



REPUBLIC OF KENYA



In re Estate of William Thomas Ombaka Oburu (Deceased) (Succession Cause E151 of 2024) [2025] KEHC 14555 (KLR) (Family) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14555 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E151 OF 2024

PM NYAUNDI, J

OCTOBER 16, 2025

IN THE MATTER OF THE ESTATE OF WILLIAM THOMAS OMBAKA OBURU (DECEASED)

RULING

Introduction

1. It is for good reason that Section 66 of the *Law of Succession Act*, vests in the Court the final discretion to pronounce as to the person or persons to whom a grant of letters of administration shall issue in respect of a deceased's estate. In exercising this discretion, the Court is to be guided 'by the best interests of all concerned' and the order of preference set out in Section 66 (a), (b), (c) and (d).
2. The framers of the law must have anticipated that disputes such as the one subject of this judgment would arise where surviving members of the deceased family fail to agree. When this happens, the decision would rest with the Court, a responsibility not to be taken lightly.
3. The Objector is the brother of the deceased, the basis of the Objection is that the 2nd Petitioner does not qualify as an appropriate administrator given that he is not a blood relative of the deceased. The Objector also takes issue that he and other blood relatives of the deceased were not notified by the Petitioners of the filing of the Petition and urges that this was in contravention of Rule 26 (1) and (2) of the Probate and Administration Rules.
4. The Objector alleges that in presenting the Petition the Petitioners have sought to circumvent mandatory legal requirements, including irregularly causing the publication of gazette notice in respect to the estate of the deceased. He has cross Petitioned for grant of letters of administration having been so nominated by his family.
5. The 1st Petitioner in response avers that she was constrained to apply for the grant along with her brother on account of the souring of relationship with her in-laws (the siblings of deceased). She depones that she and her son were mistreated by her in-laws soon after the demise of her husband, at his funeral and after his burial things fell apart completely. They frustrated her attempts to obtain the chief's letter and have withheld vital title documents of estate assets from her.



6. She further contends that the Objector is ill-suited to be appointed as an administrator, he is conflicted since he is championing the payments of debts that are contested. The 2nd petitioner asserts that given the soured relationship between his sister and her in-laws he is best placed to be appointed as joint administrator.
7. The Objector has countered these allegations stating that nothing could be further from the truth. He avers that he and his Siblings have great respect and love for his sister in-law and her children. He has submitted documentation to demonstrate the vibrant relationship with the deceased, the support offered to the 1st petitioner and her children in the wake of the deceased's death and post his interment. He avers that it is the applicant who has cold-shouldered his family, for reasons unknown to them.
8. The Objection and Cross Petition were canvassed via written submissions with the parties highlighting their respective submissions. The Submissions of the Objector are dated 20th June 2025, while those of the Petitioner are dated 4th July 2025.

Summary Of The Objector's Submissions

9. The Objector frames, the following as the issues for determination;
 - i. Whether the 2nd Petitioner has met the requirements for appointment as a co- administrator under the *Law of Succession Act* (Cap 160)
 - ii. Whether there is a continuing trust
 - iii. Whether the deceased died domiciled in Kenya
 - iv. What relief should the Court grant
10. The Objector submits that the attempt to circumvent the production of the letter from the area chief renders the Petition fatally defective and cites the decisions in *Re Estate of Shem Kitanga (Deceased)* [2018] eKLR; *Re Estate of Ambutu Mbogori* [2018] eKLR; *Re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR.
11. Coupled with this the Objector submits that this Court should take an unfavorable view of the failure of the Applicant to comply with the mandatory provisions of Sections 51 (2)(g) requiring that a petition discloses all surviving family members and cites the decision in *Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR.
12. This failure to disclose the blood relatives it is submitted is fatal and reliance is placed on the decision in *Re Estate of Daniel Kiprop Keney (Deceased)* [2019] eKLR. The Objector draws parallels with the decision in *Re Estate of Magangi Obuki (Deceased)* [2020] eKLR, where such failure led to revocation of the grant.
13. It is submitted that since there are minor beneficiaries to the estate there is a continuing trust. The position is clear at law and therefore there is no need to restate the submissions on this point. Likewise, it is not dispute that the deceased was Kenyan working in Dubai, that he died in Kenya and the assets enumerated in the Petition are all in Kenya and therefore within the jurisdiction of the Court. It is also not disputed that the deceased died intestate. I will not therefore delve on the submissions on this point.
14. The Objector submits that on account of the above infractions and also that he is a next of kin of the deceased, he be appointed as Co Administrator and the 2nd Petitioner be excluded from the administration of the estate of the deceased.



Petitioner's Submissions

15. The Petitioner submits that there is judicial precedent that commends that where the proposed co administrators are not on good terms the Court ought to avoid appointing them as joint administrators. Reference is made to the decision in *Re Estate of Chandrakant Shamjibhai Ghweewala (Deceased)* [2006] eKLR.
16. Further it is submitted that since the Objector is not a beneficiary to the estate, there was no obligation to notify or seek consent of the Objector and reference is made to the decision in *Jason Werimo Onyango v Patrick Onyango Sakwa* [2019] KEHC 5505 (KLR)
17. It is submitted that the enumeration of liabilities that include the Objector and his sister as Creditors are sufficient basis to find that the Objector would be conflicted as he has is championing interests that are contested by the estate reference is made to the decision in *Re Estate of T N N (Deceased)* [2014] eKLR.

ANALYSIS AND DETERMINATION

18. Having considered the pleadings and submissions filed herein alongside the applicable law I discern the following to be the issues for determination-
 - a. Whether the Objection has merit and the 2nd Petitioner should be disqualified from being an administrator to the estate?
 - b. Whether the Objector ought to be appointed as Co Administrator of the Estate
19. The governing provisions on application for grant of letters of administration are Section 51 which lays down the format that the application should take. The provision is couched in mandatory terms. It states-

Section 51 (1) An application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) An application shall include information as to-

 - (a) the full names of the deceased
 - (b) the date and place of his death
 - (c) his last known place of residence
 - (d) the relationship (if any) of the applicant to the deceased
 - (e) whether or not the deceased left a valid will
 - (f) the present addresses of any executors appointed by any such valid will
 - (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
 - (h) a full inventory of all the assets and liabilities of the deceased; and
 - (i) such other matters as may be prescribed.
20. Further rule 7 (7) of the Probate and Administration rules provides-



Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior reference to a grant by virtue of that section has-

- a. renounced his right generally to apply for a grant
- b. consented in writing to the making of the grant to the applicant, or
- c. been issued with a citation calling upon him either to renounce such right or to apply for a grant

Rule 7(8) provides –

Where a grant of administration is sought jointly by more persons than one (but not exceeding four) the provisions of this rule shall apply to all applicants save that the affidavit need be sworn by one only.

21. The affidavit sworn by the Petitioners on 13th February 2024 does not comply with the above stated mandatory provisions. The 2nd Petitioner is not a person in the order of preference set out in Section 66 of the Act. The affidavit does not disclose the family members of the deceased, there is further no averment of notice given to those who rank prior in preference to the 2nd Petitioner.
22. Having found that the Petition as presented runs afoul of Section 51 of the Law of Succession Act and rule 7 and law of the Succession Act, the question then is what are the consequential orders. I remind myself that the primary duty of the Court is to dispense substantial justice. This is at the core of the mandate of the probate court and especially in light of Article 159 (d) of the Constitution that requires that ‘justice shall be administered without undue regard to procedural technicalities’.
23. The relationship of the disputants to the deceased is not contested. It is not contested that the 1st petitioner is the sole surviving spouse. It is also not disputed that the deceased was survived by parents and siblings as enumerated at paragraph 5 of the Petition by way of cross application for a grant dated 19th November 2024. It is also not disputed that the 2nd Petitioner is a brother to the 1st Petitioner and therefore a brother in law to the deceased.
24. Are the infractions such as to render the Petition incurably defective. I do not think so. It is not disputed that the beneficiaries to the estate are the 1st Petitioner and the 2 minor children. In Re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR, faced with almost similar circumstances where the administrators of the estate failed to comply with mandatory provisions of Section 83 of the law of succession Act, the Court while noting that the applicants had made a good case for revocation of grant and removal of the administrator, proceeded to find that no useful purpose would be served in revoking the grant. The Court proceeded to invoke the inherent powers donated by rule 73 of the probate and administration rules and instead of revoking the grant directed that the administrators finalise administration within a specified period of time.
25. By parity of reasoning, I find that whereas the Petition as presented runs afoul of the statutory requirements the infractions do not render the petition as incurably defective. The substantive requirement is that the estate is administered in the interests of the beneficiaries.
26. I will therefore proceed to consider whether the 2nd Petitioner is suited to be appointed as an administrator. The principles to guide Courts in the appointment of administrators to estates of deceased persons are set out under Section 66 of the Law of Succession Act. The applicant faults both the process of presenting the Petition and the competence of the 2nd Petitioner Court to apply and be



appointed as administrator. It is suggested that Administration of estates is limited to blood relatives, that is, individuals who are related by consanguinity to the deceased person.

27. However, a careful reading of Section 66 shows that this is not so. This is because it is the Court that has the discretion to appoint. It is evident that the priority list of beneficiaries is provided as a guideline. It is the best interests of 'those concerned' that is the paramount consideration. Those concerned in a succession matter would be the beneficiaries of the Estate. The Court is obligated to make a decision that safeguards the interests of the beneficiaries.
28. There is a plethora of court decisions where courts have appointed individuals who are not related by consanguinity, for instance in *F F M & another v A M A & another* [2015] KEHC 7568 (KLR), the Court proceeded to appoint a widow and her brother in law (husband to her sister) as opposed to the brothers of the deceased who had objected to her appointment.
29. The Court in *re Estate of Benard Njonjo* [2014] KEHC 5698 (KLR), considered the issue of who ranked in priority in the appointment of the administrators. It stated thus-

The father and brothers of the deceased are remote relatives as the deceased was survived by a widow and a child. By virtue of Section 39(1) of the Act, the father and brothers of the deceased are not entitled to a share in the estate of the deceased. Similarly, by virtue of Section 66 of the Act, the father and brothers of the deceased do not have a prior or equal right to administration over or with the widow and child of the deceased. In other words, the widow and son have a superior right to the administration of the estate of the deceased over the father and siblings of the deceased. So long as there is a surviving widow and child, the other relatives have no interest in the estate, and there is therefore no need for them to be represented in the administration of the estate. If the applicant is not willing to participate in administration he can be excused, but there is no need in the circumstances for his son, a brother of the deceased, to be enjoined in the administration of the estate.
30. In the instant case, the Objector's seek to bar the appointment of the 2nd Petitioner for the reason that he is related by affinity and not consanguinity, it is further stated that given the 2nd Petitioner's application does not comply with the mandatory provisions of Section 51 of the Act, it ought to be struck out. As stated in the decision of *Omollo v Ongoro* [2023] KEHC 18999 (KLR) by virtue of Section 47 of the *Law of Succession Act* and rule 73 of the Probate and administration rules the Court is vested with inherent powers to make orders to meet the ends of Justice.
31. The Objector denies responsibility for the soured relationship but admits that as at the moment the relationship between the family of the deceased and the 1st Petitioner is fractured. The 1st Petitioner has exited the family WhatsApp group and she failed to meet a younger brother of the deceased after he travelled all the way to Dubai for the sole purpose of checking on her and the children. She has made unpalatable accusations against the Objector and his siblings. It is difficult to visit her and the children.
32. Given that the relationship between the 1st Petitioner and her in-laws is currently strained, these circumstances allow for the appointment of a person other than a blood relative of the deceased as envisaged by Section 66. I find therefore that the 2nd petitioner is suitable for appointment as co administrator. He is a maternal uncle of the minors and can be trusted to safeguard their interests.
33. The second issue for determination is whether the Objector should be appointed as a co administrator. The Petitioner is opposed to his appointment for two reasons; the soured relationship and he is supporting the payment of debts that are contested. He also has a claim against the estate. The Objector responds to this by stating that the Petitioner failed to disclose the liabilities of the estate it is only the net estate that is available for distribution. In fact, one of the creditors has already lodged a suit in Court.



34. A grant may issue to co-administrators (up to four) but it is a joint grant. The administrators are expected to act in unison and not separately or in contestation. The relationship between co administrators is therefore key, for if there is animosity, suspicion and hostility between them, it is likely to affect negatively their effectiveness in administering the estate.

35. In Re Estate of Makokha Idris [2019] eKLR, Justice Musyoka stated as follows concerning the position of administrators:

It must be stated that even though there are four administrators in place in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them... The powers conferred on administrators by section 82 of the *Law of Succession Act* are exercisable by all the four administrators named in the grant, and all the duties imposed on administrators by section 83 of the Act fall on all four the administrators. The four cannot purport to act singly or solely, unless, of course, there has been delegation of responsibility.

36. In the John Wacira Wambugu Case [2016] eKLR, Odunga J, as he was then, held as follows:

The legal position of joint administrators was dealt with in Willis Ochieng Odhiambo v. Kenya Tourist Development Corporation & Another Kisumu HCCC No. 51 of 2007, where the Court while citing with approval Lewin on Trusts, 16th Edn. at 181; Williams & Mortimer: Executors, Administrators & Probate and Bullen & Leake & Jacobs: Precedents of Pleadings, 13th Ed. at 373 held that in the case of co-trustees of a private trust, the office is a joint one and that where the administration of the trust is vested in co-trustees they all form as it were one collective trust and therefore must execute the duties of their offices in their joint capacity It was further held that although a strict definition of “trustee” does not apply to personal representatives who hold property upon trust for the estate, the legal responsibilities and liabilities of executors and administrators of estates are the same and are treated similarly where matters of procedure are in issue. It is therefore my view and I hold that in such circumstances a compromise of a cause of action must be by the administrators jointly and any purported compromise by only one when the other denies having authorised such compromise cannot stand.

37. The Objector has made known his stand on the liabilities he has enumerated in the Petition. The 1st Petitioner is challenging these debts. Some of the debts are alleged to be owed to siblings of the Objector. In the event that the same have to be litigated the Objector will be conflicted as he too has his own claim. For this reason, I find that the Objector is not a suitable co administrator in this estate.

38. Owing to the above the Objection, response to Petition and Cross Petition will fail and consequently grant will issue to the 1st and 2nd Petitioner.



39. The administrators so appointed will file summons for confirmation of grant, which includes proposal on how the estate will meet the liabilities, within 60 days. Mention on 4th February 2026 to confirm compliance and take further directions.

40. On account of the relationship between the parties, there shall be no order as to costs.

41. Parties at liberty to exercise right of appeal within 30 days.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 16th DAY OF OCTOBER, 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Mrs. Oduor holding brief for Ochieng Oduol for Objector

Kaula holding brief for Mr. Ougo for the Objector

