

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MACHAKOS  
SUCCESSION CAUSE NO. 644 OF 2011

IN THE MATTER OF THE ESTATE OF DAVID MUTUA KISINI (DECEASED)  
AND  
IN THE MATTER OF THE PETITION OF LETTERS OF ADMINISTRATION **DE**  
**BONIS NON**

**RULING**

1. The Applicants, Fred Dominic Muli Mutua and Samuel Mwendwa Mutua, have approached this Honourable Court vide Petition dated 19<sup>th</sup> September 2025 under Sections 54, 67, 73, 76(e) and the 5<sup>th</sup> Schedule of the Law of Succession Act (Cap 160), as well as Rules 7 and 12 of the Probate and Administration Rules, seeking the issuance of a Grant of Letters of Administration *de bonis non* in respect of the unadministered portion of the estate of the deceased, David Mutua Kisini.
2. The Applicants state that they are sons of the deceased and are among the surviving beneficiaries of his estate. They have filed this Petition following the death of the previous administrator, Margaret Nduku Mutua (the deceased's widow), who passed away on 22<sup>nd</sup> April 2023 before completing the administration of the estate.
3. The deceased, David Mutua Kisini, died intestate on 9<sup>th</sup> October 2007 in Wyoming, Minnesota, United States of America. Letters of Administration intestate were initially granted to **Margaret Nduku Mutua** by this Honourable Court on 1<sup>st</sup> February 2012, and subsequently confirmed on 18<sup>th</sup> July 2013, as evidenced by the annexed Certificate of Confirmation of Grant.
4. The Applicants have annexed the death certificate of Margaret Nduku Mutua, confirming her demise on 22<sup>nd</sup> April

2023. The Certificate of Confirmation of Grant from the original proceedings shows that certain assets were distributed among some beneficiaries, but the immovable property known as I.R. 47968(L.R. No. 12715/685) was inadvertently omitted from the inventory of assets and thus remains unadministered.

5. A recent official search conducted at the Nairobi Lands Registry reveals that the said property, I.R. 47968(L.R. No. 12715/685), was purportedly transferred to a third party in 2011, approximately 4 years after the deceased's death in 2007. This transfer, occurring long after the deceased's passing and without the involvement of the estate's administrator, suggests fraudulent dealings, possible forgery, or misrepresentation, necessitating urgent legal action to recover and preserve the asset for the estate.
6. Although the property was not listed in the original succession proceedings, it forms part of the deceased's estate and ought to have been included. The omission appears to have been inadvertent.
7. The Applicants seek this Grant of Letters of Administration *de bonis non* to enable them to:
  - a) Institute appropriate proceedings in the Environment and Land Court for the cancellation of the illegitimate and fraudulent transfer of L.R. No. 12715/685;
  - b) Pursue any necessary criminal proceedings or report the matter to relevant authorities for investigation into the fraud;
  - c) Collect, recover, and preserve the said unadministered asset; and

d) Administer and distribute the recovered asset in accordance with the Law of Succession Act, subject to further orders of this Honourable Court, including confirmation of the grant.

8. In the alternative, should this Honourable Court deem it appropriate, the Applicants pray for a limited Grant of *Letters of Administration ad litem* or *ad colligenda bona* for the specific purpose of instituting and prosecuting the aforesaid suit to recover the asset, pending full administration.
9. The application is opposed by the Replying Affidavit sworn and notarized on 7th November 2025 by George Kisini Mutua of Wyoming, Minnesota, USA. The deponent contends that he is the deceased's firstborn child who is competent and authorized by his siblings, Joseph Mbithi Mutua, Peter Mwanzia Mutua, John Muthusi Mutua, Mary Nzisa Mutua, and Susan Mumbua Mutua to swear the replying affidavit in response to the Applicants' motion application dated 19<sup>th</sup> September 2025 herein.
10. He avers that the administratrix, who was their mother, completed administration of the estate and transferred all the priorities to her name before her death. She is now deceased. That Property Title No. 12715/685 was not part of this estate, and nothing remains unadministered in this cause.
11. He further avers that him and his other siblings have not consented to the appointment of the Applicants as the administrators of any deceased's property that was not included in this cause, and therefore object to their application.
12. The application was canvassed through written submissions. The Applicants' submissions are dated 14.11.2025 whilst the Respondents' submissions are dated 18.11.2025.

13. The Applicants submit that the replying affidavit does not contradict any material fact or point of law raised by the Applicants in their Petition and supporting affidavit and that it is in the interest of justice that the Petition be allowed as prayed, to prevent further irreparable loss to the estate through continued illegal dealings and to protect the rights of the rightful beneficiaries.
14. On the other hand, the Respondent/Objector submits that the deceased died intestate, and the widow, **Margaret Nduku Mutua**, petitioned the court for a grant of letters of administration *intestate* in this file. She was appointed on **1<sup>st</sup> February 2012**, and the grant was confirmed on **18<sup>th</sup> July 2013**. The deceased's properties were listed in the petition. The Petition was published in the *Kenya Gazette*, and a grant of letters of administration was issued to her because no beneficiary objected, including the applicants/petitioners. The grant was later confirmed to the petitioner (**Margaret Nduku Mutua**), and all the properties were transferred to her because no beneficiary protested, including the applicants/petitioners. She then registered all the titles in her name as per the confirmed grant annexed by the applicant to the supporting affidavit. This marked the end of the administration, and the estate was closed. The administrator later died on **22<sup>nd</sup> April 2023**.
15. The two beneficiaries, **Fred Dominic Muli Mutua and Samuel Mwendwa Mutua**, have now petitioned the court for a grant of letters of administration *de bonis non*. However, this grant is issued when a single administrator dies before the administration is completed.
16. The reason given by the applicants for making this petition is that **"the deceased's property LR. 12715/685"** has been discovered after the administrator's death. Additionally, they allege that the property was fraudulently transferred after the

deceased's death. Therefore, they contend that they need a grant of letters of administration ***de bonis non*** to file a lawsuit to recover the property for this fraudulent transfer. This is an admission that the property is not in the deceased's name. Furthermore, it is an admission that they seek the grant of letters of administration *de bonis non* to file a law suit, and not to complete the administration.

17. The Respondent has clarified that the replying affidavit responds to the petition and not to a motion, as incorrectly stated in the affidavit. That this error is cured by the dictates of **Article 159 (2) (d)** that enjoins courts to administer justice without undue regard to technicalities. We refer to: ***re Estate of ZKM Deceased [2018] KEHC 9738 (KLR)*** to support our argument, where the court stated that ... **“to insist on procedure and technicalities is to elevate mere procedure and technicalities at the expense of just and fair administration of justice.”**
18. As regards whether a grant of letters of administration ***de bonis non*** can issue per the petition dated **19<sup>th</sup> September 2025**, the Respondent submitted that a grant of letters of administration ***de bonis non*** is issued **“upon the demise of a single administrator/executor, making the grant useless and inoperative. This makes Section 76 (e) of the Law of Succession Act CAP 160 come into play, and a fresh grant of letters of administration *de bonis non* is issued.”** The death of the single administrator makes the grant **'useless and inoperative'**, and a new grant ***de bonis non* is necessary to complete the administration.** (See the case of: ***re Estate of Philip Kipkorir Sete (Deceased) (Succession Cause 306 of 1999) [2025] KEHC 7504 (KLR)***, and ***In re Estate of Naja Jehangir Austin (Deceased) (Succession Cause 107 of 1982) [2025] KEHC 9157 (KLR)***).

19. The Respondent relied on the decisions in the following judicial pronouncements.

- i. **In re Estate of Ngaigwo M'Shomba (Deceased) [2019] KEHC 2362 (KLR) [2019] KEHC 2362 (KLR)**, the court noted...“where an administrator dies before completion of administration, the right course of action should be to seek his replacement through an application for grant of administration *de bonis non*”. Also see **Maamun bin Rashid bin Salim EL-Rumhy vs Haider Mohammed Bin Rashid El-Basamy (1963) (EA.438)**.
  
- ii. In re Estate of **Goolamhoosain Manjee Keshavjee (Deceased) [2017] KEHC 1395 (KLR)**, the court noted that “in my view, the relevant part in the instant application and circumstances is **Section 76 (e) of the Law of Succession and rule 44 of the P & A rules and rule 16 of the 5th schedule considering that the executor died before completing the administration of the estate. In the absence of the executor, the grant which is inoperative and useless. The estate cannot be left unadministered forever. (See- in the matter of the estate of Mwangi Mugwe alias Elieza Ngware (deceased) and in the matter of the estate of Mary Wairimu Ngware (deceased) Nairobi H.C.succession no.2018 of 2001 and in the matter of the estate of Githaiga Gichuki (deceased (2014) eKLR.”**
  
- iii. **In re Faith Wanjiku Maganjo v Rebean Muriithi Maganjo [2017] KEHC 5485 (KLR)**, the court held that “**letters of administration, 'grant de bonis non' are issued where the administrator dies and leaves behind an estate which has not been administered. The second administrator is**

**called the ‘administrator *de bonis non*’ and distributes the remaining assets. This grant is issued when the administrator dies. The grant must be obtained when the sole or last surviving personal representative of a deceased’s personal estate dies after taking out the grant of representation but before completing the administration. The estate of the deceased had not been distributed.”**

20. Therefore, the concept is that a ***de bonis non grant*** is issued if the administration has not been completed, and the single administrator is dead. It does not apply if the single administrator dies after the completion of the administration of the estate, as in this case. It is also not issued to file a lawsuit to claim a deceased’s property or to include a deceased’s property that was left out.

**The grant is amended to include the left-out property if the administration is not yet completed. However, if the administration is already completed, a fresh petition is made in a new cause/file.**

### **Analysis and determination**

21. I have considered the petition, the supporting affidavit, the replying affidavit and the parties’ advocates’ written submissions.
22. It is not disputed that the Applicants and the Respondents are siblings being children of **David Mutua Kisini**, the deceased in this cause who died intestate on 9<sup>th</sup> October 2007 in Wyoming, Minnesota, United States of America. Letters of Administration intestate were initially granted to his wife **Margaret Nduku Mutua** by this Honourable Court on 1<sup>st</sup> February 2012, and subsequently confirmed on 18<sup>th</sup> July 2013, as evidenced by the annexed Certificate of Confirmation of Grant. It is also not disputed that the deceased

Administratrix had completed the administration of the estate prior to her death.

23. What I gather to be disputed is the fact that Property Title No. 12715/685 was not part of this estate, and nothing remains unadministered in this cause and further that the Respondent and his other siblings have not consented to the appointment of the Applicants as the Administrators of any deceased's property that was not included in this cause, and therefore object to their application.
24. The sole and pertinent issue I frame for determination is whether the Petition is merited. As correctly submitted by the Respondent, the concept of *de bonis non grant* is issued if the administration of the deceased's estate has not been completed, and the single administrator is dead. It does not apply if the single administrator dies after the completion of the administration of the estate, as in this case. It is also not issued to file a lawsuit to claim a deceased's property or to include a deceased's property that was left out. The grant is amended to include the left-out property if the administration is not yet completed. However, if the administration is already completed, a fresh petition is made in a new cause/file.
25. On the foregoing, I find the Petition to be lacking in merit and the same is dismissed with no order as to costs this being a family matter.
26. However, the Applicants are directed to file a fresh petition if they so wish to establish if Property Title No. 12715/685 forms part of the Estate of **David Mutua Kisini**, the deceased and thereafter pursue any rightful claim over the same. The filing of the fresh petition will not prejudice the Respondents at all and therefore the Respondent and his siblings, Joseph Mbithi Mutua, Peter Mwanzia Mutua, John Muthusi Mutua, Mary Nzisa

Mutua, and Susan Mumbua Mutua are directed to consent to the Applicants filing of the fresh Petition which is in the best interest of the Estate, in default the Applicants will proceed to file the fresh petition in the absence of the consent.

27. This file is closed.

28. Orders accordingly.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 27<sup>TH</sup>  
JANUARY 2026

NOEL I. ADAGI  
JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 27<sup>TH</sup>  
JANUARY 2026