



REPUBLIC OF KENYA



In re Estate of Stephen Musembi Nzuve (Deceased) (Succession Cause 1 of 2017) [2024] KEHC 7600 (KLR) (26 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 1 OF 2017**

**FR OLEL, J
JUNE 26, 2024**

BETWEEN

**ROSEMARY MUMBUA 1ST APPLICANT
FRANCESCA MUTINDA 2ND APPLICANT
CECILIA KITHEI 3RD APPLICANT
MUTIE NZUVE 4TH APPLICANT**

AND

**ROSE NZIOKI MUSEMBI 1ST RESPONDENT
JOAN LOIUS 2ND RESPONDENT
CHRIS NZIOKI 3RD RESPONDENT**

(In The Matter Of Application For Revocation Of Grant Letters Of Administration Intestate Issued To Rose Nzioki Musembi By Hon P. Nyamweya On 24th April, 2017 And In The Matter Of Application By Rosemary Mumbua Francesca Mutinda And In The Matter Of Application By)

RULING

A. Introduction

1. Vide Chamber Summons dated 20.06.2023, brought pursuant to provisions of Article 159 of the [Constitution](#) of Kenya, 2010, Section 47, 76, 83 of the [Law of Succession Act](#), Cap 160 laws of Kenya and Rules 44 and 73 of the [Probate and Administration Rules](#), the Applicants sought the for the following orders;
 - a. A temporary injunction be issued against Rose Nzioki Musembi (1st Respondent) prohibiting her from disposing properties or otherwise dealing with the estate of Stephen Musembi Nzuve,



including rent collected pending the hearing and determination of the instant Summons and in the main cause herein.

- b. An order be issued compelling Rose Nzioki Musembi (1st Respondent) to immediately surrender all title documents, records and assets of the estate of the deceased to the Court Registrar in Machakos for audit by the advocates of the Applicants and safekeeping by the Court pending the hearing and determination of the instant Summons and the main cause herein.
 - c. Both parties comply with the court order which directed that rent from the deceased's properties be deposited in a joint bank account operated by the two administrators.
 - d. Such further orders and directions as the Honorable court deems fit to facilitate expeditious and fair determination of this Application and the main suit.
 - e. Costs be provided for
2. The Application is supported by the Supporting Affidavit of the 1st respondent/Applicant Rosemary Mumbua Nzube dated 20th June 2023 and further Affidavit dated 13th September 2023. While the 1st petitioner/Respondent (Rose Nzioka Musembi) opposed this Application through her grounds of opposition dated 20th July 2023 and replying affidavit dated 30th August 2023.

B. The Application

3. The applicant deposed that she was a co administrator and eldest daughter of the deceased herein (Prof Stephen Musembi Nzube) and her mother was the late Jacinta Loko. She had filed this application on her on behalf and also on behalf and with the Authority of her co siblings Francesca Claire Mutinda, Gabriel Mutie Nzube and Cecilia Kithei Nzube. The 1st Respondent herein had been appointed as co-administrators of the estate on the presumption that she was married to the deceased but the purported marriage had been annulled by the High Court in Nairobi HCCCC No 94 of 2018, the Trustees of UON pension v Rose Katunge and Rosemary Mumbua & 7 others because of bigamy and the 1st Respondent has not appealed against the said judgement/decree.
4. Despite the said Judgment, the 1st Respondent had continued to exploit the lengthy trial process to exploit the deceased Estate, and was hell-bent to waste and control their father's estate for her personal benefit and that of her two children, by selling off and dealing with the estate herein with impunity. It was deposed that the 1st Respondent has engaged in fraudulent activities to wit;
- a. She has two marriage certificates which formed the basis of the nullification of the purported marriage to the deceased herein.
 - b. She forged two birth certificates for her two children to add the name of the deceased herein. The children had two birth certificates with two different names and fathers which have been annulled by the co-ordinator Civil Registration, Machakos.
 - c. Shortly after the death of the deceased herein. She secretly and fraudulently moved to Chief Magistrate Court at Kangundo and obtained letters of administration and a confirmation of grant issued on 21.12.2016 without disclosing the same to the Applicants who are children of the 1st family thus disinherit them.
 - d. On 9.08.2016, she transferred three cars that belonged to the deceased herein to her maiden name Rose Katunge Nzioki while her Identity card reads Rose Nzioki Musembi.



- e. She filed a skewed Affidavit of distribution in which she allocated herself and her two children 71% of the deceased's estate in blatant disregard of the fact that she married the deceased in 2010 and only lived with him for five years before his accidental death and had no child with him. She came with her two children.
5. It was further averred that the 1st Respondent had continued to collect rent from the estate and used the same as she pleases to the applicant's family exclusion, yet she was well aware that she was neither a wife nor a beneficiary of the estate of the deceased as determined by the high court on 5th July 2019. There was also an earlier order issued by this court, revoking the Certificate of grant issued at Kangundo Chief Magistrate's court, which order also directed that all properties illegally transferred be revert back to the estate but this had order had not been effected as the 1st respondent had taken all original titles belonging to the deceased from their pervious joint advocate without informing her and was hoarding all the title documents to the exclusion of the applicant and her sibling.
6. It would therefore be just and in the interest of all parties to have all title documents kept in a safe and neutral place like court registry pending the conclusion of this matter. The applicant therefore urged this court to find that she had made out a *prima facie* case with high chances of success the basis upon which the orders sought could be granted.

C. The Response

7. In opposition to the Summons, the 1st Respondent filed grounds of opposition and a replying affidavit, where she averred that she was the 1st administrator to the Estate of the deceased and the biological mother to Joan Louis and Chris Nzioki, the 2nd and 3rd respondents herein and was authorised to make and swear this Affidavit on their behalf.
8. The application under consideration was *res judicata* as the court had previously ruled and gave directions on a similar applications which raised related issues and therefore the said application as filed constituted an abuse of the process of the court and was calculated at scuttling the hearing of the case that has substantially progressed.
9. She further deposed that she got married to the deceased herein under Kamba Customary Law and rites on 2008, five (5) years after his first wife Jacinta Loko had died. It was contended that the Applicants participated in the traditional marriage as it was held within the community where they all lived. Later, her marriage to the deceased was solemnized on 20.10.2010 at the Tala Central Catholic Church allowing her later to adopt her matrimonial names.
10. She further deposed that she had previously conducted a customary law marriage with her former husband Stephen Mutisya Masika and the said marriage was later converted to a civil marriage at the Registrar of Marriage offices. Her former husband went missing in early 1999 and all efforts to find him were futile and did not bear any positive results. Three (3) years later, the elders and family members met and it was resolved that they could not hold/keep her in his home as she was young woman, as a result of which all customary rights resolving the dissolution of the said marriage were performed including return of all the dowry paid. The deceased was aware of this position and had known of all these facts, which he independently verified by holding sittings with his elders and the 1st Respondent's parents.
11. The 1st respondent further urged the court not to grant any of the orders sought, as the ruling issued in Nairobi HCCC 94 of 2019 (O.S), had only directed that she could not benefit from the Pensions Benefits of the deceased as the said court had faulted the validity of her marriage to the deceased, but in the same breath had ruled that the 2nd and 3rd Respondents were dependents of the deceased and



therefore were entitled to the said pension benefits and had since been allocated their rightful share of the same.

12. The 1st respondent further emphasized that the 2nd and 3rd Respondents were children of the deceased as per the birth certificates issued and were legitimate beneficiaries to the estate. She also denied not disposing off, plundered, wasting or messed up with the deceased Estate in any manner and the allegations made as against her were malicious falsehoods calculated to hurt her ego as a widow and mother.
13. The 1st respondent reiterated that her marriage to the deceased was validly conducted and solemnized with the participation of the applicants as well as their respective families'. This application had therefore been brought in bad faith and actuated by malice to achieve egoistic objectives and not the ends of justice. She urged the court not to grant the orders sought and to proceed to set down the trial for distribution of the Estate of the deceased without undue regard to technicalities of procedure, which the applicant was unfortunately emphasizing on.
14. As regards the prayer to have her deposit of all title documents in court, the said prayer was absurd and premature. In addition, the issue of deposit of rent in a joint interest earning account was violated by the 1st Applicant who stopped the same and had even chased away tenants in some of the properties she was managing, by writing letters to the effect that she wanted to renovate the leased estate property. Lastly, the 1st respondent averred that the issues raised in the instant application were the same as those raised in the application dated 16.7.2019 and 27.11.2019. This application also intended to defeat the orders issued by this court on 8.10.2019 and 20.1.2020 giving directions as to the manner of disposing the issues pertaining to the estate herein.
15. The 1st respondent therefore urged this court to dismiss this Application to pave way for the distribution of the Estate of the deceased.

D. Applicants Further Affidavit

16. The applicant in response averred that the 1st respondent was made an administrator on the basis of a fake and/or fraudulent marriage certificate she had presented to court and in Nairobi HCCC No 94 of 2019(O.S), the high court had made a finding nullifying her marriage to the deceased and they therefore had the right to bring this Application in good faith to protect her fathers estate from plunder . Further it was the 1st respondent who had acted in bad faith by secretively filing and obtaining grant at Kangundo SPM Succession cause No 79 of 2016, which she used to disinherit the applicant and her siblings and this had to be corrected as the 1st respondent held onto all property titles, bank accounts and 90% of rental Income from the Estate.
17. Despite being two administrator's the 1st respondent had continued to operate as if she was the sole administrator of the Estate by refusing to allow her to access estate documents and this obstinacy had reduced her to a mere administrator on paper without any capacity to enable, he perform her lawful duties of safeguarding the Estate. Further the applicant reiterated that the two birth certificates produced by the respondent, had been nullified by the civil registrar, Machakos as the 2nd and 3rd respondents were not biological children of the deceased and were therefore not deserving to get any share of the Estate.
18. It was therefore necessary to protect the estate by placing caution/inhibition on the estate properties to protect the same from being wasted. There were also over forty (40) properties which the deceased had bought but had not transferred to himself, which were at greater risk of being diverted if their documents were not surrendered to court for safe keeping. Finally, there was no previous Application



bearing similar orders which had been heard and determined and therefore the issue of *res judicata* could not arise.

19. Finally the applicant deponed that the issues raised were weighty and could not be dismissed as mere technicalities because they went to the heart and spirit of the law of succession. Protecting the estate would prevent wastage, plunder or diversion by anyone including the applicant herself. The court was therefore urged to grant the orders as sought.

E. Submissions

(i) The Appellants Submissions.

20. The Applicant filed submissions on 14.09.2023 and raised two issues for determination. First was whether she had met the threshold for grant of injunctive order against the 1st Respondent. While relying on the case of *Giella v Cassman Brown* [1973] EA it was submitted that the grounds for issuance of injunctive orders had been met. That the Applicant had established prima facies case as the beneficiary and co-administrator of the estate of the deceased. The grant was issued on the basis that the 1st Respondent was a wife but the said marriage had been nullified and therefore the 1st respondent had no right to be an administrator of the estate herein. Reliance was placed on the case of *Mrao Limited v First American Bank of Kenya Limited & 2 others* [2003] eKLR.
21. The Applicant further submitted she would suffer irreparable damage unless the orders sought were granted as the 1st Respondent has all the titles belonging to the deceased in her possession, had seized all bank accounts and other moveable assets of the deceased including the motor vehicles and was currently staying at the home of the deceased and further barred the deceased biological children access thereto. It is alleged that the 1st Respondent would cause intentional damage to the estate worth several millions unless restrained and the balance of convenience therefore tilted in favour of the Applicant. Reliance was placed in the case of *Byran Chebii Kipkoesh v Barnabas Tuitoek Bargarora & another* [2019] eKLR.
22. As to whether the estate herein qualifies for preservatory orders, it was submitted that section 47 of the *Law of Succession Act* vests the court with discretion to issue protective orders for purposes of safeguarding the estate of a deceased herein. Reliance was placed on the case of *Floris Piezzo and another v Giancarlo Falasconi* [2014] eKLR, *Re estate of Kitur Chepsungulgei (deceased)* [2021] eKLR.
23. The applicant thus prayed that this court finds that his Application has merit and be pleased to allow the same.

(ii) Respondents Submissions.

24. The Respondent filed submissions on 24.01.2024 in which she reiterated the contents of her Replying affidavit and urged the court to find that the applicants' allegations as to her disposing off the estate property were "unsubstantiated allegations", which were not proved and thus should not be granted.
25. This application was also a back door attempt to circumvent the orders earlier issued by Hon Justice G.V Odunga dated 8th October 2019 and 20th January 2020, respectively whereby the Honourable judge stayed all the applications and directed that the main cause be heard by viva voce evidence to resolve all contentious issues. The said orders had not been reviewed and/or set aside and thus rendered the current application to be *res judicata*.



26. The applicant too had no right to demand the title deeds of the estate to be deposited in court as they were neither exhibits nor security for due performance of any obligation by either party. The 1st respondent urged this court to reject this Application in its entirety and proceed to hear the main suit.

F. Determination

27. I have considered the court record, the Chamber Summons, the supporting and further Affidavits on record, the grounds of opposition and replying affidavit and also the submissions of the parties and find that the issues for determination are;
- a. Whether the Application under consideration is *res judicata*.
 - b. Whether the Applicant is entitled to the orders of injunction as sought.
 - c. Whether the 1st respondent should surrender all title deeds, records and Assets of the estate held for Audit by the Advocates and safekeeping with the deputy Registrar of this Court
 - d. Whether both parties should comply with the court orders directing them to deposit all rents collected in a joint bank Account operated by both Administrators.
 - e. Who should pay costs of this Application?

i. Whether the Application under consideration is *res judicata*

28. On the first issue, the 1st Respondent contends that this application is *res judicata* as the issues raised had already been determined. The same issues were earlier raised in the applications dated 16.7.2019 and 27.11.2019 and thus this application was intended to defeat the orders issued on 8.10.2019 and 20.1.2020 in the manner of disposing the issues pertaining to the estate herein. Odunga J, as he then was, in the case of Machakos HCCC E007 of 2021 discussed the doctrine of re judicata at length, and rendered himself as follows;

“Section 7 of the *Civil Procedure Act*, 2010 provides as hereunder: “No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in HCCC E007.2021 Page 16 which such issue has been subsequently raised, and has been heard and finally decided by such court.”

36. It is now old hat that the said doctrine applies to both suits and applications as was held in *Abok James Odera v John Patrick Machira* Civil Application No Nai. 49 of 2001. However, as was held in the said suit, to rely on the defence of *res judicata* there must be:
- (i). a previous suit in which the matter was in issue;
 - (ii). the parties were the same or litigating under the same title;
 - (iii). a competent court heard the matter in issue;
 - (iv). the issue had been raised once again in a fresh suit.
37. As regards the rationale of the doctrine of *res judicata*, reliance was placed on the decision of the Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* (2017) eKLR. “The rule or doctrine



of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.”

38. In the Maina Kiai case (*supra*), the Court quoted with approval the Indian Supreme Court in the case of *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated; “The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. The practical effect of the *res judicata* doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.”
29. The court orders dated 8th October 2019 and 20th January 2020, related to directions as to fast tracking hearing and determination of this suit through *viva voce* evidence. The said orders also stayed all previous Applications which had been filed and had not been determined. The basis of filing this new application was that the High court in Nairobi HCCC No 94 of 2019(O.S) had issued adverse orders as to the status of the 1st respondent as a beneficiary to the estate and there was urgent need to preserve the estate. These issues had not been canvassed before court previously and obviously cannot be held to be *re judicata*.

(ii) Whether the Applicant is entitled to the orders of injunction as sought

30. As held in *Floris Piezzo & another v Giancarlo Falasconi* (2014) eKLR, the court while considering an Injunction Application did express itself thus;

“we have carefully considered the grounds of Appeal, rival written and oral submissions and the law. The application before the high court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased’s question which arose and had to be determined first was whether the court had jurisdiction to grant an injunction in a succession cause. The appellants took the position that the court had no such jurisdiction, whereas the respondent took the contrary position. However, the high court was persuaded that rule 73 of the probate and administration rules reserved the courts inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion, we have no doubt at all that the *Law of Succession Act* gives the court wide jurisdiction in dealing with testamentary and administrative issues of an estate. Indeed section 47 of the said Act gives the court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as maybe expedient. It cannot be said that such decrees



and orders would exclude injunction orders. In other words, we are of the same view that section 47 of the Act gives the court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased Estate. This section must be read together with rule 73 of the Probate and Administration rules, which further emboldens court's jurisdiction to make such orders as maybe necessary for ends of justice or to prevent abuse of the process of court. We would imagine such orders would include injunctive orders.”

31. Similarly *in the matter of the Estate of Paulo Kiplagat Boiwo* (2012) eKLR, the court while affirming that preservatory orders were similar to injunctive orders noted that the applicants had to abide by the conditions set out in the celebrated case of *Giella v cassman Brown* (1973) E.A 358 namely that the applicant must make out a *prima facie* case and show that they will suffer irreparable loss which loss cannot be compensated by damages and lastly that the balance of convince should tilt in their favour where doubt exists.
32. Also, *in the matter of the Estate of Jeremiah Ngiri Kibati* (2019) eKLR and *Re Estate of Elijah Ngari (Deceased)* (2019) eKLR, the court while dealing with the issuance of conservatory orders in succession matters cited with approval the decision of Joseph Kaimenyi M'ndatho M'mbwiria (2012) eKLR, that in an Application for presevatory orders, the following conditions had to be satisfied;
 - i. That the suit property is at risk of being disposed of or alienated or transferred to the detriment of the Applicant unless presevatory orders of inhibition are issued.
 - ii. That refusal to grant orders of Inhibition would render the applicants suit to be nugatory.
 - iii. That the applicant has an arguable case.
33. A cursory perusal of the court record indicates that on 24.04.2017, the following orders were issued by consent;
 - a. That the confirmed grant issued in succession cause 79 of 2016 at Kangundo Law Courts be revoked.
 - b. That any properties belonging to the deceased that had been transferred were ordered to revert back to the deceased's name.
 - c. That the Applicant and the Respondent herein are appointed as joint administrators of the estate of the deceased and letters of administration to issue to the said administrators forthwith.
 - d. That all rental income from the properties of the deceased to be deposited in a joint interest earning account to be opened in the joint names of the administrators. The account opening to be effected within 14 days and the deposits were to take effect from 1st May 2017.
 - e. The administrators were at liberty to apply as to the use and payment of the said monies so deposited to meet the estate of dependant expenses.
 - f. The administrators were to file and serve fresh summons for confirmation of grant within 30 days.
 - g. The status quo be maintained.
 - h. Matter be mentioned on 21.06.2017 for directions.
34. Section 83 of the *Law of Succession Act*, provides for the duties of personal representatives of the Estate, which include the duty to collate and preserve the estate, and also to give accurate accounts of the estate



assets. Further Section 40 of the said Succession Act, also provides that there shall be no intermeddling with the free estate of the deceased and any person who contravenes the same is liable to be fined or imprisoned by court.

35. The 1st respondent has not denied that she secretly filed Kangundo Succession Cause No 79 of 2016 and fraudulently obtained a grant of letters of Administration, which was confirmed on 21st December 2016 and which grant was subsequently revoked by this court on 24th April 2017. Further it has also been proved that vide the judgment delivered in Nairobi High court HCCC No 94 of 2018, *The trustees of UON Pension v Rose Katunge and Rosemary Mumbua & 7 others*, the court held that there was no valid marriage as between the deceased and the 1st respondent on ground of bigamy. The 1st respondent did not Appeal as against this decree.
36. Given this history and also given that the 1st respondent had not denied being in custody of majority of the original title deeds to the estate, and it would no doubt be in the interest of justice to have all the said properties of the Estate, to be preserved and distributed after hearing of this cause. To that extent it can be said be said that the applicant has made out a “genuine and arguable” case to have the estate preserved.
37. The second limb the court has to consider, is if the applicants will suffer irreparable loss which loss cannot be compensated by damages should the orders sought not be granted and lastly if the balance of convince should tilt in favour of the applicants. In the case of *Paul Gitonga Wanjau v Gathuthis Tea Factory company ltd & 2 others* (2016) eKLR , the court considered this question and stated that;
- “Where any doubt exists as to the applicants rights, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory application should be granted, takes into consideration the balance of convenience to the parties and the nature of injury which the respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.....
- Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If the applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”
38. It is my finding that the applicants as direct beneficiaries to the estate stand to suffer irreparable harm if this vast estate is not preserved. There is real likelihood, that the Estate unless safeguarded stands to be wasted, and the process of retracing the same, and reverting them back to the estate would be tedious, involving further litigation all of which can be avoided. Hence the balance of convenience tilts in favour of granting of the interlocutory/ presevatory injunction prayers as sought.

(iii) Whether the 1st respondent should surrender all title deeds, records and Assets of the estate held for Audit by the Advocates and safekeeping with the deputy Registrar of this Court.

39. The applicant averred that the 1st respondent has in her possession, majority of the original title deeds of the estate and bank account details, and despite being the co administrator, the 1st respondent had refused to share the same and was making unilateral decision’s concerning the estate to their detriment. The respondent did not deny these serious allegations, though she denied wasting the estate and/or disposing off the same. Given that hearing of the protest/objection had began it would be safe to assume that all parties had provided a complete and updated version of the Estate properties.



40. The court on 31st July 2023, issued inhibition orders to be registered as against all the properties and by this application has also confirmed that it is necessary to place preservative orders on all of the estate properties. That would adequately protect the estate from wastage and/or disposal. It would thus not serve any purpose to again order the 1st respondent to deposit in court all the original title deeds that she has in her possession before the suit is heard and determined. Such orders affecting either party can be made at the conclusion of this matter and where appropriate the court has residual powers to order for the cancellation and fresh gazetting of any title deed that will not be produced then.

(iii) Whether both parties should comply with the court orders directing them to deposit all rents collected in a joint bank Account operated by both Administrators.

41. The court order of 24th April 2017 was explicit that both administrators should open a joint bank account, at a commercial bank, where all rents of the estate were to be deposited with effect of 1st May 2017. Eight (8) years later, no action has been taken and the applicant seeks to have compliance enforced. Compliance with court orders was emphasised in Constitutional Petition 39 of 2019 [*Gideon Omare v Machakos University*](#), where Odunga J as he then was stated that;

“ Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in *Teacher’s Service Commission v Kenya National Union of Teachers & 2 others* Petition No 23 of 2013: “The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

42. Both parties herein are equally to blame for the non-compliance with this order, and neither party has filed any appeal or order for review to have it set aside. The court therefore does not need to action the same as that remains the duty of the parties. This court therefore gives them 21 days to so open the joint account, and if they totally failed to so, then pursuant to provisions of section 47 of the [*Law of Succession Act*](#) and rule 73 of the probate and administration rules, will allow an account to be opened by the deputy registrar at KCB-Machakos branch in the names of the late Professor Stephen Musembi Nzuve (Deceased), whereas earlier directed all rents will be deposited.

E. Disposition

43. In the final analysis I do find that the summons is partially merited and direct as follows;

- a. A preservative order/ inhibition be and is hereby issued restricting any dealing in all properties of the estate both in the names of the deceased and where he had beneficial interest and the lands registrar -Machakos is directed to effect this order by ensuring that inhibition orders are registered as against all the properties of the Estate pending hearing and determination of this suit.



- b. Similarly, a preservative orders are hereby issued restricting any dealing In all the properties of the deceased held by any Sacco shares/Housing scheme, bank accounts and this order further extends and shall be registered at NTSA stopping any transfer of the deceased interest in Motor vehicle KCD 349C, KBF 026N and KBT 675N.
- c. In line with section 83 (e) of the Law of Succession Act, both the administrators are directed to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. This is to be done within 60 days of issuance of this order.
- d. Both administrator's to comply with the court order dated 24 April 2017 directing that they do open a joint account where all rents of the estate will be deposited and if they failed to so within 21 days of reading of this ruling, then pursuant to provisions of section 47 of the Law of Succession Act and rule 73 of the probate and administration rules; The Branch Manager at KCB- Machakos Main Branch is directed to allow the Deputy registrar Machakos High court (As the sole signatory) to open an account in the names of the late Professor Stephen Musembi Nzuve (Deceased), whereas all rents to his estate will be deposited .
- e. That costs of this Application to abide by the cause.

44. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF JUNE, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 26th day of June, 2024.

In the presence of;

Ms Nyazeme for Applicant

No appearance for Respondent

Sam Court Assistant

