



REPUBLIC OF KENYA



**In re Estate of Omurunga Mbaya (Deceased) (Succession Cause
107 of 1983) [2025] KEHC 875 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 107 OF 1983
SC CHIRCHIR, J
JANUARY 30, 2025**

IN THE MATTER OF THE ESTATE OF OMURUNGA MBAYA (DECEASED)

BETWEEN

JAMES MALOBA ALUFUMA PETITIONER

AND

ZAINABU NYAROTSO OMURUNGA OBJECTOR

AND

MICHAEL A MALOBA APPLICANT

RULING

1. Through summons dated 5th December 2023, the Applicant herein seeks orders as follows:
 - a. This Honourable court be pleased to order that all the powers and duties of the administrator Annah Indosio Omurunga who died be vested in Michael Ambetsa Maloba as the sole survivor of the estate of the late Omurunga Mbaya
 - b. That such further orders be made as the court may deem fair, just and expedient in the circumstances
2. The application is premised on the grounds appearing on the face of the application, and the supporting affidavit of the applicant, Michael A. Maloba.
3. The Applicant states that Omurunga Mbaya (The deceased) was survived by two daughters, being Anna Indosio Omurunga and Zainabu Nyarotso Omurunga and himself , as his nephew; that the deceased's daughters have both died and he is the sole survivor of the estate . He has annexed a burial permit evidencing the death of Annah Indosio Omurunga . He further states that the court issued a certificate of confirmation of grant on 11/12/2018 to Anna Indosio Omurunga and in which the



whole parcel No. Marama/Buchenya/531 was to devolve to him. He is unable to obtain the transfer of the estate to himself since the administrator has since died.

4. He now prays that the court appoints him as the administrator of the estate so that he can take up all the powers and duties of an administrator for him to effect the transfer process.
5. There was no response or opposition to the application.

Determination

6. The main issue for determination is whether the powers of an Administrator who has since died can vest on a beneficiary of the Estate.
7. The Application is premised on section 47 and 81 of the *Law of succession Act*.

Section 81 of the *Act* provides as follows:

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”

8. Thus the section sets out what happens when one of the Administrators or Executors (where they are more than one) dies. The powers of Administration then vests on the surviving Administrator(s)/ Executor(s), with some exception.
9. The Applicant herein is a beneficiary of the estate. He was not, and has never been an Administrator of the Deceased’s estate. He cannot therefore assume Administration of the Estate by way of a vesting order , envisaged under section 81 of the *Act*.
10. The record shows that Annah Indosio Omurunga , the deceased Administrator, was the sole Administrator of the deceased’s Estate. Upon her death , the Grant became inoperative within the context of section 76 of the *Law of succession Act*.
11. There is nothing to vest on the Applicant . The Applicant , should be seeking to have the grant revoked , then apply for his appointment as an Administrator. His Application would then be subjected to the usual assessment to confirm his competence and locus standi to be the Administrator.
12. The approach he has taken is misconceived. In the circumstances, the Application herein is disallowed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE

In the presence of:

Godwin Luyundi- Court Assistant.

