



REPUBLIC OF KENYA



In re Estate of Beth Wanjiru Mutonga (Deceased) (Succession Cause E084 of 2023) [2025] KEHC 18204 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E084 OF 2023**

G MUTAI, J

DECEMBER 3, 2025

BETWEEN

MWANIAISHA ALI YUSUF 1ST APPLICANT

ALI MUTONGA KHALFAN 2ND APPLICANT

**AS THE ADMINISTRATORS OF THE ESTATE OF KHALFAN MACHARIA
MUTONGA ALIAS PETER MACHARIA MUTONGA**

AND

**TUSMO NJERI KHALFAN (AS A BENEFICIARY OF THE ESTATE OF
THE LATE KHALFAN MACHARIA MUTONGA ALIAS PETER MACHARIA
MUTONGA) OBJECTOR**

RULING

1. In a decision this Court delivered on 22nd January 2025, the Court:-
 1. Authorized the sale of Title No Mombasa/Block XI/653 and ordered that the proceeds of the sale be shared equally by the beneficiaries;
 2. The share of the proceeds due to the estate of Khalfan Macharia Mutonga's estate be deposited in the Court.
2. The administrators of the estate, Khalfan Macharia Mutonga, alias Peter Macharia Mutonga, filed the Summons dated 16th September 2025 seeking the release of the funds on the grounds that they wished to distribute the same to the beneficiaries, as they are in dire need of the funds.
3. Ms Tusmo Njeri Khalfan opposed the application vide her affidavit sworn on 28th October 2025, in which she averred that Mwanaisha Ali Yusuf and Ali Mutonga Khalfan obtained the grant in respect of the estate of Khalfan Macharia Mutonga (deceased) fraudulently and that there were pending proceedings in succession cause no 114 of 2020 in the Court below, which were filed without her



knowledge and which she was contesting. Ms Tusmo deposed that the court below issued temporary orders barring the applicants from acting as administrators pending hearing and determination of the case. Ms. Tusmo attached to her affidavit a temporary order issued by Hon Gathogo Sogomo on 6th May 2025.

4. Counsel for the objector also filed grounds of opposition dated 28th October 2025.
5. The administrators filed a supplementary affidavit sworn on 4th November 2025, in which they stated that they attached the certificate of confirmation of grant issued on 7th April 2021. I have perused the Supplementary Affidavit and was unable to find the alleged attachment.
6. Parties made their oral submissions on 5th November 2025. I have considered the same.
7. It would appear to me that the Court below has jurisdiction to hear the succession proceedings in respect of succession cause no 114 of 2020. At present, the Hon Gathogo Sogomo is considering whether to revoke the grant issued to Mwanaisha Ali Yusuf and Ali Mutunga Khalfan. The learned magistrate, in his wisdom, saw it fit to grant an injunction and specifically ordered that: -

“ A temporary order is hereby issued restraining the respondents, by themselves, their agents, servants, or assigns, from selling and or representing themselves as the deceased successors and administrators pending the hearing and determination of this application.”
8. The applicants have not shown that the application has been determined, nor have they caused the said order to be set aside. Even if they contested the jurisdiction of the Court below to issue the impugned orders, they should have applied to have the impugned orders set aside or filed an appeal against the same.
9. For as long as the orders issued on 6th May 2025 subsist, this Court cannot allow the applicants to withdraw the subject funds. This Court, if it permitted any such action, would be putting our system of justice into disrepute. I will do no such thing.
10. That being the case, it is my view that the application dated 16th September 2025 has no merit. The same is dismissed.
11. Since this is a family dispute, parties shall bear their own costs of the application.
12. Orders accordingly.

DATED AND SIGNED THIS 3RD DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Mabeya, for the Applicant;

Mr Kututa, for the Objector; and

Norah – Court Assistant.

