



In re Estate of Kevin John Ombajo (Deceased) (Succession Cause 555 of 2018) [2025] KEHC 8301 (KLR) (Family) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 555 OF 2018
PM NYAUNDI, J
JUNE 13, 2025
IN THE MATTER OF THE ESTATE OF KEVIN JOHN
OMBAJO (DECEASED)**

BETWEEN

TRACY KAMENE APPLICANT

AND

JACQUELINE VIVIAN AKINYI RESPONDENT

AND

TRUE BLAQ LIMITED INTERESTED PARTY

RULING

1. The Application for determination is dated 15th May 2024 filed by Tracy Kamene (the Applicant). It seeks the following orders;
 - a. Spent.
 - b. This Honourable court be pleased to issue an order compelling the 1st Interested Party to register the Share Transfer application lodged by the Applicant on the 26th day of March 2024 in relation to the shares of the late Kevin John Ombajo in the 1st Interested Party;
 - c. In the alternative to (b) above, this Honourable court be pleased to issue an order compelling the 2nd Interested Party to register the Share Transfer application lodged by the Applicant on the 7th August 2023 in relation to the shares of the late Kevin John Ombajo in the 1st Interested Party;



- d. The Honourable court be pleased to issue an order compelling the 1st Interested Party to produce a full Statement of Account for the Deceased's Directors' Account in the 1st Interested Party for the period 2014 to 2024.
 - e. The Honourable court be pleased to extend the time within which the Applicant is required to complete the administration of the estate in respect of all matters other than continuing trusts and to produce to the court a full and accurate account of the completed administration; and
 - f. The costs of this application be provided be awarded to the Applicant.
2. The Application is brought pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act Cap. 21, Sections 47 and 83 of the Law of Succession Act, Sections 498, 499, 500 and 501 of the Companies Act 2015, Rule 73 of the Probate and Administration Rules and all enabling provisions of the Law and was supported by a sworn affidavit by the Applicant of even date. She filed a Further Affidavit sworn on 3rd July 2024.
 3. The application was opposed. The Respondent filed a Replying Affidavit sworn on 8th July 2021. The interested party filed a replying affidavit dated 27th May 2024 and a statement of grounds of opposition of even date on the grounds that; (i) the Petitioner/Applicant is seeking orders against a third party in probate proceedings therefore this Honorable Court lacks the requisite jurisdiction to entertain the Application as drafted. (ii) THAT the issues in controversy relate to shareholding and liabilities in a limited liability company which are a preserve of the dictates of the Articles of Association and should be resolved under the legal framework provided for in the Companies Act, the Civil Procedure Act and Rules.

Applicant's Case

4. The applicant's case is that she is the widow of the deceased and a co-executor in the estate of the deceased. This court issued a Certificate of Confirmation of Grant of Probate dated 7th July 2021 directing that the estate should be distributed according to the Deceased's Will dated 20th February 2015.
5. In November 2021, she invited the Respondent to execute transfer forms relating to shares held by the deceased in the company of the interested party but she refused. She later approached the court with an application dated 3rd December 2023 seeking amongst other orders an order to compel the Respondent to sign the transfer forms or in the alternative, to authorize the Deputy Registrar to execute them on the Respondent's behalf. In a Ruling dated 2nd June 2023, the court noted the Respondent's reluctance to complete the administration of the estate and allowed her application directing the Respondent to execute the forms within 14 days. When the respondent failed to sign the forms, the Deputy Registrar signed them. She approached the Registrar of Companies to register the transfer but was advised that the transfer could only be done by the interested party.
6. On 26th March 2024, she forwarded the forms to the Interested Party for registration. By a letter dated 2nd April 2024, the Chairperson of the board of the Interested Party responded stating that the forms would only be registered if both the Respondent and the Applicant jointly communicate to the company. She was further informed that at the time of his passing, the Deceased's Directors Account in the company had a positive balance of Kshs. 10,600,303.00. Since then, the business has allegedly paid out Kshs. 26,274,694.00 drawn down on behalf of the estate leaving a net liability of Kshs. 15,674,391.00. The company insisted that this liability must be settled before the share transfer is registered. She argues that this is an attempt by the Respondent to frustrate the administration of the estate since the Respondent acts as the managing director of the interested party. She urged the court



to allow the application as prayed for the administration of the estate to be complete. She argued that the Respondent will not suffer any prejudice.

7. Although the Respondent filed an appeal against the judgment issued by this court, no orders have been issued to stay the judgment or the orders of 2nd June 2023. That the process leading to the confirmation of grant was procedurally sound. Since the court ordered that she should receive 490 shares while the Respondent receives 177 shares, the argument that the shares cannot be transferred in piecemeal does not stand. That the issue of stay pending appeal was canvassed by this court in the Respondent's application dated 21st July 2021 and the court's ruling dated 2nd June 2023 and therefore, the issue is res judicata.

Respondent's Case.

8. The Respondent's case is that she is the co-executrix of the estate of the deceased. This court issued a judgement on 7th July 2021 directing that the estate of the deceased should be distributed according to the Deceased's will dated 20th February 2015. The applicant obtained a Certificate of Confirmation of Grant of Probate dated 7th July 2021 without an application contemplated under Section 71 to enable her distribute the estate. She was aggrieved by the judgment of 7th July 2021 and she filed an appeal at the Court of Appeal which is pending hearing and determination. She declined to sign the transfer forms because the transfer forms referred to a company known as Truebalq International Limited as opposed to True Balq Limited. She asked the applicant to correct the errors but instead, she submitted the forms to the Deputy Registrar for execution. When she submitted the forms to the interested party for execution, the interested party raised queries about the transmission. That the issues raised in the application ought to have been the subject of an application under the provision of Section 71 of the Law of Succession. She denied the allegation by the applicant that she is trying to frustrate the transfer of the share as the director of the interested party; she argued that the interested party has an independent board of directors that deliberates and makes decisions on behalf of the company as required by law. She argued that if the orders sought by the applicant are granted her appeal will be rendered nugatory.

Interested Party's Case.

9. Peter Kenneth Chege Nduati, the Chairman of the Interested Party stated that Application not only lacks basis in law but the issues in controversy fall outside the jurisdiction of a probate court. On 6th March 2024, the Board of Directors received a letter dated 28th February 2024 forwarding an extract of the Will of the deceased and a Share Transfer Form from the applicant. The board convened on 12th March 2024, to deliberate on the issue of the transmission of shares and it was noted that the Share Transfer Forms received from the applicant were for the transfer of 490 shares held in the name of the deceased to the applicant. The board resolved to write to the applicant and the respondent who are the executrix of the estate of the deceased to request them to send two share transfer forms as stated in the will, and further that, the joint Executrices should jointly communicate via Secretary to allow the Board take guidance on the next steps in the matter. The Board further noted that the Deceased owed the Interested party approximately Kshs.26, 274,649.00 which had accumulated from the monthly draw down by the Estate. They informed the applicant and the respondent of the outstanding amount and that the same should be settled before the board can consider any transfer/transmission of shares.
10. On 6th May 2024 the Interested Party was served with a demand letter dated 3rd May 2024 from the firm of Messrs. Mohamed Muigai LLP on behalf of the Applicant demanding that the Company complies with a court order dated 7th July 2021, failure of which the Applicant will institute contempt proceedings against the directors of the Interested Party herein. They responded to that letter on 7th



May 2024 through their lawyers. The letter basically restated the position adopted by the Board in its letter dated 2nd April 2024 which required the executrixes the Estate of Deceased to specifically revert on the liability owed to the Interested Party by the estate. On 20th May 2024, their advocates were further served with a letter in response to the letter dated 7th May 2024 by the applicant's advocates. The letter was forwarded to the Interested Party's Board for deliberation and further instructions on an appropriate response.

11. Before the Interested Party could respond to the aforesaid letter, they were served with the current application. That the order seeks to compel the Interested Party to transfer the shares without following the procedures laid out under its Articles of Association and the Companies Act. That the position taken by the Interested Party's Board to insist on settlement of the outstanding liability before transmission of shares is both informed and within the bounds of the Interested Party's Articles of Association and the Companies Act therefore the orders sought in the instant Application fall outside the jurisdiction of a probate Court. He argued that the provisions of the Law of Succession Act and the Probate and Administration Rules are structured to only provide resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries, and dependents to the exclusion of any third parties. That since the Interested Party was not a party in the probate proceedings, the orders sought herein cannot be granted as against the Interested Party since a probate Court lacks the requisite jurisdiction to entertain matters by or against third parties. That the interested party acknowledges the dispute between the estate of the deceased and itself, the same relate to shareholding, and liabilities in a limited liability company which issues are a preserve of the dictates of the Articles of Association and ought to be resolved under the legal framework provided for in the Companies Act. He argued that the applicant's application is not only incompetent, but devoid of any merit and should be dismissed with costs.

Applicant's Submissions.

12. The Applicant's submissions are dated 4th July 2024. It was her submission that the jurisdiction of this court is derived from Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. This court has the inherent power to issue any orders it deems necessary to enable the effective administration of the estate of the Deceased and to ensure that the ends of justice are met. That there is no dispute as to the ownership of the shares which form part of the estate of the deceased and therefore, this court has jurisdiction to entertain the instant application.
13. The applicant further submitted that the interested party's action of withholding shares which belong to the estate of the deceased amounts to intermeddling in contravention with the provisions of Section 45 of the Law of Succession Act. That upon the death of the deceased, his shares vest in their personal representative in accordance with a grant of representation as was held in the case of Rosemary B.Koinange & 5 others v Isabella Wanjiku Karanja & 2 others [2017] eKLR.
14. The applicant finally submitted that there exist two court orders directing the shares of the deceased to be distributed. The said orders have never been set aside.
15. The applicant's further submissions are dated are dated 4th August 2024. The applicant submitted that the interested party alleges that the deceased owed it Kshs. 26,274,694. The applicant argues that this amount has not been proved by the interested party; no documentation has been produced by the interested party.



Interested Party's Submissions.

16. The Interested Party's submissions are dated 19th July 2024. They reiterated the averments in the Replying affidavit sworn on 27th May 2024. Their argument is that this court lacks jurisdiction to entertain the instant application. It was their submission that the dispute surrounding this case revolves around shareholding and a liability owed by the estate to the company. That the orders sought herein cannot be ventilated or granted before a succession court as a limited company enjoys a separate legal existence apart from its shareholders. That the position taken by the Interested Party's Board to insist on settlement of the outstanding liability before transmission of shares is both informed and within the bounds of the 1st Interested Party's Articles of Association and the *Companies Act* therefore the orders sought in the instant Application fall outside the jurisdiction of this Honourable Court as invoked by the Applicant under Section 47 of the *Law of Succession Act* as the court is sitting as a Probate Court.
17. It was their submission that the probate court settles disputes between the personal representatives of the deceased and the survivors, beneficiaries, and dependents to the exclusion of any third parties. Therefore, by virtue of fact that the Interested Party was not a party in the probate proceedings, the orders sought herein cannot be granted as against it since a probate Court lacks the requisite jurisdiction to entertain matters by or against third parties. They sought to rely on the decisions of Re Estate of Boniface Mutinda Kabaka (Deceased) (Succession Cause E185 of 2021) [2022] KEHC 12031 (KLR) (Family) (27 May 2022) (Ruling), James Muhu Kangari vs Muhu Holdings Ltd & Serah Mweru Muhu [2019] eKLR, Patrick Kibathi Kigwe & 2 others v Charles Kigwe Gathecha [2015] eKLR. Further Reliance was also placed on the following Court of Appeal decisions; Rosemary B. Koinange (suing as legal representative of the Late Dr. Wilfred Koinange and also in her own personal capacity) & 5 others v Isabella Wanjiku Karanja & 2 others [
18. They urged the court to find that the applicant's application is incompetent and devoid of any merit and the same ought to be dismissed with costs.

Analysis and Determination.

19. The interested party has raised the issue of jurisdiction of the probate court, it is trite law that jurisdiction is everything and without it a court has no power to move one more step and must down its tools in respect of the matter. See Owners Of The Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] eKLR. This position was reiterated by the Supreme Court in Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Limited & 2 Others [2012] eKLR as follows;

A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.
20. The interested party argued that this court lacks jurisdiction to order that the shares be transferred and registered to the applicant and the respondent. They also argue that the deceased had a loan and the same was communicated to the executors of the deceased's will. That the loan should be settled before the shares held by the deceased are transferred to the rightful beneficiaries.
21. Section 2 of the LSA which deals with its application. It provides;
 2. Application of Act



Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.

22. From the foregoing, it is my conviction that the applicability of the Law Succession Act is limited to cases concerning the intestate or testate succession of the estate of a deceased, in other words, inheritance issues. It therefore goes without say that anything outside of this does not fall within the purview of the Law Succession Act. I am persuaded by the dicta of W. Musyoka in *In Re Estate Of Alice Mumbua Mutua (deceased)* [2017] eKLR where he articulated the jurisdiction of the probate court as follows;

27 Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and Rules, which have elaborate rules on suits by and against executors and administrators.” (Emphasis added).

23. From the foregoing decisions, it is clear to me that for a matter to fall within the purview of the Law Succession Act it must; concern itself with the determination of the assets of a deceased, the survivors of the deceased and persons with beneficial interest; involve itself with the distribution of the assets of a deceased among the survivors and any persons with beneficial interest.

24. This position was affirmed by this Court while dealing with a deceased’s shares in a company in *Pacific Frontier Seas Limited -vs- Kyengo & Another (Civil Appeal 32 of 2018)* [2022] KECA 396 (KLR) as follows;

In our view the above judgments of this Court and the decisions of the High Court in *Re Estate of Alice Mumbua Mutua (supra)*, *Patrick Kibathi & 2 Others v. Charles Kigwe Gathecha (supra)* and in *Re Estates of Gitere Kahura and Mary Nyokabi (supra)* represent the correct law. Where there is no dispute on the shares held by the deceased in a company, the succession court has the jurisdiction to decide whether they are available for distribution and how they should be distributed. When there is intermeddling and interference with properties of the deceased, including shares, the court has jurisdiction to stop the intermeddling and to preserve the estate. However, when the dispute veers off to contestations on who are the company’s shareholders, directors, the extent and number of shares, the properties of the company, the filing of annual returns, occupation of the company’s properties, liabilities of the company, etc., those are, with respect, issues for the company to be resolved under the legal framework provided by the *Companies Act*.

25. In a case similar to the above where the deceased’s shares in a company were in issue in *Rosemary B. Koinange (suing As Legal Representative Of The Late Dr. Wilfred Koinange And Also In Her Own Personal Capacity) & 5 Others -vs- Isabella Wanjiku Karanja & 2 Others* [2017] eKLR, this Court held;

54. There can be no argument that the shares of a deceased in a limited liability company are assets which the family has power to distribute in a Succession Cause. The argument is rather that when there is a dispute on ownership of the shares, only a ‘Companies Court’ has jurisdiction to adjudicate. (Emphasis added)



26. It is clear to me that not every issue concerning the estate of a deceased falls under the ambit of the Law Succession Act. It is evident that there is a dispute between the interested party and the deceased's estate concerning shares and the amount owed by the deceased, and whether shares can be transferred when there is a dispute on liability. I am of the opinion that these issues do not fall within the purview of the probate court. The parties herein will have to canvass these issues before a competent Court.
27. In the result, the application dated 15th May 2024 and is dismissed for want of jurisdiction with no order as to costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 13th DAY OF JUNE, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Ms. Ogonyo for Executrix (Applicant)

Tracy Kamene

Fardosa Court Assistant

