



REPUBLIC OF KENYA



**In re Estate of Ogutu Ngondo Oori (Deceased) (Succession Cause 199 of 2010) [2025] KEHC 3402 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 199 OF 2010  
WM MUSYOKA, J  
MARCH 21, 2025**

**IN THE MATTER OF THE ESTATE OF OGUTU NGONDO OORI (DECEASED)**

**RULING**

1. The application, dated 18<sup>th</sup> September 2024, is by Joseph Okwira, for review or setting aside of orders that were made in a ruling that was delivered on 12<sup>th</sup> May 2022, by Karanjah J, on a confirmation application, dated 20<sup>th</sup> May 2021.
2. The principal argument is that the applicant is a survivor of the deceased, yet he had been excluded from the list of survivors and had not been provided for in the distribution. For that reason, he argues that the distribution of Marachi/Bumala/1266, an asset of the estate, was not feasible, for as long as he was excluded.
3. I have not seen any response to the application, by the administrators.
4. Directions were taken on 15<sup>th</sup> October 2024, for disposal of the application, by way of written submissions. There has been compliance by both sides. I have read the written submissions filed and taken note of the arguments made.
5. Review of a court order is sought based on Order 45 rule 1 of the Civil Procedure Rules, and it is one of the remedies that has been adopted into probate practice by Rule 63 of the Probate and Administration Rules. The said relief is available on 3 grounds: error on the face of the record, discovery of new and important piece of evidence and other sufficient reason. The applicant has not sought to demonstrate that there was an error on the face of that ruling, which merits the review sought; or that an important matter of evidence has been discovered, which was not available when the ruling was being written; or that there existed some other sufficient reason for the review sought. He has not sought to demonstrate that his case falls within the ambit of Order 45.
6. The issue, of the applicant being a child or survivor of the deceased, who has been excluded from the succession process, is not new. It was at the centre of his summons for revocation of grant, dated 24<sup>th</sup> October 2014, in which he complained that he and 2 others had been excluded. The grant had been confirmed by then, excluding him. He did not file a protest to that confirmation process of 2011, to



raise the issues that he is raising now. He or his Advocates mishandled his revocation application, for it was never canvassed viva voce, where the issues around his being a child of the deceased could have been addressed, instead the grant was revoked without a formal hearing, on 12<sup>th</sup> June 2019.

7. The new administrators, appointed following the revocation of 12<sup>th</sup> June 2019, mounted a summons for confirmation of their grant, dated 20<sup>th</sup> May 2021, where they did not list the applicant as a child or survivor of the deceased. The applicant filed an affidavit of protest, sworn on 8<sup>th</sup> September 2021, to that confirmation application. He listed himself as one of the children of the deceased. The administrators swore an affidavit in reply to that protest, asserting that the applicant was not a beneficiary. Although the issues raised merited a viva voce hearing, the applicant conceded to canvassing the confirmation application by way of written submissions. In their submissions, the administrators asserted that the applicant was not a child of the deceased. The court ruled on that application, on 12<sup>th</sup> May 2022, where it found that the allegation that the applicant was a child of the deceased was not established by necessary evidence, and his protest was dismissed, and the confirmation application, of 20<sup>th</sup> May 2021, was allowed, excluding him.
8. Setting aside of court orders is sought and granted with respect to faulty proceedings, where some procedural step has been skipped, or the proceedings are muddled in some way, which would make them unfair to the applicant. The applicant has not sought to demonstrate that there was any misstep in the manner the confirmation proceedings, leading up to the ruling of 12<sup>th</sup> May 2022, were handled.
9. The issues now being placed before me, vide the application, dated 18<sup>th</sup> September 2024, had been placed before another court. They were judicially considered and dismissed. The applicant now wants me to sit on appeal, on the findings made by my colleague, in the ruling of 12<sup>th</sup> May 2022. I exercise a concurrent jurisdiction with Karanjah J, and I cannot possibly sit on appeal on his decisions. In any case, these issues are now res judicata. Another decision cannot be made on them based on the same facts. The applicant should have appealed that decision, if he was aggrieved by or dissatisfied with it .
10. It is my finding and holding that the application, dated September 18, 2024, is neither properly conceived nor grounded. Indeed, it is filed in abuse of court process. It has no merit, whatsoever. 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 21<sup>ST</sup> DAY OF MARCH 2025.**

**W. MUSYOKA**

**JUDGE**

Arthur Etyang, Court Assistant.

Advocates

Ms. Betty Achala, instructed by Abalo & Company, Advocates for the applicant.

Mr. Erick Jumba, instructed by Balongo & Company, Advocates for the administrators.

