

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 177 OF 2013

IN THE MATTER OF THE ESTATE OF DAVID MULEI (DECEASED)

WILSON MATOLO MULEI.....1ST PETITIONER/ ADMINISTRATOR (NOW DECEASED)
JOSEPHINE NZIVA DAVID .2ND PETITIONER/ADMINISTRATOR/1ST
RESPONDENT

VERSUS

BENARD KAVITA MWOVEPROTESTER /2ND
RESPONDENT

BETH KANINI DAVID.....PROPOSED
ADMINISTRATOR/APPLICANT

RULING

1. The Applicant Beth Kanini David moved this court by way of Summons dated 13th October 2025 brought under Order 51 and Order 24, Rule 3 of the Civil Procedure Rules and section 3A of Civil Procedure Act. The Applicant seeks for orders:
 - a. Spent.
 - b. Spent.
 - c. THAT, this Honourable court be pleased to grant leave to the PROPOSED ADMINISTRATOR/PETITIONER herein to substitute the 1st administrator/ petitioner, WILSON MATOLO MULEI, with BETH KANINI DAVID.
 - d. THAT WILSON MATOLO MULEI, who is now deceased, be substituted for the Proposed protestor BETH KANINI DAVID.
 - e. THAT, upon grant of the above prayers, the proposed Administrator/ Petitioner be allowed to testify in this matter.
 - f. Costs of this application be in the cause.
2. The application is supported by the supporting affidavit of the Applicant sworn on 13th October 2025 and is based on the following grounds reproduced verbatim thus:-

- a. THAT, the 1st administrator/petitioner in this matter WILSON MATOLO MULEI (deceased), was husband to the proposed 2nd administrator/petitioner.
 - b. THAT, PURITY KARUANA MBOGO, is the wife and legal representative to WILSON MATOLO MULEI -deceased.
 - c. THAT, this suit has been in progress since the year 2013 and during the course of the litigation, on 19th November the 1st administrator/petitioner passed on.
 - d. That, the proposed 1st administrator/petitioner applied to the court vide succession suit no MCSUCCMISC/E084/2025 Machakos for a limited grant *ad-litem*.
 - e. That the lower court delayed in issuing the said letters ad-litem until 24th September 2025.
 - f. THAT, in light of these developments, the Applicant now prays before this Honourable Court to grant permission for the substitution of the deceased 3rd protestor, WILSON MATOLO MULEI, with his legal representative, BETH KANINI DAVID, enabling the continuation of the legal proceedings.
 - g. This application for substitution is driven by the sincere desire of the Applicant to ensure the protection of the late 2nd administrator/petitioner's interests in the ongoing lawsuit.
 - h. THAT, the Applicant asserts that this Honourable Court possesses the discretion to substitute parties in the ongoing suit. Such substitution is essential to uphold the principles of justice and fairness, ensuring that the Applicant and 3rd protestors' fundamental rights, as guaranteed by the Constitution of Kenya 2010, are protected from potential prejudice caused by being condemned unheard and unrepresented.
 - i. THAT, leave of this court is required for the deceased to be substituted with the legal representative of the deceased's estate.
 - j. THAT, no prejudice shall be occasioned upon any parties if the orders sought are granted.
3. The application is opposed by the Respondents vide the grounds of opposition dated 21st October 2025 filed by Mwanja Mbithi & Co. Advocates. The Respondents contend that the application is grossly defective, incompetent, bad in law, and bereft of any merits, and grossly violates and is in breach of substantive and mandatory provisions of

law, and is an abuse of the process of the court, and ought to be struck out or dismissed with costs, for reasons that: -

- (a) Prayer No. 2 is spent and wholly overtaken by events, there is no Ruling to be stayed, as this Honourable on 15/ 10/2025 delivered its Ruling on the Protest dated 21 / 10/2014 and the Summons Application dated 25/3/2025 and made final orders thereon, as was lawfully scheduled by the court way back on 9/7/2025.
- (b) The Applicant is guilty of and falls afoul of the doctrine of laches and delays in filing the instant Application after a grossly inexcusable and inordinate delay and is not in court with clean hands as equity demands. as she deliberately seeks to mislead the court into granting the application on the blatant and inexcusable falsehood that her Ad Litem Grant in Machakos MCSUCCMISC/E084/2025 (annexture "BKD3") was delayed by the lower court until 24/9/2025, yet it is plain that the same was in fact on 2/7/2025 and duly signed and issued on 4/7/2025 by Hon. J. Kituku, SPM, and was thus available as at 4/7/2025, and yet waited to rush to this court only on 13/ 10/2025 to stall delivery of a Ruling that was on 9/7/2025 scheduled for delivery on 15/10/2025.
- (c) The application is incompetent in so far as it is oblivious of, and is contrary to plain and mandatory provisions of the Law of Succession Act, in particular, section 81 of the Act and judicial precedents that outlaws and do not permit substitution of a deceased administrator in cases of the death of one or more administrators where there is one or more surviving administrator/ s, to whom administration of the estate remains wholly vested upon the surviving administrator(s).
- (d) In this case there is a surviving administrator upon whom the law vests and bestows the sole authority and responsibility of administering the estate including its distribution to the beneficiaries, and to whom the grant should be confirmed.
- (e) This court, in the circumstances of this cause, has no jurisdiction or power to grant the substitution of a deceased administrator, as doing so would be acting contrary to, and ultra vires to sections 76 and 81 of the Law of Succession Act, and any substitution of a deceased administrator, strictly prohibited, and

not provided for by law, would be a null and void act, of not effect in law.

- (f) The grant, in the circumstances, has not become useless and inoperative, and any addition of the Applicant as co-administrator, without lawful justification, and contrary to law, as above set out, shall, as the record shows in light of her plain hostilities against the protester and the surviving 2nd administrator, only unreasonably stall and delay confirmation of the grant, and realization of the protester's rights to his interest in Plot No. Iveti/Iveti/ 1301 as ordained in the Ruling of 15/ 10/ 2025, and prejudice expeditious completion of administration and interests of the other none competent and long suffering beneficiaries.
 - (g) The Applicant's interests to her estranged and since deceased husband stands fully protected in the proposed distribution in the filed Summons for Confirmation of Grant, and if any prejudice is perceived, she shall be at liberty to file an affidavit of protest setting out any disputed or contested matters on distribution, and is thus she is not at all prejudiced, and the law is fully aware of her circumstances when it outlawed substitution of a deceased administrator in the presence of a surviving administrator.
4. That being contrary to and in breach of statutory provisions, and in light of previous similar applications, and being contrary to the joint Ad Litem Grant dated 2/7/2025 and issued on 4/7/2025, jointly to the Applicant and Purity Karuana Mbogo, as the deceased administrator's (**personal Representatives**) for purposes of this application, the application is an abuse of the process of the court, as joint personal representatives are enjoined by law to apply or act jointly at all times. The Respondents pray that the said Summons be struck out or dismissed with costs.
 5. The application was canvassed by way of written submissions. The Applicant's submissions are dated 17th November 2025 whilst the Respondents' submissions are dated 5th November 2025.
 6. According to the Applicant, as at the time of making the instant application, no one had been conferred with the letters of administration and as such they cannot purport to have administrators. The Applicant asserts that what is there at this stage are Petitioners for grant of letters of Administration.

7. On the other hand, the Respondents argue that the application is incompetent, offends, is contrary to, violates and breaches mandatory provisions of the Law of Succession Act and is an abuse of the process of the court and the court has no jurisdiction to grant it. That this cause is purely a succession proceeding to which only the Law of Succession Act and the Probate and Administration Rules exclusively apply. It is not a civil suit/proceeding and the cited provisions of the Civil Procedure Act and Rules upon which the Application is exclusively grounded do not apply.
8. The only exception is a select cluster of provisions of the Civil Procedure Rules, and no others, that are expressly "imported" into the Law of Succession Act by dint of Rule 63 of The Probate and Succession Rules and made applicable in succession proceedings. However, Orders 51 and 24 of The Civil Procedure Rules, and Section 3A of The Civil Procedure Act, on which the Application is grounded exclusively, are not among such provisions, and do not apply in succession proceedings, it is contrary to law, thus not only incurable defective but also incompetent, over which there is no jurisdiction to grant.

Analysis and Determination

9. I have carefully considered the proceedings in this cause, the application before me, the supporting affidavit and the grounds of opposition, the submissions filed by the parties and the applicable law. In my view, the question I am invited to answer in this ruling is whether the application can be allowed meaning, the Applicant can be allowed to substitute the 1st Petitioner/Administrator one **Wilson Matolo Mulei** who has since passed on.
10. In short, I have perused the proceedings in this cause and established that the deceased, David Mulei, died intestate on 14th February 2010 at Bishop Kioko Catholic Hospital. A Grant of Letters of Administration intestate was made to WILSON MATOLO MULEI (1st Administrator/Son) and JOSEPHINE NZIVA DAVID (2nd Administrator/Wife) by this Honourable Court on 10th June 2013 signed by Lady Justice L. Mutende. WILSON MATOLO MULEI (1st Administrator/Son) and JOSEPHINE NZIVA DAVID are son and wife of the deceased respectively. They were thus jointly appointed as such. The said Grant has not been challenged save that the 1st Administrator is now deceased.
11. It is therefore not true as submitted by the Applicant that as at the time of making the instant application, no one had been conferred with the letters of administration and as such there are no Administrators to the estate.

12. Section 81 of the Law of Succession Act deals with a situation where one or more of several administrators passes away like in this cause. In such a situation the surviving Administrator [s] are mandated to proceed with the administration of the estate to finality.
13. Section 81 of the Law of Succession Act is a self-executing provision which empowers a surviving administrator to complete administration of an estate 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 survivor or survivors of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him."

14. In this Cause, the grant was issued to two persons, one of whom is now deceased. That is not a ground to make it inoperative and as observed above the provisions of Section 81 cited above come into play to remedy the situation.
15. I take note that the death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them.
16. The Law of Succession Act provides for avenues within which the Applicant or any other affected party can move the court to challenge the administration of the deceased's estate by an Administrator.
17. Last but not least, the Applicant presented before this court the joint Ad Litem Grant dated 2/7/2025 and issued on 4/7/2025 in Machakos MCSUCCMISC/E084/2025 (annexture "BKD3") to the Applicant and one Purity Karuana Mbogo, jointly as the deceased administrator's "**personal Representatives** " for purposes of this Application. The Applicant has however chosen to solely file the application without the authority of or the participation of her Co-representative. Joint personal representatives are enjoined by law to apply or act jointly at

all times. This makes the application incompetent and is an abuse of the process of the court.

Disposition

18. In the end, I find that the application dated 13th October 2025 lacks merit and is dismissed in its entirety.
19. Since this is a succession cause involving family members, I will not make an order for costs.
20. It is so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 21ST JANUARY 2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 21ST JANUARY 2026