



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Polland (Deceased) (Succession Cause
E014 of 2025) [2026] KEHC 6141 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE E014 OF 2025**

M THANDE, J

MAY 8, 2026

**IN THE MATTER OF THE ESTATE OF SYLVIA
MARIA GERTRUDE POLLAND (DECEASED)**

RULING

1. The proceedings herein relate to the estate of Sylvia Maria Gertrude Polland (the deceased), who died on 5.1.25. Following her death, Alfie Ahmed Warshow (the Petitioner) filed a petition for grant of probate of written will on 21.3.25, in his capacity as the executor named in the deceased will.
2. This ruling is in respect of a preliminary objection dated 18.6.25, by one Patrick Mwabaya (Interested Party). The objection is that the petition is fatally defective for being filed without a death certificate and ought to be struck out.
3. In a replying affidavit sworn on 15.8.25, the Petitioner stated that at the time of filing the petition, he was yet to be issued with the death certificate of the deceased, owing to a dispute between the parties herein as to who between them would perform the deceased's final rights. The dispute was settled in Malindi Magistrates Court Miscellaneous Application No. E010 of 2025. The Court directed that the deceased's remains be released to the Interested Party; that the Interested Party was to use funds left to him by the deceased's friend, Mel, to settle mortuary and cremation charges and the Petitioner was to top up any shortfall; that the deceased's ashes to be interred next to her husband; that the Petitioner and the Interested Party would jointly surrender the burial permit and letter from the German embassy surrendering the deceased's passport to the Registrar of Births and deaths for issuance of a death certificate.
4. The Petitioner further stated that the Interested Party refused to involve him in the deceased's final rights and in the surrender of the burial permit and embassy's letter for issuance of the death certificate; that he obtained the death certificate on 8.7.25; that the objection has now been overtaken by events; that the Interested Party has no locus standi in the petition as he is not an executor, a beneficiary of the estate of the deceased, a dependant of the deceased or a creditor.
5. Rule 7 of the Probate and Administration Rules stipulates the general provisions relating to an application for grant. Among the particulars that an application for a grant of representation should



contain is evidence of the death of the deceased in respect of whose estate the application is made. Rule 7(2) provides:

There shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available.

6. The fact of the Petition being filed without a death certificate is not disputed. The Interested Party seeks that the petition be struck out on that basis. He relied on the case of *In re Estate of Charo Nguma Kalama* [2018] KEHC 3145 (KLR) where the grant was revoked for want of a death certificate.
7. The case of *Estate of Charo Nguma Kalama* is however distinguished, in that a grant therein had been issued yet it was not known if Kalama was alive or dead. The circumstances therein are that Kalama had disappeared sometime in 1997 and had not been heard of since. In the application for a grant of representation, the petitioner had indicated the date and place of death of the deceased where in fact there was no evidence of his death. The Court found that the grant was obtained fraudulently by the making of a false statement, namely, that the deceased died in Mtwapa on 27.7.00 and further concealed from the court something material to the case to wit that the Deceased disappeared without a trace in 1997. In the present case, the demise of the deceased is not in doubt or disputed.
8. It is noted that this matter is yet to be gazetted. The practice of this Court is that once a grant is filed, the Court checks to see if the provisions of Section 51(2) of the *Law of Succession Act* and Rule 7 of the Probate and Administration Rules have been complied with, before the matter is submitted for gazette. Where a document or a particular is found to be missing for one reason or another, the Court will not strike out a petition but will direct the petitioner(s) to supply the same and gazette is stayed pending supply of such document of particular, as the case may be.
9. The jurisdiction of a court to strike out pleadings though provided in law, must be exercised with great caution, to avoid injustice. This has been stated in a long line of authorities, the most often cited, being the case of *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] eKLR where Madan, JA stated:

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.
10. The petition herein though filed without the death certificate is not beyond redemption. The deficiency can be cured by simply supplying the Court with the death certificate of the deceased, which in fact the Petitioner already has. As such, the Petition should be allowed to go forward.
11. In the end, and in view of the foregoing, the Court makes a finding that the preliminary objection lacks merit and the same is dismissed with costs to the Petitioner.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 8TH DAY OF MAY 2026

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M. THANDE

JUDGE

