



**In re Estate of Wanjohi Kirumba (Deceased) (Succession Cause  
258 of 2016) [2024] KEHC 4290 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4290 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 258 OF 2016  
HM NYAGA, J  
APRIL 29, 2024**

**IN THE MATTER OF THE ESTATE OF WANJOHI KIRUMBA(DECEASED**

**BETWEEN**

**BETH WANGUI NDUATI ..... 1<sup>ST</sup> APPLICANT**

**RUTH NJERI NJOROGE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ROSE WAMBUI ..... 1<sup>ST</sup> RESPONDENT**

**MICHAEL MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL KINUTHIA ..... 3<sup>RD</sup> RESPONDENT**

**JANE NJERI ..... 4<sup>TH</sup> RESPONDENT**

**MARY WANGUI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This cause relates to the estate of the late Wanjohi Kirumba (deceased) who died intestate on 13<sup>th</sup> August, 2009.
2. The Applicants and the 1<sup>st</sup> Respondent are the widows of the deceased while the other respondents are children of the deceased.
3. The assets of the deceased's estate comprised of Title No. Othaya/Itement/657 & Uns. Commercial Plot No.12- Gilgil Town.
4. Pursuant to the orders issued on 23<sup>rd</sup> September,2021, parties were directed to adduce viva voce evidence to establish the clear position on the ground and deceased's assets and mode of distribution.



5. On 1<sup>st</sup> November,2023, the Applicants testified and closed their case. On 6<sup>th</sup> December,2023 and 28<sup>th</sup> February,2024 the respondent’s case was heard wherein the 2<sup>nd</sup> Respondent testified and thereafter, the counsel for the respondents applied to call Charles Mwangi from the 1<sup>st</sup> House to testify.
6. The Counsel for the Applicants opposed the application for reasons that the statement of Charles was filed after the Applicants had testified and that the respondents are trying to fill the gaps in their case.
7. In a brief rejoinder, the Respondent’s Counsel submitted that Charles had been mentioned as a beneficiary from the 1<sup>st</sup> house and he was unaware of this proceeding, and that no prejudice will be caused if he testifies as he will clear the air.
8. This court is to now determine whether or not to allow Charles testify in support of the Respondent’s case.
9. It is true that the statement in question was filed on 5<sup>th</sup> December,2023 after the Applicants had closed their case.
10. Under section 47 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration Rules the court has unfettered discretion to make orders to meet the ends of justice. Said Section 47 and Rule 73 provides as follows

Section 47 –

“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: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

Rule 73 of the Probate and Administration Rules

“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 Supreme Court in *I.E.B.C. Vs Robert K. Nyengi* [2015] eKLR, considered an application for leave to file a document out of time in the context of an election Petition and stated that it is essential for a Court in exercising its discretion to admit additional evidence to ensure no prejudice is occasioned to a party if the evidence is admitted.
12. In *The Matter of the Estate of George M’mboroki Meru HCSC No. 357 of 2004*, Ouko, J (as he then was) expressed himself inter alia as follows:

“The [Law of Succession Act](#), like section 3A of the [Civil Procedure Act](#) has a saving provision as to the court’s jurisdiction under section 47 which is affirmed by rule 73 of the Probate and Administration Rules. It is therefore accepted that the court retains certain intrinsic authority in the absence of specific or alternative remedy, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent abuse of its process, to do justice between the parties and to secure a fair trial between them.”



13. Similarly, Kimaru, J in Rev. Madara Evans Okanga Dondo vs. Housing Finance Company of Kenya Nakuru Hccc No. 262 of 2005 held:

“The inherent jurisdiction of the court enables the court to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process. In sum, it may be said that the inherent jurisdiction of the court is virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

14. In Shah vs. Mbogo [1967] EA 116 at 123B, the court held that the court’s discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist the person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.

15. Guided by the above statutory provisions and the precedents, I will now determine the issue herein.

16. The Applicants are opposed to Charles testifying for sole reason that the respondents are trying to fill in the gaps in their case. The counsel for the respondents told court that Charles was unaware of this proceeding.

17. It is not in dispute that the said Charles is a beneficiary of the deceased from the first house. The issue at hand is in regards to the estate’s assets and the mode of distribution. It is now trite that the primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries and the court prior distributing the estate of the deceased has to take into account the sentiments of all beneficiaries. I have seen the statement in issue and I note is with respect to the assets of the deceased and mode of distribution. I believe no prejudice will be occasioned to the Applicants if Charles is allowed to testify. The Applicants will have a chance to cross examine him. In addition, the court has a duty to ascertain the truth with respect to the assets of the deceased and if any party has any information that will aid it in that regard, then it ought to consider it.

18. In the interest of justice, I will exercise my discretion and allow the respondent’s said witness to testify.

19. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF APRIL, 2024.**

**H. M. NYAGA,**

**JUDGE.**

In the presence of;

Court Assistant Kipsugut

No appearance for parties

