



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Benjamin Okumu Oduku (Deceased) (Succession Cause
411 of 2011) [2025] KEHC 3414 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3414 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 411 OF 2011

WM MUSYOKA, J

MARCH 21, 2025

**IN THE MATTER OF THE ESTATE OF BENJAMIN OKUMU ODUKI
(DECEASED)**

RULING

1. The application, dated 25th June 2024, is by Joseph Peter Aduki, for stay of execution of orders that were made in the ruling of Tuiyott J, of 23rd May 2016, with respect to subdivision, partitioning, transfer and or any dealing with a property described as Bukhayo/Ebusibwabo/1604, pending appeal.
2. The principal argument is that the applicant, upon being dissatisfied with the orders made in that ruling, preferred an appeal against the same, at the Court of Appeal, being in *Kisumu CACA No. 32 of 2021*.
3. The proceedings that Tuiyott J conducted, leading up to the impugned ruling, were in the nature of an objection, under sections 68 and 69 of the *Law of Succession Act*, Cap 160, Laws of Kenya. Representation to the estate had been sought by Joseph Nyerere Okumu, and the applicant objected, on grounds that he was also a survivor of the deceased, but his name had been omitted from the list of survivors in the petition.
4. After taking oral evidence from several witnesses, presented by both sides, Tuiyott J concluded that the applicant was not a survivor of the deceased, and that he was not entitled to a share in his estate. It was observed that his claim was in the nature of declaration of a trust, which the High Court may not have jurisdiction to make. The objection was dismissed, and that was what he was aggrieved about.
5. The final order, made in the ruling of 23rd May 2016, was in the nature of a dismissal of the objection. No order was made for the doing of anything by anyone. Therefore, there was no order made capable of being implemented or executed. No order was made for the subdivision, partitioning, transfer and or any dealing with a property described as Bukhayo/Ebusibwabo/1604.
6. That being the case, the application, dated 25th June 2024, is not properly conceived or grounded. It has no merit, and I hereby dismiss it. As this is a family matter, I shall not award costs. Orders accordingly.



DELIVERED VIA EMAIL, DATED AND SIGNED, AT BUSIA, THIS 21ST DAY OF MARCH 2025.

W. MUSYOKA

JUDGE

Arthur Etyang, Court Assistant.

Advocates

Mr. Onsongo, instructed by Obwoye Onsongo & Company, Advocates for the applicant.

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the administrator.

