



In re Estate of Benson Kamolo Mandiu Kinyumu (Deceased) (Succession Cause 1916 of 2006) [2025] KEHC 13599 (KLR) (Family) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13599 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1916 OF 2006
HK CHEMITEI, J
OCTOBER 2, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE
BENSON KAMOLO MANDIU KINYUMU (DECEASED)**

BETWEEN

WAMBUA BENSON KAMOLO 1ST ADMINISTRATOR

FAITH MUYIVA KAMOLO 2ND ADMINISTRATOR

AND

ELIZABETH KANINI MUSILI APPLICANT

RULING

1. Before the court is a Preliminary Objection by the Respondent's dated 27th July 2023 in which they oppose the Applicant's affidavit of protest dated 1st July 2022 on the grounds that the same was *res judicata* and offends the provisions of Section 7 of the [Civil Procedure Act](#) and that the issues raised therein have already been dealt with by this court.
2. The court directed the parties to file written submissions which they complied.
3. The court has perused the said submissions and the rival affidavit by the second Respondent Wambua Benson Kamolo dated 27th July 2023 extensively.
4. The court has perused as well the judgement and the ruling respectively by Justice Abida Ali (as she then was) and Justice Maureen Odero. The judgment by Justice Abida was comprehensive on the position of the Applicant, namely that she was a wife to the deceased and that she did not participate in acquisition of any property for the three years she stayed with the deceased. Her position was therefore to be considered under Section 40 of [Cap 160](#).



5. Judge Odero simply found that the Applicant was on a fishing expedition and she refused her application.
6. I have perused the contested affidavit of protest and although the Applicant reiterates the need to share out the estate in a manner in which the deceased seems to have suggested, I doubt whether that might be the position considering Judge Abida's judgment which stated in part:

“Having stated as above I see no value in revoking and or annulling the grant but do declare that the Applicant was indeed the 2nd wife of the deceased and ought to be considered bearing the above point in mind at the time of distribution.”
7. The learned judge went ahead to direct that the grant be confirmed within 30 days hence the filing of the application dated 13th November 2020. The said application has included the Applicant as one of the estates beneficiaries.
8. The affidavit of protest which the Respondents are objecting to is not therefore in my view *res judicata* as it is responding to the application for confirmation of grant. All that the Applicant is voicing is her protest on the mode of distribution of the estate. That issue of distribution has not been dealt with and does not therefore offend Section 7 of Cap 21 as stated by the Applicants.
9. It is of course evident that some of the issues she has raised were dealt with by the judgement of Abida J and at the right time the court may take it into consideration but after hearing the parties.
10. For now, I do not find the preliminary objection meritorious and I shall disallow the same.
11. Let the application for confirmation of grant dated 13th November 2020 be fixed for hearing forthwith.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 2ND DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE

