

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**SUCCESSION CAUSE NO. 14 of 2018**  
**IN THE MATTER OF THE ESTATE OF ESTATE OF WINI CHIKU MBOTELA**  
**(DECEASED)**

**RULING**

1. The proceedings herein relate to the estate of Wini Chiku Mbotela who died testate on 5.12.17 at Kidutani/Mawamba. A grant of probate of written will was on 11.10.19 issued to Arthur Hill Buki, the executor named in the deceased's will dated 23.12.14.
2. Before the Court for determination is the summons for confirmation of grant dated 17.1.23 seeking distribution of the estate of the deceased in terms set out in her will.
3. The Application is opposed by David Kibwana Mbotela (David), a son of Loviser Rehema Mbotela, a daughter of the deceased, *vide* an affidavit of protest dated 2.4.25. He averred that under the deceased's will, his mother was to receive a 2.5 acre portion of title number Kilifi/Mtwapa/1950 (Plot 1950); that the deceased subdivided Plot 1950 into 4 plots; that Plot 5619 was registered in Loviser's name, Plot 5621 was registered in Nancy Mbotela, Plot 5622 in the name of Emmanuel Mbotela and Plot 5309 in the name of Martin Nyongesa Simiyu; that that the deceased sold 0.5 acre portion of Loviser's share to Isnab Properties Limited at a consideration of Kshs. 4,000,000/= to raise funds to conclude the subdivision of Plot 1950 and to trace the title documents for Kwale/Majoreni/84 and Kwale/Majoreni/85 (the Kwale properties); that following default by Isnab Properties Limited, the property was sold and transferred to Martin Nyongesa Simiyu (Martin) at consideration of Kshs. 2,500,000/= on 28.5.19; that a joint account was opened in the names of Nancy Mbotela, Emmanuel Mbotela and David, in which Kshs. 1,500,000/= was deposited and equally shared among Nancy Mbotela, Emmanuel Mbotela, Julia Oloya, Yvonne and David.
4. David now contends that the Executor must render account of the remaining funds. Further that the 0.5 acres sold from Loviser's share should be considered as a liability payable from the remaining estate in terms of clause 3 of the Will of the deceased; that the said liability should be paid out of the property in Clause 5 of the Will which is the family home and which Nancy seeks to sell.
5. David further stated that the said liability cannot be recovered from the Kwale properties which are still in the name of his grandfather David Mbotela. Further, that the grant cannot be

confirmed to include the said Kwale properties as they do not form part of the estate of the deceased.

6. In her affidavit sworn on 25.4.25 in response, Nancy admitted David's averments regarding subdivision of Plot 1950 and his mother's entitlement to 2.5 acres thereof, as well as the sale of 0.5 acres. She averred that the proceeds of sale were to settle rates for the Mtwapa and Bombolulu properties and for sub-division of Plot 1950; that Martin paid Kshs 4,000,000/- in several instalments from 8.12.16 to 2018. The payment was made by cash or by mpesa to the deceased or to her; that when sent to her the deceased would direct her to pay the surveyor, rates or for the deceased's upkeep; that as at 3.1.18, Martin had paid a total of Kshs 2,238,000/- leaving a balance of Kshs 1,762,000/-; that when she, David and Emmanuel opened the joint account, they did not consult or notify the Executor; that after sharing the sum of Kshs 1,500,000/- among the beneficiaries, a further sum of Kshs 239,800/- was disbursed to some of the beneficiaries namely Emmanuel - Kshs 110,000/-, Nancy - Kshs 77,300/- David - Kshs 47,500/- and Leah - Kshs 5,000/-
7. Nancy further stated that this Court has no power at all to alter the will of the deceased and can only interpret the same and ensure that the deceased's intentions are upheld to the fullest extent possible. She denied that she was seeking to sell the deceased's residence in Bombolulu and that the same was bequeathed to her son David Victor Amani Mbotela who is an adult. She also admitted that the Kwale properties do not form part of the estate of the deceased. Nancy urged the Court to disregard David's protest and confirm the grant.
8. The Executor swore an affidavit on 25.4.25 opposing the affidavit of protest in which he restated the averments of Nancy. He averred that he is not aware of the sale of the 0.5 acres or the purpose thereof; that as executor, he is not aware of any liabilities of the estate and that it would be irregular for David to consider the sale of the 0.5 acres as a debt owed by the estate as the same was sold by the deceased prior to her passing on; that this Court has no power at all to alter the will of the deceased as proposed by David; that he is unable to render full accounts of the estate of the deceased herein as he has not received or collected any monies in respect of the estate; that this Court ought to declare the Kwale properties as a void bequest as they cannot be distributed in the estate of the deceased herein, the same not belonging to her. The Executor urged the Court to disregard the protest raised by David and proceed to confirm the grant.
9. After carefully considering the issues raised in the affidavit of protest as well as the affidavits of Nancy Mbotela and the Executor in response thereto, the Court has formed the opinion that

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the justice of this case requires that the matter be heard by way of *viva voce* evidence. I accordingly withhold the ruling pending such hearing.

**DATED, SIGNED and DELIVERED in MALINDI this 17<sup>th</sup> day of April 2026**

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**M. THANDE**  
**JUDGE**