



**In re Estate of Paul Masai Osiranga (Deceased) (Succession Cause
182 of 2007) [2025] KEHC 1619 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 182 OF 2007
WM MUSYOKA, J
FEBRUARY 21, 2025**

IN THE MATTER OF THE ESTATE OF PAUL MASAI OSIRANGA (DECEASED)

RULING

1. This succession cause was closed on 30th January 2024, and fresh succession proceedings were to be commenced.
2. The background was that a summons for revocation of grant, dated 25th October 2023, had been filed, based on grounds that the applicants, in that application, and other family members, had been excluded from the succession process, and calling for a recall of all the transactions carried out on the basis of the cause, to facilitate fresh proceedings that would involve and include all the survivors of the deceased. The parties elected to negotiate and mediate, and orders referring the matter to mediation were made, on 23rd November 2023. Mediation happened, and the resultant mediation settlement was adopted as an order of the court, whose terms were what I have stated in paragraph 1 above.
3. Zedekiah Onyando Okumu then filed a Motion, dated 22nd April 2024, seeking stay of execution and setting aside of the orders of 30th January 2024, on grounds that he had acquired some properties, which formerly belonged to the estate, and those orders, therefore, affected him, yet he had not been heard before they were made.
4. The application, dated 22nd April 2024, was filed under certificate of urgency. It was placed before me on 24th April 2024. I allocated it 7th May 2024, for argument inter partes. The Advocates, for the applicant, were aware of the date, for I see, on the record, an email from them, addressed to the Advocates for the other side, informing them of the date of 7th May 2024, which mail was acknowledged. Come 7th May 2024, none of the parties attended before me, and I allocated the matter another date, 30th May 2024, this time for mention. Come 30th May 2024, no one attended court, and I closed the matter.
5. The orders of 30th May 2024 provoked the filing of another application, dated 15th July 2024, where the applicant in the application, dated 22nd April 2024, seeks stay of the orders of 30th January 2024, and reinstatement of the application, dated 22nd April 2024. It is explained that the Advocate, in the



- firm of Advocates handling the matter for the applicant, who was seized of it, a Mr. Obado, had left the firm without properly handing over, hence there was an oversight, which meant that the matter was left unattended.
6. The respondent opposed it, through grounds of opposition, dated 12th September 2024.
 7. Directions were given on 16th October 2024, for canvassing of the application, by way of written submissions. By the last mention on 17th December 2024, when I allocated dates for ruling, the applicant had not filed their written submissions. I see submissions on record by the respondent.
 8. The applicant displays a glaring lack of seriousness with this matter. After he was allocated dates for hearing of the application dated 22nd April 2024, he did not have the courtesy of attending court to prosecute it, and the court was gracious enough to give him another chance, by way of a date for mention on 30th May 2024. Even on that date he did not come to court. He then files the application dated 15th July 2024, to have the earlier one reinstated. He was given directions, on 16th October 2024, to file written submissions. When the matter was mentioned, 2 months down the line, on 17th December 2024, he had not complied. Such a party is seeking discretion of the court, and I doubt that it would be deserving of exercise of discretion in its favour, in the circumstances.
 9. I see arguments about the right of the applicant to access justice, and his entitlement to a fair hearing, being imperilled, if the orders he seeks are not granted. I doubt that a party who is allocated dates, on 2 occasions, by the court, for appearance, and does not attend court, and who is given directions to file written submissions, on the disposal of its application, and does not file them, can validly raise issues about his access to justice being impeded, or his entitlement to fair hearing being compromised.
 10. This succession cause was closed, because the proceedings were initiated and prosecuted by ½ of the family to the complete exclusion of the other ½ of the family. The closure of the file was intended to give opportunity to the family to initiate and conduct fresh succession proceedings, that would carry and incorporate all the members of the family. The applicant is not a member of that family. He might have bought estate property after confirmation, but if the process leading up to that confirmation was botched, he cannot claim superior right to that of the short-changed children of the deceased.
 11. A flawed distribution of the estate is always open to being nullified, under section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, to allow for a fresh start, expected to be inclusive of all. That fresh process cannot possibly be halted to accommodate the interests of a person who was not even a member of the family. His rights can only be secondary to those of the children, so long as no proper administration of the estate was done. A revocation of a flawed administration process cannot be stopped, or, where granted, set aside, to accommodate a third party.
 12. Secondly, the applicant loses nothing. The estate has not been distributed. Administration is set to be done afresh. His interests can be catered for in the fresh proceedings. What he should do is to await the commencement of the fresh proceedings, to which he should seek to be joined, to pursue his claims and protect his interests, when the grant to be issued comes up for confirmation.
 13. I am not persuaded that I should exercise discretion in favour of the applicant, for the reasons given above. The application, dated 15th July 2024, is without merit. I do hereby dismiss it. The file herein shall remain closed and stored in the archives of the court. There shall be no order on costs. Orders accordingly.

DELIVERED VIA EMAIL, AND DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 21ST DAY OF FEBRUARY 2025.

W MUSYOKA



JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Odhiambo, instructed by Onyango Odhiambo & Company, Advocates for the applicant.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the respondent.

