

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE E1172 OF 2023**

***IN THE MATTER OF THE ESTATE OF PETER GEORGE MWAURA***  
***(DECEASED)***

**CAROLINE WANJIKU COWAN ..... APPLICANT**

**VERSUS**

**GRETCHEN SANDERS HELEN ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE NJERI MAKONNEN ..... 2<sup>ND</sup> RESPONDENT**

**MWAURA JEREMIA MUIRURI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The matter before this Court arises from the administration of the estate of the late Peter George Mwaura, a distinguished retired pilot who transitioned from this life on 10 October 2022 at Kitisuru, Nairobi. The Deceased died intestate, leaving behind a vast and multifaceted estate comprising substantial immovable properties, significant shareholdings in blue-chip companies, and various business interests in the aviation and hospitality sectors. The Court, on the 4 December 2023, issued a joint Grant of Letters of Administration to Gretchen Sanders Helen, Florence Njeri Makonnen, Mwaura Jeremiah Muiruri, and Caroline Wanjiku Cowan. This Grant was subsequently confirmed on 24th June 2024, ostensibly following a consensus among the heirs regarding the distribution of the known free assets.

2. However, the harmony envisioned during the confirmation process proved ephemeral. Shortly after the issuance of the Certificate of Confirmation, a deep schism emerged among the Administrators, primarily pitting Caroline Wanjiku Cowan, the Applicant, against the other three co-Administrators, the Respondents. The Applicant moved this Court through Summons dated 23 of November 2024, seeking an order of *status quo* and the rectification of the confirmed Grant to include several assets she claims were fraudulently or erroneously omitted. This initial Application was followed by a more confrontational Notice of Motion dated 15 April 2025, wherein the Applicant sought the disqualification of the law firm representing the Respondents, M/s Wamae & Allen Advocates, citing a profound conflict of interest and professional misconduct.
3. The Respondents, in a bid to arrest these proceedings at the threshold, filed a Notice of Preliminary Objection dated 13 May 2025, challenging the procedural validity of the Applicant's motion for disqualification. Given the interconnectedness of these disputes—ranging from the evidentiary integrity of Affidavits to the ethical standing of Counsel and the substantive identification of estate property—the Court directed that the Preliminary Objection and the two substantive Applications be heard and determined concurrently.

### **Preliminary Objection**

4. The Court first addresses the Preliminary Objection raised by the Respondents, which seeks to strike out the Applicant's Notice of Motion dated 15 April 2025. The Respondents contend that the entire Application is incurably defective due to non-compliance with the mandatory provisions of the Oaths and Statutory Declarations Act. Specifically, they argue that while the Supporting Affidavit of Caroline Wanjiku Cowan was notarized in Texas, USA, the exhibit marked "CWC-1" appears to have been commissioned by

an unidentified Advocate in Kenya, thereby violating Rules 9 and 10 of the Oaths and Statutory Declarations Rules.

5. The Respondents rely heavily on the literal interpretation of Rule 9, which mandates that all exhibits to Affidavits must be securely sealed under the seal of the Commissioner and marked with serial letters of identification. They argue that the act of commissioning an Affidavit is a unitary process; the officer administering the oath must have physical sight of the exhibits at the time of swearing to ensure they conform to the statements made in the oath. To support this, they cite ***Weetabix Limited vs. Healthy U Two Thousand Limited*** eKLR, where the Court underscored that the sealing of exhibits is not a mere formality but a substantive safeguard against the falsification of documentary evidence.
6. The judicial philosophy underpinning these rules is further elucidated in ***Awil Ogle Abdullahi & Kinsi Salat v School Management Committee St. John's Lokichoggio Primary School KEELC 3030 (KLR)***, where the Court noted that the oath is an everlasting covenant, requiring absolute solemnity. The failure to seal exhibits before the same officer who notarizes the Affidavit, according to this line of precedent, allows a deponent to potentially disown documents and escape the consequences of perjury. The Respondents thus posit that because Exhibit "CWC-1" was commissioned by a different person than the Notary Public in Texas, it has no legal life, rendering the Supporting Affidavit valueless and the Application fit for rejection.
7. In response, the Applicant filed a Supplementary Affidavit on 14 July 2025, attempting to cure the identified procedural flaw. She concedes that there was an inadvertent failure to have the specific set of email excerpts notarized by the Texas Notary, but points out that the Court record shows all other documents were properly notarized by Marcus R. Rodriguez, whose

commission is valid until 2027. The Applicant argues that this error is a curable procedural technicality and should be viewed through the transformative lens of Article 159(2)(d) of The Constitution, which commands the judiciary to prioritize substantive justice over procedural niceties.

8. The Applicant further relies on the decision in ***Francis A. Mbalanya v Cecilia N. Waema eKLR***, where the Court held that while improperly sealed annexures may be expunged, the supporting affidavit and the underlying application remain valid if the deponent shows no malice and seeks to cure the defect via a supplementary filing. This position is reinforced by the Oxygen Principles found in Sections 1A and 1B of the Civil Procedure Act, which mandate the Court to facilitate the just, expeditious, and cost-effective resolution of disputes.
9. In determining this objection, the Court must distinguish between a defect that goes to the root of the Court's jurisdiction and one that is merely a matter of form. The Respondents' objection is technically sound; the fragmented commissioning of Exhibit CWC-1 is indeed a breach of the strict requirements of Rule 9. However, the modern Kenyan judicial trend, post-2010, has moved away from the "fetishization" of procedural rules. In ***Kenneth Nyaga Mwige v Austin Kiguta & 2 others [2015] eKLR***, the Court of Appeal clarified that the marking of a document is for identification purposes and does not equate to proof of its contents.
10. The Court finds that the Applicant has sufficiently demonstrated that the error was an oversight and not a deliberate attempt to mislead. By filing the Supplementary Affidavit dated 14 July 2025, which contains the properly notarized versions of the previously contested documents, the Applicant has cured the mischief. Striking out an application of such substantive gravity— involving allegations of Advocate intermeddling and the omission of millions of shillings in assets—based on an annexure marking error would constitute

a failure of the court's duty to deliver substantive justice. The Preliminary Objection is, therefore, dismissed. The Court admits the Supplementary Affidavit and the notarized exhibits therein into the record.

### **The Disqualification of M/s Wamae & Allen Advocates**

11. The Court now turns to the substantive Notice of Motion seeking the disqualification of the firm of Wamae & Allen Advocates from representing the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents. This Application is anchored on three central grievances: first, that the firm previously acted for the Applicant and thus possesses confidential information that may be used to her detriment; second, that the managing partner of the firm, Mr. Charles Wamae, is a necessary witness in these proceedings; and third, that the firm is embroiled in a conflict of interest due to the partner's purchase of a significant estate asset.
12. The relationship between an Advocate and a client is fundamentally fiduciary, predicated on an unwavering duty of loyalty and the sacrosanct protection of confidentiality. This principle is codified in Section 134 of the Evidence Act, which prohibits the disclosure of any communication made in the course of professional employment without the client's express consent. In the context of succession, where an Advocate represents multiple administrators in a joint enterprise to manage an estate, the retainer is specific to the individual clients as a collective.
13. The Applicant asserts that M/s Wamae & Allen LLP assisted all four parties in obtaining the letters of administration and drafting the schedule of distribution confirmed in June 2024. Now that the Applicant has challenged that very schedule, claiming it omitted properties that were known to her co-Administrators, the firm is in the position of representing the Respondents against their former co-client in a dispute arising from the same transaction.

14. Kenyan law adopts the real mischief or real prejudice test for disqualification, as established in ***King Woolen Mills & Another v Kaplan & Stratton Advocates LLR 2170 (CAK)***. In that case, an Advocate who had acted as common counsel for both a bank and its borrowers was restrained from later representing the bank against those same borrowers in litigation concerning the validity of the loan documents he had prepared. The Court reasoned that the advocate would inevitably, even if unconsciously, use confidential knowledge acquired during the initial retainer to the disadvantage of the former client.
15. The Respondents argue that the right to counsel of choice is a constitutional right under Article 50, and that the Applicant has not proven actual prejudice. They cite ***William Audi Odode & Another v John Yier & Another*** for the proposition that courts should not tell litigants whom they should hire. However, this right is not absolute. As Meoli J. observed in ***Jopa Vilas LLC v Overseas Private Investment Corp eKLR***, an Advocate may be removed to protect the integrity of the judicial process if there is a potential for breach of confidentiality or serious misconduct.
16. In the present case, the Applicant has raised specific discrepancies in the bank accounts and property lists that the firm itself helped compile. The firm is now tasked with defending the Respondents against allegations that they—and by extension, the firm that advised them—failed to disclose assets. This creates a palpable risk that the firm will use its intimate knowledge of the Applicant's previous positions to undermine her current claims.
17. The most serious allegation concerns the sale of the Deceased's Toyota Prado, registration. No. KBR 434K, to Mr. Charles Wamae, the managing partner of the firm. The Applicant claims the vehicle was sold for Kshs. 3,000,000/= despite being valued at Kshs. 12,000,000/=. The Respondents, in their defence, produce a Sale Agreement dated 23 January 2020,

asserting the sale occurred two years before the Deceased's death and thus the car is not free property of the estate.

18. The Court must consider Rule 9 of the Advocates (Practice) Rules, which provides that no Advocate may appear in a matter where they have reason to believe they may be required as a witness to give evidence. The Respondents contend that the role of counsel as a witness is speculative. However, the reality of this case is that the managing partner is the current owner of an asset that the Applicant seeks to bring into the estate. He is a primary party to a transaction that is now under the judicial microscope. Nonetheless, I note that that Applicant does not dispute the fact that the vehicle was sold 2 years prior to the demise of the Deceased. She only takes issue with the diagnosis of dementia and the fairness of the price.
19. The Advocate's testimony regarding the capacity of the Deceased at the time of the sale and the fairness of the price is essential. He cannot simultaneously be the Advocate arguing for the validity of the sale and the witness testifying to the same facts. Such a dual role blurs the line between argument and evidence, undermining the neutrality of the Court.
20. Furthermore, Rule 6, paragraph 99 of the LSK Code of Conduct prohibits representation where there is a risk that the Advocate's personal interests will materially limit their duties to the client. Buying a client's property—especially one belonging to a person suffering from a cognitive impairment—is a transaction that invites intense scrutiny. Even if the sale was conducted before death, the fact that the firm continued to act for the executors of that client's estate while one partner held an interest in a disputed asset creates a conflict that cannot be cured by disclosure.
21. The Court concludes that the continued representation of the Respondents by M/s Wamae & Allen Advocates is untenable. The firm's involvement in the

very transactions that are now the subject of litigation, coupled with the managing partner's personal interest in an asset the Applicant seeks to retrieve, presents a fundamental conflict. The prayer for disqualification is merited.

### **Rectification of the Certificate of Confirmation of Grant**

22. The Court now addresses the Applicant's Summons dated 23 November 2024, which seeks to rectify the confirmed Grant and an order for the rendering of accounts. The Applicant argues that she has discovered several assets that were deliberately omitted from the initial schedule of distribution, including land parcels, motor vehicles, aircraft sale proceeds, and bank accounts.
23. Under Section 2 of the Law of Succession Act, an estate consists of the free property of the deceased—that which they were legally competent to dispose of during their lifetime and in respect of which their interest was not terminated by death. The Respondents have raised several jurisdictional and substantive hurdles to the inclusion of the contested assets.

### **Immovable Property and Joint Tenancy**

24. The Respondents are amenable to including Land Parcel L.R. No. Ithanga/Ngelelia/Block-1/794, as it is registered solely in the Deceased's name. However, they vehemently oppose the inclusion of Flat Number 8A (registered as I.R. 81036 over LR number 209/12814). They produce an instrument of Lease showing that the Deceased and Gretchen Hellen Sanders held this property as Joint Tenants.
25. In Kenyan property law, the doctrine of survivorship is a hallmark of joint tenancy. As affirmed in *In re Estate of Stephen Cheruiyot Kositany (Deceased) [2019] eKLR*, when one joint tenant dies, their interest is extinguished and the entire property vests automatically in the surviving

tenant. Such property does not form part of the deceased's net intestate estate. The Applicant has not produced evidence of any words of severance that would transform this into a tenancy in common where the Deceased would have held a divisible share. Consequently, Flat 8A is correctly excluded from the estate and belongs solely to Gretchen Sanders Helen.

#### The Toyota Prado KBR 434K

26. The Respondents argue that this vehicle was sold *inter vivos* on 23 January 2020 and thus the Deceased's interest was terminated before death. Under section 34 of the Act, an intestate is only represented by their free property. If a valid transfer occurred, the vehicle cannot be returned to the estate. However, the Applicant challenges the validity of the sale itself, citing the Deceased's dementia and the potential exploitation of his vulnerable state by the *de facto* guardians.
27. While a succession court's jurisdiction is generally limited to administration and not the determination of title validity, it has a duty to ensure that administrators have gotten in all property that should rightfully be there. Given the suspicious circumstances of the sale to the family lawyer at a potential undervalue, the Court directs that while the vehicle remains in its current title, the proceeds of that sale—and an accounting of their use—must be disclosed. If the sale is found to have been a sham or a breach of fiduciary duty by the guardians, the value of the vehicle may be netted off against the Respondents' shares in the final distribution.

#### Blue Sky Aviation Services Limited and the Corporate Veil

28. The Applicant seeks USD 750,000 from the proceeds of an aircraft sale by Blue Sky Aviation. The Deceased was a 50% shareholder in this company. The law is clear: a company is a separate legal person from its members (***Salomon v Salomon & Co Ltd***). An estate is entitled only to the deceased's shares in the company, not to the company's underlying assets or sale

proceeds. This was recently reaffirmed in *Pacific Frontier Seas Ltd v Kyengo [2022] eKLR*, where the Court of Appeal held that beneficiaries cannot claim company property directly.

29. However, the Applicant alleges that the Respondents, acting as guardians of the sick Deceased, used their control over the company to siphon funds. The Court may lift the corporate veil in exceptional cases of fraud or where a company is a mere agent or facade for the shareholders. While the Court will not bring the aircraft proceeds directly into the estate at this stage, the shares in Blue Sky Aviation Services Limited must be properly valued, and any dividends or distributions that were due to the deceased but were diverted must be accounted for by the Administrators.

#### The Tailwinds Family Holdings and DTB Accounts

30. The Applicant challenges the exclusion of two bank accounts at Diamond Trust Bank (DTB) held in the names of 'Tailwinds Family Holdings' and a joint account for the three Respondents. The Applicant provides evidence that these accounts were opened to receive funds from the Deceased's personal accounts at Barclays and Equity Bank, which were closed during his illness.
31. The Court finds the Respondents' current denial of these as estate assets to be disingenuous, particularly as their own Counsel previously listed them as assets of the Deceased in correspondence dated March 2023. If these accounts are the repository of the Deceased's cash, they are held in a constructive trust for the estate. The corporate label of "Tailwinds" cannot be used to hide the Deceased's personal wealth from the other heirs. These accounts are hereby declared estate assets and must be included in the amended Grant.

#### Duty to Account

32. Under Section 83 of the Law of Succession Act, administrators have an absolute duty to produce a full and accurate inventory and account of all dealings with the estate. The Respondents claim this is premature, but the Court disagrees. The joint enterprise of administration has clearly broken down. One administrator, the Applicant, has been excluded from the financial management of the estate, forcing her to rely on bank discrepancies she discovered herself.
33. The Court notes with concern the acknowledged advances made to Jeremiah Muiruri of Kshs. 20,000,000/= and Florence Njeri of Kshs. 6,500,000/= via Doro Ltd. Whether these were wedding gifts or loans, they represent a significant portion of the Deceased's wealth distributed before the formal succession process was concluded. The Respondents' claim that these are not part of the estate because they were joint lenders is a legal conclusion that must be tested against the evidence. To restore transparency, the Court orders a comprehensive accounting of all such advances.
34. The administration of the estate should have been a dignified process of honouring a self-made man's legacy. Instead, it has been marred by a lack of transparency, the exclusion of a co-Administrator, and ethically questionable dealings by both the Kenyan-based Administrators and their legal counsel. The Court's role is to ensure that the four administrators act as one, and where they fail to do so, to impose the necessary supervision.
35. The conflict of interest presented by the firm of Wamae & Allen Advocates is substantial. An Advocate who purchases a disputed asset from a client allegedly suffering from dementia while simultaneously representing the estate's executors cannot remain on the record. The Preliminary Objection, while based on valid procedural rules, must yield to the substantive necessity of hearing these serious allegations. Finally, the discovery of assets like the

lthanga property and the DTB accounts necessitates a review of the confirmation order to ensure an equitable distribution.

36. Consequent upon the combined analysis of the Preliminary Objection and the two substantive applications, I make the following orders:

- (i) The Respondents' Preliminary Objection dated 13 May 2025 is hereby dismissed;
- (ii) The firm of Wamae & Allen Advocates is hereby disqualified and restrained from representing the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents, or any other party, in this Succession Cause or any related litigation. The Respondents are granted forty-five (45) days to instruct new legal counsel.
- (iii) The Certificate of Confirmation of Grant issued on 24 June 2024 is amended and rectified to include:
  - (a) Land Parcel L.R No. ITHANGA/NGELELIA/BLOCK-1/794.
  - (b) Diamond Trust Bank (DTB) accounts No. 0566827001, No. 0381736001, and No. 056682702.
  - (c) Any accrued dividends or liquidating distributions from Blue Sky Aviation Services Limited.
- (iv) An order of *status quo* is hereby issued. All Administrators are restrained from selling, transferring, charging, or in any manner withdrawing funds from any account or dealing with any asset of the estate, including those in the name of Tailwinds Family Holdings Limited, pending further orders of this Court.
- (v) The Respondents are hereby ordered to file in Court and serve upon the Applicant, within sixty (60) days:

- (a) A full and accurate account of all rental income received from the Nyali and Kileleshwa apartments from 2018 to date.
  - (b) Detailed bank statements for all accounts held by Tailwinds Family Holdings Limited and the "Gretch/Florence/Mwaura/Samuel" DTB account from their inception;
  - (c) Documentary proof of the Kshs. 20,000,000/= advance to Mwaura Jeremiah Muiruri and proof of any repayments made.
  - (d) Documentary proof regarding the loan of Kshs. 6,500,000/= to Doro Limited and any subsequent repayments.
  - (e) A full accounting of the proceeds from the sale of the aircraft and the Toyota Prado (Reg. No. KBR 434K).
- (vi)** The Administrators are directed to open a single Joint Estate Account within thirty (30) days. All administrators shall be joint signatories, and all future rental income and estate funds must be deposited into this account.
- (vii)** The Court orders the valuation of all indivisible assets, including the shareholdings and the Nairobi Block properties, within ninety (90) days, the cost of which shall be borne by the estate.
- (viii)** The costs shall be in the cause.
37. In parting, I wish to remind the parties that as Administrators, they hold the property of the Deceased in trust for the beneficiaries. The current path of litigation and mutual recrimination is a breach of that trust. Failure to comply with these orders will result in the immediate revocation of the Grant and the appointment of the Public Trustee to finalize the administration.

**DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEB 2026**

**HELENE R. NAMISI**  
**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicant: Mr Ogola  
For the Respondents: Mr Otieno  
Court Assistant: Lucy Mwangi

Ruling