

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. E1384 OF 2020**  
**IN THE ESTATE OF KEZIA WANJIRU MONDO**  
**(DECEASED)**

**RULING**

**INTRODUCTION**

1. The Administrators herein were issued with grant of letters of administration in respect of the estate of the deceased on 21<sup>st</sup> September 2021. The assets of the deceased are said to include-

1. LR Nos 4371/115; No. 4871/116; 4871/117; 4871/118; 4871/119; 4871/ 120; 4871/121; 4871/122; 4871/123; 4871/124; 4871/125

2. The deceased is said to have been survived by the following beneficiaries-

1. Catherine Njeri Mondo Daughter
2. Ngigi Kitson Mondo Son
3. Nancy Wamaitha Njoroge Daughter
4. Sarah Wambui Mbaria Daughter
5. Gladwell Wanjiku Mondo Daughter
6. Lilian Nyaguthii Mondo Daughter
7. Florence Waithira Mondo Daughter
8. Lucy Wambui Magu Daughter

3. The Administrator vide Summons for Confirmation dated 22<sup>nd</sup> September 2023, seek that the grant issued to them be confirmed and the assets be distributed in accordance with

paragraph 5 of the Supporting affidavit sworn on 22<sup>nd</sup> September 2023.

4. In response to the Summons, the Applicant has filed Summons for revocation dated 15<sup>th</sup> April 2024; Affidavit of Protest sworn on 15<sup>th</sup> April 2024 and Notice of Preliminary Objection dated 11<sup>th</sup> February 2025.
5. The Notice of Preliminary Objection is framed as follows-  
TAKE NOTICE, that the proprietor herein shall raise a preliminary objection that this Honourable Court lacks jurisdiction to determine the issues raised herein namely;
  - (a) Whether or not the titles subject matter of this application were jointly registered between the deceased and the protestors
  - (b) If so whether the said titles vested in the Protestor upon the death of the deceased
  - (c) Whether there is any property belonging to the estate of the deceased
6. On 10<sup>th</sup> July 2025, I directed that the Summons for Revocation alongside the Preliminary Objection would proceed by way of written submissions, neither of their parties have filed submissions. The Summons for revocation and the Affidavit of protest have not been responded to.

#### **ANALYSIS AND DETERMINATION-**

7. Having considered the pleadings herein, the issues for determination are-

1. Whether the Preliminary Objection has merit and the grant should be revoked?
  2. Who should bear the Costs of the Suit?
8. The Supreme Court in **Adega & 2 others v Kibos Distillers Limited & 5 others [2020] KESC 36 (KLR)**

restated the now well settled principles that will guide a Court in determining the merit of a preliminary objection-

**[41] In Mukisa Biscuits Manufacturing Company Limited v. West End Distributors (1969) E.A. 696 Law JA stated;**

**“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a Preliminary Point may dispose of the suit. Examples are objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.” [Emphasis added]**

9. The Applicant avers that the assets as enumerated in the schedule do not comprise part of the estate of the deceased and that further the issue of the Administrators claim to the properties was adjudicated upon and determined in **H. C. Succession Cause No. 144 of 1979 (Nairobi) Estate of Peter Mondo (Deceased)** by ruling of Hon. Muchelule J (as he then was) delivered on 13<sup>th</sup> April 2015.
10. It is not challenged that the subject parcels of land are registered in the joint names of the applicant and the

deceased. On similar facts the Court in **In re Estate of Joseph Kipkemoi Limo (Deceased) [2025] KEHC 1623 (KLR)** found that properties held in joint tenancy at the time of the deceased's death, would vest absolutely in the surviving registered joint owner by operation of the doctrine of survivorship and are therefore not available for distribution in these succession proceedings. In arriving at the decision the Court cited with approval the decision in **ISABEL CHELANGAT v SAMUEL TIRO ROTICH & 5 others [2012] KEHC 5520 (KLR)** where the Court elucidated on the implications of joint ownership thus-

**A joint tenancy imparts to the joint owners, with respect to all other persons than themselves, the properties of one single owner. Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner. Joint tenancy carries with it the right of survivorship and "four unities". The right of survivorship (*jus accrescendi*) means that when one joint owner dies, his interest in the land passes on to the surviving joint tenant. A joint tenancy cannot pass under will or intestacy of a joint tenant so long as there is a surviving joint tenant as the right of survivorship takes precedence**

11. For the aforesaid reasons I find that the properties as enumerated in paragraph 1 above do not comprise the

estate of the deceased. Given the mandate of the Court which is limited to distributing the estate of the deceased to the rightful beneficiaries (see **Re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR**), I have no hesitation in upholding the Preliminary Objection and find that the jurisdiction of the probate Court is ousted as it cannot adjudicate over property that does not constitute part of the estate of the deceased.

12. What then are the orders consequent to the upholding of the preliminary Objection? **Section 76 of the Law of Succession Act** gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

**A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:-**

**a) That the proceedings to obtain the grant were defective in substance;**

**b) .....**

**c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**d)**

**e) The grant has become useless and inoperative through subsequent circumstances.**

13. As stated the Court had earlier on in the decision of Hon. Muchelule J. determined the question of the administrators' claim over the assets enumerated in paragraph 1 above. That decision was not appealed against. The Petition lodged by the administrators enumerates the same assets as the only property of the deceased.

14. This Petition therefore runs afoul of Section 76(c) of the Law of Succession Act and necessitates that the Court proceed to revoke the grant. The grant is accordingly revoked, in the event that the beneficiaries of the estate of the deceased herein discover assets that legally belong to her they are at liberty to move the Court accordingly.

15. In the majority of cases, where the parties are family members the Court will not make orders as to costs. However, in the current case, the administrators will be condemned to pay costs. Knowing very well, that the Court had pronounced itself on their claim to the subject parcels of land they nonetheless proceeded to file this Petition.

16. The following orders shall issue-

1. The preliminary Objection dated 11<sup>th</sup> February 2025 is allowed
2. The Grant herein issued to **CATHERINE NJERI MONDO, NANCY WAMAITHA NJOROGE AND**

**FLORENCE WAITHERA** on 21<sup>st</sup> September 2021 is revoked

3. Costs will follow the event; the administrators will pay costs of Kshs 35000 to the Applicant/ Protestor within 30 days.
4. The file is closed
5. Party exercising their right of appeal granted leave to do so within 30 days.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT  
THIS 16<sup>th</sup> DAY OF OCTOBER, 2025.**

**P.M. NYAUNDI  
JUDGE**

**In the presence of:**

Fardosa Court Assistant  
No Appearance by Parties