



In re Estate of Paul Maloba Mutanda (Deceased) (Succession Cause 945 of 2007) [2025] KEHC 3495 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 945 OF 2007
SC CHIRCHIR, J
MARCH 20, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE PAUL MALOBA MUTANDA (DECEASED)

BETWEEN

STEPHEN EUGENE MALOBA APPLICANT

AND

EUNICE MAKOKHA NYANGWESO 1ST ADMINISTRATRIX

JACINTA AFANDE MALOBA 2ND ADMINISTRATRIX

RULING

1. What is coming up for determination is the summons for revocation of Grant dated 28/10/2024. It seeks orders as follows;
 - a). That the letters of Grant of Administration intestate issued in the joint names of the 1st and 2nd Administrator be revoked.
 - b). That fresh Letters of Administration intestate be issued in the name of Stephen Eugene Maloba.
2. The summons are supported by the Affidavit of Stephen E. Maloba (The Applicant)

The Applicant's Case

3. The Applicant states that Jacinta Afande Maloba, the 2nd Administrator has since died and as such the Grant of letters of Administration has become inoperative . That the court had already expressed the view that the presence of the 1st Administrator in the cause was no longer tenable. That the other Administrator, one John Chesiro Mutanda was dropped from administration of the Estate. He further states that in terms of paragraph 19 of Justice Musyoka's ruling delivered on 13/5/2022, the 1st Administrator had been affectively removed from the Administration of the Estate.



4. The Application is supported by Celestine Yvonne Maloba, Silas Maloba, Edna Maloba and Michael Maloba all describing themselves as children of the deceased Administrator, Jacinta Afande. They are also in support of the Applicant being appointed as Administrator in place of Jacinta Afande.

Respondent's Case

5. The Application is opposed by the 1st Administrator (The Respondent). It is the Respondent's case that the needed substitution is in respect of the grant that was issued on 12/5/2016 and as per the said grant the Administrators are herself, the late Jacinta Afande and one John Mutanda Chesiro .It is further stated that this court is functus officio, as the issue of Administration was concluded on 12/5/2016. She insists that contrary to the Applicant's assertion ,she is still one of the Administrators of the Estate. She refutes the suggestion that the orders of 13/05/2022 effectively removed her from the administration of the estate. She believes that the present application is a gimmick to delay the conclusion of the Administration process.
6. The Parties have filed submissions which I have considered.

Analysis and Determination

7. I have considered the parties rival positions in this matter. The record shows that on 12/5/2016, John Chesiro Mutanda, Eunice Makokha Inywanyeso and Jacinta Afande were appointed as Administrators of the deceased's estate. That appointment is what is currently subsisting. Thus contrary to the Applicant's allegation, John Chesiro mutanda has never been dropped as an Administrator.
8. The applicant has produced a death certificate showing that the 2nd Administrator , Jacinta Afande has since died. In terms of section 81 of the Law of Succession Act (The Act), that death effectively left the other two Administrators in charge of the Estate. Section 81 provides as follows: "Upon the death of one or more of several executors or Administrators to whom a grant of representation has been made all the powers and duties of the executors or Administrators shall become vested in the survivors or survivor of them provided that where there has been a grant of Letters of Administration which involve a continuing trust; a sole surviving Administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him".
9. Upon the death of Jacinta Afande, there are 2 more surviving Administrators as aforesaid and therefore as per the provisions of Section 81 the two can lawfully carry on with the Administration of the estate. The question of continuing trust, if any , is a non-issue since there are still more than one Administrator surviving. There was no indication that there is a continuing trust, in any event.
10. The applicant has argued that Pursuant to paragraph 19 of Justice Musyoka's ruling delivered on 13/5/2022, the first Administrator effectively ceased to Administer the estate.
11. In the subject ruling, the Judge postponed the confirmation of Grant for reasons that he set out in the ruling. In paragraph 19, the Judge stated as follows: "I note that the Applicant (Then the 1st Administrator) , in the affidavit in support of the Application listed herself as a dependant of the deceased. She has not explained in what respect she was dependant. She is not a surviving spouse of the deceased not his child, nor grandchild. To my understanding she is a mother- in -law of the deceased, and she only came in to fight for the rights of her grandchildren. She has no claim or entitlement to a share in the estate, and she should not therefore be listed as a survivor or heir or dependant. The persons she purports to represent are now Adults, and they should come into the picture, to agitate their claim instead of appearing by proxy, so that the stranger can step aside. She holds no power of Attorney,



- executed in her honour by those that she claims to represent, and her presence in the matter is therefore untenable. This alone would be sufficient ground for me not to confirm her as administratrix.”
12. The above statement simply expressed an intention of the Judge, but cannot be said to have been conclusive on the matter of representation. In any event, confirmation of Grant was postponed. It is only at the point of confirmation that the court not only distributes the Assets of the estate, but also confirms whether the appointed administrator (s) should be allowed to continue in their position or dropped. That has not happened. It is therefore incorrect to state that the 1st Administrator has been removed from Administration.
 13. Further the in the final orders contained at paragraph 35 of the aforesaid ruling, the Judge gave some assignments to the Administratrixes and John Chesire in a language that clearly speaks for itself. The Judge stated “That the Administratrixes and John Chesiro Mutanda are hereby directed to render accounts along the lines pointed out in paragraph 34 here above, and that the said accounts shall be in affidavit form, supported by appropriate documentation” (35 (b)).
 14. A literal meaning of this direction is that the orders were being directed at the two women Administratrixes and John Chesiro Mutanda. Not only does this order confirm that the respondent herein is still an Administrator of the Estate but it shows that she still has some unfinished responsibility to the estate: that of rendering accounts in respect of the Estate.
 15. However, notwithstanding the aforesaid, a reading of the record shows that the deceased was polygamous. The respondent herein represents the interest of one house, the children of her deceased daughter, and widow of the deceased, while the respondent herein and his siblings belong to the 2nd house. There is therefore need to allow representation from each house for each group to feel that their interest is being taken care of. Consequently, it is necessary to have a representative from the house of the deceased Administratrix Jacinta Afande.
 16. The Applicant has stated that he is a child of the deceased’s Administrator and the deceased herein. Though I have not seen any grant of representation or grant ad litem to prove that he is the personal representative of Jacinta Afande’s Estate, I have seen four Affidavits sworn by his siblings in support of his appointment. I will, in the circumstances consider the said affidavits as expression of consent on their part.
 17. In the conclusion, I hereby make orders as follows;
 - a. The Grant of Letters of Administration issued on 12/7/2016 is hereby revoked.
 - b. A fresh Grant to issue in the names of John Chesire Mutanda, Eunice Makokha Nyanyimeso and Stephen Eugene Maloba.
 - c. Each party to meet their own costs.
 - d. This matter to be mentioned on a date to be given on the date of this ruling to confirm compliance with paragraph 35 (b) of the Ruling of 13/5/2022 and for further directions.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO THIS 20TH DAY OF MARCH, 2025 IN THE PRESENCE OF:

S CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi – Court Assistant.



Mr. Wandallah for the Applicant.

