



**Mangala v Mangala & another (Miscellaneous Civil Application  
48A of 2023) [2024] KEHC 5942 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5942 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS CIVIL APPLICATION 48A OF 2023**

**WM MUSYOKA, J**

**MAY 27, 2024**

**BETWEEN**

**RICHARD OKOTH MANGALA ..... APPLICANT**

**AND**

**GRACE RAEI MANGALA ..... 1<sup>ST</sup> RESPONDENT**

**LINNER NAMBALA WAFULA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. These proceedings relate to the estate of Penina Omwonyi Mangala, deceased.
2. Succession proceedings to that estate have been undertaken in 2 causes, Kisumu HCSC No. 39 of 2006 and Busia CMCSC No. E262 of 2021. The grants in both causes have been confirmed, that in the Kisumu cause on May 17, 2006, while that in the Busia cause was confirmed on January 19, 2022. Of course, it is unacceptable to have 2 succession causes in respect of the same intestate estate. The Busia cause is the latest in time, and it was filed during the pendency of the Kisumu cause, in abuse of court process.
3. The courts have pronounced that the filing of separate succession causes, in respect of the same estate, leading to issuance of different grants of administration, and the making of different orders on distribution of the same estate, is unacceptable. It can only lead to confusion. For rival groups would be holding different grants, all of them authorising them to administer the same estate, and there would be the real spectre of the court giving conflicting orders or directions, on the distribution of that 1 estate, which would expose the court and the judicial system to disrepute and embarrassment. There is only 1 estate, and, conversely, there should be only 1 administration of that estate, through 1 succession cause. In *Newton Gikaru Gathiomi & another vs. Attorney General/Public Trustee [2015]* eKLR (Odunga, J), where two grants had been made in respect of the same estate, it was said that the law does not contemplate the issuance of two grants in respect of the same estate, and, therefore, the issuance of the



- second grant, in that cause, before the revocation or annulment of the first grant, was not procedural. In *Jeremiah Mukangu Gioche vs. Samuel Kanyoro Ikua & 3 others* [2020] eKLR (Kimondo, J), it was stated that the *Law of Succession Act*, Cap 160, Laws of Kenya, would never countenance a situation where two different parties hold two separate grants to the same estate.
4. The only incidence, where the issuance of 2 grants is contemplated, in respect of the same estate, is where the deceased died partially testate and partially intestate. A grant of probate would be made in respect of the estate which would be the subject of the will, and a separate grant of letters of administration intestate would issue to deal with the estate not distributed by the will. Where several wills are discovered after the demise of the deceased, the proper course of action would be to deal with all of them in one cause, where it may be necessary to determine whether they are all valid, or whether the previous wills had been revoked by the latter wills. If all are found to be valid, then they all ought to be probated in the same cause. Where the deceased died wholly intestate, there can only be one succession cause in his intestacy. The incidence of 2 succession causes, in such an intestacy, would be a pointer that something would not be right with the administration of the intestate estate.
  5. Where it transpires that more than 1 cause have been initiated, regarding the estate of 1 individual dead person, then several things may happen. One of them would be that the court may bring together the 2 or more causes, consolidate them, and issue 1 grant out of the consolidated cause, and thereafter give or make consequential directions or orders in the consolidated cause. See *Pirisila Omungala Ndunyi & another vs. Gabriel Ocholi Mukoko* [2005] eKLR (GBM Kariuki, J), *Esther Muthoni Kuria vs. Francis Kimani Kuria & another* [2006] eKLR (Kubo, J), *BNM & Another vs. GNM & Another* [2013] eKLR (Musyoka, J), *Awadh Saleh Said Sherman vs. Omar Saleh Sherman & 3 others* [2015] eKLR (Thande, J), *Rose Faith Mwawasi & another vs. Fatuma Athman Abud Faraj* [2015] eKLR (Thande, J), *Gilbert Wainaina Gachao vs. Patrick Gachanja Gachao & another* [2015] eKLR (Musyoka, J), *In re estate of Njoroge Gichubi (Deceased)* [2017] eKLR (Musyoka, J) and *In re Estate of Fredrick Polwarth Kibuthu Kubai (Deceased)* [2019] eKLR (Ongeri, J).
  6. The other approach would be what was adopted in *In re Estate of David Chege Jasan (Deceased)* [2019] eKLR (Machelule, J), where it was stated that it was not lawful, that, in respect of one deceased person, the beneficiaries should litigate over his estate in two different courts, and that such should be considered to be in abuse of the process of the court, and one of the succession causes ought to be dismissed. The court may dismiss the extra cause or causes, so that there is left only 1, or it may strike them out, as was done in *In Re Estate of Lyduska Hornik Platto (Deceased)* [2012] eKLR (GBM Kariuki, J) and *In Re the Estate of Muiruri Gatuku (Deceased)* [2014] eKLR (Musyoka, J).
  7. The other option would be to close the cause filed during the pendency of the other, as was done in *In re Estate of Henry Clement Wariithi* [2017] eKLR (F. Amin, J), *In re Estate of Kariuki Gachenga (Deceased)* [2018] eKLR (Musyoka, J) and *In re Estate of Rose Ngonyere Imbagwa (Deceased)* [2021] eKLR (F. Amin, J). In *Ndamba vs. M'Murungi & another* [2004] eKLR (Sitati, J), *Selina Tipango vs. Emily Wambui Ishmael & 7 others* [2016] eKLR (Nyakundi, J), *In re Estate of Nyambia Mukaya (Deceased)* [2019] eKLR (Onyiego, J), *In re Estate of Kanyeki Kimatu (Deceased)* [2020] eKLR (Sitati, J) and *In re Estate of Zakaria Lugonzo Amalemba (Deceased)* [2021] eKLR (Nyakundi, J), the grants made in the subsequent causes were revoked, on the basis that they were obtained in a process where the administrators had failed to disclose something material to the court, being the pendency of the succession cause filed earlier.
  8. In view of the above, I do not quite understand why the applicant herein found it necessary to initiate another cause, a third one, in the same estate, ostensibly to get directions on what ought to be done with the 2 certificates of confirmation of grant issued from the Kisumu and the Busia causes. This third cause was completely needless. All what should have been done should have been to ask the High Court,



- in the Kisumu cause, to call up the Busia succession cause file, and then decide, within its discretion, what to do with the 2 matters, between consolidating the 2 causes, or dismissing or striking out or closing the Busia cause, or revoking the grant made in the Busia cause and cancelling the certificate of confirmation of grant issued in that cause.
9. The *Law of Succession Act* and the *Probate and Administration Rules* may appear to be silent on that course of action, but there is inherent power, saved through Rule 73 of the *Probate and Administration Rules*, to enable the court do justice in the circumstances, and prevent abuse of the court process. Section 47 of the *Law of Succession Act* is often cited, as saving such inherent power, although I do not quite agree with that, but it is still a provision that those courts, who are persuaded that it saves the inherent power of the court in probate matters, can resort to, to deal with the anomaly of multiple succession causes in respect of the same estate. Of course, where a probate court doubts that section 47 and Rule 73 would be appropriate, in the circumstances, there is also Article 165(6)(7) of the *Constitution*, which gives the High Court supervisory powers over subordinate courts. The High Court can call up any file pending before a subordinate court, in a probate and administration matter, using any of these provisions, and may make any order, or give any direction, it considers appropriate to ensure the fair administration of justice.
  10. The direction that this matter should now take should be that the Deputy Registrar shall call up the cause in Busia CMCS No. E262 of 2021, so that it can be put together with Kisumu HCSC No. 39 of 2006, which has already been placed inside this miscellaneous file. Upon Busia CMCS No. E262 of 2021 and Kisumu HCSC No. 39 of 2006 being brought together, the court shall decide what to do with them, of course in the presence of the parties. The miscellaneous file shall, after the court decides what to do with them, be closed.
  11. So, let the Deputy Registrar act in terms of paragraph 8 above. This miscellaneous cause shall be mentioned on July 1, 2024, for compliance with the orders herein, and for further directions. The Deputy Registrar shall notify all the affected parties of that mention date. In the meantime, the estate herein shall not be distributed, pending the further orders to be made, or the directions to be given, on July 1, 2024. None of the 2 certificates of confirmation of grant, whether that in the Kisumu cause or that in the Busia cause, shall be implemented, until the other or further orders are made. It is so directed.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 27<sup>TH</sup> DAY OF MAY 2024**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Onyango, instructed by Owiti Otieno & Ragot, Advocates for the applicant.

