



In re Estate of Pia Swatton Heusi aka Pia Swatton (Deceased) (Succession Cause E083 of 2024) [2026] KEHC 1418 (KLR) (9 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E083 OF 2024
G MUTAI, J
FEBRUARY 9, 2026
IN THE MATTER OF THE ESTATE OF PIA
SWATTON HEUSI AKA PIA SWATTON (DECEASED)**

BETWEEN

DORCAS CHEPYATOR KOMEN PROTESTOR

AND

**USHWIN KHANNA AKA USHWIN DWARKA KHANNA 1ST EXECUTOR
ANNA MCCONNELL AKA MARGARET ANN MCCONNELL .. 2ND EXECUTOR**

RULING

1. Ms Pia Swatton-Heussi, aka Pia Swatton, died on 27th April 2024 at the General Hospital. At the time of her death, she was 78 years old.
2. According to the letter written by Mohamed M Musa, Area Chief, Mwembe Tayari Location, the deceased left behind no beneficiary but only a will. She was not married and had no children or siblings. Her parents were, by then, deceased.
3. The deceased died testate. In her will dated 17th October 2000, she appointed Anne McConnel and Ushwin Khanna as the executors and the trustee of the said will.
4. The executors filed a petition dated 7th October 2024, for the grant of probate of her written will. In the petition, the estate of the deceased was estimated to be worth Kes 45,300,000/-. The only liability noted was a debt of Kes 1,342,191/- owed to Ms Monika Ludascher.
5. The grant of probate of the written will of the deceased was issued to the named executors on 30th January 2025. The executors filed a summons for confirmation of the grant on 3rd July 2025. In the said summons, they proposed that the estate be distributed in accordance with the will of the deceased.



6. Through an affidavit of protest sworn on 29th July 2025, the protestor, Dorcas Chepyator Komen, objected to the confirmation of the grant on account of a debt the deceased allegedly owed her. She deposed that the deceased was a donee of a power of attorney she (Dorcas) executed, vide which the deceased collected rents due to her from tenants renting her rental apartments on Plot No 239/IV/MN and Plot No 240/IV/MN. Pursuant to the said power of attorney, the deceased received rent income from the protestor's tenants and issued receipts. However, the deceased did not remit the money to her.
7. The protestor accused the 1st executrix of destroying records, and both executors of not disclosing all the material information, in particular the deceased's indebtedness to her. She prayed that the Court, in the interest of equity and justice, not confirm the grant,

“until and unless an appropriation for my rent receivables is considered by the said executors of the deceased war.”
8. The protestor attached to her protest an alleged power of attorney, receipts allegedly issued by Pia Swatton to tenants upon receipt of rent, evidence of payments made by the protestor to the deceased on account of her services, and for maintenance of the protestor's properties. In a letter dated 14th August 2024, the amount owed by the deceased to Ms Dorcas Chepyator Komen was given as Kes 17,258,236/-, after taking into account expenses and charges.
9. The protest is opposed. The 2nd executor deposed to an affidavit sworn on 20th August 2025, in which he denied that the deceased owed the protestor any money. He averred that it was in fact the protestor who owed the deceased money, as evidenced by a statement of account the deceased prepared, which allegedly showed that as at 29th February 2024, the deceased was owed Kes 1,054,202/-.
10. Mr. Khanna deposed that this Court had no jurisdiction to determine the matter. He wondered why the protestor kept sending the deceased money if it were true that she was owed money. He questioned the decision of the protestor to wait until after the deceased died to make a claim.
11. On her part, the 1st executrix, Margaret Ann McConnell, deposed to an affidavit sworn on 20th August 2025 in which she denied that she ever instructed any worker to burn documents as alleged in the affidavit of Charles Mboya Msafiri, sworn on 26th March 2025. She stated that the said affidavit had false allegations. She contended that she had been in the house of the deceased on a few occasions to collect important documents for safekeeping, which she handed over to the estate's advocates for safekeeping.
12. Ms McConnell deposed that she replaced some of the hard outer covers of the spring files and had the old covers burnt after the documents had been refilled, “as they were of no further use.”
13. The matter was canvassed by way of Written submissions. The submissions of the protestor are dated 11th November 2025. Her counsel contended that the protestor was a creditor of the estate whose liability was neither captured nor disclosed in the application for confirmation of grant dated 3rd July 2025, contrary to provisions of section 51(2) (b) of the *Law of Succession Act*. It was submitted that the alleged indebtedness arose out of a relationship between the deceased and the protestor, which was acknowledged by Mr. Ushwin Khanna in his affidavit sworn on 20th August 2025. Mr. Kinyanjui, learned counsel for the protestor, submitted that it was necessary to establish what amount was owed before the grant could be confirmed, and not after. In support of the said contention, he relied on the case of *Gerald Ambosa Liona & 4 others v Ernest Shipoche Liona* [2020] KEHC 8582 (KLR).
14. Counsel contended that after a grant is confirmed, the next step would be the distribution of the estate. Thus, it was necessary that the jurisdiction of the Court under Rule 40(6) of the Probate & Administration Rules, 1980, be invoked before, and not after, the confirmation of the grant.



15. The executor's submissions are dated 24th November 2025. The petitioners submitted that the summons for confirmation of the grant was listed for bearing on 30th July 2025. On the said dated the executors, submitted, it was removed from the list of files in the cause list
- “so that the matter could not proceed to be heard on that day” and that this was so because “we discovered that the file had been removed to enable the protestor to file her application dated 29th July 2025, being the same date that the hearing of the confirmation of grant was listed.”
16. It was contended that the submissions of the protestor were filed out of time and without leave and should be struck out.
17. Regarding the merits of the protest, it was urged that it was the protestor who owed the estate money and not the inverse. Counsel submitted that the alleged debt had not, in any event, been acknowledged by the executors and ought to have been proved before a competent Court. Reliance was placed on the decision of the Court in the case of *in re Estate of Rauni Mbutu (deceased)* [2016] eKLR.
18. Further, it was urged that the disputes between the estate and third parties could not be determined by the Family Court. Counsel relied on the case of *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] KEHC 8289 (KLR).
19. The executors deprecated the decision of the protestor to wait until the deceased died before making a claim. They urged that the claim had not crystallized. They therefore prayed that the protest be dismissed and that the Court do proceed to hear the summons for confirmation of the grant.
20. I have considered the protest, the response thereto, as well as the submissions of the parties. The protestor's protest is based on her alleged status as the creditor of the estate. The issue, then, as far as I can tell, is whether she is in fact a creditor of the estate.
21. Before undertaking an analysis and determination of the matter, I must first deal with a preliminary issue. This Court was asked to strike out submissions for being filed out of time. Should it do so? In my view, it shouldn't. The delay was not inordinate and does not appear to have prejudiced the executors.
22. It is not in dispute that the alleged debt hasn't been subjected to judicial process. There is no decree of any competent Court. The alleged debt has not been admitted as being due and owing by the estate by the executors. Can such an alleged debt be the basis of a protest under Rule 40(6) of the Probate & Administration Rules?
23. The duty of the Probate Court is to validate the will of the deceased, appoint executors, ensure orderly payment of debts, taxes, and the distribution of the estate of a deceased person to the rightful heirs. What the Court distributes is the net estate of the deceased, that is to say, what remains after payment of all lawful debts.
24. The probate Court does not ascertain whether the debts are, in fact, owed. That duty falls elsewhere. This is what the learned judge, in the case of *in re Estate of Rauni Mburu* [2016] eKLR, referred to as the debt having crystallized. In the said case, Mabeya, J., stated that:-
- “ 17. To my mind, what the court was saying in the said case is that the role of the family court is well set out in the Act, to ascertain the assets, the liabilities, if any, the beneficiaries, and determine the mode of distribution of an estate, period. It is only where one has an established claim against the estate that has already crystallized that he can litigate it before a family court. That claim



is to be considered as a liability to the estate. This court, in my view, cannot be called upon to ascertain whether or not one has a right to an estate of the deceased where such a right has not yet crystallized. The right must first be shown to have crystallized before the family court can entertain it as a liability in succession proceedings.”

25. The protestor is not a beneficiary of the estate. She is a third party to it. I agree with the executor’s counsel that this Court shouldn’t entertain disputes between the estates of deceased persons and third parties.

26. I am guided by the decision of Musyoka, J In re Estate of Alice Mumbua Mutua (Deceased) [2017] KEHC 8289 (KLR), where the learned judge stated as follows:-

“29. Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation.”

27. I note the foregoing notwithstanding that the protestor appears to have slept on her claim. No reason has been given for the decision to wait until the deceased died before making her claim. There is doubt as to who, between the deceased and the protestor, owed the other money. The protestor, if she is to be believed, regularly sent money to the deceased, at a time when the protestor ought to have been receiving money from the decedent. Questions regarding the probative value of the documents relied upon abound, which are best left to the Civil Court.

28. It is clear that I have not found merit in the protest. The same is completely without merit, frivolous, vexatious, and an abuse of the Court process. The protest is accordingly dismissed.

29. Costs are at the discretion of the Court. The Probate Court does not normally award costs. In this case, the Court will not depart from the practice, notwithstanding the fact that it has strongly deprecated the conduct of the protestor.

30. The orders that commend themselves to me are the following: -

1. Protest dated 29th July 2025 is hereby dismissed;
2. Parties will bear their own costs;
3. Summons for confirmation of the grant shall be heard on 24th February 2026. The beneficiaries will attend the Court virtually.

31. It is so ordered.

DATED AND SIGNED ON THE 9TH DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr. Deche, & Mr. Ushwin Khanna, for the Executor and the Executrix;

Mr. Kinyanjui, for the Protestor; and



Bancy – Court Assistant.

