



REPUBLIC OF KENYA



KENYA LAW
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**Bunyasi & 10 others v Mbalanya (Family Appeal E001 of 2025)
[2025] KEHC 13843 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
FAMILY APPEAL E001 OF 2025
WM MUSYOKA, J
OCTOBER 3, 2025**

BETWEEN

MARY BUNYASI 1ST APPELLANT
JOYCE WANDERA OMANYO 2ND APPELLANT
DAVIS OMANYO 3RD APPELLANT
CHRISTINE OMANYO 4TH APPELLANT
SAMUEL OMANYO 5TH APPELLANT
AMOS OMANYO 6TH APPELLANT
ABRAHAM OMANYO 7TH APPELLANT
GEORGE OMANYO 8TH APPELLANT
SARAH OMANYO 9TH APPELLANT
EUNICE OMANYO 10TH APPELLANT
JILOM OMANYO 11TH APPELLANT

AND

LUCY MBALANYA RESPONDENT

(An appeal arising from orders made in the ruling by Hon. Richard O. Odenyo, Senior Principal Magistrate, SPM, delivered on 15th January 2025, in Busia CMCS No. 27 of 2016)



JUDGMENT

1. The appeal herein arises from a decision of the trial court, in Busia CM CSC No. 27 of 2016, of 15th January 2025. The grounds of appeal revolve around the trial court erring in failing to appoint the administrators agreed upon by the family; and in appointing women only, among others.
2. The orders, made on 15th January 2025, which form the basis of the appeal, were made on an application, dated 20th December 2024. The parties had come up to the High Court, on appeal, regarding appointment of administrators, and general administration, and an order, revoking the earlier grant, was made, and directions were given, for appointment of fresh administrators, after family consultations.
3. The application, dated 20th December 2024, sought appointment of 3 individuals, that the family had allegedly settled on, being Mary Bunyasi, Amos Omanyoo and Abraham Omanyoo, for appointment. The trial court was of the view that the respondent, who was the previous administrator, whose grant had been revoked, at the High Court, and who the High Court did not disqualify from appointment, be considered, ostensibly as she had had the foresight to initiate the succession proceedings, after the estate had been in limbo for 27 years, without any of the children of the deceased taking initiative, and she also had institutional memory, having been the administratrix prior to the revocation.
4. The applicants were given time, 7 days, to agree on administrators, involving the respondent, failing which the court was to appoint fresh administrators. Apparently, there was no compliance, and the court eventually appointed fresh administrators, being John Obura Omanyoo, Lucy Mbalanya Omanyoo and Mary Bunyasi. That aggrieved them, hence this appeal.
5. The matter is fairly straightforward, whether the trial Court had discretion to appoint administrators, or was bound by the choice of the family.
6. Appointment of administrators is at the discretion of the court, according to section 66 of the *Law of Succession Act*, Cap 160, Laws of Kenya and Rule 27 of the Probate and Administration Rules. The parties apply, recommending certain individuals, and the court appoints. It may appoint the persons suggested, or it may pass over them and appoint others, with reasons. See *Muigai v Muigai* and another [1995-1998] EA 206 (Amin, J) and *In Re the estate of Margaret Muringi Muhoro – (Deceased)* [2014] eKLR (Musyoka, J). The hands of the court would only be tied in testate succession, where it has to appoint the persons named in the will as executors, so long as they are willing to take up executorship. In intestate succession, the hands of the court are not so tied, there is discretion.
7. Section 66 of the *Law of Succession Act* reads:
 - “ 66. Preference to be given to certain persons to administer where deceased died intestate
When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—
 - (a) surviving spouse or spouses, with or without association of other beneficiaries;



- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

8. Rule 27 of the Probate and Administration Rules stipulates:

“ 27. Exceptions to rules as to priority

Nothing ... shall operate to prevent a grant being made to any person to whom a grant may be made, or may be required to be made, under the Act.”

- 9. In this case, the trial court exercised that discretion, in the manner that it did, for reasons that it recorded. It was not bound to appoint the individuals fronted by the family. I have not found any abuse of discretion, in the manner of the appointment, and the appellants have not demonstrated that the trial court exercised its discretion improperly or capriciously.
- 10. The appellants argue that the administrators appointed were all women. That is not what I see, from the order of 15th January 2025. Of the 3 appointees, 1 was a man. John Obura Omanyo cannot possibly be a woman. There was gender balance. Appointment could not be done on a 50:50 basis, as there were only 3 positions available, going by the earlier directions by the court. The closest it could come was the ratio of 1:2.
- 11. The parties, in this matter, are engaging in a lot of unnecessary litigation. They should focus on the core of the matter, which is distribution of the estate, instead of expending too much time on petty family politics. It does not really matter who administers an estate. It boils down to who has the ability and capacity. So long as there is competence, diligence and focus. The respondent is not an outsider, being the widow of one of the sons of the deceased. She can, quite properly, represent the estate of her late husband, in the administration of the estate of his late father.
- 12. I see and find no merit in the appeal herein, and I hereby dismiss the same. As this is a family matter, each party shall bear their own costs. Let the original trial court file be returned to the relevant registry, for the court seized of the matter to finalise it. This appeal file shall be closed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3rd DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Barasa Ouma, instructed by BM Ouma & Company, Advocates for the appellants.

Mr. Wycliffe Okutta, instructed by Ouma-Okutta & Associates, Advocates for the respondent.

