



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wakhome & another v Alunga & 4 others (Environment & Land Case  
7 of 2020) [2023] KEELC 22120 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22120 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE 7 OF 2020  
EC CHERONO, J  
DECEMBER 5, 2023**

**BETWEEN**

**SALOME WAKHOME ..... 1<sup>ST</sup> PLAINTIFF**

**JULIANA WAKHOME ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**TEFROZA MUHONJA ALUNGA ..... 1<sup>ST</sup> DEFENDANT**

**WAMALWA WANYAMA CHIMBANGA ..... 2<sup>ND</sup> DEFENDANT**

**PAUL MWELEZA ..... 3<sup>RD</sup> DEFENDANT**

**ERASTUS BARASA ..... 4<sup>TH</sup> DEFENDANT**

**MOSES ASICHELE ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> plaintiff/Applicant, Salome Wakhome filed an application dated 11<sup>th</sup> May,2023 against the Respondents seeking for the following orders;
  - a. That the purported authority to plead given by the applicant to the 2<sup>nd</sup> plaintiff be revoked, withdrawn and or nullified.
  - b. That upon grant of prayer 1 above, the 1<sup>st</sup> applicant be granted leave to file her independent witness statements and file her independent list of documents.
  - c. Costs be provided for.
2. The application is supported by the applicant affidavit sworn on 14<sup>th</sup> May 2023 and grounds apparent on the face of the said application.



3. It is the applicant's case that they are co-administrators of the estate of Josephat Wakhome Nabiswa with her co-plaintiff and that they have administered over the estate and concluded distribution of the estate to the beneficiaries. She further averred that being old and illiterate, the 2<sup>nd</sup> plaintiff has been using her as a puppet making her ratify court documents that she does not know or understand the contents thereof and as such, the 2<sup>nd</sup> plaintiff has been acting under false authority. She urged the court to withdraw the authority issued to the 2<sup>nd</sup> plaintiff and to allow her to proceed with the case on her own by filing independent witness statements and list of documents.
4. None of the applicants filed response either in opposition or in support of the application.
5. I have perused the application and the supporting affidavit and find that the only issue that commend for determination is whether the applicant is deserving of the orders sought.
6. By way of a brief background, this suit was commenced by both plaintiffs herein vide a plaint dated 19<sup>th</sup> February 2020 acting through the firm of Samba & Company Advocates seeking the main remedy that the defendants be evicted from land parcel no. Bungoma/ndalu/41 ("herein referred to as the suit land") or any resultant sub-divisions thereof.
7. The question that the court is called upon to determine in the present application is whether the law allows the applicant to withdraw authority issued to a co-administrator to institute a suit and whether she can be allowed to prosecute this suit commenced by a plaint dated 19<sup>th</sup> February, 2020 separate from her co-administrator by filing independent statements and documents.
8. The applicant being a co-administrator in the estate of Josephat Wakhome Nabiswa-deceased derives her authority to act in relation to the estate from Section 82 of the [Law of Succession Act](#) which provides thus;
  - a. to enforce by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arise out of his death for his estate .....
9. From the above provision, it is clear that the law expects co-administrators to act jointly at all times such that a single administrator cannot act alone in matters touching the estate in the absence of the co-administrator. The rationale behind this is that they are not acting on their own behalf but on the behalf of the estate of a deceased person. Their authority is therefore derived from the estate of a single deceased person since they hold one confirmed grant. They therefore have no choice but to act as one with regard to the management of the deceased's estate.
10. The courts have severally held that a joint administrator ought to file proceedings on behalf of the Estate jointly but not singularly as the applicant herein seeks to do. See the case of [Simon Kamau Muhindi \(Suing as the administrator of the Estate of Esther Nyokabi Muhindi \(deceased\) v Monica Wambui Ngugi & another](#), HCCC No 207 of 2013, where the Court held that:-
 

“The Capacity to agitate any suit on behalf of the Estate of the deceased inheres in the administrators duly appointed by the court. They act jointly at all times...  
one administrator out of the others lacks capacity to bind the estate or any of the administrators or file suit alone on behalf of the estate”.



11. Therefore, the applicant cannot withdraw her authority and then seek to act independent from her co-administrator. Although the applicant from the wording of the application wishes to maintain the same plaint as jointly filed but prosecute separately, I see no major departure from the requirement to jointly agitate and prosecute a suit. Both procedures of a trial ought to be carried out jointly as co-administrators are expected to speak in one voice and aim towards a common goal which is to protect the estate of the deceased person as required by law.
12. Based on the decisions referred hereinabove to which I entirely agree, I find that the applicant herein has no capacity to separately prosecute a suit where they were appointed jointly to administer the estate of the deceased.
13. Ultimately, I find that the application dated 11<sup>th</sup> May 2023 lacks merit and the same is hereby dismissed with costs to the respondents.
14. Orders accordingly.

**READ, DATED, DELIVERED AND SIGNED AT BUNGOMA THIS 5<sup>TH</sup> DAY OF DECEMBER, 2023.**

**HON.E.C CHERONO**

**JUDGE**

In the presence of;

Wamalwa R for 1<sup>st</sup> plaintiff/applicant

Mr. Wekesa H/B Samba for 2<sup>nd</sup> plaintiff/respondent

Okwaro C/A

