Changal v Maritim & another (Succession Cause 196 of 2015)
[2025] KEHC 8667 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8667 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 196 OF 2015

RN NYAKUNDI, J

JUNE 18, 2025

IN THE MATTER OF THE ESTATE OF THE LATE MARTIM KIPTUI MARIKO-DECEASED

BETWEEN

LEAH CHANGAL ..... APPLICANT

AND

GLADYS SABAI MARITIM ..... 1ST RESPONDENT

BENJAMIN KIMURSI LAMAI ..... 2ND RESPONDENT

RULING

1. I am called to determine the applicant's summons dated 18th March, 2025 expressed to be brought under the provisions of sections 47 and 48 of the *Law of Succession Act* and Art. 159 of the *Constitution* of Kenya. The applicant seeks reliefs to wit;

    a. Spent

    b. That this honourable court be pleased to substitute the deceased joint administrator Salome Chemwei Maritim with the applicant Leah Changal.

    c. That upon such substitution a fresh grant be re-issued to three administrators Gladys Sabai Maritim, Benjamin Kimursi Lamai and Leah Changal.

    d. That any other relief that the Honourable court deems fit to award

    e. That cost of this application be provided for.

2. The application is supported by various grounds an affidavit sworn by one Leah Changal. According to the applicant the grant earlier issued to Gladys Sabai, Benjamin Maritim and Salome Chemei has been rendered partially operational owing to the death of Salome Chemei. That there exists an order

pending implementation. That owing to the death of joint administrator the is need to substitute the deceased joint administrator to enable all the process continued.

3. In response to the application, the Respondents filed a Preliminary Objection seeking to dismiss the instant application for it offends the provisions of section 81 of the *Law of Succession Act*. In support of this position learned counsel Ms. Koech cited the decisions in *Re-Estate of Korir Arap Malakwen (deceased)* Succession cause No. 459 of 2014) and *In Re Estate of Chemwok Chemitei (deceased)* (2021) Eklr.

Determination

4. I have considered the application and the preliminary objection raised by the respondents. The respondents contend that this application offends the provisions of section 81 of the *Law of Succession Act* and should be dismissed.

5. Let me point out that it has been the consistent position of this court, and indeed the position under the law, that the *Law of Succession Act* does not provide for substitution of deceased administrators. This court has previously addressed this issue and maintained a clarity on the proper legal framework to be applied in such circumstances.

6. The *Law of Succession Act* does not envisage substitution of a deceased administrator. What is contemplated under Section 81 of the Act is that, in the event of the death of one or more joint administrators, where there are several administrators, the surviving administrator or administrators have the mandate to continue with their duties to completion without the need to replace the deceased ones. Section 81 provides:

> " 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 executor or administrators shall become vested in the survivors or survivor of them..."

7. In the present case, while Salome Chemwei Maritim has died, there remain two surviving joint administrators, namely Gladys Sabai Maritim and Benjamin Kimursi Lamai. Under Section 81, the grant remains operational and all powers vest in these surviving administrators. This court addressed this precise issue in *Re Estate of Korir Arap Malakwen (deceased)* Succession Cause No. 459 of 2014, where I held that the *Law of Succession Act* has no provisions for substitution of deceased administrators.

8. In our legal system on adjudication of Succession disputes administrators are appointed under Section 66 of the *Law of Succession Act*. Once they accept the appointment the law is restrictive in various ways to give them room to administer the estate faithfully and diligently. In the event the intestate estate in question had in its place more than one legal representative or administrator, the death of one of them is a valid ground for revoking the grant of representation. This is provided for under Section 76 of the law of the Succession Act for the reasons that such a grant becomes useless and in operative upon the death of a sole or the administrators so appointed as evidenced by the grant of letters of administration. In the same statutory regime, there are saving provisions like section 81 of the Act as cited above that where there are more than one administrator and it happens that one of the aforesaid administrators his or her life on earth is terminated by an Act of God, natural causes or any other calamity the surviving administrator has the mandate of the law to proceed and deliver the justice of the matter on distribution of the estate. The court in Re-Estate of George Rugui Karanja (Deceased) EKR held as follows: "The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the

Act which provides for vesting of the powers and duties of personal representatives in the survivor of survivors of a dead personal representative. The provision 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 executor 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 any 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.It would appear to me that once all the holders of a grant die section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative and liable for revocation under Section 76(e) of the *Law of Succession Act* to pave way for appointment of new administrators. The appointment of fresh administrators take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act."

9. There may be differences against members of the same family. In my view differences between human beings even those from the same blood line but that is as natural as breathing. It is a fact of life that infinite varieties exist of everything under the son and is traceable to creation for those who believe the whole things were declared to be on this planet earth by God himself. That includes the being of huma beings from the first generation of family in reference to Adam and Eve. The families from the same consanguinity and affinity commonly referred to under Section 29 pf the *Law of Succession Act* as beneficiaries or heirs to the estate have a duty to accommodate suitably differences among them without occasioning discrimination as stipulated in Article 27 (4) of the *Constitution*. It is only in this manner can we give due respect, dignity, security, right to life to everyone's humanity. The recognition of the reality and value of differences that may exist between brothers and sisters from the same biological parents, and the aspirational value of equality, human rights, equity, non-discrimination, are important underpinnings when it comes to probate administration. In essence I have emphasised elsewhere that in succession disputes family don't have to see things as they are but see them in reference to themselves as members who draw their aspirations from the roots of the deceased whose estate is a subject of litigation. In a prouder perspective, our constitutional framework as promulgated in 2010 comprehends virtually the whole of what is sometimes called the form of life of a human being as guaranteed under Article 26 of the *Constitution*. This same constitution in everywhere authors the plan for a way of life of every citizen. The perceived and experienced un equal treatment and lack of fairness in the distribution of the net estate survived of the deceased is a creature of our fallibility as human beings. In a different incarnation I have stated that the administrators appointed under Section 66 of the *Law of Succession Act* is not a form of employment by the court but a solemnly duty to be taken up on behalf of the deceased by always consulting the spirit of the owner of the estate to unlock and answer many questions which may arise during the adjudication on the distribution of the estate. The administrators are therefore first among equals who essentially are to ensure that there is real and meaningful equality, fairness, and non-discrimination in the distribution of the intestate estate of the deceased. Given the importance of this principles, I am of the considered view that the surviving administrator has the capabilities to deliver the mandate and duties of an administrator as contemplated in the statute. If this court was to invoke Section 76 of the *Law of Succession Act* there is a likelihood of delay in the transmission of this estate

10. In the circumstances, I find merit in the preliminary objection. The application for substitution is not provided for under the *Law of Succession Act* and cannot be sustained. The surviving administrators have full authority to continue with the administration of the estate.

11. Accordingly, I allow the preliminary objection and dismiss the application with each party bearing its costs.

DATED SIGNED AND DELIVERED AT ELDORET THIS 18TH DAY OF JUNE 2025

.....

R. NYAKUNDI

JUDGE

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