

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 483 OF 2007

**IN THE MATTER OF THE ESTATE OF PETER ALUKHABA AMBUNDO
ALIAS SHIKOLI PATASI (DECEASED)**

BETWEEN

BENEDICTO AMBUNDO PATASI.....APPLICANT

AND

DINA SUMIRA LIBAMBULA.....RESPONDENT

RULING

1. The Court is considering the Summons for Setting Aside Court Order dated 8th March 2025 filed by Everlyne Livambula, seeking to be joined in these proceedings as an administrator of the estate of the late Dinah Siumira Libambula seeking substitution in this cause, as well as seeking orders including stay of execution of the order issued on 30th March 2022 and participation in the administration of the estate.
2. The application is opposed in part by Benedicto Ambundo Patisi, a beneficiary of the Estate, who does not oppose inclusion of the Applicant but urges the Court not to set aside the order of 30th March 2022, and indicates intention to institute a fresh succession cause to address the administration of the estate.

ISSUES FOR DETERMINATION

3. The Court identifies the following issues:
 - a. Whether the Applicant has locus standi
 - b. Whether the order of 30th March 2022 should be set aside
 - c. Whether co-administration is appropriate

ANALYSIS

(a) Locus Standi

4. It is not disputed that the original administrator, Dinah Siumira Libambula (deceased), died on 23rd March 2022. The Applicant has produced a grant confirming her appointment as administrator of the estate of the deceased administrator.
5. In **Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR**, the Court held that ***succession proceedings do not abate upon death of an administrator and substitution is necessary.***
6. Succession proceedings are representative in nature and failure to substitute a deceased administrator would leave the estate without proper representation, thereby occasioning prejudice.
7. Where a party dies during the pendency of proceedings, the law does not allow the matter to abate automatically. Instead, substitution is required to ensure continuity and prevent a legal vacuum in

representation of the estate. This principle was affirmed in **Re Estate of M’Ngarithi M’Miriti (Deceased) [2017] eKLR**”, where the ***Court held that succession proceedings must continue through properly appointed representatives to avoid prejudice to estate administration.***

8. Similarly, In **Re Estate of Kagongo (Deceased) [2019] eKLR**, the Court held that death of an administrator necessitates substitution to ensure the estate remains properly before the Court and is not left unrepresented.
9. The Court is also guided by Article 48 of the Constitution of Kenya, 2010, which guarantees access to justice, requiring courts to adopt interpretations that facilitate substantive justice in estate disputes rather than defeat it on technical grounds.
10. The Court finds that the Applicant has locus standi.

(b) Whether to Set Aside the Order of 30th March 2022

8. The Applicant contends that the order of 30th March 2022 ought to be set aside on the basis that it was issued in the absence of the administrator, following the demise of the original administrator, and that it has the effect of affecting land title BUTSOSO/INDANGALASIA/7824 without affording the estate an opportunity to be heard.

9. The Protestor opposes setting aside, and submits that the order was regularly issued that the applicants have since indicated the intention to file a fresh succession cause .
10. **In Shah v Mbogo [1967] EA 116**, the Court held discretion should avoid injustice but not assist deliberate delay.
11. In **Patel v East Africa Cargo Handling Services Ltd [1974] EA 75**, it was held that justice is the overriding objective.
12. However the court must also consider the principle of finality in litigation, particularly in succession matters where the estate administration requires certainty and orderly distribution as illustrated in the case **of Benjoh Amalgamated Ltd V Kenya Commercial Bank LTD{2014}eKLR**.
13. The Court finds that setting aside the order would destabilize estate administration.
14. The Court observes that setting aside the order entirely may not necessarily serve the interest of justice, given that the dispute can be adequately addressed through proper representation and co-administration of the estate rather than vacating the order in toto. The court therefore declines to set aside the order.

(c) Whether Co-Administration is Appropriate

14. Both parties claim interest in the estate and seek protection of estate assets.

15. In **Re Estate of Mwaura Mutungi (Deceased) [2018] eKLR**, the Court held that all beneficiaries must be represented.
16. In *S K Tarwadi v Veronica Muehlemann* [2019] eKLR, courts may exercise inherent jurisdiction to ensure justice.
17. The Court finds co-administration necessary for fairness and accountability in order for the administration of the estate to be a joint effort.

(d) Fresh Succession Cause Argument

18. The Court rejects the argument that a fresh cause makes this application unnecessary.
19. In **Re Estate of G.K.K. (Deceased) [2017] eKLR**, succession must be conducted under court supervision to ensure proper management, preservation, and distribution of the estate.
20. The court therefore retains the supervisory jurisdiction over the administration of the estate and may intervene whenever necessary to safeguard the estate property, protect the interests of beneficiaries, prevent intermeddling, and ensure compliance with the provision of the Law of Succession Act.

CONCLUSION

20. The Court finds the Applicant has locus standi and the order dated 30th March 2022 should remain.

21. Accordingly, the Court orders:
- a. Application is partially allowed
 - b. Order of 30th March 2022 is not set aside
 - c. Everlyne Livambula and Benedicto Ambundo Patisi are appointed co-administrators and shall act jointly
 - d. No dealings with estate property without court authority
 - e. Costs in the cause.
 - f. Mention on 28.10.2026.
 - g. Right of Appeal 30 days.

DATED, SIGNED and DELIVERED at KAKAMEGA this 8TH day of MAY, 2026.

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Agong'a/Velma.

Parties absent.

Court Assistant to upload the ruling on the CTS forthwith.