



**In re Estate of Mwangi Kimanga (Deceased) (Succession Cause
1728 of 2000) [2024] KEHC 7612 (KLR) (Family) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1728 OF 2000
HK CHEMITEI, J
JUNE 27, 2024
IN THE MATTER OF THE ESTATE OF MWANGI KIMANGA (DECEASED)**

BETWEEN

**ALICE WANJIKU MWANGI 1ST APPLICANT
MARY WAITHERA KIMANGA 2ND APPLICANT
JANE WAMAITHA KIMANGA 3RD APPLICANT**

AND

**PRISCAH WANJIKU KIMANGA 1ST RESPONDENT
STEPHEN MAINA KIMANGA 2ND RESPONDENT**

AND

**GERALD IRUNGU INTERESTED PARTY
ALICE WANJIRU INTERESTED PARTY**

RULING

1. This ruling relates to the applications dated 29th January, 2024 and 6th February, 2024.
2. The application dated 29th January, 2024 was filed by Wangalwa Oundo seeking for Orders That:
 - (a) Spent.
 - (b) The Honourable court do issue an order requiring the payment of the Certificate of Taxation dated 20th May, 2023 in the sum of Kshs. 40, 129, 466/= inclusive of interest of Kshs. 4, 012, 944/= less any sums paid on account to be satisfied by the assets from the estate of



Benson Mwangi Kimanga (deceased) accruing from rents, dividends, bonuses, emolument and royalties from the following entities:

- a. New Kiona Limited.
 - b. Terrace Hotel Limited.
 - c. Mwea House Limited.
 - d. Kirima Bus Services Limited.
 - e. All rents accruing in the parcels of land and developments situated within LR. 209/76, 209/76/10 (Bekim House) Westlands close, Nairobi.
 - f. All rents and dividends accruing to the Estate of Benson Mwangi Kimanga (Deceased) held by Masterways Properties Limited.
 - g. All such other funds in the banks or property management firms and or assets of the Estate of Benson Mwangi Kimanga (deceased) capable of satisfying the decree herein.
3. The application is supported by affidavit sworn by Wangalwa Oundo on 29th January, 2024 where he avers *inter alia* that he was issued with a certificate of taxation dated 20th May, 2023 and warrants of attachment dated 11th January, 2024 were issued by this court to Moonstar Auctioneers to execute the decree and the Judgment Debtor's properties were proclaimed on 18th January, 2024.
 4. He filed garnishee proceedings against Bank of Africa Limited in respect of the bank account held by the 1st Judgment Debtor, Stephen Maina Kimanga, to satisfy the remainder of the decretal amount.
 5. Stephen Maina Kimanga has stated that the debt should be settled by the deceased's estate and not them (administrators) in their personal capacity and that the deceased's estate has several assets that generate rent, dividends, emoluments and royalties that are capable of settling the debt.
 6. This court should order that the debt be settled from the deceased's estate i.e. New Kiona Limited, Kirima Bus Services Limited, Runyeki Bar, Terrace Hotel Limited and Funds held by Masterways Properties Limited for the Estate of Benson Mwangi Kimanga (deceased).
 7. The application is opposed vide notice of preliminary objection dated 26th January, 2024 on the grounds that:-
 - (a) The Applicants herein through the firm of Wangalwa Oundo & Co. Advocates obtained a court order dated 11th December, 2015 freezing all transactions in respect of the estate of Benson Mwangi – Deceased.
 - (b) That Advocate Wangalwa Oundo swore an affidavit on 6th December, 2018 in HCC NO. 756 OF 2008 (Milimani High Court – Commercial & Tax Division) stating in paragraph 8 of the affidavit that he is aware that all assets and dividends in respect of the Estate of Mwangi Kimanga (deceased) held in all the companies have been frozen.
 - (c) There is a reference dated 29th May, 2023 which is yet to be heard and determined.
 - (d) The issues of the Estate of Benson Mwangi Kimanga (deceased) are ongoing in P & A E1445 of 2020 – Nairobi and are yet to be determined.
 8. The application dated 6th February, 2024 on the other hand was filed by Jonathan Omangi seeking for orders that:-



- (a) Spent.
 - (b) Directions be issued on determination of the respondents' reference dated 29th May, 2023.
 - (c) There be a stay of proceedings till the reference is determined as rival submissions have already been filed.
 - (d) Costs be borne by the Applicants.
9. It is supported by affidavit sworn by Jonathan Omangi on 6th February, 2024 who avers inter alia that costs were awarded in objection proceedings in HCCC 1728 OF 2000, Nairobi over the administration of the deceased's estate. The objectors filed a bill of costs and used a valuation report that valued both shares and physical location as was used in the will subject of another succession matter E1445 of 2020 – Nairobi.
 10. Before the taxation was undertaken, they objected indicating that the valuation had speculated the value and assumed all the property belonged to one person (Benson Mwangi Kimanga) yet there were other shareholders. The taxing master taxed off Kshs. 15 million out of Kshs. 58 million and awarded Kshs. 40, 129, 466. Since the taxing master overlooked their objection, they moved to the High Court and filed a notice of motion dated 29th May, 2023 for stay of execution and stay of execution pending a reference dated 29th May, 2023.
 11. Both counsel filed submissions and a ruling was delivered directing that the parties deposit Kshs. 20 million in a joint account of the two counsel. They filed for review and cited the order of court dated 11th December, 2015 gagging all actions in relation to the estate of Benson Mwangi Kimanga until the matters are fully finalized. They also filed a reference dated 29th May, 2023 which is still pending in court.
 12. He further deponed that as parties were waiting for further directions from court, the parent file could not be traced. The presiding judge intimated she had opened a skeleton file where on 14th December, 2023 she granted orders of stay till 17th January, 2024 when the parent file which had been traced in Hon. Lesootia's chambers was to be placed before Hon. Justice P. Nyaundi for directions. His pleas to have the file placed before the Honourable Judge did not bear fruits as Hon. Lesootia had the file for purposes of ex-parte garnishee application behind their back.
 13. There were stay orders granted on 14th December, 2023 but before they expired, there was already execution orders dated 11th January, 2024 vide an application dated 6th December, 2023 which was not served upon them resulting to contempt of court orders in place as issued on 14th December, 2023 and defeating the very purpose of the reference and review already filed in court. The review was to alert the judge of the existence of gagging orders made on 11th December, 2015 which orders halted all transactions to do with the estate of Benson Mwangi Kimanga (Deceased).
 14. He further deponed that there was a reference in place which reference touched on how the taxation was conducted in view of the shareholdings by the various persons (shareholders of respective properties) which was assumed to belong to one person – Benson Mwangi Kimanga.
 15. Wangalwa & Company Advocates, representing the Applicants/ Respondents have filed garnishee proceedings and funds in the sum of Kshs. 10, 000, 000/= which have been withdrawn from the 2nd Respondent's account number 03402250008 at Bank of Africa Limited – Kitengela Branch.
 16. The application is opposed by replying affidavit sworn by Wangalwa Oundo on 13th February, 2024 stating inter alia that the issue of stay of execution of proceedings is a clear plot to seek a stay of execution



upon realization by the applicants that the order for stay of execution cannot be granted by this court in light of its ruling dated 6th October, 2023. The applicants cannot be heard complaining of the delay in delivering a ruling in the reference since the applicants have themselves sought to defeat the determination of the reference by filing various applications instead of allowing the court to determine the reference.

17. The applications which were filed after the reference are dated 11th October, 2023 (seeking to review conditional orders for stay of execution delivered on 6th October, 2023) and 23rd January, 2024 (seeking stay of execution of the proclamation dated 15th January, 2024). That the applicants have made it difficult for this court to determine the reference dated 29th May, 2023. An order for stay of proceedings cannot be granted because it will amount to a grant of an order of stay in which case it will amount to allowing this court to rehear the application afresh.
18. The 1st and 2nd respondents have filed submissions dated 13th May, 2024 on the notice of preliminary objection dated 26th February, 2024.
19. The court has perused the said submissions and does not wish to reproduce them here save to state that they both gravitate around the rival affidavits.

Analysis and Determination

20. This court on its own motion has taken the liberty to peruse this file and it notes that Muchelulei J (as he was) on 11th December 2015 revoked the grant that had been issued to the 1st and 2nd respondents. He went ahead to cancel all the transaction resulting from the said grant.
21. The learned judge under paragraph 3 thereof stated as follows;

“ That the executors appointed as per the will are hereby directed to immediately file for grant of probate wherein the applicants shall file the necessary objection.”
22. The net effect therefore was that to the extent that there was no administrator of the estate the Will remained just as that.
23. It appears then that the applicants or the executors of the Will filed Succession Cause No E1445 of 2020 which matter is part heard before this court. Hon Lady Justice Odera granted the executors a grant dated 3rd May 2023.
24. The said grant is subject of dispute and it is generally ongoing. The implication therefore is that the deceased estate herein is yet to be distributed. Although the firm of Wangalwa Oundo Advocates is holding a decree in their favor pursuant to a taxation proceedings I find that the only way to deal with it is by way of a debt in the estate.
25. In other words, it is not possible unless by consent of the parties to authorize any payment of any sum from the estate without first having the grant confirmed. So that in essence even for argument sake, the execution which the decree holder is yearning to do will only be upon the deceased proven estate.
26. The prayers for instance by the decree holder requesting for the various entities, assets or properties left by the deceased and enumerated on the face of the application dated 24th January 2024 for instance can only be determined after the issues bedeviling the estate have been sorted out. For now, it's difficult to know for instance what was the deceased shares in the various companies listed therein and thus order that the decree be settled through the said shares.



27. Looking at the record herein, it is not disputed that the said law firm was already in the picture in respect to Justice Muchelulei ruling or judgement. The counsel acknowledge that the court had frozen all the deceased estate until the matter was determined.
28. I think it will be irrational for this court to direct that the decree be settled from the assets of the estate unless it is clear that all the issues raised by the objectors have been exhausted. That process is being undertaken in File Number E1445 of 2020.
29. I respectfully think that my reasoning above touches on the pending Reference only to the extent of eventual execution. The other issues on whether the decree holder was entitled to the figures reached by the taxing master can still be litigated upon. However, at the period of execution I find that the decree holder as found above will have to await the outcome of E1445 OF 2020 mentioned herein.
30. The net effect in my finding therefore is that taking the totality of the matters herein I do not think that the decree holder will suffer any harm except on time. The figures which the taxing master gave him will still hold unless a contrary ruling is given vide the pending Reference. The decree holder in my humble view therefore shall remain a creditor to the estate.
31. Consequently, and based on the above findings this court finds that this matter ought to be consolidated with number E1445 of 2020 for ease of administration. In any event all the parties herein are still the same parties in the said file.
32. The applications and the preliminary objection jointly and severally are determined as follows;
 - (a) There be stay of execution by the decree holder herein against the estate of the late Benson Mwangi Kimanga pending the hearing and determination of Succession Cause Number E1445 of 2020.
 - (b) The Reference pending herein be prosecuted forthwith and any results of the said Reference shall await the determination of Succession Cause No E1445 of 2020.
 - (c) This file shall be consolidated with file Number E1445 of 2020.
 - (d) Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 27TH DAY OF JUNE 2024.

H K CHEMITEI

JUDGE

