



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M'mutungi M'magana alias M'mutungi Magana (Deceased)  
(Succession Cause 60 of 2015) [2025] KEHC 8790 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8790 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 60 OF 2015  
HM NYAGA, J  
JUNE 19, 2025**

**BETWEEN**

**JULIUS MBABU MUTUNGI ..... 1<sup>ST</sup> PETITIONER**

**FRANCESKA KARIMI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**FRANCESKA KARIMI ..... 1<sup>ST</sup> PROTESTOR**

**ROSE WANJA MUTWIRI ..... 2<sup>ND</sup> PROTESTOR**

**CHARLES KIMATHI ..... 3<sup>RD</sup> PROTESTOR**

**AND**

**ALICE NCHUGUNE MIRITI ..... OBJECTOR**

**RULING**

1. Coming for determination are two applications namely:-
  - a. Application dated 23/10/2023 which seeks the following prayers:-
    - i. Spent
    - ii. That the Honourable court be pleased to issue an order of inhibition inhibiting any dealings over LR. NO. NKUENE/NKUMARI/1XX1, LR. NO. NKUENE/NKUMARII/1XX8 and LR. NO. ABOGETA/U-KIUNGONE/2XX6 and any resultant subdivision pending hearing and determination of this application inter-partes.



- iii. That the honourable court be pleased to revoke the rectified certificate of confirmed grant issued to one JULIUS MBABU MUTUNGI and FRANCESKA KARIMI on the 21<sup>st</sup> July, 2021 and confirmed on 27<sup>th</sup> July, 2021.
- iv. That the Honourable court be pleased to issue a declaration and an order amending the said grant to the effect that the objector is entitled to have a share in LR. NO. NKUENE/NKUMARI/1XX1 and LR. NO. ABOGETA/U-KIUNGONE/2XX6 which was passing to her late husband as per the deceased to whom this cause relates wishes.
- v. That the honourable court be pleased to issue an order compelling the protestors herein to produce the deceased to whom this Succession cause relates last testamentary disposition/will which he caused to be authored detailing his wishes prior to his demise.
- vi. That the honourable court be pleased to grant any further or better orders as shall meet the ends of justice.
- vii. That costs of the application be born by the protestor/respondent.

2. Application dated 18<sup>th</sup> May 2024, which seeks the following prayers:-

I. Spent

II. That this honourable court be pleased to issue an order to the Land Registrar Meru to dispense with production of the original title document of Land Parcel No. Nkuene/Nkumari/1XX8 Abogeta/U-Kiungone/2XX6 and Nkuene/Nkumari/1717 while registering LR. 19 to facilitate distribution of the deceased's estate as per the confirmed grant.

III. That the costs of this application be in the cause.

3. Before I delve into the two applications. I will give a brief history of the cause. The letters of administration herein were issued to Julius Mbaabu and Francisca Karimi on 10<sup>th</sup> August, 2021. A certificate of confirmation of grant was issued to the two administrators. Then after, Julius Mbaabu passed on. Vide a ruling delivered on 23<sup>rd</sup> November, 2023, the court invoked Section 81 of the [Law of Succession Act](#) and ordered Franceska Karimi to complete the transmission of the estate to the beneficiaries.
4. In her application dated 23<sup>rd</sup> October, 2023, Alice Ngucure Miriti has described herself as the legal wife of Julius Mbaabu Mutungi, the Co-administrator who passed away. The applicant's case is that the Petitioners herein concealed material facts aided by the protestors. That the said Julius Mbaabu, even though listed as a petitioner, was a serial drunkard and suffered from mental illness and for this reason, he let go of the property that the deceased herein had bequeathed him during his lifetime, a fact not brought to the attention of the court.
5. That as a result, the said Julius Mbaabu ceded his entitlement to LR. No. Abogeta/U-Kiungone/2XX6 and allowed half of it to pass to the protestors and he was not considered in the distribution of Lr. No. Nkuene/Nkumari/1XX1 and Lr. No. Nkuene/Nkumari/1XX8; whereby the deceased had stipulated how the subject parcels of land were to be shared. That the objectors failed to disclose that the deceased had intended to have Julius Mbaabu get parcel No. Abogeta/U-Kiungone/2XX6 alone and that the other parcels were to be shared equally among all his children. That prior to her death, the deceased had been living with Julius Mbaabu on parcel No. Abogeta/U-Kiungone/2XX8 and the letters and her family had been living and cultivating the land exclusively. That the protestor who were aware of



- the condition of her husband, and without including him, obtained a rectified grant, to the detriment of the applicant's rightful share.
6. The applicant further states that land parcel No. Abogeta/U-Kiungone/352, in the name of the deceased, had been sub-divided during his lifetime and transferred to the protestors as set out in her affidavit. That land parcel No. Abogeta/U-Kiungone/2XX0 was also sub-divided during the deceased's lifetime as set out in her affidavit. That Parcel No. Abogeta/U-Kiungone/2XX8 was for pass to Julius Mbaabu but the deceased died before he could do so.
  7. It is further stated that the act of excluding the applicant from the LR. Nkuene/Nkumari/1XX1 and 1XX8 demonstrated the fact that the protestors came to court with unclean hands.
  8. It is further averred that the application dated 20<sup>th</sup> July, 2023 which sought to have Franceska as the sole administrator is a clear demonstration of the ill will on the part of the protestors, who want to disinherit her. The applicant thus sought to have the grant herein annulled/revoked. In response, the Petitioner filed a replying affidavit sworn on 14<sup>th</sup> May, 2024.
  9. In a nutshell, the Petitioner avers that the applicant has no capacity to make this application as she is not a beneficiary of the estate.
  10. It is further averred that the said Julius Mbaabu was of sound mind, a teacher by profession and who the court appointed as a co-administrator. That the matter was fully heard by this court and distribution was ordered by it. That the deceased died intestate and the said Julius never contested the manner in which the estate was distributed and that he got a larger share than other siblings.
  11. Parties were directed to file submissions. At the time of writing this ruling only the Petitioner/ Respondent had filed hers.
  12. The petitioner submitted that Julius Mbaabu was a co-administrator and never contested the manner in which the estate was shared. That there was no evidence to show that Julius was to get the whole share of Abogeta/U-Kiungone/2XX6.
  13. The Petitioner further submit that the court can also order that the entire estate be shared equally with the court having regard to the gifts given by the deceased in his lifetime.
  14. It is further submitted that the applicant lacks, the locus standi to make the application. Citing the case of Rajesh Pranjivan Chadasama -vs- Sailesh Pranjivan Chadasama (2014) eKLR, it is submitted that without a grant of letters of administration for the estate of Julius Mbaabu, the applicant has no capacity to make the application.
  15. The petitioner also cited the case of the estate of Catherine Nduku Malinda (2020)eKLR where it was reiterated that a daughter in-law may lay a claim not in her own right but a personal representative of the deceased son. Also cited to buttress this position the cases of the Estate of Munyua Mbeke (....)eKLR and the estate of Cecilia Wanjiru Kibicho (2016) eKLR.
  16. It is further submitted that the applicant has not met the threshold to warrant the revocation of her grant, as set out under Section 76 of the *Law of Succession Act*.
  17. That the late Julius Mbaabu fully participated in the Cause and never complained about the share he got.
  18. The issues for determination are: -
    - a. Whether the applicant has locus standi to make this application or not.



b. Whether there are sufficient grounds raised to warrant a revocation of the grant.

19. The applicant is the wife of Julius Mbaabu, who was a son of the deceased herein. As a daughter in-law to the deceased. She does not fall under any category of the dependents set out under Section 29 of the Act, which states as follows:-

(XXXXXXXXXXXXXXXXXXXX)

20. The applicant has not come as a personal representative of the estate of Julius Mbaabu. I am thus in agreement that she lacks locus standi to bring this application. In ruling so, I am in agreement with the decision in the Estate of Catherine Nduku Malinda (Supra) where it was held as follows:-

(XXXXXXXXXXXXXXXXXXXX)

Similarly, The Estate of Cecilia Wanjiru Kibicho (supra) it was held that:-

XXXXXXXXXXXXXXXXXXXX

Having found that the applicant lacks the capacity to bring this application, the same is struck out with costs.

In view of eh above, I find that it would be unnecessary to consider the other issue. The same can eb considered if the applicant gets letters of administration for her late husband.

**DATED, SIGNED & DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**

**H.M. NYAGA**

**JUDGE**

