



REPUBLIC OF KENYA



**In re Estate of Jackson Mwanja Busolo (Deceased) (Miscellaneous Civil Application 51 of 2023) [2024] KEHC 5877 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5877 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION 51 OF 2023  
RN NYAKUNDI, J  
MAY 24, 2024**

**IN THE MATTER OF THE ESTATE OF JACKSON MWANJA BUSOLO (DECEASED)**

**BETWEEN**

**BEATRICE NAFULA MWANJA ..... 1<sup>ST</sup> APPLICANT  
PETER MUKHONJE MWANJA ..... 2<sup>ND</sup> APPLICANT  
SARAH NAVALAYO MWANJA ..... 3<sup>RD</sup> APPLICANT  
MARY NKHANU MWANJA ..... 4<sup>TH</sup> APPLICANT  
CAROLYNE NAMUKHULA MWANJA ..... 5<sup>TH</sup> APPLICANT  
SALOME NAMAROME MWANJA ..... 6<sup>TH</sup> APPLICANT  
EVERLYNE NALIAKA MWANJA ..... 7<sup>TH</sup> APPLICANT  
MILDRED NALIAKA MWANJA ..... 8<sup>TH</sup> APPLICANT  
MELISA MULEMIA MWANJA ..... 9<sup>TH</sup> APPLICANT**

**AND**

**JOHN WABOMBA MWANJA ..... 1<sup>ST</sup> RESPONDENT  
PHILIP BUSOLO MWANJA ..... 2<sup>ND</sup> RESPONDENT  
JOSEPH KHAEMBA MWANJA ..... 3<sup>RD</sup> RESPONDENT  
MARK KARANI MWANJA ..... 4<sup>TH</sup> RESPONDENT  
DANCAN KARANI MWANJA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

Coram: Before Justice R. Nyakundi



1. Before me is the Notice of Motion dated 18/11/2023 and filed on 20/11/2023. The Applicant seek the following orders:
  1. Spent.
  2. That the 1<sup>st</sup> Administrator be substituted with Mary Nakhanu Mwanja.
  3. That the Honourable Court be pleased to order the Respondents to commence and facilitate the process of transmission of the estate of the deceased which has been pending since the year 2014.
  4. That the Deputy Registrar do sign the transfer forms on behalf of any party objecting to the transmission.
  5. That costs of this application be provided for.
2. The application is premised on the grounds therein and is further supported by the Affidavit sworn by Fedrick Wanyama Lusweti on 20/11/2023. He deposed that he is a brother-in-law to the 1<sup>st</sup> Applicant, that the 1<sup>st</sup> Applicant is the administrator and the only widow to the deceased in whose the estate relates vide Eldoret High Court Succession No. 47 of 2004, that a certificate of confirmation of grant was issued in the case on 2/10/2014 and the estate comprises of the following: LR No. Ndivisi/Khalumuli/88, Nzoia Sisai. Farm No.3591, Matunda Market Plot, Viketi Marketing Cooperative Farm Plot 31-38 and LR No. Langas/Block/14/90.
3. He further deposed that the 1<sup>st</sup> Applicant initiated the process of transmission in the year 2019 by selling part of the estate to facilitate the process of transmission and the same was strongly opposed to by the Respondents and that the process then stalled and to date none of the estate has been transmitted, that currently the 1<sup>st</sup> Applicant is critically ill, bed ridden and in dire need of funds for the pending, on-going medical bills and general up keep which money can only be realized after sell of part of the estate of the deceased bequeathed to her, that according to the certificate of confirmation of grant the 1<sup>st</sup> Applicant is to get the following: Nzoia Sisal Farm Plot No. 3591 (1.8 acres), Matunda Market Plot (partly sold), Viketi Marketing Cooperative Society Plot (5 acres) and LR No. Langas Commercial Plot (permanent house). He maintained that from the above, it clear that the Applicants appear in all the properties and it will be trite that the process of transmission be done once and for all to put an end to this endless litigation. He stated that as at now the 1<sup>st</sup> Applicant cannot sign any document because of her state of health and he and majority of her family have agreed that Mary Nakhanu Mwanja do substituted her because of the following:
  - a. She will represent the interest of the 1<sup>st</sup> Applicant and that of her other siblings who are daughters to the deceased.
  - b. The respondent has always objected to transmission because he claims daughters are not to inherit any estate from the deceased
  - c. The 1<sup>st</sup> Respondent had already side-lined the 1<sup>st</sup> Applicant and denied her access to any of her property stating that she and her daughters should not inherit any property from the deceased.
4. Further, that it will be in order that she be substituted to enable all the beneficiaries to the estate to get their share as required by law, that the Respondents are to facilitate the process



of transmission as they have been heavily reaping mesne profits from the estate for over a decade now with the exclusion of the 1<sup>st</sup> Applicants and the other applicants who are widow and daughters of the deceased respectively, that the 1<sup>st</sup> Respondent, Mark Marauni and Philip Busolo have been threatening anyone who questions about the proceeds from the estate and thus stalling the process further, that there is a ruling from Butali PM L& E 036 OF 2022 which is to the effect that the Respondents are now aware of this matter and the only solution to this issue is for transmission to take off, that the Respondents have been a stumbling block when it comes to transmission of the property of the deceased and unless this Honourable court intervenes, the estate might never be transmitted to the rightful beneficiaries, the 1<sup>st</sup> Applicants medical bills will not be attended to and that the process will stall again and that since the Respondents have all along not been assisting in settling the medical bills being incurred by the 1<sup>st</sup> Administrator/Applicant, he intends to dispose of part of the estate to cater for the pending bills and ongoing bills. He urged that it will be in the interest of justice that the orders sought be granted.

### **Response to the application**

5. He deponed that the instant application is devoid of merit, frivolous, incompetent, fatally defective ,vexatious ,baseless and dead on arrival, that the Applicants' Supporting affidavit is devoid of form, incompetent, incurable by amendment and the same should be struck out and/ or expunged from the court record since the same has been sworn by purported brother in law to the 1<sup>st</sup> applicant who is a stranger to this proceedings who is a busybody in this proceedings, that the instant application is brought under the wrong provisions of the law which do not donate any power to this honourable court to grant the orders sought thus making the instant application herein incompetent ab initio and has been commenced by way of Notice of motion instead of chamber summons thereby making the instant application fatally defective.
6. He further deponed that the instant application amounts to abuse of the court process as it seeks to unduly burden the Court and waste this Honourable Court's resource in judicial time given that there exists Eldoret Succession Mwanja Busolo-deceased where all issues relating to the said estate can be completely addressed, that the Applicants should not be allowed to approach this Court with two causes at the same time relating to the same estate being the estate of The Estate of Jackson Mwanja Busolo- Deceased for that portends prospects of embarrassment in the event of conflicting decisions. According to the Respondents the instant application hereto is a mischievous one aimed at misleading the honourable court to grant the orders sought through backdoor and should be dismissed with costs.

### **Determination**

7. I have carefully considered application herein, supporting affidavit and affidavit in opposition for substitution. The Applicants seek to substitute one of the administrators being Beatrice Nafula Mwanja with Mary Nakhanu Mwanja for reasons that the said administrator is unwell and for purposes of completing the administration of the estate herein.
8. In *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2016]* eKLR, the Court held as follows;

There is absolutely no room of substitution of the deceased administrator under the *Law of Succession Act*. In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise.....



Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the *Law of Succession Act* on the reason that the grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the application.

9. From the above it is clear that there is no specific provision in succession law which provides for substitution of an administrator. In case of such a scenario Section 76 (e) comes to play and a fresh grant of letters of administration de bonis non is issued.
10. This position was also aptly considered in the matter of the estate of Mwangi Mugwe alias Elieza Ngware (deceased) and in the matter of the estate of Mary Wairimu Ngware (deceased) in Nairobi High Court Succession Cause No. 2018 of 2001 where Justice Khamoni dismissed an application seeking substitution of a deceased single administrator without revoking the grant first under Section 76(e). Similar position was held by Judge Angawa in the matter of the estate of Peris Wanjiku Nduati (deceased) Nairobi High Court Succession Cause No. 2349/2001 in which she held that:

where an administrator dies before completion of administration, the right course of action should be to seek his replacement through an application for grant of administration de bonis non”. Also see *Maamun bin Rashid bin Salim EL-Rumhy v Haider Mohammed Bin Rashid El-Basamy* [1963][EA.438].
11. For the above reasons stated, the application before me and the prayers seeking to directly substitute one of the administrators herein is not legally and procedurally correct. The Applicants are advised to make an appropriate application for revocation of the grant and then seek issuance of a fresh grant of letters of administration de bonis non and subsequent confirmation of the grant.
12. It also important to note that the Supporting Affidavit herein has been sworn by one Fredrick Wanyama Lusweti in his capacity as a brother-in-law to Beatrice Nafula Mwanja. Give that the *Law of Succession Act* under Section 29 establishes a hierarchy of precedence for succession related disputes, it is evident that he thus lacks locus in this particular case. It is also worthwhile to point out that Eldoret High Court Succession Cause No. 47 of 2004 is the primary file when it comes matters pertaining to the administration of the estate of Jackson Mwanja Busolo, as such parties are hereby advised against opening new files in that regard.
13. This application is therefore incompetent and not properly before the court. It is accordingly struck out.
14. Each party shall bear their own costs.
15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF MAY 2024**

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**R. NYAKUNDI**  
**JUDGE**

