

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 547 OF 2012
IN THE MATTER OF THE ESTATE OF JOEL NGUI MWEU
(DECEASED)

ANNA MULEKYO MUTUA 1ST
APPLICANT

MARY WANZA WAMBUA 2ND
APPLICANT

RHODA NDUNGE WAMBUA 3RD
APPLICANT

MUENI MUTUA 4TH
APPLICANT

VERSUS

MARY KALOLIA MUTISYA 1ST
OBJECTOR

MWIKALI NGUI 2ND
ADMINISTRATOR

RULING

1. Before this court for determination is a Summons for Rectification of Grant dated 20th January 2025. The Application seeks orders for rectification of the letters of administration and Certificate of Confirmation of Grant in the names of Mary Wanza Wambua.
2. The application is supported by the grounds set out in the summons and the supporting affidavit sworn by the

Applicants. The gist of the application is that the Applicants are daughters of the late Joel Ngui Mweu, who died intestate on 9th April 2012. They state that Mwikali Ngui petitioned for letters of administration in respect of the deceased's estate, which were issued to her on 19th September 2016. Mwikali Ngui has since represented the estate in various court matters, including Nairobi ELC Appeal No. 239 of 2019 before the Court of Appeal, Machakos HCC No. 52 of 2009, PMCC No. 208 of 2006, HCC No. 20 of 2023, and HCC No. 41 of 2003.

3. The Applicants contend that the administrator has ceased performing her duties, resulting in the said cases stalling for want of representation of the estate. They state that despite several attempts to engage her to proceed with the matters, she has declined to do so. The Applicants fear the estate may suffer irreparable loss if the cases continue without a representative. Consequently, they propose to have Mwikali Ngui substituted with Mary Wanza Wambua as the administrator of the estate. They therefore seek rectification of the grant and issuance of a partial Certificate of Confirmation of Grant in the name Mary Wanza Wambua the proposed new administrator.
4. Upon service of the summons on all parties, the administrator, Mwikali Ngui, filed a response sworn on 31st January 2025. She denied ever expressing a desire to relinquish her role as the administrator of the estate of the deceased. She claimed

that the letter dated 21st February 2024, purportedly authored by her, is a forgery, as she did not write or sign the same. She asserted that she has diligently defended all matters before court, particularly Nairobi ELC Appeal No. 239 of 2019, having recently instructed her new advocates to file a Notice of Change of Advocates from the firm of Nzei & Company Advocates to her current advocates, so as to ensure continued defence of the appeal. She averred that she has continued to administer the estate, which largely remains unadministered, and that a Certificate of Confirmation of Grant cannot be issued at this point as she is still in the process of identifying and collecting all assets of the deceased. She accuses the Applicants of seeking to hastily dispose of the assets of the deceased instead of waiting for full and lawful distribution among all the beneficiaries.

5. Additionally, the Objector filed Grounds of Opposition dated 2nd April 2025 asserting that Mwikali Nguu remains the lawful personal representative of the estate of the deceased under Section 81 of the Law of Succession Act and capable of performing all his duties and therefore the court cannot grant the orders sought.
6. In response to the Grounds of Opposition, the Applicants vide a response sworn on 17th April 2025 asserted that as beneficiaries of the estate, they hold equal priority with the petitioner and are therefore entitled to apply for letters of Administration. They explained that the summons was

prompted by the administrator written communication addresses to them and her former advocates expressing her intention to withdraw from further participation in the succession proceedings and other matters touching on the deceased's estate.

7. The Applicants exhibited a copy of the application to cease acting filed by Nzei and Company Advocates which included the Administrator's letter dated 21st February 2024. They further noted that the Petitioner appears to have reconsidered her decision to withdraw from the succession cause. Consequently, they stated they are not opposed to the appointment of two administrators to manage the estate jointly.
8. Additionally, the Applicants argued that the objector has failed to demonstrated how her interests would be prejudiced by the appointment of Mary Wanza Wambua as co-administrators. They referenced a ruling delivered on 11th July 2016, which they claimed remains unchallenged, wherein the court held that the objector being related to the deceased by marriage does rank in priority over the deceased's surviving child. They also pointed out that the objector had filed numerous suits against the deceased and the court had previously found that her dual role as both the Plaintiff and Defendant in those matters would create conflict of interest thereby disqualifying her from serving as administrator.

9. The summons was canvassed by way of written submissions. The Applicants' submissions are dated 28th April 2025, while the Objector's submissions are dated 2nd April 2025. Although the Administrator, filed a response to the summons, she did not file any written submissions in opposition.

Applicant's Submissions

10. The Applicants began their submissions with a brief overview of the case, reiterating the facts as presented in their supporting affidavit. They identified two issues for determination: firstly, whether the Applicants' application dated 20th January 2025 was properly defended, and secondly, whether the Court should appoint the 2nd Applicant as an administrator of the estate.
11. On the first issue, the Applicants relied on the cases of **Daniel Kibet Mutai & 9 Others v Attorney General [2019] eKLR** and **Kennedy Otieno Odiyo & 12 Others v Kenya Electricity Generating Company Limited [2010] eKLR**. They argued that the Grounds of Opposition filed by the Objector consists of general denials and fail to specifically address the substantive factual claims raised in an application. They contended that, while both a Preliminary Objection and Grounds of Opposition are recognised means of contesting an application, they are only appropriate where the opposition is based purely on points of law and not where the intention is to deny factual allegations. Therefore, they

submitted that the Objector did not effectively rebut the factual averments in the present summons.

12. On the second issue, the Applicants cited Sections 56 and 66 of the Law of Succession Act, which empower the Court to appoint up to four administrators of an estate. They contended that the current administrator had clearly communicated her intent to withdraw from her role as administrator, citing personal reasons, including a deep seated fear of inheriting curses allegedly placed by the deceased on those who unlawfully or fraudulently acquired his property. The Applicants further criticized the administrator's performance, describing her approach to estate matters as negligent and lacking diligence, fidelity, and accountability required of a personal representative under the law.
13. The Applicants further submitted that the administrator had severed communication with them and failed to keep them informed about the progress of the succession cause and other pending matters related matters. In the interests of justice and fairness, they urged the Court to appoint the 2nd Applicant, who has the support of safeguard their interests in the estate. They reiterated that the Objector has not demonstrated any prejudice or harm that would result from the appointment of the 2nd Applicant is appointed to act as an administrator. They asserted that the Objector's opposition to the summons is motivated by self-interest, as she stands to benefit from the continued ineffective administration of the

estate, particularly given her ongoing legal disputes against it.

14. In conclusion, and while invoking Rule 73 of the Probate and Administration Rules, the Applicants urged the Court to exercise its inherent jurisdiction by appointing Mary Wanza Wambua, the 2nd Applicant, as co-administrator of the estate of Joel Ngui Mweu (deceased). They argued that such an appointment would promote efficient administration and ensure fair representation of all beneficiaries.

Objector's Submissions

15. The Objector identified one issue for determination, that is, at what point can the Applicants substitute personal representative of the estate of the late Joel Ngui Mweu. She submitted that a personal representative is appointed by the court to collect and manage the assets of a deceased person's estate, acting as a trustee for the benefit of its beneficiaries in accordance with the law.
16. While relying on the case of **Re Estate of Julius Mimano (Deceased) [2019] eKLR**, the Objector submitted that there is no doubt that Mwikali Ngui is the duly appointed personal representative of the deceased estate and she has performed her duties in accordance with sections 81, 82 and 83 of the Law of Succession Act, as evidenced by the grant of letters of administration issued to her. The Objector further submitted that Mwikali Ngui has served as administrator for a period of

nine years and the allegation that she relinquished her role is false. She contended that the letter dated 21st February 2024 does not state that the administrator had withdrawn as a personal representative.

17. The Objector added that neither the administrator nor herself signed the consent for substitution and rectification of grant dated 20th January 2025. While citing **Re Estate of Mwangi Mugwe alias Elieza Ngware (Deceased) [2003] eKLR** and **Re Estate of George Ragui Karanja (Deceased) [2016] eKLR**, the Objector argued that the Applicants had not demonstrated that the estate had suffered any irreparable loss, nor had they shown that Mwikali's conduct was wanting or unbecoming of a personal representative. She further argued that no summons, calls, or text messages had been presented before the Court to prove that the Applicants made any genuine effort to engage the administrator, and that there was no evidence showing that the estate of Joel Ngui Mweu had suffered any loss.

18. In conclusion, the Objector urged the Court to find that Mwikali Ngui should be allowed to continue performing her duties as the personal representative of the estate and to dismiss the present summons with costs.

Analysis and Determination

19. I have carefully considered the summons application herein, the affidavit in support and submissions placed before the

court and it is my view that the following issue arise for determination;

Whether the Summons application dated 20th January 2025 should be allowed

20. The applicants contend that the Grounds of Opposition filed by the objector consist of general denials and lack of the necessary specificity to effectively rebut the detail factual allegations presented in their summons and supporting affidavit. They rely on the principle that general, unparticularised averments are insufficient to defeat a prima facie case established through pleadings and sworn evidence, they cited authorities to support this position.
21. Upon reviewing the record, it is evident that the objector did file Grounds of Opposition in response to the present application. While Order 51 rule 14 (1) of the Civil Procedure Rules permits a respondent to oppose an application either by filing a replying affidavit or grounds of opposition in in this particular case, a replying affidavit would have been more appropriate and necessary. A replying Affidavit provides substantive evidence to counter the material facts alleged. I find that the grounds of opposition filed by the objector do not adequately suffice in rebutting the facts raised in the supporting affidavit as the grounds do not constitute evidence of the allegations raised by the applicants.

22. In the case of **Kennedy Otieno Odiyo & 12 Others v. Kenya Electricity Generating Company Limited [2010] eKLR** where it was held as follows:-

“The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the application in its supporting affidavit. Thus what was deponed to was not entered nor rebutted by the Respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant.”

23. Similarly, in the case of **Kipyator Nicholas Kiprono Biwott Vs George Mbuguss and Kalamka Ltd Civil Case No. 2143 of 1999**, the court held;

“ From the facts and the law I have analyzed in this case, I do find the Defendants have no defence to this suit..... having filed no replying affidavit to rebut the averments in the plaintiff’s affidavit in support of the application. I, therefore have no alternative but to strike out paragraphs 3, 4, 5, 6 and 10 of the defence and enter judgment for the plaintiffs on liability...”

24. In light of the above, I reiterate that the objector has not sufficiently defended the summons application. Her grounds of opposition being general and unsupported by evidence, fail to meet the threshold required to challenge the applicants claim.
25. Conversely, the administrator filed a sworn a response on 31st January 2025 in which she explicitly denies having expressed any intention to relinquish her role. She further asserts that the letter of 21st February 2024 which the applicants rely on, is a forgery. This sworn denial directly challenges a key factual assertion made by the Applicants. As such, the existence of this affidavit means the matter cannot be deemed undefended.
26. this then leads this court to a determination whether the letter dated 21st February 2024 constitutes evidence of an effective withdrawal/renunciation or otherwise.
27. On the record before this Court, the applicants rely on the letter of 21st February 2024 and the application by the then advocates to cease acting. The authenticity of the said letter was squarely placed in issue by the administrator herself. She denied writing it and alleged that it was a forgery. However, apart from the bare denial in her replying affidavit, no evidence whatsoever was tendered to substantiate that serious allegation. The Court notes that the letter originated from her former advocates, Nzei & Company Advocates, who filed an application to cease acting for her and annexed the

very letter in question. That document is on the official court record, bears her name and signature and was submitted through an officer of the Court acting in the ordinary course of professional representation. In those circumstances, the evidential presumption of regularity attaches to it under Sections 119 and 120 of the Evidence Act: documents produced in the ordinary course of representation by an advocate are presumed genuine unless rebutted by cogent evidence.

28. By contrast, an allegation of forgery is not a casual averment; it is a criminal imputation that must be proved to a standard higher than mere balance of probabilities but approaching the criminal standard.
29. This Court therefore finds that her denial remained a bare assertion devoid of evidential support and incapable of dislodging the prima facie authenticity of the letter lodged by her former advocates.
30. Consequently, the Court is satisfied that the letter of 21st February 2024 is authentic and constitutes a voluntary communication by the administrator expressing her clear intention to withdraw from participating in the administration of the estate of Joel Ngui Mweu. In that letter, she unequivocally stated that she wished to dissociate herself from the succession proceedings because of a perceived curse associated with the disputed parcel of land and requested that all cases be determined by the Court instead. This amounted,

in substance, to a renunciation of the duties of an administrator, envisaged under Section 76(d)(ii) of the Law of Succession Act, which empowers the Court to revoke or alter a grant where the holder has failed to proceed diligently with administration or where the grant has become useless or inoperative through subsequent circumstances.

31. Having expressed that renunciation but still willing to administer the estate, I will therefore proceed to balance the interests and more particularly consider the interests of the beneficiaries and the administration of the estate of the deceased.

32. The Law of Succession Act contemplates the Court appointing administrators as per the order of preference guided under Section 66 of the Act and allows up to four administrators over the same property as per Section 56 (1) (b). Where holders of a grant cease to act or are shown to have abandoned administration, the remedy commonly available is either (i) revocation and substitution as per Section 76 of the Act, if the grant has become useless or was obtained improperly, or (ii) the appointment of further administrators or co-administrators to ensure the interests of the beneficiaries are protected.

33. By virtue of Rule 73 of the Probate & Administration Rules, it is in the best interest of the estate and beneficiaries to have Mary Wanza Wambua appointed a co-administrator of the estate. The foregoing is also in consideration that the

applicants do not seek to immediately revoke the grant held by Mwikali; rather they have equally considered to have Mary Wanza added as co-administrator so that the estate is properly represented in pending litigation and its administration may proceed.

34. Based on the above, the Letters of Administration intestate issued on 19th September 2016 and the Certificate of Confirmation of Grant (as partially confirmed) are hereby rectified to include Mary Wanza Wambua as a co-administrator of the estate of Joel Ngui Mweu (deceased) alongside Mwikali Ngui.

35. Each party shall bear their own costs of this application, as this matter concerns a family estate and it is in the interests of justice that costs not be used to divide the beneficiaries further.

36. Orders accordingly.

Dated, signed and delivered at Machakos this 3rd day of November, 2025

RHODA RUTTO
JUDGE

In the presence of:

.....Applicants

.....Objector

Selina Court Assistant

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