

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE NO. E3121 OF 2024

IN THE MATTER OF THE ESTATE OF INDUKUMAR HARILAL JASANI
(DECEASED)

TRUSHMEETA DHANAK	APPLICANT
	VERSUS	
DHARMESH JASANI	1ST RESPONDENT
RAKHEE JASANI	2ND RESPONDENT

RULING

1. The matter placed before this Court for determination strikes at the very heart of the philosophical and equitable underpinnings of the Law of Succession in Kenya. The administration of a deceased person's estate is an undertaking imbued with the highest degree of solemnity. It is a process that demands absolute fidelity, transparency, and an unwavering commitment to the strictures of the law. Those appointed as administrators are elevated to the status of fiduciaries; they do not act for their own enrichment or to advance personal vendettas, but act as the temporal custodians of the deceased's earthly acquisitions, bound by an inflexible duty to gather, preserve, and distribute the estate in absolute alignment with the deceased's intentions and the superseding interests of the beneficiaries.

2. When the primary beneficiary of an estate is labouring under a pronounced legal and mental incapacity, the protective mantle of the Court—its *parens patriae* jurisdiction—is profoundly activated. In such instances, the Court's supervisory role ceases to be merely administrative and becomes deeply protective. The Court must scrutinize the conduct of the Administrators with heightened vigilance to ensure that the vulnerability of the incapacitated beneficiary is not exploited. The present dispute, crystallized in the Summons dated 15 August 2025, requires the Court to navigate a deeply fractured familial landscape, balancing stringent statutory procedural rules against the paramount constitutional imperatives of privacy, dignity, and equitable justice.
3. The Applicant invokes the jurisdiction of this Court pursuant to section 66 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules. She seeks the intervention of the Court in the ongoing administration of the estate of the Deceased by the Deceased's biological children, the Respondents.
4. The Applicant seeks two primary, alternative prayers. First, she prays that the Grant of Letters of Administration Intestate (which the record demonstrates is, in fact, a Grant of Probate with Written Will Annexed) issued on 17 June 2025 to the Respondents be amended to include her as a Co-Administrator. Second, in the alternative, she prays that the Court be pleased to revoke the Grant entirely and order that a new Grant do issue to the Public Trustee to administer the Deceased's estate in the interest of justice.
5. The Deceased passed away on 13 February 2022. The Deceased died testate, having executed a written Will dated 17 June 1992. Under the terms of this testamentary instrument, the Deceased bequeathed his entire worldwide estate to his surviving widow, Mrs. Vilas Jasani, and appointed her as the sole Executrix.

6. Accordingly, Mrs. Jasani initiated the statutory process by petitioning the Court for a Grant of Probate. However, the smooth progression of her Petition was abruptly halted. The current Applicant, a niece to the widow, alongside Dr. Paresh Kumar J. Patel, a long-standing confidant of the Deceased, filed an objection dated 6 April 2023. The objection was not malicious but protective; it was premised on profound concerns regarding Mrs. Jasani's mental capacity to undertake the rigorous duties of an Executrix, citing a documented history of age-related memory loss and cognitive decline.
7. Responding to the objection, the Court ordered a formal mental and medical assessment of the widow. The medical evaluation confirmed the apprehensions raised by the objectors. The Court formally determined that Mrs. Jasani was suffering from advanced cognitive decline and was legally incapable of performing the responsibilities of an administratrix or executrix under the provisions of the Law of Succession Act.
8. With the sole Executrix disqualified by reason of mental incapacity, the statutory mechanisms under the Law of Succession Act were engaged to identify alternative administrators. The Respondents—Dharmesh Jasani and Rakhee Jasani—being the biological children of the Deceased and the stepchildren of the incapacitated widow, stepped forward. They petitioned the Court for a Grant of Letters of Administration with written Will Annexed, arguing their priority under the prescribed lines of descent established by the Act. Following the requisite statutory processes, including the publication of a 30-day notice in the Kenya Gazette which attracted no formal objections at that specific juncture, the Court issued the Grant to the Respondents on 17 June 2025.

9. Subsequently, the Respondents filed a Summons for Confirmation of Grant of Probate on 7 October 2025, seeking the final judicial sanction to distribute the estate in accordance with the Deceased's Will. As the Will devised the entirety of the assets to their incapacitated stepmother, the Administrators were ostensibly seeking authority to transfer the estate to her benefit.
10. However, the relative tranquillity of the proceedings was ruptured by the Applicant's Summons of 15 August 2025, which forms the subject of this Ruling. The Applicant alleges that the Respondents are antagonistic towards their stepmother, have exhibited a pattern of neglect and concealment, and cannot be trusted to administer the estate in her best interests. The adversarial posture of the parties escalated exponentially with the filing of the Respondents' Replying Affidavits. In a highly unusual, unprecedented, and legally contentious manoeuvre, the 1st Respondent attached to his Replying Affidavit a document marked as Exhibit "DJ-2", which purports to be the private, living Will of the incapacitated widow, Mrs. Vilas Jasani, dated 31 May 2022, and drafted by the Respondents' own legal counsel, Coulson Harney LLP (Bowmans).
11. The exhibition of this highly confidential document, belonging to a living person who is currently under a legal disability, has become the fulcrum of the Applicant's argument for the immediate revocation of the Grant, raising profound questions regarding breach of privacy, conflict of interest, and fiduciary malfeasance.

The Applicant's Case

12. The Summons dated 15 August 2025 seeks the following orders:
 - (i) The Grant of Letters of Administration Intestate issued on 17 June 2026 to Dharnesh Jasani and Rakhee Jasani be amended to include

the Applicant as Co-Administrator of the Estate of the late Jasani Indukumar Harilal Naranji;

- (ii) In the alternative and without prejudice to prayer 1 above, this Honourable Court be pleased to revoke the Grant herein and order a grant do issue to the Public Trustee to administer the Deceased's estate in the interests of justice;
- (iii) Cost of the application be provided for.

13. The Applicant's case is meticulously detailed in her Supporting Affidavit sworn on 15 August 2025, and corroborated by the Supporting Affidavit of Dr. Paresh Kumar J. Patel, sworn on the same date.
14. The Applicant depones that she is the niece of the Deceased's widow, Mrs. Vilas Jasani, and has maintained a deeply supportive and protective relationship with her aunt. The Applicant places heavy reliance on the fact that the Deceased's Will unequivocally names the widow as the sole beneficiary of the estate. She narrates that following the Deceased's passing, she took her aunt into her home in Zanzibar to provide necessary care, highlighting her active involvement in safeguarding the widow's welfare prior to the widow's return to the United Kingdom.
15. The gravamen of the Applicant's apprehension is that the Respondents, being stepchildren who allegedly harbor historical animosity towards the widow, will inevitably sideline, marginalize, or unfairly treat the vulnerable beneficiary during the administration process. The Applicant contends that the Respondents have already demonstrated a propensity to act without full transparency or consultation, and that they lack the requisite goodwill to prioritize the needs of a mentally incapacitated beneficiary.
16. To substantiate the allegations of familial discord and to illuminate the Deceased's own apprehensions regarding his children's disposition towards

their stepmother, the Applicant relies heavily on the Affidavit of Dr. Paresh Kumar J. Patel. Dr. Patel depones that he was a long-time friend and confidant of the Deceased. Crucially, Dr. Patel annexes text messages (marked as Exhibit "PKP 1") exchanged with the Deceased prior to his demise. In these digital communications, the Deceased explicitly articulated profound worries about his wife's deteriorating memory and specifically entreated Dr. Patel to safeguard her interests and well-being after his death, expressing implicit doubt that his own biological descendants would adequately fulfill this protective role. Dr. Patel asserts, from his personal knowledge, that the Respondents were never on good terms with the widow and are highly unlikely to prioritize her needs given her advanced age, limited means, and mental frailty.

The Response

17. The Respondents mount a robust and aggressive defence against the Summons, articulated through the Replying Affidavits of the 1st Respondent sworn 9 October 2025 and 2nd Respondent sworn 7 October 2025.
18. The Respondents firmly assert their statutory entitlement to administer the estate, grounding their claim on their undisputed status as the biological children of the Deceased. The 1st Respondent depones that there is no pending application for the provision of dependants, and that all assets comprised in the Deceased's Will shall devolve to him and his sister in accordance with the law, as they are committed to faithfully administering the assets per the terms of the Will. The 2nd Respondent's affidavit mirrors these assertions, confirming her agreement with her co-administrator and opposing the Applicant's summons in its entirety.

19. The most contentious element of the Respondents' pleadings is the inclusion of Exhibit "DJ-2" by the 1st Respondent. This exhibit is a copy of a Will executed by the incapacitated widow, Mrs. Vilas Jasani, on 31 May 2022. The document reveals that Mrs. Jasani's Residuary Estate is to be held in trust for her friend and her godchildren, including the Applicant's relatives/associates, thereby entirely excluding her stepchildren, the Respondents, from her testamentary dispositions. The Respondents proffer this highly sensitive document to the Court ostensibly to demonstrate the Applicant's ulterior motives. They imply that the Applicant's intervention is not driven by a genuine concern for the proper administration of the Deceased's estate, but rather by a self-serving desire to control the assets that will eventually flow into the widow's estate—an estate from which the Applicant's associates stand to benefit under the terms of the newly exposed Will.

Submissions

20. The Applicant's legal arguments are articulated in the written Submissions dated 10 November 2025. The Applicant anchors the legal challenge on section 71(2) of the Law of Succession Act, emphasizing the Court's enduring, supervisory responsibility to ensure that a grant is not only rightly made to the applicant but that the administrator is administering, and will administer, the estate according to law. The Applicant argues that a Grant should only be confirmed where the administrators can unequivocally prove that the estate is being managed in accordance with the law and the Deceased's wishes.
21. The submissions introduce a highly consequential argument regarding the Respondents' conduct during the litigation. The Applicant vehemently condemns the Respondents for attaching the private, living Will of Mrs. Vilas Jasani (Annexure DJ-2) to their Replying Affidavit. The Applicant argues that

a Will is a strictly private and confidential document that only becomes a matter of public record upon the death of the testator. The deliberate exposure of the incapacitated widow's Will by the Administrators—facilitated by their Advocates—is characterized as an abhorrent breach of privacy.

22. The Applicant postulates that this egregious act demonstrates that the Administrators were unduly anxious to ascertain the contents of the widow's testamentary dispositions. Having discovered they were excluded, they utilized the document in an adversarial manner against her interests. This conduct, the Applicant argues, establishes a clear pattern of misrepresentation, exploitation, and bad faith. The Applicant urges the Court to find that allowing the Administrators to proceed without supervision creates a real and imminent risk that the mentally incapacitated beneficiary will be taken advantage of and left destitute. The Applicant concludes that urgent intervention, either through the appointment of a Co-Administrator or the Public Trustee, is required in the paramount interest of justice.
23. The Respondents' submissions dated 3 December 2025 construct a multi-tiered legal defence attacking both the procedural competence and the substantive merit of the Applicant's case.
24. First, they attack the procedural validity of the Applicant's primary prayer. The Respondents argue that the Act contains no provision permitting the amendment of a Grant to unilaterally inject a new Co-Administrator into the proceedings. Relying on the jurisprudence established in cases such as ***In re Estate of Jared Ombogo Adero (Deceased) KEHC 20256 (KLR)***, the Respondents submit that an application for amendment is legally synonymous with an application for rectification under section 74 of the Act. They contend that section 74 is strictly circumscribed to the correction of minor clerical errors and cannot be utilized as a backdoor mechanism to

effect substantive changes to the identity or number of court-appointed administrators.

25. Second, the Respondents vehemently challenge the Applicant's *locus standi*. They invoke section 38 of the Act and the decision in ***In re Estate of Dorcas Omena Binayo (Deceased) KEHC 8338 (KLR)*** to emphasize the primacy of consanguinity in succession matters. The Respondents argue that the Applicant, being merely a niece to the stepmother, lacks any blood relationship with the Deceased and consequently falls outside the prescribed lines of descent. Furthermore, relying on ***In re Estate of Amos Kiteria Madeda-Deceased KEHC 12950 (KLR)***, they argue that the Applicant does not meet the legal definition of an interested party capable of mounting a revocation challenge under section 76 of the Act, as she is neither an heir, devisee, creditor, nor a direct beneficiary of the Deceased's estate.
26. Third, regarding the substantive prayer for revocation, the Respondents assert that the Applicant has woefully failed to discharge the evidentiary burden required to trigger the draconian remedy of revocation under section 76 of the Act. Citing ***In Re Estate of Prisca Ong'ayo Nande (Deceased) KEHC 6553 (KLR)***, they argue that revocation requires concrete proof of defective proceedings, fraudulent concealment, or abject failure to administer the estate diligently. The Respondents dismiss the Applicant's allegations of animosity and potential marginalization as baseless speculation, entirely devoid of factual foundation under section 108 of the Evidence Act.
27. Finally, the Respondents defend their controversial decision to exhibit the living widow's Will. Relying on *Halbury's Laws of England*, they argue that a Will is a mere declaration of intention that can be freely revoked during the testator's life. While acknowledging the exceptional nature of the disclosure, they argue it was a necessary evidentiary manoeuvre to demonstrate to the Court the Applicant's bad faith and lack of genuine interest in the Deceased's

estate. Regarding the Public Trustee, they cite ***Eastend Horticultural Producers Limited v Wathuku & 2 others; Gichuki (Objector) KEHC 3549 (KLR)*** to assert that the Public Trustee is an administrator of last resort, and as they are capable and willing to act, the threshold for such an appointment has not been met.

Analysis & Determination

28. This Court distills the following core legal issues for determination:

- (i) Whether the Applicant possesses the requisite *locus standi* as an interested party to institute these proceedings challenging the grant of representation;
- (ii) Whether the Court possesses the jurisdiction under section 74 of the Law of Succession Act to amend a validly issued Grant for the express purpose of joining an additional Co-Administrator;
- (iii) Whether the conduct of the Respondents, specifically the unauthorized acquisition and publication of the incapacitated sole beneficiary's private, living Will in a public court record, constitutes a breach of the constitutional right to privacy and a violation of fiduciary duty sufficient to warrant the revocation of the grant under section 76 of the Act;
- (iv) Whether the Court should invoke its inherent powers under Rule 73 of the Probate and Administration Rules, read together with section 66 of the Act, to appoint the Public Trustee as the administrator of last resort to safeguard the estate and the interests of the incapacitated beneficiary.

The Locus Standi of the Applicant

29. The threshold jurisdictional question that must be resolved before delving into the substantive merits of the application is whether the Applicant is clothed with the requisite *locus standi* to maintain this suit. The Respondents forcefully argue that as a niece to the widow, the Applicant lacks

consanguinity to the Deceased, is not a beneficiary under his Will, and, therefore, falls entirely outside the statutory definition of an interested party entitled to seek the revocation of a grant under section 76 of the Law of Succession Act.

30. The concept of *locus standi* in succession proceedings is deeply entrenched in our jurisprudence. The general principle, strictly applied, dictates that a litigant must possess a recognizable, direct stake in the estate to invoke the Court's jurisdiction. The Respondents correctly cite the persuasive authority of ***In re Estate of Amos Kiteria Madeda-Deceased KEHC 12950 (KLR)***, which delineated the parameters of an interested person as including an heir, devisee, child, spouse, creditor, or a beneficiary with a property right or claim against the estate. The Court in ***Julian Adoyo Ongunga & Another v Francis Kiberenge Bondeva [2016] eKLR*** further reinforced this principle, noting that *locus standi* is so cardinal in a civil matter that it runs to the heart of the case, and an action instituted without it amounts to null and void proceedings.
31. On a rigid, formalistic application of these definitions, the Applicant—possessing only a prospective or derivative interest through her aunt—would appear to lack standing. She is not claiming an inheritance for herself from the Deceased's estate.
32. However, the administration of justice in probate matters is not a mechanistic exercise in statutory rigidity, particularly when the Court is confronted with the profound vulnerability of an incapacitated beneficiary. The unique and compelling factual matrix of this case demands a more nuanced, purposive, and equitable approach to standing. The sole, absolute beneficiary of the Deceased's entire estate is Mrs. Vilas Jasani. It is a matter of undisputed judicial record in this very cause that Mrs. Jasani suffers from advanced age-

related memory loss and lacks the mental capacity to manage her own affairs.

33. When a sole beneficiary is labouring under a severe legal and mental disability, the Court's protective jurisdiction is unequivocally activated. An incapacitated person cannot independently monitor the administration of the estate, demand accounts, or instruct legal counsel to challenge fiduciary malfeasance. If this Court were to adopt the Respondents' restrictive interpretation of *locus standi*, it would effectively immunize the Administrators from any scrutiny. They would be left free to manage, and potentially dissipate, the estate without any oversight, secure in the knowledge that the only person with strict legal standing to object is mentally incapable of doing so. Such an outcome is entirely repugnant to the fundamental tenets of equity and the protective mandate woven throughout the Law of Succession Act.
34. The Applicant is not a mere busybody or an unrelated interloper. She is the niece of the incapacitated widow, has provided direct care and shelter for her, and serves as her *de facto* next friend and protector. In the context of an application seeking to expose potential prejudice to an incapacitated sole beneficiary, a close relative acting in a protective capacity possesses a sufficient, albeit derivative, interest to bring the matter to the Court's attention. The Court finds that the imperative to protect the vulnerable beneficiary from potential exploitation overrides rigid procedural barriers. The Court aligns its reasoning with the broader interpretations of justice where equity demands that those who cannot speak for themselves must have Advocates recognized by the court. Consequently, the preliminary objection regarding *locus standi* is dismissed. The Applicant is deemed a sufficiently interested party for the limited purpose of moving the Court to safeguard the incapacitated widow's absolute entitlement.

The Scope of Rectification under Section 74

35. Having surmounted the hurdle of standing, the Court turns to the Applicant's primary prayer, which seeks an order that the Grant issued to the Respondents be amended to include her as a Co-Administrator. The Respondents argue that the Act does not contemplate the amendment of a Grant in the substantive manner proposed by the Applicant.

36. The alteration of a grant of representation is governed exclusively by section 74 of the Act, read in tandem with Rule 43(1). Section 74 explicitly provides:

Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

37. The jurisprudence surrounding Section 74 is well-settled, consistent, and unequivocal. The power of rectification is strictly confined to the correction of minor, clerical, or typographical errors that do not alter the fundamental character, substance, or the identity of the administrators appointed by the grant. The Court has consistently held that the addition, substitution, or removal of an Administrator transcends the boundaries of mere rectification.

38. As accurately cited by the Respondents, in ***In re Estate of Jared Ombogo Adero (Deceased)***, the Court definitively ruled that seeking to include a party as a co-administrator is a substantive alteration that cannot be entertained under the guise of an amendment or rectification pursuant to section 74. This position is fortified by the decision in ***In the Matter of the Estate of Muniu Karugo (Deceased) (Nairobi High Court succession cause number 2668 of 1997)***, where Koome J (as she then was) held that rectification only deals with obvious errors and cannot be used to

fundamentally change the character of the Grant. Furthermore, in *In re Estate of Prisca Ong'ayo Nande (Deceased)* the Court reiterated the limited, procedural scope of rectification, distinguishing it from substantive challenges to the Grant.

39. The Applicant's attempt to utilize the terminology of amendment to forcibly inject herself into the administration of the estate alongside the hostile Respondents is procedurally incompetent. The Court cannot utilize section 74 to bypass the statutory priority mechanisms established under section 66 of the Act, nor can it force antagonistic parties into a joint fiduciary relationship through a mere clerical alteration of the grant document. Therefore, the first prayer in the Applicant's Summons, seeking the amendment of the Grant to include her as a Co-Administrator, lacks statutory anchorage and must fail. It is hereby dismissed.

Fiduciary Duty, Conflict of Interest, and the Right to Privacy

40. The failure of the first prayer directs the Court's intense focus to the alternative prayer: the revocation or annulment of the grant under section 76 of the Act. Section 76 confers upon the Court the discretionary power to revoke a Grant on several enumerated grounds, including where the proceedings were defective in substance, where the Grant was obtained fraudulently or through the concealment of material facts, or where the administrators have failed to proceed diligently with the administration of the estate.
41. As elucidated in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa KEHC 1528 (KLR)*, the power to revoke a Grant is a discretionary power that must be exercised judiciously and only on compelling grounds, always having regard to the best interests of the beneficiaries. Fraud, false statements, or the deliberate marginalization of legitimate beneficiaries constitute substantive defects warranting revocation. It is also trite law, as noted in

Central Bank of Kenya Limited v Trust Bank Limited & 4 Others eKLR, that vague and general allegations of fraud cannot suffice; they must be specific and proven.

42. The evaluation of this issue requires the Court to undertake a rigorous examination of the Respondents' conduct, specifically their extraordinary decision to exhibit the private, living Will of the incapacitated widow in their Replying Affidavit.
43. It is a foundational principle of testamentary law that a Will is ambulatory in nature. It is a mere declaration of intention that speaks only from the date of the testator's death. During the lifetime of the maker, a Will possesses no legal effect regarding the transfer of property and remains a highly confidential, privileged document. The testator retains the absolute, unfettered right to revoke, alter, or destroy the instrument at any moment prior to death.
44. The unauthorized procurement and subsequent publication of a living person's Will in a public judicial forum represents a profound and egregious breach of the constitutionally guaranteed right to privacy. Article 31(c) of the Constitution explicitly mandates that every person has the right to privacy, which includes the right not to have "*information relating to their family or private affairs unnecessarily required or revealed*".
45. The Court has consistently and robustly defended this constitutional right. In the highly persuasive authority of ***Peter Maina Mwaniki v Attorney General & 6 Others [2023] KEHC 22385 (KLR)***, the Court affirmed that the constitutional protection of privacy regarding family and private affairs is paramount and extends strictly to the management of estate information, emphasizing the institutional duty of confidentiality. While it is acknowledged that the right to privacy is not absolute and may be subject to limitations

under Article 24 of the Constitution, the unauthorized exposure of a living, incapacitated person's Will in a hostile probate dispute does not meet any threshold of justifiable limitation. It serves no legitimate public interest; it merely serves the tactical litigation interests of the Respondents.

46. The Respondents, acting through their legal counsel, obtained a copy of the widow's Will—a document purportedly drafted by the same law firm in May 2022—and annexed it to their sworn Affidavits to publicly demonstrate that the widow intended to bequeath her assets to her godchildren and friends, to the total exclusion of the Respondents. The Respondents attempt to justify this startling breach of confidentiality by arguing it was a necessary evidentiary manoeuvre to demonstrate the Applicant's bad faith and ulterior motives.
47. This justification is wholly and emphatically rejected by this Court. The unauthorized public exhibition of the incapacitated widow's private testamentary intentions is not merely a procedural misstep; it is an act of overt hostility. Administrators of an estate are fiduciaries. They are bound by the most exacting standards of utmost good faith, loyalty, transparency, and undivided allegiance to the beneficiaries. When administrators utilize their position, or their access to privileged legal documents, to publicly expose and attack the private affairs of the sole beneficiary they are legally mandated to serve, the fiduciary relationship is irrevocably shattered.
48. The actions of the Respondents demonstrate a visceral conflict of interest. It is evident to the Court that upon discovering their exclusion from their stepmother's Will, the Respondents adopted a deeply adversarial posture against her. An administrator who views the sole beneficiary as an adversary cannot be trusted to gather the assets, account transparently, and ultimately transfer the entirety of the deceased's estate to that beneficiary without prejudice, delay, or attempts at statutory sabotage.

49. While the Applicant's initial allegations of neglect and animosity might have been viewed as subjective apprehensions, the Respondents themselves provided the incontrovertible proof of their unsuitability through their own pleadings. The deliberate violation of the widow's constitutional right to privacy under Article 31(c), coupled with the undeniable conflict of interest it exposes, renders the ongoing administration by the Respondents fundamentally defective in substance. Their conduct conclusively demonstrates that they cannot proceed diligently, fairly, and with the requisite utmost good faith in the administration of the estate.
50. Consequently, the Court finds that the high threshold for revocation under section 76 of the Act has been decisively met. The Grant issued to the Respondents is fatally compromised by their own hostile and unconstitutional conduct towards the vulnerable sole beneficiary.

Inherent Powers and the Appointment of the Public Trustee

51. Having determined that the Grant issued to the Respondents must be revoked, the Court must now decide the future trajectory of the estate's administration. The Applicant prays for the appointment of the Public Trustee as the administrator of last resort.
52. The appointment of administrators in cases of intestacy (or where the appointed executor fails to act, thereby triggering the intestacy priority rules for the appointment of an administrator with will annexed) is guided by section 66 of the Act, which establishes a general order of preference: surviving spouses, followed by other beneficiaries entitled on intestacy, then the Public Trustee, and finally creditors. The Respondents correctly argue, citing ***Eastend Horticultural Producers Limited v Wathuku & 2 others; Gichuki (Objector) KEHC 3549 (KLR)***, that the Public Trustee is generally

considered an administrator of last resort and that children normally have priority.

53. However, section 66 explicitly prefaces this order of preference with a crucial, overriding caveat: the Court retains the *"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..."*. The statutory hierarchy is precisely that—a general guide, not an inescapable, mathematical straitjacket. As noted in ***In Re Estate George Ragui Karanja (Deceased) eKLR***, the order of preference is not binding on the Court; it is discretionary, and the Court can appoint administrators without strictly following the list if the circumstances demand it.
54. In the present case, the surviving spouse is mentally incapacitated and cannot act. The next in the ordinary line of priority, the biological children have been disqualified by this Court due to their egregious breach of fiduciary duty, their demonstrated hostility toward the sole beneficiary, and their unconstitutional invasion of her privacy. The Applicant, while possessing sufficient interest to trigger the Court's protective jurisdiction, is a relative by affinity and does not inherently fall within the primary classes of preferred administrators for the Deceased's estate under section 66.
55. Faced with a deeply fractured family dynamic, a disqualified set of priority administrators, and an exceptionally vulnerable, incapacitated sole beneficiary who is absolutely entitled to the entirety of the estate, the Court must invoke its inherent jurisdiction to fashion a remedy that prevents the dissipation of the estate and serves the ends of justice. Rule 73 expressly preserves this inherent authority, stating:

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.

56. The jurisprudence of this Court is replete with instances where Rule 73, read together with Section 47 of the Act, has been utilized to remove unsuitable administrators, appoint neutral entities, or forge creative solutions to paralysing administrative stalemates. For instance, the principles articulated in ***Floris Pierro & another v Giancarlo Falasconi [2014] eKLR*** recognize the broad ambit of the probate court's powers to grant protective orders. Similarly, in ***In re Estate of Hayati Saiffudin Anjarwalla [2022] KEHC 11759 (KLR)***, the Court invoked its inherent powers under section 47 and Rule 73 to authorize protective actions pending the regular administration of the estate to prevent loss. Furthermore, the Court in ***In re Estate of the Late Dedan Kariuki (Deceased) [2024] KEHC 10490 (KLR)*** affirmed that Rule 73 grants a succession court inherent powers to make orders necessary for the ends of justice or to prevent abuse of the court process.
57. To appoint the Applicant or to leave the estate in the hands of the Respondents would only perpetuate the toxic cycle of litigation and mutual suspicion, entirely to the detriment of the incapacitated widow. In circumstances where familial relations have irretrievably broken down and the priority administrators have proven themselves hostile to the sole beneficiary, the appointment of a neutral, statutory body becomes not merely an option of last resort, but an absolute necessity for the ends of justice.
58. The Public Trustee is statutorily equipped to manage estates objectively, transparently, and strictly in accordance with the law, free from the emotional entanglements and conflicts of interest that plague the current parties. The Public Trustee operates under strict statutory mandates to preserve assets

and act impartially. Therefore, exercising its final discretion under Section 66 of the Act, fortified by the inherent powers preserved under Rule 73, the Court determines that it is in the paramount best interests of the estate, and crucially, the best interests of the incapacitated sole beneficiary, that the Public Trustee be appointed to take over the administration of the estate of the Deceased.

59. Furthermore, the Court cannot allow its records to be utilized as a repository for unlawfully acquired, private documents intended to harass or prejudice vulnerable persons. The unauthorized exhibition of Mrs. Vilas Jasani's living Will is a continuing violation of her constitutional right to privacy. The Court must exercise its inherent power to sanitize its record and prevent the further abuse of its processes. Documents procured in breach of constitutional rights, introduced not to advance the administration of the estate but to launch a collateral attack on the sole beneficiary, have no place in the judicial record.
60. Accordingly, the Court makes the following final Orders:
- (i) Prayer (i) of the Applicant's Summons is hereby disallowed.
 - (ii) The Applicant's alternative prayer is hereby allowed. The Grant of Probate with Written Will Annexed, issued to Dharmesh Jasani and Rakhee Jasani on 17 June 2025, is hereby revoked in its entirety pursuant to Section 76 of the Law of Succession Act.
 - (iii) The Summons for Confirmation of Grant of Probate with Written Will dated 7 October 2025, filed by the Respondents, is consequently struck out as the underlying Grant has been revoked.

- (iv) In the best interests of the incapacitated sole beneficiary, and in the exercise of the Court's final discretion under section 66 of the Law of Succession Act read together with Rule 73 of the Probate and Administration Rules, the PUBLIC TRUSTEE is hereby appointed as the sole Administrator of the Estate of the Deceased.
- (v) A fresh Grant of Letters of Administration with Written Will Annexed shall issue to the Public Trustee forthwith to facilitate the immediate preservation and administration of the estate.
- (vi) The Respondents are hereby ordered to render a full, true, and accurate account of their administration, and to hand over all assets, documents, titles, and records pertaining to the Deceased's estate to the Public Trustee within thirty (30) days of the date of this Ruling.
- (vii) To remedy the continuing breach of the constitutional right to privacy under Article 31(c) of the Constitution, the document marked as Exhibit "DJ-2" (purporting to be the Will of Mrs. Vilas Jasani dated 31 May 2022), attached to the 1st Respondent's Replying Affidavit, is hereby expunged and struck from the Court record. The Deputy Registrar is directed to ensure the immediate physical and electronic redaction of the said annexure from the file.
- (viii) The costs of the Summons shall be borne personally by the Respondents, jointly and severally, and shall not be charged to the estate of the Deceased.
- (ix) Matter to be mentioned before the Deputy Registrar on 29 July 2026 to confirm compliance with order (vi) above.

DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF

MAY 2026

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

Delivered on virtual platform in the presence of:

for the Applicant:

for the Respondents:

Court Assistant: Lucy Mwangi

Ruling