



Kenya Anti-Corruption Commission v Koech & 2 others (Anti-Corruption and Economic Crimes Case 18 of 2016) [2025] KEHC 11238 (KLR) (Anti-Corruption and Economic Crimes) (30 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 18 OF 2016**

**LM NJUGUNA, J
JULY 30, 2025**

BETWEEN

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

DR DAVY KIPROTICH KOECH 1ST DEFENDANT

DUNSTAN MAGU NGUMO 2ND DEFENDANT

THE PUBLIC TRUSTEE 3RD DEFENDANT

RULING

1. This court has been moved by way of an application dated the 28th April, 2025 by the plaintiff/applicant. The application is brought under Order 51 Rule 1 and order 24 Rules 4 and 5 of the [Civil Procedure Rules](#), Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) and Section 7 of the [Public Trustee Act](#) and all the other enabling provisions of the law. The applicant has sought the following orders: -
 1. That this Court grants the survivors of the estate of the 1st defendant leave to appoint a legal representative to replace the 1st defendant/1st respondent herein within 30 days of the date of this Order.
 2. That in the event that no legal representative is appointed to substitute the deceased within the time prescribed in Order 1 above, the 1st defendant/1st respondent be substituted with the public trustee.
 3. That any further order that the court may deem fit, just and expedient.
 4. That costs of this application be provided for.



2. The application is premised on the grounds set out on the face of the application and it is supported by the annexed affidavit sworn by Joram Wambugu, on the 28th April, 2025.
3. The applicant avers that the 1st defendant passed on during the pendency of this suit on the 5th September, 2024. That the survivors of the deceased some of whom have previously accompanied the deceased to court and are thus aware of this suit have failed and/or neglected to appoint a legal representative to the estate of the deceased thus making it difficult to proceed with the suit in the present state.
4. The 3rd respondent opposed the application by way of a replying affidavit sworn by Dorcas Nyalwidhe, on the 13th May, 2025 in which she depones that the Public Trustee is a public entity and should not be compelled to defend a suit against a private citizen given that criminal liability applies in personam.
5. She refers to Section 66 of the *Law of Succession Act* Cap 60 which gives priority to the survivors being the spouse, and children in applying for letters of Administration and avers that the 1st defendant's beneficiaries rank in priority over the Public Trustee and that the Public Trustee should be an administrator of the last resort, priority having been given to the spouse and the children of the deceased.
6. That the plaintiff has not demonstrated to this court that it has exhausted all avenues under the law to compel the deceased beneficiaries to appoint a legal administrator to substitute the deceased in the suit. That the Public Trustee is a Government entity and should not be compelled to defend a suit against a private citizen given that criminal liability applies in persona.
7. The public Trustee states that in cases where the courts have appointed it as an administrator suo Moto, it encounters challenges in getting instructions hereby making it difficult to defend the matters and especially in this case where the survivors are uncooperative.
8. Further that under Section 82 of the *Law of Succession Act*, a legal representative has duties to discharge which must be performed with prior knowledge of the assets and liabilities of the deceased's estate but in the case herein, Public Trustee is not privy to this information. That as an administrator, the Public Trustee require funds to meet administration costs, filing and Public Trustee fees which must be paid by the beneficiaries or drawn from the estate funds. That additionally, the Government cannot meet the judgment debt or be liable for any debts incurred by the 1st defendant/respondent.
9. That from the foregoing, the applicant has not established a prima facie case to warrant the appointment of the Public Trustee having failed to demonstrate that all beneficiaries have refused to act.
10. The application was disposed of by way of written submissions and the applicant and the 3rd respondent complied with the directions on filing of submissions.

Applicant's Submissions.

11. The applicant submitted on provisions of Order 24 Rule 4(1) which gives the court authority to cause, on an application made in that behalf, a legal representative of a deceased defendant to be made a party to progress the suit, and Order 24 Rule 5 of the *Civil Procedure Rules* that require the court to determine the question of whether any person is or is not a legal representative.
12. The applicant contends that the court when confronted with such an application, it has a duty imposed on it, within the confines of Rules 4 and 5 of the *Civil Procedure Rules* and the duty so imposed is mandatory as the word used is "SHALL". That the duty is connected with the requirement of Section



1A of the [Civil Procedure Act](#) for the court to give orders to facilitate an expeditious resolution of a dispute and in exercising of this duty, the court should exercise its powers in a manner that gives effect to this overriding objective.

13. The applicant has invited the court to appreciate that there may be instances where beneficiaries may deliberately fail to take the option of appointing a legal representative so that the suit can abate or put a suit in “parking mode” within the court system ad infinitum thus contributing to the backlog of cases, though the applicant is not stating that to be the case in this matter. Reliance was placed on the case of [Okoiti v Portside Freight Terminals Limited & 12 Others](#) (Petition E011 of 2024) (2025).
14. The applicant has urged the court to appoint the Public Trustee pursuant to Section 7 of the [Public Trustee Act](#) and has relied on the case of [Justin Boso & others v Mwauchi Bembito & 2 others](#) (2020) eKLR and Article 165 (3) of the [Constitution](#) that gives this court the qua High court unlimited jurisdiction in civil cases. A number of cases were relied on, on Jurisdiction to wit [Hadija Mlao Mlingo v Director of Public Prosecutions & 3 others; Wilberforce Malanga Wambulwa & 5 others \(interested Parties\)](#) (2020) eKLR in which the court quoted with approval the case of [Ethics and Anti-Corruption Commission & another v William Baraka & 4 others](#) (2017) Mtengo & eKLR and that of [Shakeel Ahmed Khan & another v Republic & 4 others](#).

3rd Respondent’s Written Submissions

15. The 3rd respondent identified one issue for determination ;
 - a. Whether the Public Trustee can substitute the 1st defendant/1st respondent in the suit.
16. The Public Trustee submitted on Section 66 of the [Law of Succession Act](#) and averred that it does not rank in priority to the surviving spouse and beneficiaries of the 1st defendant/1st respondent who have the right to administer the estate. It contended that although the court has the discretion to appoint the Public Trustee, the court must record its reasons in the proceedings for such appointment and in any event, the power to appoint an administrator of an estate of a deceased is vested in the family Division of the High court and not this court. That Section 6(2) of the [Public Trustee Act](#) gives the Public trustee the discretion to decide on whether to take up administration of an estate of the deceased defendant.
17. The respondent relied on the case of Re Estate of Dorcas Binayo (Deceased) 92021) KEHC 8338 (KLR) on the order of preference to guide the court on appointment of administrators in intestacy, and the case of [Eastend Horticultural Producers Limited Vs Wathuku & 2 others](#) (Succession cause No. 60 of 1997) (2023) KEHC 3529 (LKR) (20 April 2023). It was its contention that the application offends the doctrine of exhaustion of available remedies and that the applicant has not demonstrated that it has exhausted all the avenues under the law to compel the survivors to take out letters of administration.
18. The respondent submitted that its appointment as an administrator could eventually prejudice the Estate’s interest and present suit as the office lacks the relevant information regarding the beneficiaries, assets of the 1st defendant and requisite resources to defend the suit.
19. The application was disposed of by way of written submissions and the applicant and the 3rd respondent complied with the directions on filing of the same.

Analysis And Determination.

20. The court has considered the application and the supporting affidavit, the replying affidavit and the submissions filed by the applicant and the 3rd respondent. The only issue for determination is whether the application has merits.



21. The applicant has moved this court to grant the survivors of the estate of the 3rd defendant leave to appoint a legal representative to replace the 1st defendant within 30 days failing which the 1st defendant be substituted with the Public Trustee. The 3rd respondent has strongly opposed that application.
22. The matter herein is part-heard and the 1st defendant died during the pendency of the suit and since then, there is very little that has gone on in this suit as the survivors and the beneficiaries of his estate have failed to substitute him and hence, the present application.
23. I have read through the replying affidavit by the Public Trustee and the Provisions of the [Public Trustee Act](#), and the court has taken into account its sentiments and the reasoning. Similarly, the court also appreciates the predicament the applicant is in, which scenario was well espoused by Sila Munyao J in the case of [Justin Boso & others v Mwauchi Bembito & 2 others](#) (2020) eKLR.
24. Before this court can address the issue as to whether the Public Trustee can be appointed to administer the estate of the 1st defendant, it would be prudent for this court to first give the opportunity to the children/beneficiaries of the 1st defendant to apply for a limited Grant just for purposes of finalizing the case. From the material provided to the court, it appears to me that the applicant has not done enough to reach out to the beneficiaries of the estate of the 1st defendant for them to apply for a limited Grant even if it will only be for purposes of this suit.
25. In the premises, I do hereby grant prayer (1) of the application but grant the estate 90 days to apply for a limited grant. Determination of Prayer (2) is hereby held in abeyance pending further directions by this court after the 90 days aforesaid.
26. The order issued herein above to be served to one of the children of the 1st defendant in accordance with the order of priority set out in Section 66 of the [Law of Succession Act](#).
27. The order issued herein be served through the office of the Chief Executive Officer, of the Plaintiff and an affidavit of service be filed three days before the Mention date to be fixed on the date of this ruling.
28. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF JULY, 2025

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L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Wambugu for the Plaintiff

Miss Njuguna for the Defendant

Court Assistant - Wilson

