

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**SUCCESSION CAUSE NO E091 OF 2023**

**IN THE MATTER OF THE ESTATE OF SARLA DEVI SONI (DECEASED)**

**RULING**

1. The deceased, Mrs. Sarla Devi Soni, died testate; her last will and testament is dated 26<sup>th</sup> March 2019. The will was executed in the presence of Dr. Charles Mbango Mwangome, a psychiatrist, and Ms. Caroline Njeri Njuguna, an advocate, on the same date.
2. The decedent appointed Ms. Sangita Sunil Sukhnandan Jalota and Ms. Rita Sood as the joint executrices and trustees of her will. The two executrices are her daughters. The testator specifically excluded her son, Mr. Deepak Soni, as her beneficiary and, in particular, stated at paragraph 5 of her said will that:  

**“ In the execution of my will, I wish my trustees to know that I do not intend to bequeath any of my property, movable or immovable to my son Mr. Deepak Soni, or his lineage of my grandchildren from Mr Deepak Soni, who is in my lifetime ill-treated me, committed acts and omissions of cruelty to me, and even obtained a share of my London property, 15 Grosvenor Court, Hae Lane, Mill Hill Midds, under falsehood and malice.”**
3. The petition for the grant of probate of the said written will is dated 4<sup>th</sup> October 2023 and was filed by the executrices, Sangita Sunil Sukhnandan

Jalota and Rita Sood. They attached a copy of a certificate of death issued in London, showing that the deceased died on 16<sup>th</sup> May 2023 in London from metastatic breast cancer, and a letter written by the Chief of Kisauni Location that indicated that the deceased had 2 heirs, Rita Sood and Sangita Sunil Sukhnandan Jalota, whose identification details were given

4. The deceased was indicated as owning a house in Tudor, Plot No MSA/Block X/156, and money in a DTB Bank account number 5102862002. The estimated value of her estate was given as Kes 50,000,000. According to the said deposition, she had no liabilities.
5. The petition was gazetted on **19<sup>th</sup> April 2024**. There being no objection, the grant was issued on **18<sup>th</sup> June 2024** to the executrices.
6. Mr **Deepak Soni**, the son of the decedent, whom I shall hereafter refer to as “the objector” or “the protestor”, filed a chamber summons application dated 4<sup>th</sup> April 2025 seeking an injunction to prevent the executrices of the estate from executing the instructions in the will, for the court to nullify the will and to revoke the grant, and for costs to be awarded to him. The objector contended that the deceased was not in a proper state of mind when she executed the will, that the will did not meet the statutory requirements, and that he was unfairly left out of the will on the basis of false allegations.
7. The objector made a deposition sworn on 4<sup>th</sup> April 2025, in which he contested the capacity of the testator to make the will and averred that there was no ground to exclude him as a beneficiary

- 8.** The application was opposed. Mrs Rita Sood deposed to an affidavit sworn on 9<sup>th</sup> June 2025. In the said deposition, she stated that the application was misconceived, as an objection ought to have been filed before the grant was issued and not after. She averred that no grounds warranting revocation of the grant under section 76 of the Law of Succession Act had been disclosed. Further, there were no grounds to invalidate the will. Ms. Sood deposed that the will was valid, bore the signatures of the deceased and those of two witnesses. Regarding the relationship between the deceased and the objector, she contended that the objector forged the signature of the deceased, resulting in a loss of a title which forms part of the estate of the deceased. The incident was reported at Makupa Police Station as OB entry No 60 on 13<sup>th</sup> May 2022.
- 9.** The deposition of Mrs Rita Sood was corroborated by Mrs Sangita Sunil Sukhnandan Jalota in her affidavit sworn before a Notary public in Western Austria on 5<sup>th</sup> June 2025.
- 10.** The application dated 4<sup>th</sup> April 2025 has not been heard. The objector died on 11<sup>th</sup> May 2025. Vide and application dated 25<sup>th</sup> June 2025, Ms. Sangeeta Soni and Ms. Rakhee Mediratta, sought to be allowed to proceed with this suit as the legal representatives of the estate of the objector, and that they be substituted as applicants and allowed to file further documents in support of the application. Ms. Sangita Soni and Rakhee Mediratta are the widow and daughter, respectively, of the objector.

- 11.** The executrices opposed the application by filing a notice of preliminary objection sworn on 21<sup>st</sup> September 2025. The preliminary objection is in respect of the capacity of Ms. Sangita Soni and Rakhee Mediratta to be substituted as applicants.
- 12.** The preliminary objection was canvassed by way of written submission as directed by the court on **14<sup>th</sup> October 2025**.
- 13.** The submissions of the executrices are dated 27<sup>th</sup> October 2025. Their counsel urged in the written submissions that the applicants lacked the capacity to file the application. It was contended that the application was based on the Civil Procedure Rules, whereas the said rules are inapplicable to the probate proceedings, save as allowed under rule 63 of the Probate and Administration Rules. It was urged that under Orders 1 Rule 10, and 32 Rule 12 of the Civil Procedure Rules are inapplicable to matters before the Probate Court.
- 14.** Counsel submitted that the applicants ought to have obtained limited grants before filing the impugned application. Reliance was placed on the decision of the court in the case of **Ngui & 2 others v Nthenge [2022] KEHC 11477 (KLR)**.
- 15.** It was urged that the advocate who filed the application was not properly on record, as there was no notice of change of advocates. Counsel relied on the case of **Kamau v Miringu [2024] KEHC 8373 (KLR)**. Counsel submitted that the application was irregular and a total abuse of the court process, and should be dismissed

16. On the other hand, the applicant's counsel urged that the application was properly before this court. Mr. Okello, learned counsel for the applicants, urged that there was no proper preliminary objection before the court. He submitted that allowing the objection would be draconian, as it would be imprudent to dismiss the application without hearing the parties and ascertaining the facts in issue. In support of this contention, counsel cited the case of *Muumbo & another (C/o Muigai Kemei & Associates Advocates) v Mwingi View Point Lodge Limited & 8 others* [2024] KEELC 6921 (KLR).

17. Counsel contended that no advocate previously acted for the intended objectors herein.

18. It was submitted that this court has the power to issue a grant to the wife of the deceased. Mr. Okello prayed that the preliminary objection be dismissed.

19. I have considered the preliminary objection, the submissions of the parties, and the applicable law. Was the preliminary objection rightly taken? Is there merit in the said objection?

20. In the case of ***Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd (1969) EA 696***, it was held as follows:

**“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which, if argued as a**

preliminary point, may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

21. The Supreme Court of Kenya, in the case of **Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 others [2015] KESC 23 (KLR)**, stated that:

“Thus, a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

22. What then are the facts on record? Whereas Deepak Madan Soni initially filed an objection as a *pro se* litigant, he subsequently appointed the firm of Peter M Warindu & Co. Advocates to represent him. It is the said firm that filed the application dated 11<sup>th</sup> May 2025 seeking to revoke the grant and to annul and invalidate the will

23. Upon the demise of the objector, an application was filed by Sangeeta and Rakhee through the firm of Okello & Otieno Advocates on 24<sup>th</sup> June 2025. There is no clarity as to what relationship the said firm has with Peter Mbuya Warindu, as the submissions in respect of the matter now before me were prepared by Okello Eugene, Advocate, and stated as having been drawn by Peter Warindu & Co, Advocates

24. It would appear to me that the question of representation of the intended objectors calls for examination of facts. It is not, therefore, an issue that can be determined through a preliminary objection.
25. What of the capacity of the intended objectors? They say that they are a wife and a daughter of the deceased objector and have annexed a copy of his last will and testament. Does that cloth them with the capacity to take over the prospection of the objector?
26. There is no doubt that the claim they make arises from the interest of the deceased, that is to say, Mr. Deepak Soni. It is the estate of the late Deepak Soni that they wish to represent. Can they do so without a grant, as they have purported to do?
27. In the case of **Alexander Mutunga Wathome v Peter Lavu Tumbo & another [2015] eKLR**, it was stated that:
- “In law, one can only represent the estate of a deceased person when a grant of representation has been made in respect of the estate of such deceased person under the Law of Succession Act. In addition, section 82 of the Law of Succession Act provides that it is the personal representative who has the powers to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased. A personal representative is defined under section 3 of the Act as the***

***executor or administrator, as the case may be, of a deceased person.”***

**28.** In the said case, the court went on to say that:

**“The applicant has in this respect not produced evidence to show that he has been given such a grant of representation with respect to the 2<sup>nd</sup> protestor’s estate and cannot therefore be substituted in the place of the 2<sup>nd</sup> protestor.”**

**29.** I agree with the above holding. In the submissions of the intended objectors, counsel stated that “the honorable court has powers to issue a grant to the wife of the deceased, a fact not disputed by the applicant.” This, to me, is tacit acceptance of the fact that they do not have a grant presently and that the same was necessary.

**30.** That being the case, the intended objectors/applicants have no capacity to file the application. Their application is misguided and is for striking out.

**31.** I must point out that the Civil Procedure Rules are generally inapplicable to probate proceedings, save as provided for in Rule 63 of the Probate and Administration Rules. Orders 1 Rule 10, and 32 Rule 12, of the Civil Procedure Rules are not among the rules that apply to Probate proceedings.

32. What emerges clearly from the foregoing is that the challenge regarding the capacity of the applicants to seek to represent the estate of Deepak Soni is merited. In the circumstances, I find and hold that the notice of motion dated 25<sup>th</sup> June 2025 is fatally defective. The same is struck out. Given the nature of the matter, I make no orders as to costs.

33. Orders accordingly.

**Dated and signed in Mombasa, this 17th day of February 2026.**

**Delivered** virtually through **Microsoft TEAMS**.

**Gregory Mutai**

**JUDGE**

In the presence of:

Mr. Okello, for the Intended Objectors/Applicants;

No appearance for the Respondents; and

Bancy – Court Assistant.