



REPUBLIC OF KENYA



In re Estate of the Late Jacinta Mary Wanjiru (Deceased) (Succession Cause E2113 of 2021) [2024] KEHC 2066 (KLR) (Family) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2066 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E2113 OF 2021

HK CHEMITEI, J

FEBRUARY 29, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JACINTA MARY WANJIRU (DECEASED):

RULING

1. This ruling relates to the application dated 7th August, 2023 filed by the Applicant, Agnes Wairimu Kamithi; seeking for orders that:
 - a. Spent.
 - b. Pending the hearing and final determination of the application herein the honorable court be pleased to issue an order restraining the respondents, their agents, servants and or employees from intermeddling and or interfering with the deceased's estate including all those parcels of land known and or described as follows:
 - i. Residential home (not in possession of the title deed) Cedar Groove estate, House No. 20.
 - ii. ICIPE Plot, located in ICIPE 6th Street.
 - iii. Nairobi/ Block 114/ 204 – St. Jacinta Christian School (50% of the plot).
 - iv. King David Senior School- (Two plots over LR No. 10090/ 116).
 - v. Mombasa Sunset Paradise Holiday Homes, Suswa 1 (50% - half share with Boniface Mburu).
 - c. The respondents be ordered to account for all funds and or proceeds they have collected and or received from the deceased's estate since her demise on 15th November, 2020 and how they were utilized, spent and preserved.



- d. This honorable court be pleased to issue an order restraining the respondents, their agents, servants and or employees from intermeddling and interfering with the deceased's estate including all those parcels of land known and or described as follows:
 - i. Residential home (not in possession of the title deed) Cedar Groove estate, House No. 20.
 - ii. ICIPE Plot, located in ICIPE 6th Street.
 - iii. Nairobi/ Block 114/ 204 – St. Jacinta Christian School (50% of the plot).
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pending the issuance of a confirmed grant in respect of the deceased's estate is issued by this honorable court.
 - e. The honorable court be pleased to order for a forensic audit of the deceased's estate since her demise to be conducted by a reputable audit firm to be agreed upon by all the beneficiaries herein failing which the honorable court do appoint one.
 - f. The respondents be ordered to refund all and any proceeds they have withdrawn from the deceased's accounts and misappropriated from the entire estate.
 - g. Costs of this application be provided for.
2. The application is opposed by replying affidavit sworn on 22nd August, 2023 by Boniface Mburu Mwaura.
 3. The applicants and respondents have filed written submissions dated 9th October, 2023 and 30th October, 2023, respectively.

Background:

4. This matter relates to the Estate of Jecinta Mary Wanjiru (deceased) who died intestate on 15th November, 2020 and a grant of letters of administration intestate has been issued to the respondents.
5. There is a pending objection application that was scheduled for hearing on 26th September, 2023. The basis of the objection is that the applicants were omitted as the deceased's beneficiaries in the petition for grant of letters of administration intestate.
6. In a nutshell, the applicants aver that they are the deceased's beneficiaries and have been omitted from the succession proceedings by the respondents. The 1st applicant avers that she is the widow of the late David Mukii Kamau who was the deceased's first-born son and the 2nd – 4th respondents are his daughters. They further aver that the respondents are intermeddling with the deceased's estate by surveying, collecting rent and disposing off motor vehicle registration number KCK 434B.
7. The respondents aver that the 1st respondent was never married to their deceased brother David Mukii Kamau hence not a wife/ widow and they also dispute that she had any children with their deceased brother. They further accuse the 1st applicant of intermeddling with the deceased's estate by unilaterally running the operations of the two schools – St. Jacinta Junior Christian School and King David Senior School – and diverting all the profits to herself without accounting for the same to the rest of the beneficiaries. They aver that she should be compelled to produce a full statement of accounts on the



funds derived from the two schools. They do not deny disposing off motor vehicle registration number KCK 434B but state that the deceased was not its sole registered owner and that she was not in its actual possession when she died.

Analysis and Determination:

8. I have carefully considered the application, the responses as well as the written submissions filed by the parties and address them as follows:

Analysis:

9. The issues for determination, as crafted by the parties, are as follows:
- a. Whether the respondents engaged in activities against the estate deemed to be intermeddling.
 - b. Whether the 1st applicant has locus standi with the estate of the deceased and is a beneficiary?
 - c. Whether the applicants' application is merited as to warrant the grant of the orders sought.
10. In *John Marete Kirema & Another v Gladys Karimi Muthama & 3 others* [2013] eKLR Judge J. A. Kamau stated, "... I have considered Section 45 of the *Law of Succession Act*, and I have no doubt that the Section prohibits the taking away of possession of property of a deceased person contrary to the said provision of the Act. This implies by taking away, the person who is taking possession of the said properties at the time of the deceased death. A person who is in possession of the said properties at deceased property at the time of the deceased death cannot be accused of taking possession or intermeddling with the deceased estate as his possession do not in any way interfere with the status quo as of the time of the deceased death. The Section in question prohibits disposal of the deceased estate contrary to the clearly spelled out provisions and talks of free property. It is a crime for anyone to intermeddle with the deceased property [emphasis mine] and makes person intermeddling liable to account to the executor or administrator..."
11. At paragraph 9 of *Eddab Wangu & another v Sacilia Magwi Kivuti (Deceased) Substituted with Ribereta Ngai* [2021] eKLR Judge L. Njuguna stated, "... Generally, the law contemplates that a person can either distribute his estate by way of a will or in absence of a will, the estate is subjected to the rules of intestacy. From the reading of Sections 35, 36, 38 and 40 of the Act, the legislature contemplated the rules to apply where the deceased has passed on and left behind survivors. What this means therefore is that where a child of a deceased person has predeceased the deceased, then such a child cannot be said to be a beneficiary. The rightful beneficiary ought to be the spouse of the deceased child (who should hold the property given to her in trust for the children of the deceased child) or where the deceased child is not survived by a spouse but has children, the right person as the beneficiary of the deceased's estate ought to be the child of the deceased child (grandchild of the deceased). Where the child who predeceased the deceased was not survived by either a child or a spouse, then such a deceased child cannot be said to be a beneficiary of the estate..."

Determination:

12. I think that the substantive issue for determination which will require full oral evidence is whether the applicant was the daughter in-law to the deceased having married the late David Mukii Kamau. For now, there is no evidence to the contrary taking into account the averments on record by the parties.
13. At the same time there is accusations and counter accusations about the intermeddling with the estate. The applicant for instance has not disputed the fact that she is running St Jacinta Junior Christian



school as well as King David Senior School which are apparently associated with the deceased. She has not disclosed how she has been managing the same from the date the deceased passed on.

14. For her to attempt to gag the respondents from managing the rest of the estate smug bad faith. This of course does not exonerate the respondents. It must be noted that the law requires all the parties whether administrators or beneficiaries to render true accounts of the estate.
15. On this note therefore this court expects all the parties herein to maintain the estate as it is and render full accounts whenever it shall be so requested by this court or any other party.
16. For now, I think it will not be appropriate to allow the application as requested by the applicants as they are also complicit. Let the accounts be fully rendered during the substantive determination of the cause.
17. Consequently, and for the above reasons the application is disallowed with no order as to costs.
18. The parties are hereby directed to proceed and have this matter heard by way of viva voce evidence. They are hereby granted 30 days to file and serve if any witness statements or further affidavits.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

H K CHEMITEI.

JUDGE

