



Kandie & 2 others (All Suing as Administrators of the Estate of Aaron Kimosop Kandie) v Kanziwa Limited; Kandie (Applicant) (Civil Case 252 of 2007) [2025] KEHC 14935 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 252 OF 2007
HI ONG'UDI, J
OCTOBER 21, 2025**

BETWEEN

**RHODA CHELANGAT KANDIE 1ST PLAINTIFF
KIGEN KANDIE 2ND PLAINTIFF
KIPTUI KANDIE 3RD PLAINTIFF
ALL SUING AS ADMINISTRATORS OF THE ESTATE OF AARON KIMOSOP
KANDIE**

AND

KANZIWA LIMITED DEFENDANT

AND

CONSTANTINE JELIMO SERONEY KANDIE APPLICANT

RULING

1. In the Notice of Motion dated 25th May, 2023 the applicant has sought for substitution of the 3rd plaintiff following his demise.
2. The application is premised on the grounds on its face as well as the affidavit sworn on even date by the applicant.
3. The 2nd plaintiff in response filed grounds of opposition on 24th June 2025, stating that the application was bad in law, incompetent, an abuse of the court process and the same was premised on non-existent provisions of the law. Thus, the same ought to be dismissed.
4. The 2nd plaintiff also filed a replying affidavit sworn on 29th July 2025 where he reiterated the contents of his grounds of opposition.



5. The defendant in response filed grounds of opposition dated 27th January 2025. He stated that the application was bad in law, fatally incompetent, unsustainable, an abuse of court process and null and void ab initio. He further stated that the law does not provide for nor envisage substitution of parties after conclusion of a suit and after judgment and decree has been rendered. He added that this court has no jurisdiction to entertain or grant orders sought in the instant application since applicant was not a party to this suit and so she has no locus standi.
6. The defendant also filed a replying affidavit sworn by one of its directors and shareholder David Irungu Kahumbu on 9th June 2025. He averred that this suit had been heard to its conclusion and judgment delivered by this court on 15th October 2020. He stated that there is no provision in law for substitution of parties after the suit has been concluded. He further stated that the applicant was not an administrator of the estate of the deceased herein. Thus, she lacked capacity and locus standi to represent or purport to pursue the interests of the said estate.
7. The applicant filed a further affidavit sworn on 23rd July 2025 where she averred that her husband the 3rd plaintiff was deceased and she was seeking to substitute him in this suit. She stated that she had been appointed as the legal representative of his estate and issued with letters of administration ad litem. She further stated that upon death of a party, the suit does not abate so long as an application for substitution is made within the statutory period and in good faith. She further stated that her aim to substitute the 3rd plaintiff is in order to gather and protect his estate since he was an heir to the suit property. She added that the claim by the other parties that she is barred by law from substituting the 3rd plaintiff, was a reflection of misconstruction of the law.
8. The defendant filed a further replying affidavit sworn on 30th July 2025. He averred that the applicant had confirmed in her affidavit dated 23rd July 2025 that she has no interest or locus in the estate of the deceased. He stated that the property that the applicant claimed to have been given to her late husband (Kiptui Kandie) the same being Owashika Avenue LR. No. 9277/4 was not the suit property (LR. No. 9726/1) and had no connection to this suit. He equally reiterated the contents of his grounds of opposition and his replying affidavit.
9. The application was canvassed by way of written submissions.

Applicant's submissions

10. These were filed by Abuodha & Omino Advocates and are dated 19th June, 2025. Counsel submitted that the applicant was a dependant in the estate of the 3rd plaintiff and she was therefore entitled to apply to join the suit as an administrator of his estate. This is to enable her protect the said estate on her own behalf and that of the rest of the dependants of the 3rd plaintiff.
11. In the further submissions dated 23rd July 2025, counsel reiterated the content of his earlier submissions and added that he could not file notice of appointment to be on record since his client has not been substituted to be part of this suit.

2nd Plaintiff's submissions

12. These were filed by Mukite Musangi & Company Advocates and are dated 20th June, 2025. Counsel identified one issue for determination which is whether the application dated 25th May, 2023 is merited.
13. Counsel submitted that this court lacked the legal bearing upon which to determine the application. Reference on this was made to the decision in the matter of the estate of Mwangi Mugwe alias Elieza Ngunware (deceased) [2003] eKLR, where the court cited the decision in Re Estate of Popp Hans



Joachim Ernst Gustav (deceased) [2018] eKLR, that the Law of Succession Act has no provisions talking about substitution of a deceased administrator. See also; Mwangi Mugwe alias Elieza Ngware (deceased) [2003] eKLR.

14. Counsel further submitted that the application herein ought to be dismissed since it is made in clear violation of section 81 of the Law of Succession Act. He placed reliance on the decision in Re Estate of Chemwok Chemitei (deceased) [2021] eKLR where the court held as follows;

“Upon the death of one or more of several executors or administrators to whom a grant of representation has made all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them”

15. The court’s attention was also drawn to the decisions in John Karamwa Maina v Susan Wanjiru Mwangi [2013] eKLR cited in Re Estate of Popp Hans Joachim Ernst Gustav (deceased) [2018] eKLR and Florence Okutu Nandwa & Another v John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998.

16. He concluded by urging the court to dismiss the application with costs.

Defendant’s submissions

17. These were filed by Gatu Magana & Company Advocates LLP and are dated 21st July, 2025. Counsel gave a brief introduction of the case and submitted that the present application was filed by a person who was not a party to this suit. He stated that the advocates representing the applicant had not filed any notice of their purported appointment. To support his argument, he cited several decisions among them being Joshua Nyamache T. Omasire v Charles Kinanga Maena [2008] eKLR where the court discussed the ramifications of an Advocate’s failure to regularize his appointment as follows;

“An advocate who is not duly appointed to act for a party cannot be allowed to purport to file applications or documents on behalf of a party. An application filed by an advocate who is not duly appointed is an affront to the court process and is a nullity. The court can strike it out ex debito justitiae. When an advocate who is on record in a matter realizes that there is a strange application in the file, filed by an advocate who is not duly appointed by his client, the right thing to do is to ask the court to expunge the strange document out of the record.

In this application, it is apparent that the application dated 3rd March, 2008 by Nyairo Orora & Co. Advocates is improperly before court as it was filed by a stranger. I strike it out with costs to the defendant.”

18. Counsel further submitted that this suit was instituted by the plaintiffs in their capacity as joint administrators of the estate of the deceased. Thus, the 3rd plaintiff was not acting in his own capacity and so the applicant cannot purport to have locus standi to substitute him. He placed reliance on the decision in John Karumwa Maina v Susan Wanjiru Mwangi [2015] eKLR where the Court held as follows:

“...May I point out that it is an enormous responsibility to be the administrator of the estate of a deceased person. The duties by such an administrator are enumerated in section 83 of the Act. Under section 95 of the Act an administrator runs the risk of being fined or being jailed if he fails to administer the estate in the manner provided by the law. It is for these reasons, among others, that the position of administrator of an estate cannot be imposed on a person who has not sought the appointment...”



19. See also; Julian Adoyo & Another v Francis Kiberenge Bondeva [2016] eKLR.
20. Counsel asserted that upon the demise of the 3rd plaintiff who was an administrator of the estate of the deceased, his powers automatically vested upon the surviving administrators of the estate by virtue of section 81 of the Law of Succession Act and as such the application herein was bad in law and unnecessary. He added that the said application was strange in law as there is no provision for substitution of a party after judgment. Reference for this was made to the decision in Mueni Kiamba v Mbithi Kimeu Kimolo [2017] eKLR where the court held as follows;

“..the Provisions of Order 24 Rule 10 of the Civil Procedure Rules takes care of such circumstances. Indeed, the matter had proceeded up to judgment and decree and what remained only was the finalization of the execution. I find there is wisdom in the above provision in that matters that have reached execution stage should be allowed to proceed without the need for substitution of deceased parties. This goes a long way in ensuring the overriding objective of the Civil Procedure Act and Rules namely the timely and expeditious determination of disputes between parties. Hence, it is my considered view that it was not mandatory to substitute the deceased decree holder at the execution stage and therefore the learned trial magistrate misapprehended the law when he ruled that the non-substitution of the decree holder was fatal to the suit...”

21. He thus urged the court to dismiss and/or strike out the application herein with costs in favour of the defendant.

Analysis and determination

22. I have considered the application together with the affidavit sworn in support, grounds of opposition the replying affidavits and the submissions by the respective parties. The issue I find falling for determination is whether this court should grant the orders sought in the application dated 25th May, 2023 by allowing the applicant to substitute the 3rd plaintiff in this suit.
23. It is not disputed that this suit was filed by the plaintiffs who are administrators of the estate of the deceased herein. The applicant contends that she is a dependant in the estate of the 3rd plaintiff (deceased) and she was therefore entitled to apply to join this suit as an administrator of his estate in order for her protect the said estate. On their part the 2nd plaintiff and the defendant have opposed the application terming it as bad in law, incompetent, an abuse of the court process and that the same was made in clear violation of section 81 of the Law of Succession Act.
24. It is trite law that where two or more persons are appointed as joint administrators of an estate and one dies then Section 81 of the Law of Succession Act will come into play. The said section provides as follows;

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors of survivor of them.....” [own emphasis]

25. In Re Estate of Elijah Oktah Mikah Tsimbwele (Deceased) [2021] eKLR, Hon. Justice Musyoka stated that

“..... Under Section 81 of the Act, the powers and duties of personal representatives rest in the surviving personal representative on the death of one of them.....”



26. In this case only one of the plaintiffs (3rd plaintiff) who is an administrator has passed away and he was not the only plaintiff/administrator and as such under the provisions of Section 81 of the [Law of Succession Act](#) all the powers and duties of administering the estate of the deceased are now vested in the other two plaintiffs/ administrators. And if the 1st plaintiff/administrator is also deceased as claimed then the said powers and duties will vest in the 2nd plaintiff /administrator.
27. Furthermore, this suit was heard and Judgment delivered on 15th October, 2020 by J. N. Mulwa – Judge.
28. In view of the above, it is my considered view that the estate of the deceased is properly represented in this suit. Thus, there is no need for appointment of an additional plaintiff. The applicant can only act on behalf of the estate of her late husband. The Grant Ad Litem issued to her does not give her authority to step into the shoes of her late husband in this suit which is in respect of the estate of his deceased's father (the deceased herein).
29. For the reasons given above I find no merit in this application for substitution dated 25th May, 2023 and the same is hereby dismissed in its entirety with no orders as to costs, since it's a suit touching on family.
30. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 21ST DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

