

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. E014 OF 2023**

**IN THE MATTER OF THE ESTATE OF ATHANAS LUCAS MULUNDA  
WANDENGU (DECEASED)**

**GLORIA OKATWA MULUNDA.....**  
**.....APPLICANT**

**VERSUS**

**GEORGE VICTOR OMWAKWE**  
**MULUNDA.....PETITIONER/RESPONDENT**

**RULING**

1. This ruling determines three applications arising from a dispute over the administration of the estate of the late Athanas Lucas Mulunda Wandengu, who died intestate on 22<sup>nd</sup> October 2022, leaving behind a widow, Beatrice Manyasi, and eleven children.
2. The known assets of the deceased comprise:
  - a. Kakamega Town Block II/206 (a three-bedroom rental house)
  - b. Kakamega County Municipality Otiende Estate House No. 501 (a rental house)
  - c. Imanga Plot No. 9.
3. A contentious asset is land parcel S/Wanga/Buchifi/90, alleged to have been fraudulently transferred to the petitioner, George Victor Mulunda, five days after the deceased's death.
4. George Victor Mulunda petitioned for a grant of letters of administration. His sister, Gloria Okatwa Mulunda, objected on grounds including lack of family consultation, forgery of consent

signatures, and the exclusion of the widow who holds priority under the law. Mediation failed. notwithstanding the widow's subsequent affidavit supporting George Victor Mulunda.

5. This court, on 30<sup>th</sup> June 2024, appointed George Victor Mulunda and Gloria Okatwa Mulunda as joint administrators to ensure impartial estate management.

6. The family contentions has persisted leading to the present applications:

a. Beatrice Manyasi, the deceased widow's application dated 23<sup>rd</sup> October 2024, where she seeks orders, inter alia, for a declaration of her life interest over the net estate and for rental income to be paid directly to her for medical and upkeep needs.

b. The second administrator's first application dated 23<sup>rd</sup> October 2024, where she seeks orders for:

- i. A joint account for rental income
- ii. Preservation of contested propertie S/Wanga /Buchifi/ 90 and S/Wanga/Buchifi/100
- iii. A stay of proceedings pending the filing of a suit in the Environment and Land Court.

c. The second administrator's second application dated 2<sup>nd</sup> July 2025, where she seeks the revocation of the joint grant and issuance of a fresh grant to her as sole administrator.

## **Analysis**

7. Section 76 of the Law of Succession Act, provides 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) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(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;**

8. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.

**“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

9. On the widow's application for a life interest and control of rent, the application is partly merited. Under **Section 35 of the Law of Succession Act**, where the deceased leaves a surviving spouse and children, the spouse holds a life interest in the entire net intestate estate. This safeguards the spouse from destitution, granting her the exclusive right to income from the estate during her lifetime or until remarriage.

**“(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:**

**(a) the personal and household effects of the deceased absolutely; and**

**(b) a life interest in the whole residue of the net intestate estate:**

**Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.**

**(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power**

**shall not be exercised by will nor in such manner as to take effect at any future date.”**

10. The order of life interest in the application by Beatrice Manyasi is granted as she is legally entitled to the benefit and income from the estate. However, directing rent to her personal account would bypass the administrators' statutory duty to collect and account for assets. The proper mechanism is to affirm her life interest and order the administrators to manage the estate for her primary benefit.

11. The order on urgency has been overtaken by events. The substantive prayers are being determined herein.

12. On the second administrator's first application dated 23<sup>rd</sup> October 2024, the application on having a joint rental account is granted. Given the profound mutual distrust and allegations of misappropriation by George Victor Mulunda, which have been supported by way of evidence, a joint account for all rental income is a necessary interim preservative measure. This ensures transparency, prevents unilateral control, and preserves funds for the widow's benefit and eventual distribution. In **re Estate of Fredrick Kagio Kinyua (Deceased) [2015] KEHC 436 (KLR)**, the court held that:

***“The fact that the personal representative holds property on behalf of others and for their benefit makes his position a fiduciary one. He is accountable to the estate;”***

13. The prayer for injunction on the contested lands is granted. The administrators have a duty to preserve all estate property. The allegation that S/Wanga/Buchifi/90 was transferred days after death raises a prima facie case of a fraudulent transfer intended to defeat the interests of beneficiaries. An injunction restraining any dealings with this and the related parcel S/Wanga/Buchifi/100 is essential to maintain the status quo. The protection under **Section 53 of the Land Registration Act** for a good faith purchaser does not appear to apply here.

**“If a person acquires or receives land in respect of which the court could make an order for restoration or for the payment of reasonable compensation, the court shall not make that order against that person if that person proves that the land was:**

**(a)acquired or received in good faith and without knowledge of the fact that it has been the subject of a disposition to which this part applies; or**

**(b)acquired or received through a person who acquired or received it in the circumstances set out in paragraph (a).**

**(2) Reference to knowledge in this section shall include actual, constructive and imputed knowledge.”**

14. In **Words and Phrases Legally Defined Vol. 3**, John Beecroft Saunders defines jurisdiction as follows:

***“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”***

- 15. Article 162(2)(b) of the Constitution of Kenya, 2010, and the Environment and Land Court Act establish the Environment and Land Court as a superior court of equal status to the High Court with exclusive original jurisdiction to hear and determine disputes relating to environment and land, including title to land and contracts, choses in action or instruments granting any enforceable interests in land.**

**“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:**

**(b) the environment and the use and occupation of, and title to, land.”**

16. The prayer for stay of proceedings is dismissed. This court's primary mandate is to identify, preserve, and distribute the net estate of the deceased. The question of whether a disputed asset forms part of that estate is squarely within this court's jurisdiction. The issue of ultimate ownership can be determined by the Environment and Lands Court concurrently, but this succession cause must proceed to ensure the widow and other beneficiaries are not prejudiced by delay. This is also reiterated in **Mbuki v Waweru & 3 others [2025] KEELC 2932 (KLR)**, where the court held that:

***“To this end, Parliament, in its wisdom, enacted the Environment and Land Court Act, which establishes the Environment and Land Court (ELC) as the specialized forum for the adjudication of land-related disputes. Complementing this statutory framework is the Land Act, whose Section 150 unequivocally stipulates that the ELC: ....shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”***

17. This application for revocation of the grant and sole administration is not merited at this stage. Under Section 76 of the Law of Succession Act, a grant may be revoked for reasons like fraud, failure to proceed diligently, or failure to account. While the allegations against George Victor Mulunda of forged consents and questionable land transfer are serious, they largely pertain to conduct before the grant was issued. The court's appointment of joint administrators on 30<sup>th</sup> June 2024 was specifically designed to check unilateral conduct and introduce oversight considering that the prior subjection of this matter to the mediation court failed.

18. Revoking the grant to appoint a sole administrator from one faction would increase conflict and is contrary to the family's own expressed wish as per the meeting of 27<sup>th</sup> January 2024, which demanded for four administrators. The remedy is to reinforce the joint administration framework with specific, strict conditions, not to dismantle it. In the case of **Albert Imbuga Kisigwa v Recho Kavai Kisigwa, Succession Cause No.158 OF 2000**, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

***“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for***

***the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."***

19. 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 places 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.***

**Orders**

20. Accordingly, this court hereby appoints **George Victor Omwakwe Mulunda, Gloria Okatwa Mulunda, Francis Mulunda,** and **Maximular Mulunda** as the joint administrators of the estate of the late Athanas Lucas Mulunda Wandengu.
21. On the widow's application dated 23<sup>rd</sup> October 2024:
- a. It is hereby declared that the applicant, Beatrice Manyasi, as the surviving spouse of the deceased holds a life interest in the net intestate estate of Athanas Lucas Mulunda Wandengu, determinable upon her death or remarriage.
  - b. The joint administrators, George Victor Omwakwe Mulunda, Gloria Okatwa Mulunda, Francis Mulunda, and Maximular Mulunda, shall manage the estate with the primary objective of maintaining and providing for the said widow from the estate's income and resources.

- c. For the purposes of accountability, Beatrice Manyasi Mulunda shall be presenting a monthly budget to the administrators who shall then withdraw funds from the rental income that is deposited on the joint bank account for her use.
  - d. Prayer for rent to be paid directly to the widow's account is declined, as it conflicts with the administrators' legal duties.
22. On the 2<sup>nd</sup> administrator's first application dated 23<sup>rd</sup> October 2024:
- a. Within fourteen (14) days of this ruling, the joint administrators, **George Victor Omwakwe Mulunda, Gloria Okatwa Mulunda, Francis Mulunda,** and **Maximilari Mulunda,** shall jointly open an interest-bearing trust account. All income generated from any estate asset, shall be deposited therein. No withdrawals shall be made without the joint written consent of at least three of the administrators, or via a court order.
  - b. A temporary injunction is hereby issued restraining the 1<sup>st</sup> administrator, George Victor Mulunda, whether by himself or through agents, from alienating, charging, transferring, leasing, or in any other way dealing with land parcels S/WANGA/BUCHIFI/90 and S/WANGA/BUCHIFI/100, pending the hearing and determination of a suit to be filed in the Environment and Land Court or further orders of this court.
  - c. The prayer for a stay of these probate proceedings is dismissed.

23. On the 2<sup>nd</sup> administrator's second application dated 2nd July 2025:
- a. The application for revocation of the grant issued on 30<sup>th</sup> June 2024 is dismissed.
  - b. The joint administrators, **George Victor Omwakwe Mulunda, Gloria Okatwa Mulunda, Francis Mulunda, and Maximilar Mulunda**, are directed to file a comprehensive and joint inventory of all assets and liabilities of the deceased, specifically including the contested parcels S/Wanga/Buchifi/90 and S/Wanga/Buchifi/100, within thirty (30) days. This inventory shall be served upon all beneficiaries.
  - c. The joint administrators are further directed to file a scheme of distribution for the confirmed estate within sixty (60) days, in full compliance with the provisions of Section 35 of the Law of Succession Act, prioritizing the widow's life interest.
24. In the event that George Victor Omwakwe Mulunda does not comply with the order requiring the opening of a joint bank account for purposes of rent collection, Gloria Okatwa Mulunda, Francis Mulunda and Maximilar Mulunda shall proceed and open.
25. Each party shall bear its own costs of these applications.
26. Mention is on 21<sup>st</sup> May 2026, to ensure compliance.
27. Any party is at liberty to seek court's intervention in case of any issue arising.

28. Right of appeal 30 days.

**DATED, SIGNED and DELIVERED in open court at KAKAMEGA this 15<sup>th</sup>  
Day of December, 2025.**

**S.N MBUNGI**

**JUDGE**

**Delivered in the presence of:**

Court Assistant - Elizabeth Angong'a

Ms Chepkemoi holding brief for Mr Nyongesa online.

Mr Omwake for the beneficiaries.

Ms Wangusi for the objector online and also holding brief for Mr Onsango for one of the beneficiaries.

Gloria Mulunda present.