

KENYA / JUDGMENT

In re Estate of Mavole (Deceased) [2026] KEHC 12841 (KLR)

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COURT

High Court

BEFORE

JN Onyiego

CASE / FILE NUMBER

Succession Cause 258 of 2017

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

SUCCESSION CAUSE NO. 258 OF 2017

IN THE MATTER OF THE ESTATE OF SAMUEL MAVOLE (DECEASED)

BENARD WAMBUA MAVOLE.....1ST ADMINISTRATOR

CYNTHIA MUENI MAVOLE..... 2ND ADMINISTRATOR

-VERSUS-

AGNES KAVENDI MUINDE.....PROTESTOR

JUDGMENT

Introduction

1. The deceased herein died intestate on 11-7-2006. According to form P&A 5, he was survived by: -
2. Malinda Mavole-Deceased 1st wife
3. Jackson Makoani Mavole-Deceased son
4. Bernard Wambua Mavole-Son -60 yrs.
5. Henry Mwanzui Mavole-Son-58 years
6. Jespher mutuku Mavole –Son-deceased
7. Mbulwa Mavole-daughter-Adult

8. Mumbua Mavole-Daughter –Adult
9. Ndulu Mavole-2nd Wife –Adult
10. Wayua Mavole-Daughter-Adult
11. Kanyiva Mavole-Daughter –Adult
12. Kamanthe Mavole-Daughter-Adult
13. Mueni Mavole-Daughter –Adult
14. Kavithe Mavole-Daughter-Adult
15. The only asset listed is LR No. Nzau/Matiliku/45 valued at Kshs. 500,000/=.
16. Via a Petition dated 29-9-2015 and filed on 8-10-2015, Bernard Wambua Mavole moved this court for a Grant of Representation as the sole Administrator. The estate was gazetted on 5-8-2016 and subsequently a grant issued on 26-9-16. The Petitioner then applied for Confirmation of the Grant vide an application dated 20-12-2017. However, the suit was dismissed for want of prosecution and later reinstated.
17. The Petitioner then filed a fresh application dated 3-10-2023 seeking Confirmation of the Grant. In response, Cynthia Mueni Mavole a daughter to the deceased filed a protest dated 16-4-2024 claiming that the Petitioner had not obtained consent from the rest of the beneficiaries and that there being two houses, each house ought to have had a Representative as an Administrator. The matter was referred for arbitration culminating to a settlement dated 15-7-2024 thus incorporating and or appointing Cynthia Mueni Mavole as the 2nd Administrator.
18. Subsequently, the two Administrators, filed a fresh application dated 30-4-2025 seeking Confirmation of the Grant issued on 29-9-2016.
19. However, before the Grant could be confirmed, a Protest dated 27/04/2025 the subject of this ruling was filed by Agnes Kavendi Muinde who claimed that she was a widow to Jespher Mutuku Mavole a son who pre-deceased the deceased father herein.

The Protest

1. The Protestor, Agnes Kavendi Muinde, deposed that she was the widow of Jasper Mutuku Mavole who died on 06/02/2003 as per the Death Certificate marked **AKM 1**. That, her deceased husband was a son to the deceased herein hence an heir to the estate i.e. a parcel of land known as Nzau/Matiliku 45(the suit land).
2. That, Benard Wambua Mavole who is a brother to her deceased husband has maliciously and without reasonable cause and justification disposed part of the said land to various interested buyers. That, according to advice from her Advocates, the said actions amount to intermeddling as per **Section 45 of the Law of Succession Act**.

3. That, further advise from her Advocate is that at the time of disposing the portions of land, succession proceedings had not been instituted and there was no Grant issued and confirmed to clothe Benard Wambua Mavole with capacity as an Administrator. She expressed apprehension that part of the land which has been sold contains the larger part of her deceased husband's undivided share of the estate. That, if the grant is confirmed as presented, the apportionment of shares will be to the so-called beneficiaries who have bought the land illegally.
4. She deposed that, she is aware of a recent survey which was conducted to identify and map out the portions that have been illegally sold and to ascertain the remaining portions which the Administrator intends to distribute to the heirs of the estate. That, it is in the interest of justice that the pending Confirmation of Grant be stopped to enable her ascertain and identify the undivided share of her late husband. That, it is proper and ideal for the survey report to be presented to court for perusal and scrutiny.
5. That, if this court is misled to confirm the Grant, there will be a miscarriage of justice as she will be deprived of her right to equitable inheritance together with her children.

The Response

1. Benard Wambua Mavole swore a Replying Affidavit on 08/08/2025 in which he deposed that, the protest lacks merit, is incompetent and incapable of succeeding. That, the relationship between the Protestor and the late Jasper Mutuku Mavole was purely a come-we-stay arrangement.
2. That the deceased sub-divided his land sometimes in 1994 with the assistance of clan elders as per the exhibited copy marked **BMW1**. That, the 1st house's portion was sub-divided into 4 portions with the lower most side assigned to Benard Mavole and the other portion to Jackson Mavole then Mwanzui Mavole and Mutuku Mavole.
3. That, upon the death of Jasper Mutuku Mavole sometime in 2003, he was buried at the deceased's estate since he was residing elsewhere. That, without prejudice to the foregoing, the Protestor herein was requested to settle on the deceased's estate and take care of the aging parents of Jasper Mutuku Mavole but she blatantly and rudely refused.
4. That, at a family meeting held after the burial of Jasper Mutuku Mavole, the Protestor claimed that she was never a wife to Jasper and never wanted anything to do with Jasper's family henceforth. That, true to her word, she never set foot on the deceased's property nor kept any ties or communication with the deceased's family. That, the portion of Jasper Mutuku Mavole remained unutilized for years since he had no family whatsoever.
5. That, due to the deteriorating health of Samuel Mavole Ivia and his wife, he was forced to sell the portion assigned to Jasper Mutuku Mavole to cater for medication and upkeep. A copy of the Sale Agreement and Translation are exhibited as **BWM2(a) & (b)** respectively.

6. That, the deceased had already distributed his property during his lifetime and no property is available for distribution. That, the Protestor is neither a wife nor daughter-in-law to the deceased hence not entitled to a share.
7. The Protest was canvassed through written submissions.

Submissions by the Protestor

1. The issues for determination were stated to be;
2. **Whether the Protestor has *locus standi* to protest against the Confirmation of the Grant.**
3. **Whether the 1st Administrator intermeddled with the estate before instituting the succession cause herein and as a result deprived the Protestor her right of inheritance of her deceased husband's share.**
4. **Whether the Protestor as a Legal Representative of the estate of her deceased husband, Jasper Mutuku Mavole, and on behalf of the child of the deceased one, Philis Malinda Mutuku, ought to know and ascertain the share of inheritance to her deceased husband who is a rightful heir to the estate.**
5. As to whether the Protestor has *locus standi*, it was submitted that the Protestor's husband died before the deceased herein hence it was unprocedural for the Petitioners to include the name of the Protestor's husband in the Petition. That, upon realizing that the 1st Administrator was pushing for Confirmation of Grant, she obtained Grant of Letters of Administration *ad Litem* on behalf of her deceased husband in order to come on board on her own behalf and on behalf of her daughter.
6. As to whether the 1st Administrator intermeddled in the estate and deprived the Protestor of her rightful inheritance, it was submitted that the large number of purported beneficiaries is evidence that the 1st Administrator illegally sold a large part of the subject land. That, there is no evidence on record showing the proper portion to be inherited by the estate of her late husband.
7. Reference was made to **Section 71 (1)(d) of the Law of Succession Act** for the submission that; a Grant of Letters of Administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled. Reliance was placed on **re Estate of Simon Robi Maroa -Deceased (2023) eKLR** for the submission that; where there is no application on record showing what all parties are entitled to and their respective shares, then '**there is nothing which the court will proceed to confirm**'.
8. Further reliance was placed on **re Estate of Ngurahiya Kamau -Deceased) (2025) eKLR** for the submission that failure to present clear arrangements at the time of confirmation is a clear recipe for future disputes.

9. It was submitted that distribution of the estate before Confirmation of Grant amounts to intermeddling and such transactions, particularly regarding immovable property, are null and void. That, consequently, the transactions executed by the 1st Administrator in the alleged sales, amounted to intermeddling and deprived the Protestor her right to inherit her late husband's share.
10. As to whether the Protestor ought to know and ascertain her late husband's share in the estate, it was submitted in the affirmative. This court was implored to reject the application for Confirmation of Grant and order a proper schedule of distribution which contains the Protestor's name.

Submissions by the 1st Administrator

1. It was submitted that the Protestor did not avail evidence of marriage between her and Jasper Mutuku Mavole. That, she did not provide proof of long cohabitation or any cohabitation with Jasper. That, she did not provide proof of any children she had with Jasper nor dependency upon him. That, most importantly, she did not provide a chief's letter in proof of her allegations.
2. Reference was made to **Section 29 of the Law of Succession Act** for the submission that the burden of proof is on the person claiming dependency to prove it on a balance of probabilities, usually through evidence of paternity (for children) or actual financial maintenance (for other dependants). Reliance was placed on the case of **Mumbi M'Nabea - vs- David M. Wachira [2016] eKLR** where the Court of Appeal (Kihara Kariuki, Okwengu & Sichale JJ.A), stated;

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not. Section 107(1) of the Evidence Act, Cap 80 Laws of Kenya provides as follows:-

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

1. It was submitted that the Protestor did not controvert the 1st Administrator's deposition that; the relationship between the Protestor and Jasper was only a temporary come-we-stay arrangement. That, the Protestor did not bring any witnesses or affidavits to attest or testify to the issue of dependency. That, she has not furnished any proof of residence or payment of utility bills by deceased or where they lived before his demise. That, she did not avail proof of financial transactions between her and Jasper.

2. It was contended that the Protestor is being economical with the truth by claiming that she had children with Jasper without mentioning how many they are, their names and ages. That, she is on a fishing expedition meant to derail the administration of the estate. Consequently, it was submitted that she is neither a widow nor dependant of Jasper hence not entitled to his share in the estate.
3. It was further submitted that the deceased sub-divided his estate sometimes in 1994 before he passed on. That, the sub-division map and list of elders who attended was filed in court and the same was not challenged or opposed. That, the Protestor refused to have any connection or relationship with the deceased after the burial of Jasper. The court was asked to consider whether the Protestor's behaviour is of someone who can be considered a wife or beneficiary of Jasper.
4. With regard to the claim that the 2nd Administrator supports the Protest, it was submitted that the 2nd Administrator acknowledged the Protestor and left it at that without giving a further explanation as to how, why, where and for how long she knew the Protestor.
5. It was contended that the burden of proof remains strictly on the Protestor and it does not shift because another party gives a blanket statement in her recognition. That, the Protestor did not take any positive steps in trying to persuade the court to believe that indeed she was married to Jasper.
6. It was contended that the Protestor never reached out to the deceased or his wife during their lifetime and only surfaced when their land is being distributed to the legal beneficiaries. That, if indeed she is a beneficiary, she should have claimed her stake as a beneficiary during their lifetime.
7. It was submitted that an **ad litem** appointment is not by itself proof of dependency in a Kenyan succession matter. That, it is a procedural tool used to represent a minor or incapacitated person in court proceedings. That, according to the Death Certificate, Jasper was resident in Matiliku and died at Makueni Hospital on 06/02/2003. That, the Protestor did not indicate where she was residing at that time and was never known to the family of the deceased. That, she has no **locus standi** to protest and should not inherit from the deceased's estate.
8. Having looked at the Protest, Replying Affidavit and Rival Submissions, the only issue for determination is whether the protest is merited.

Analysis

1. It is not in dispute that the late Jasper Mutuku Mavole died in 2003 and was a son of the deceased herein, Samuel Mavole. The Protestor claims to be a widow of Jasper Mutuku Mavole hence entitled to his share from the estate. It is trite that where an heir of the estate is deceased, his/her spouse is entitled to their share from the estate.

2. The Protestor is the one alleging to be a widow of Jasper and her allegation is highly contested by the 1st Administrator hence she bears the burden of establishing the claim on a balance of probabilities. The 1st Administrator maintains that she was in a come-we-stay relationship with Jasper and that she blatantly and rudely refused to settle on the deceased's estate and take care of the aging parents of Jasper Mutuku Mavole. That, she only resurfaced to claim a share in the estate yet she wanted nothing to do with the family of Jasper.
3. In the persuasive case of **William Kabogo Gitau -vs- George Thuo & 2 others (2010) 1 KLR 526**, the court (Kimaru J-as he then was) stated;

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposite party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegation that he made has occurred.”

1. The Protestor did not adduce any evidence to show that she was married to the late Jasper under any system of marriage recognized in Kenya. She did not adduce evidence of cohabitation and longevity of any such cohabitation and did not call witnesses to testify of their reputation as husband and wife. In **Gituanja -vs- Gituanja [1983] KLR 575** the Court held **inter-alia** that; **“the existence of a marriage is a matter of fact which is proved with evidence...”**
2. In **Eva Naima Kaaka & Another -vs- Tabitha Waithera Mararo (2018) eKLR** the Court of Appeal (Nambuye, Kiage, Murgor JJA), expressed itself as follows;

“From the above it becomes apparent that, no ram or goat was slaughtered to mark the coming into existence of a marriage. Without the presence of the central feature of the **ngurario ceremony, it cannot be said that a valid Kikuyu customary marriage came into existence between Waithera and the deceased.**

It is also worth noting that Waithara did not provide any description or particulars of the alleged ceremony; her evidence is clear, ****“... there was no *marriage...”****. Essentially, her testimony was limited to 2008 when the deceased, together with one Joseph and Karanja, who are elders and his friends, visited her parents to introduce the deceased as the person who intended to marry her. It would seem that it remained just that: an intention, to marry. The learned judge erroneously concluded that Waithera was married to the deceased under the Kikuyu-Maasai Customary Law, despite the cogent evidence that the essentials of such a marriage were not satisfied. In our view, this omission negated the existence of a Kikuyu customary marriage, and we so find.”

1. In the instant case, the Protestor did not even attempt to prove that she was married to Jasper under any Customary Law. Consequently, there is no evidence upon which this court can conclude that the Protestor was married to Jasper. There was no proof by either Birth Certificate or any form of paternity proof that the deceased sired a child with her alleged

husband. In other words, there is no proof that Jasper had a child with the Protestor. The Protestor's claim is basically unsupported as even the duration of marriage is not even specified to infer a presumption of marriages. The protest is hollow and without sufficient ground to anchor on.

2. In view of the above finding, it is my holding that the protest is unfounded and the same is dismissed with no order as to costs.
3. As to whether the grant herein should be confirmed, I note that there is no consent duly signed by all beneficiaries signaling their agreement on the proposed mode of distribution. For those reasons, the administrators are hereby given 14 days to file a list of beneficiaries with their signatures duly appended against their names. Mention on 23-9-2026 for Confirmation of the Grant.

Dated, signed and delivered this 7th day of August 2026

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J.N.ONYIEGO

JUDGE

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