

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO E002 OF 2021

**IN THE MATTER OF ESTATE OF WILLIAM NYALOYA MAMBOLEO
(DECEASED)**

AND

**FLORENCE ANYANGO.....1ST PETITIONER
ALLOYCE MARK OKELLO.....2ND PETITIONER/OBJECTOR**

AND

**JOSEPH MANY MAMBOLEO.....2ND OBJECTOR
FREDRICK OJULA R. MAMBOLEO.....3RD OBJECTOR**

JUDGMENT

1. This matter relates to the succession of the estate of the late [, William Nyaloya Mamboleo, who died intestate on 23rd June 2003. The deceased was survived by several dependants and beneficiaries, whose identities and entitlements form the central dispute in this cause.
2. On 9th May 2021, this Court issued letters of administration intestate to Florence Anyango, and Alloyce Mark Okello following a petition based partly on a chief's letter dated 19 October 2020, which listed eleven beneficiaries:
 - a. Florence Anyango (widow)
 - b. Alloyce Mark Okello (son)
 - c. Fredrick Mamboleo (son)
 - d. Paul Mamboleo (son)

- e. Charles Mamboleo (son)
 - f. Johanes Mamboleo (son)
 - g. Joseph Manny Mamboleo (son)
 - h. George Owira
 - i. Evelyne Anunda
 - j. William Mamboleo
 - k. Christopher Pambu Ogolla
3. The 1st petitioner, describes herself as the surviving widow of the deceased and the lawful administrator of his estate.
4. The core controversy revolves around:
- a. The validity of the appointment of Florence Anyango as the administrator.
 - b. The identification of all lawful beneficiaries of the deceased's estate, including the immediate beneficiaries of any predeceased dependants.
 - c. The fair and transparent distribution of the estate assets in accordance with the law.
5. The 1st petitioner depones that she is the only surviving widow of the deceased and has undertaken her duty to administer the estate for the benefit of all lawful beneficiaries, including herself. She states that she initially instructed an advocate to act for the petitioners after reaching an agreement with the 2nd petitioner and other beneficiaries. However,

the 2nd petitioner later changed his mind after the relevant documents had been typed, complicating the process.

6. The 1st petitioner avers that the objectors are not bona fide beneficiaries but are instead are keen on abusing the court process by extensively faulting the succession proceedings without providing constructive or suitable input for the identification and inclusion of rightful beneficiaries. She emphasizes that her primary goal is to ensure a comprehensive administration that includes every lawful beneficiary.
7. The objectors, in their affidavit of objection, Fredrick Ojula and Pamela Khayosa challenge the 1st petitioner's suitability to serve as the administrator. They imply that her prior failure to obtain an identity card through the 1st objector's assistance raises questions about her bona fides. They further allege that the proposed mode of distribution is skewed and does not account for all beneficiaries, particularly those from the lineage of beneficiaries who may have predeceased the deceased.
8. In an affidavit of Fredrick Ojula Mmboleo dated 6th July 2021, he identifies himself as a son from the third wife, Matilda Dima. He insists that some listed beneficiaries such as Everlyne Anunda, Christopher Pambu Ogola, George Owira Ogola, and William Mmboleo are strangers as some identity documents and signatures were not authorized as the first petitioner intends to defraud the estate. He

seeks revocation and a fresh process. He sets out that the deceased had four wives, who are all deceased, namely:

- a. Ester Akumu
- b. Margaret Omolo
- c. Matilda Dima
- d. Alice Obuar

9. He insists that the 1st petitioner was not a wife of the deceased and that she was an aunt to the deceased's second wife and was married elsewhere. He avers that she holds two different identity cards and is attempting to benefit fraudulently, and, she has four children with another man, namely

- a. Benta Auma
- b. Jonathan Onyango
- c. Roselyne Awuor
- d. Judith Achieng

10. The 2nd petitioner denies signing any consent to be co-petitioner, the said signatures were forged and many beneficiaries were left out including:

- a. Christine Odinga
- b. Jane Omulo
- c. Helida Magunda
- d. Aggrey Ochieng

11. The 2nd objector, Joseph Manny Mamboleo depones that he is a biological son to the deceased and that the 1st petitioner is not his biological mother. In addition, he says that the proceedings were filed secretly without consent, the petition is defective and marred with forged signatures, gazette carried a wrong date of death, true beneficiaries were not involved and that he ranks in priority.
12. In a joint affidavit of Alloyce Mark Okello and Joseph Manny Mmboleo, they state:
 - a. They are objectors in summons for rectification
 - b. That the 1st petitioner cannot be relied upon
 - c. Identity cards were taken without authority
 - d. The chief's list contradicts court list
 - e. The 1st petitioner selectively included some of her children who she had sired in another marriage.
13. Several beneficiaries swore affidavits in support of Florence.
14. Linah Atieno Mamboleo states that:
 - a. She is a child of the deceased
 - b. The petition was filed with consent of all beneficiaries
 - c. The 1st petitioner is the only surviving widow
 - d. The 1st petitioner sired two children with the deceased. (Roselyne Awuor and Judith Achieng)
15. Mary Omwanda Ogolla in an affidavit dated 13th January 2022, she states:

- a. She is a daughter through Alice Obwar (4th wife)
 - b. The 1st petitioner is the only surviving widow
 - c. That the 1st petitioner buried the deceased
 - d. That the 1st petitioner resides on the estate land to date
16. Christopher Pambu Ogolla in his affidavit claims that the petition was filed with full consent, no stranger included.
17. George Owira Ogolla in his affidavit states that:
- a. The deceased was polygamous and had five wives
 - b. The 1st petitioner is the only surviving wife
 - c. No strangers were included
18. The 1st petitioner in her replying affidavit dated 29th June 2022, she states that:
- a. She was the fifth wife, married in 1982.
 - b. She lived with the deceased and buried him
 - c. She sired two children with him (Roselyne Awuor and Judith Achieng)
19. The 1st petitioner further lists the full names of the beneficiaries and even groups them in accordance with their houses.
20. First wife's house, Esther Akumu (now deceased and buried where she remarried). The children of the first house are:
- a. Alloyce Mark Okello (son)
 - b. Paul Baridi Orlando (son)
 - c. Elida Magunda (daughter)(deceased)

21. Second wife Margaret Omollo (deceased) had no children.
22. The third wife's house (Mathilda Dima) (deceased). They sired the following children with the deceased:
 - a. Charles Rajwayi Mamboleo (son)
 - b. Fredrick Ojula Mamboleo (son)
 - c. Johannes Okumu Mamboleo(son)
 - d. Joseph Many Mamboleo (son)
 - e. Rose Achieng (daughter)
 - f. Hellen Aluoch (daughter)
23. The fourth wife's house, Alice Obwar (deceased). They had the following children:
 - a. James Odhiambo Ogola (son)(deceased)
 - b. Christopher Pambu Ogolla (son)
 - c. George Owira Ogola (son)
 - d. Julius Nyalloya(son) (deceased)
 - e. Mary Omwanda Ogola
 - f. Linah Atieno Ogola.
24. The 1st petitioner further says all beneficiaries were summoned by the chief, some refused to sign, the chief corrected an earlier letter, and she ranks first in priority under section 66 of the Law of Succession Act.
25. She further states that the ID number used as Florence Aloo was fraudulently processed by Fredrick and his wife; she reported to the

police and they are facing criminal charges Kakamega CMCR No. 714 of 2019.

26. The objectors, however, have not filed any formal list of alleged omitted beneficiaries or provided documentary evidence to support the existence and identities of such persons, contrary to the duty of an objector to assist the court positively.

27. From the pleadings and submissions, the following issues fall for determination by this court:

- a. Whether Florence Anyango is a suitable person to be confirmed as the administrator of the deceased's estate.
- b. Who are the lawful beneficiaries of the deceased's estate
- c. What is the appropriate mode of distribution of the deceased's estate
- d. Whether the objectors' protest has merit.

Analysis

28. The applicant's prayers seek the revocation of the grant of letters administration intestate herein together with all consequential orders. Section 76 of the Law of Succession Act empowers the court to revoke or annul a grant of representation. On whether grounds for revocation have been established, **section 76 of the Law of Succession Act** provides:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:

(b)that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c)that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;”

29. I therefore treat this application as one seeking the revocation letters of administration issued to the 1st and 2nd petitioners. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

30. In addition, **Section 76(a)(b) of the Law of Succession Act** provides for the revocation of the grant:

“(b)that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c)that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;”

31. This cause is governed by the Law of Succession Act, Cap 160. As the deceased died intestate, the distribution of his estate is governed by **Section 40** of the Act considering he was in a polygamous setting. The overriding duty of an administrator and the court is to identify all dependants and beneficiaries and to distribute the net estate in accordance with the law.

“(1)Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2)The distribution of the personal and household effects and the residue of the net intestate estate within each house shall

then be in accordance with the rules set out in sections 35 to 38.”

32. Section 66 of the Laws of Succession Act provides a hierarchy of preference for granting letters of administration. A surviving spouse ranks high in this preference. Florence Anyango has presented herself as the surviving widow. Her possession of a National Identity Card bearing her name, which she applied for independently, is prima facie evidence of her identity. The alleged failure of a prior application facilitated by Fredrick Ojula does not, in itself, disqualify her. An administrator’s core duty is to administer the estate diligently and impartially for the benefit of all. **Section 66 (a)(b) of the Laws of Succession Act** says:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;”

33. The objectors have not provided concrete evidence of her unsuitability, such as proven dishonesty, waste of estate assets, or incapacity. Their allegations are generalized. Furthermore, the fact that she instructed an advocate and attempted to proceed with the agreement of other beneficiaries indicates an effort to proceed lawfully. The Court finds Florence Anyango fit and proper to be confirmed as the administrator of the estate. In the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000**, Mwita J. made remarks on the guiding principles for the revocation. He stated;

“Power to revoke is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

34. On the identification of lawful beneficiaries, the duty to identify all beneficiaries is a cornerstone of succession law. A partial or exclusionary administration is illegal and voidable. Concealment renders the entire proceeding defective. **In Kagau & another v**

Kagau & another (Civil Appeal 477 of 2018)
[2025] KECA 696 (KLR) (11 April 2025), it was held that:

“Failure to disclose all legal heirs constitutes a valid ground for revocation of a grant. The High Court, on a preponderance of all the facts and evidence placed before it, found that the appellants had knowledge of the 1st respondent’s relationship with the deceased and the children’s dependency but omitted them from the list of beneficiaries, making the grant defective.”

35. On the rights of grandchildren, where a child of the deceased has predeceased him, the children of that predeceased child can inherit their parent’s share in equal portions. This is the principle of representation, which is fundamental to ensuring the lineage of a deceased beneficiary is not disinherited. The 1st petitioner’s stated duty to include every dead beneficiary and their immediate beneficiaries, aligns perfectly with this legal requirement. In the matter of the **Estate of Veronica Njoki Wakogoto (Deceased) [2013] KEHC 1930 (KLR)**, the court held that;

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own

parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant's mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant's deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased."

36. The petitioners must provide a verifiable and complete list of all the deceased's children. For any child who is deceased, the full names, identity document numbers, and birth certificates of their children must be provided. The objectors, if they claim certain persons are omitted, have a duty to specifically name them and provide supporting evidence. Vague protests are unhelpful and amount to an abuse of the court process, as alleged by the 1st petitioner. In **Evans Nyakwana v Cleophas Bwana Ongaro [2015] eKLR** it was held that:

"As a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the Evidence Act, Chapter 80 Laws of Kenya.

Furthermore, the evidential burden...is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side."

37. On the distribution of the estate, where an intestate leaves a surviving spouse and children, the estate shall devolve as prescribed under **Section 35 of the Laws of Succession Act**. The surviving spouse is entitled to a life interest in the whole estate, with the absolute reversion to the children upon her death. Alternatively, if the estate comprises assets like land, a practical and common approach is to assign the spouse a personal and absolute share, with the remainder divided equally among the children.

"Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:

(a)the personal and household effects of the deceased absolutely; and

(b)a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.”

38. Any distribution order from this court can only be made after the final and verified list of beneficiaries is settled. The proposed distribution must clearly state the share for Florence Anyango as the widow, and the equal shares for each living child and the collective share for the children of any predeceased child, to be held in trust.

39. On the merits of the objectors’ protest, Fredrick Ojula and Pamella Khayosa, bear the burden of proof. They have failed to discharge this burden. They have not:

- a. Provided a list of specific, allegedly omitted beneficiaries with evidence.
- b. Proposed a constructive alternative for administration or distribution.

40. Their protest appears obstructive. The court agrees with the 1st petitioner’s characterization that fault-finding without positive input undermines the process. The protest is hereby found to lack merit and is overruled.

Conclusion

41. Succession proceedings are meant to provide a fair, efficient, and conclusive mechanism for the devolution of a deceased person’s estate. This objective is defeated by generalized objections and

sustained conflict. The law requires a definitive and inclusive identification of all who have a right to benefit. Submissions do not constitute evidence at all. Cases are decided only on evidence on record. The Court of Appeal was more succinct in that submissions cannot take the place of evidence when they addressed the question in the case of **Daniel Toroitich Arap Moi v. Mwangi Stephen Muriithi & Another [2014] eKLR** as thus:

“ Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.”

Orders

42. Florence Anyango is hereby confirmed as the sole legal administrator of the estate of the late William Nyaloya Mmboleo.
43. Florence Nyaloya is directed, within 60 days of this order, to file a further affidavit annexing a Schedule of all lawful beneficiaries. It must

be inclusive of the surviving and deceased children of the deceased.
Listed beneath each predeceased is their children.

44. The administrator shall serve this affidavit and schedule on the objectors. Any party claiming that the schedule is incomplete or incorrect shall, within 30 days of service, file an affidavit specifically identifying the omitted persons and attaching conclusive documentary proof of their relationship to the deceased.

45. Upon the court's approval of the final Schedule of beneficiaries, the administrator shall file a proposed scheme of distribution conforming to Section 35 of the Law of Succession Act.

46. The administrator shall have the power to access, collect, and preserve all estate assets. She is prohibited from selling, transferring, or charging any immovable property or substantial movable asset of the estate until a distribution schedule is confirmed by the court.

47. Should the objectors fail to provide specific, evidence-based particulars of omitted beneficiaries as directed above, they shall henceforth be barred from participating in these proceedings unless with express leave of the court.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 29TH
DAY OF APRIL, 2026.**

**S.MBUNGI
JUDGE**

In the presence of:-

CA: Angong'a

Ms. Mukwana for the objectors present online

Ms Busika for the Petitioners present online.