



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Margaret Muthoni Chokwe (Deceased) (Succession Cause 87 of 2016) [2025] KEHC 10277 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10277 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
SUCCESSION CAUSE 87 OF 2016**

**M THANDE, J**

**JULY 18, 2025**

**IN THE MATTER OF THE ESTATE OF ESTATE OF  
MARGARET MUTHONI CHOKWE (DECEASED)**

**RULING**

1. The proceedings herein relate to the estate of Margaret Muthoni Chokwe who died intestate on 28.11.13 in Kilifi. The deceased was survived by 8 children. Following the deceased's demise, a grant of letters of administration, was on 13.9.16 issued to her children Beatrice Chokwe Mwinga (Beatrice), Joseph Thomas Chokwe (Joseph) and Jane Sidi Chokwe (Jane). The administrators listed the following assets as forming the estate of the deceased:

Plot No Kilifi/Roka/1489

Plot No Kilifi/Roka/1490

Account in Equity Bank, Kilifi branch

Account in Imarika Sacco

Account in Jamii Bora

NIC shares

Safaricom shares

Communication mast (Royal Media Services)

2. The Grant was subsequently confirmed on 16.11.22 and a certificate of confirmation issued on even date and all the assets were to be distributed equally amongst the 8 children of the deceased.
3. By an application dated 27.11.24, Timothy Chokwe Mwinga, Margaret Muthoni Chokwe, Tyson Timothy Chokwe and William Mutia Chokwe, seek an injunction restraining the Administrators herein from interfering with their quiet possession of the property known as Kilifi/Roka/1490 (the property) by subdividing, selling, alienating or in any other way interfering with the Applicants' interest in the property. They also seek revocation of the Grant. Their grounds are that the



Administrators failed to disclose to the Court that the property belongs to them and does not form part of the estate of the deceased. Further that the Royal Media Services communication mast (the communication mast) erected on the property does not form part of the estate.

4. In a supporting affidavit sworn on even date, Margaret Muthoni Chokwe (Margaret) averred that the Applicants are all children of Joseph and grandchildren of the deceased. Further that the deceased had in her lifetime subdivided her properties and gave parcels of land to each of her children save for their father. The deceased gave the property to the Applicants in place of their father. At the time, the Applicants were minors and in order to safeguard their interests, the deceased had the property registered in her name as guardian and trustee for the Applicants.
5. Jane opposed the Application vide a replying affidavit sworn on 9.12.24. She averred that the Applicants, are the grandchildren of the deceased and children of Joseph and have no locus standi to move the Court as they are not beneficiaries of the deceased's estate. She stated that the deceased had no will. Further that the estate of the deceased has been adequately administered vide the confirmed grant. According to her, the Application is brought in bad faith and is an abuse of the court process. She the further accused Beatrice and Joseph of failing to implement the confirmed grant.
6. In a further replying affidavit sworn on 19.2.25, Jane stated that the Administrators executed a contract with Royal Media Services in respect of the communication mast renewing the previous contract. According to her, the beneficiaries of the mast are the children of the deceased to the exclusion of the Applicants and that the Applicants can renew the contract when it expires on 3.4.28.
7. During the several appearances, the Administrators and other beneficiaries acknowledged that the property had been gifted to the Applicants by the deceased. What was in dispute is the communication mast. Beatrice stated that the property should go to the Applicants as per the title as that is what the deceased wanted. Jane stated that the deceased verbally stated that she wanted the mast to be for all. Lois Murugi Chokwe stated that she supported that the communication mast be for all. Joseph stated that the deceased gave everybody something and that the property is for the Applicants including the communication mast.
8. It is the dispute relating to the mast that is the subject of this ruling.
9. It is common ground that the mast is on the Kilifi/Roka/1490. A copy of the exhibited title indicates the proprietor thereof to be the deceased, Margaret Muthoni Chokwe as guardian and trustee for Timothy C. Mwinga, Margaret M. Chokwe, Timothy T. M. Chokwe and William M. Chokwe, who are the Applicants herein. Section 24(a) of the [Land Registration Act](#) provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. This must of necessity include the right to all that is on the property in line with the common law concept of land expressed in the Latin maxim, *cujus est solum ejus est usque ad coelum* which means that 'whose is the soil, his is also that which is above it'.
10. From what some of the beneficiaries of the estate have stated, can it be said that the deceased had made an oral will in respect of the communication mast? Section 9 of the [Law of Succession Act](#) provides as follows regarding oral wills:
  1. No oral will shall be valid unless—
    - a. it is made before two or more competent witnesses; and
    - b. the testator dies within a period of three months from the date of making the will:



11. For an oral will to be valid, it must be made in the presence of 2 or more competent witnesses and the testator dies within a period of 3 months from the date of making it.
12. While some of the beneficiaries contend that the deceased said that the communication mast is for all her children, none has disclosed when, to whom and in whose presence, this was stated. No independent witness was called to state that the declaration was made in their presence. In the premises, it cannot be said that the deceased made an oral will regarding the communication mast.
13. Additionally, the Court notes that the deceased was careful to transfer assets to her children and the Applicants during her life time which is indicative of a person who had put her house in order prior to her demise. It is thus not clear why she would omit to formally indicate her intention that the communication mast would be for all her children. Without any evidence to support this claim, the Court is not persuaded that it was the deceased's intention that the communication mast, which is on a plot she held in trust for the Applicants, be for all her children. I accordingly reject the claim.
14. The Applicants being of age can now be registered as the owners of the property. Towards this end, the Court was on 9.7.25, informed that the Administrators had signed and forwarded to the Applicants' advocate all necessary documents to effect the transfer/transmission to the Applicants.
15. In the end, I find that the Application is merited. However, no useful purpose will be served by revoking the Grant. Justice will be better served by an order for review the mode of distribution of the estate of the deceased. Accordingly, I set aside the certificate of confirmation of grant issued on 16.11.22 and direct that a fresh certificate of confirmation of grant issues reflecting that Kilifi/Roka/1490 together with the Royal Media Services communication mast thereon, is distributed to Timothy Chokwe Mwinga, Margaret Muthoni Chokwe, Tyson Timothy Chokwe and William Mutia Chokwe in equal shares.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 18<sup>TH</sup> DAY OF JULY 2025**

**M. THANDE**

**JUDGE**

