



REPUBLIC OF KENYA



**Were & 2 others v Bunyali & 5 others (Probate & Administration
E032 of 2023) [2025] KEHC 933 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
PROBATE & ADMINISTRATION E032 OF 2023**

RK LIMO, J

FEBRUARY 5, 2025

IN THE MATTER OF THE ESTATE OF SAUL EGUNZA BUNYALI (DECEASED)

BETWEEN

PRISCILA OBWOGO WERE PETITIONER

AND

CLIFF ZEPHA BUNYALI 1ST EXECUTOR

EUGENE EGUNZA ONYINO 2ND EXECUTOR

AND

AGGREY EGUNZA BUNYALI 1ST OBJECTOR

OLIVER OBUNYU BUNYALI 2ND OBJECTOR

OSCAR ESILO 3RD OBJECTOR

NANCY KAHUGA SHAZIMA 4TH OBJECTOR

WALTER AMATA 5TH OBJECTOR

RAYMOND AMATA 6TH OBJECTOR

RULING

1. The applicants herein Cliff Zepha Bunyali and Eugene Egunza Onyino have brought this application dated 12/1/2025 seeking the following prayers:-
 - i. Spent
 - ii. That the applicants be appointed as executors of the Will of the late Saul Egunza Bunyali in place of Priscila Were Abwogo who has since passed on.



- iii. That pending the hearing and determination of this application, a prohibitory order be issued directed at the respondents namely Aggrey Egunza Bunyali, Oliver Obunyu Bunyali, Oscar Esiolo, Walter Amata, Raymond Amata, their agents/proxies or anyone acting on their behalf from taking possession of, subdividing, distributing, cultivating, leasing, dispensing or in any way intermeddling with the deceased property known as Haruma Farm L.R No.6649 and in any other property of the deceased.
 - iv. That the Hon. Court be pleased to order the 1st, 2nd and 4th respondent to give account to the court and the executors all proceeds obtained from intermeddling with L.R. No.6649.
 - v. That pending the hearing and determination of this application and petition all the children of the deceased espoused in Clause 4 of the Will do enjoy equal share in cultivating/use of Haruma Farm and that in particular each do cultivate and enjoy 56 acres (later amended to 70 acres) of Haruma Farm.
 - vi. That in default of compliance with prayer 2, 3, and 4 this Hon. Court do impose a custodial sentence against the respondents as provided under Section 45 of L.S.A.
 - vii. That for purpose of expediting conclusion of this matter, this court be pleased to consolidate all pending applications so as to bring finality to the distribution of the estate of the late Saul Egunza Bunyali.
2. The applicants have listed 14 grounds in their application but in the interest of time I will summarize and compress them as follows:-
- a. That the applicants were appointed by deceased as alternate executors of the Will dated 17/8/22 and that upon the demise of the executor on 16/6/2024 they should be appointed to substitute her in accordance with Clause 2 of the Will.
 - b. That the respondents are utilizing more than 300 acres of the estate in exclusion of the other beneficiaries thereby depriving them of the right to utilize the estate.
 - c. That the respondents have brought proxies and agents and have cultivated the estate in total disregard of the rights of the other beneficiaries.
 - d. That it is now another planting season and for purposes of good order and interest of justice all the children of the deceased should be allowed to utilize equal share pending determination of this cause.
 - e. That the orders sought are for purposes of good order and in interest of justice because all the children of the deceased should be allowed to utilize equal share pending determination of this cause.
3. The applicants through learned counsel Mr. Mola submit that the 1st Respondent alone has cultivated more than 300 acres in total disregard of other children of the deceased. He submits that the 1st Respondent should be made to account for the proceeds he received from intermeddling with the estate.
4. The applicants have further relied on further supplementary affidavit of Cliff Zepha Bunyali where he has reiterated the need for substitution owing to the demise of the petitioner and the need to accommodate all the beneficiaries in the enjoyment of the estate pending determination of this cause. He has annexed the support of five other siblings to buttress his contention that majority of the beneficiaries are in favour of this application.



5. The objector herein, Nancy Kahuga Shazima in her affidavit sworn on 31/1/25 has thrown her weight behind the applicants. Through learned counsel M/s Munialo she faults the 1st and 2nd Respondents of utilizing the estate as sole owners to the exclusion of others.
6. She avers that it will be in the interest of justice to allow the application herein.
7. The 1st to 4th Respondents herein have opposed this application. They contend that the supplementary affidavit by applicants was served late and amounts to an ambush. They have sought that the same be expunged from record.
8. The respondents rely on the affidavit of Aggrey Bunyali Egunza and Oliver Obunyu Egunza sworn on 31/1/25. The affidavit has 17 paragraphs and in the interest of justice I will also summarize and compress the same.
9. The respondents read bad faith on the part of the applicants and hold that the 2nd applicant is a stranger. The learned counsel Mr. Songole has however stated that the 2 applicants can be allowed to be executors.
10. The respondents point out that they had cited the applicants for intermeddling in the estate vide an application dated 14/5/24 and that Nyakundi J on 6/6/25 issued some orders which have not been set aside or revised.
11. The respondents aver that the applicants have been collecting proceeds from leased properties of the deceased and have listed the properties. They allege that the applicants have been utilizing the income as their own and have asked them to render an account of the same.
12. They aver that they are ready and willing to have all the beneficiaries accommodated in L.R 6649 with each beneficiary getting 70 acres for use pending determination of this cause.
13. They have denied selling, subdividing or leasing out any part of the estate and have challenged the applicants to provide evidence.
14. This court has considered the application and the responses made.
15. It is quite apparent after hearing all the parties through their respective counsels that prayer 2 of the application is uncontested and the same is hereby granted as prayed.
16. This court has considered the arguments by the applicants to have the respondents render account of what they have collected from leasing or utilizing L.R No.6649 and the counter arguments by the respondents asking that the applicants do also render an account of the money reportedly collected from leased properties comprising the estate. This court finds that while everyone should and is obligated to render account of any money collected from the estate or any amount received on behalf of the estate, it is premature to go into that at this stage because no evidence has been presented before me to make a determination one way or the other. That issue of rendering accounts will be deferred and will be determined along other contested issues in this cause during trial.
17. On the question of enjoyment or use/occupation of L.R.6649, this court finds that the parties are unanimous that all the beneficiaries should be accommodated within L.R.6649 with each beneficiary cultivating/using/occupying 70 acres each pending determination of this cause. This court therefore orders that each beneficiary for the time being or in the interim period pending determination of this cause shall be entitled to cultivate/use or utilize 70 acres of L.R.6649 each. The counsels on record should act with expediency by agreeing on the mode of survey and marking out temporary boundaries of each beneficiary. The exercise however is only temporary and shall be subject to final determination



of what each beneficiary will eventually get. There shall be an order as to costs. This court further directs that going forward this court will be more inclined to entertaining the main cause itself rather than applications and will only entertain applications only if it is absolutely necessary and the same shall be done in a summary manner for purposes of expediency and to meet the ends of justice.

RULING DATED, SIGNED AND DELIVERED, AT KITALE THIS 5TH DAY OF FEBRUARY, 2025.

HON. JUSTICE R.K.LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Mola for Applicants

Munialo for Objector

M/s Ngeywo holding brief for Songole for 1st to 4th respondents

Court assistants – Duke/Chemosop

