses of mis-management of the subject funds”

39. It is thus necessary for this court to address the application bearing the above in mind.
40. If I get the petitioner correctly, the basis of the application is on the agreement by the parties as for the upkeep for the applicant. To him this is a contractual issue, but I beg to differ. I will give my reasons.
41. Once a deceased person has passed on, anything subsequent to his/her death has to be made by a personal representative of his/her estate. That may be an executor in case of a Will, or any person duly appointed by a court to represent the estate. It follows that nobody including the widow or the children of the deceased are entitled to take any steps regarding the estate without such representation. Any acts detrimental to the estate would be deemed to be intermeddling as set out under Section 45 of the *Law of Succession Act*. The said provision states as follows:-

“45. No intermeddling with property of deceased person

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.



(2) Any person who contravenes the provisions of this section shall

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

42. In my view, the agreement by the parties, in the absence of any authorization by the court is deemed to be intermeddling and it cannot be upheld.

43. This position was confirmed by the court in Re- Estate of Veronica Njokli Wakagoto Deceased (2013)eKLR where W. Musyoka, J held as follows:-

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

44. A similar position was held in re- Estate of M’Ngaruthi M’miriti (Deceased (2017) eKLR where it was held as follows:-

“Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR the court observed that:

“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.”

45. Since no letters of administration have been issued as yet, it follows that no person is authorized to deal with the estate and if he/she is found to have acted against the estate, to its prejudice, then such person is liable to punishment.



46. The law recognizes the fact that while a grant of representation is pending, the court can issue a limited grant for the collection and preservation of the deceased's assets. This is to ensure that the estate assets are protected until the full grant is issued. Section 67(1) of the Law of Succession Act provides as follows:

“No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.”

47. In this case, the applicant obtained a grant of letters of administration ad colligenda bona at Milimani Commercial Court, not to preserve the estate but to withdraw funds necessary for a surgery she was meant to undergo. This cannot be the purpose of such a grant.

48. It is also noted, from the petitioner's own valuation of the estate put at Ksh. 50,000,000/=, that the court at Milimani did not have the requisite jurisdiction to entertain the application. Section 49 of the Act, is quite clear on the question of jurisdiction of a Magistrates court. It provides as follows:-

“49. The resident magistrate within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48:

Provided that-

- (i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other resident magistrate where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer
- (ii) if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;
- (iii) every resident magistrate shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased”.

49. It is trite law that jurisdiction is everything. A court that acts without jurisdiction acts in vain. [See the case of Owners of Motors Vessel Lilian Versus – Caltex Oil Kenya Limited(1989) KLR 1]

50. It is thus my view that the magistrate's court moved by the applicant, lacked jurisdiction to grant the orders that it granted. The said grant was thus null and void and could not be acted upon.

51. That said, the court is aware that the orders were issued and funds may have been utilized. The said orders lapsed after six months. It is now upon the applicant to give a full account of those funds.

52. So what is the position as to the provisions for a spouse or dependant pending the determination of a succession cause?



53. The court, under Section 26 of the Act, has powers to make special orders. It provides as follows:-
26. Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.
54. Rule 45(1) of the P & A Rules then provides for the manner such an application is to be made. The rule provides that:-

Application under s. 26 of the Act

- (1) Every application to the court under section 26 of the Act shall, where a grant has been applied for or made but not confirmed, be brought by summons in Form 106 in that cause, or, where no grant has been applied for, be brought by petition in Form 96; and the summons or petition and supporting affidavit shall be filed in the registry and copies thereof served upon the personal representative of the deceased:

Provided that, if representation has not been granted to any person, a copy of the petition and supporting affidavit shall be served upon the persons who appear to be entitled to apply for a grant under the Act.

55. Even though not stated, it appears like the applicant's application is actually brought under the above provisions.
56. In my view, whereas the court has powers to make such a provision, it is upon the applicant to satisfy the court as to why she should have such orders.
57. In the instant case, there is nothing placed before the court to give a clear break-down of the expenses that are required. It is also important for the court to be satisfied that the estate can adequately cater for such expenses. Without such details, this court is unable to make any detailed provisions for now, but once properly acquainted with all the facts, then the court can act accordingly.
58. That said, the court duly recognizes the age of the applicant and that she has basic needs to cater for. I would for now only give a nominal figure that may be reviewed upon full information being availed to the court. I will give an order on this shortly.
59. Now the elephant in the room. From my assessment of the matter, the cause may be headed for a lengthy dispute. It is important that there are orders in place to protect the estate.
60. I therefore, direct that the two "factions" nominate one person to make an application for a temporary grant, pending the issuance of a full grant. That should be done at the earliest opportunity and in any event not more than 14 days.
61. In conclusion, the following orders/directions shall issue:-
- a. The Preliminary Objection dated 27th March, 2025 is dismissed with no orders as to costs.
 - b. The parties to nominate two representatives to apply for a temporary grant to the estate, to collect and preserve all assets, pending a full grant, within 14 days.



- c. The applicant to cause the gazettelement of the cause within the next 14 days.
- d. In the interim, there will be a provision for the upkeep of the applicant for Ksh. 30,000/= per month, to take effect after the appointment of the two administrators as above, but to be calculated from the end of July, 2025 and thereafter to be paid on or before the last day of each succeeding month.
- e. No other sums shall be drawn from the estate, unless authorized by this court, upon any application or with a full grant is issued.
- f. The Petitioner shall, within 60 days give a full account, with documentary proof, of all the sums drawn from the deceased's bank account (s) after the orders at Milimani Commercial Courts were issued.
- g. A date for compliance and further directions shall be given after delivery of this ruling.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF JULY, 2025.

**H. M. NYAGA,
JUDGE.**

