



REPUBLIC OF KENYA



KENYA LAW

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Juma v Aura (Succession Cause 26 of 1999) [2025] KEHC 6786 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6786 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

SUCCESSION CAUSE 26 OF 1999

S MBUNGI, J

MAY 22, 2025

BETWEEN

IDD JUMA PETITIONER

AND

ABDI BANUR AURA OBJECTOR

RULING

1. Before this Court is Chamber Summons filed by the Petitioner/Applicant, Iddi Juma, on 16th May, 2023, brought under the provisions of Article 50(1) and 159(2)(d) of the *Constitution* of Kenya 2010, Sections 47 and 49 of the *Law of Succession Act*, Cap 160 Laws of Kenya, and Rules 49, 63 and 73 of the *Probate and Administration Rules*. The application seeks a series of substantive and consequential orders relating to the administration, distribution, and closure of the estate of the deceased.

Background

2. The Applicant is the Petitioner in this cause and was issued with a grant of letters of administration which was subsequently confirmed on 29th July 2009. Pursuant to the confirmed grant, the estate of the deceased was distributed among the beneficiaries, including the Objector/Respondent, Abdi Banur Aura, who received and had registered in his name two parcels of land known as East Wanga/lubinu/4196 and East Wanga/lubinu/4197, measuring a total of 1.33 acres.
3. By an application dated 24th June, 2019, the Objector/Respondent sought to revoke the said grant of representation on various grounds, key among them being the alleged exclusion of himself and the daughters of the deceased from the distribution.
4. The Court through Hon. Justice W. Musyoka, delivered a ruling on the revocation application on 24th March, 2023. In that ruling, the Court declined to revoke the grant but issued fresh directions, notably that the Objector/Respondent be appointed as co-administrator and that the daughters of



the deceased be presented before the Court for the purposes of expressing their views regarding the distribution of the estate.

The Application.

5. The instant application by the Petitioner/Applicant arises from the Court's directions in the said ruling. In compliance with the Court's directive, the Applicant has presented before the Court affidavits sworn by seven daughters of the deceased, all of whom, save for one, have expressed their support for the distribution already effected. The daughters confirmed that they had earlier, in a family meeting held before the commencement of these proceedings, voluntarily renounced their interest in the estate in favor of their brothers due to the small size of the estate(8 acres), and further that they do not contest the manner in which the estate was distributed.
6. The affidavits of the seven daughters, whose names are annexed to the supporting affidavit as exhibits IJ-4 to IJ-10, reaffirm that they were aware of the succession cause from the beginning and willingly supported the allocation of the estate to their male siblings, including the Objector/Respondent. The Applicant has further deponed that the only daughter who has expressed a contrary position is Zuhura Ondiso Juma, who has since aligned herself with the Objector/Respondent in seeking a redistribution of the estate.
7. The Applicant further avers that prior to the deceased's demise, the estate land had been charged to the Industrial and Commercial Development Corporation (ICDC) and had outstanding loan arrears amounting to Kshs 4,284,803. The Applicant states that he solely repaid the said loan in full to redeem the estate land from encumbrance. Despite an understanding that the Objector/Respondent would reimburse him and contribute towards the cost of succession, including the cost of the survey and registration processes, the Objector has failed or refused to honor the agreement.
8. The Applicant's affidavit outlines that the distribution of the estate was completed and transfers effected in favor of the respective beneficiaries, including the Objector/Respondent who now holds titles to the two aforementioned parcels. However, following the ruling of the Court, the inclusion of the Objector/Respondent as co-administrator has complicated the finalization of the estate, hence the current application seeking clarification and final orders.

Prayers Sought by the applicant.

9. Specifically, the Petitioner/Applicant prays that the Court do examine and consider the affidavits of the daughters of the deceased to satisfy itself that the said affidavits meet the conditions set out in paragraph 7 of the Court's ruling dated 24th March, 2023, and that the Court declares the distribution of the estate valid and undisputed with respect to all the beneficiaries save for the share held by the Objector/Respondent.
10. The Applicant further prays for an order that the two parcels of land registered in the name of the Objector/Respondent; East Wanga/lubinu/4196 and East Wanga/lubinu/4197, be redistributed equally between the Objector and his sister, Zuhura Ondiso Juma, or any other beneficiary the Objector may acknowledge as deserving a portion thereof.
11. The Applicant also prays that the Court order the surrender of the original titles of the said parcels to the Land Registrar Kakamega within 30 days to enable the redistribution and that failure to surrender the titles within the prescribed period, should result in their automatic cancellation and that the Land Registrar be directed to issue new titles in accordance with the Court's orders.



12. In addition, the Applicant prays that the appointment of the Objector/Respondent as co-administrator of the estate be reviewed and set aside, and that the administration of the estate be deemed finalized and closed, subject to the Objector reimbursing the Petitioner/Applicant the loan arrears and succession-related costs incurred solely by the Applicant.
13. The Applicant further prays for an order directing the Objector/Respondent to bear the costs of the instant application and those incurred by the Applicant in facilitating the appearance of the deceased's daughters before the Court in compliance with the directions of the ruling delivered on 24th March 2023.
14. The Applicant has submitted that the estate has been in court for over twenty-four years since the filing of the succession cause in 1999 and urges the Court to bring the matter to a close by issuing final and conclusive directions since litigation must come to an end.
15. The application is supported by a list of annexures marked IJ-1 to IJ-11, including a copy of the confirmed grant, the ruling of the Court dated 24th March 2023, the agreement entered into by the family prior to filing the succession cause, and the affidavits of the daughters of the deceased.

Objector/Respondent's Case.

16. In addition to the affidavits presented by the seven daughters of the deceased in support of the distribution undertaken by the Petitioner/Applicant, there are two affidavits sworn by one of the daughters, Zuhura Ondiso Shitseswa, who stated that she is the firstborn daughter of the deceased, the late Juma Shitseswa Linani. These affidavits present a contrary view and are aligned with the position of the Objector/Respondent, Abdi Banur Aura.
17. In her first affidavit, she avers that the Petitioner did not involve her nor her sisters in the succession proceedings when the petition was filed. She states that their late father had sired nine daughters, eight of whom are still alive, and that during his lifetime, he had allocated parts of the estate to four of his daughters, including rooms at the shopping centre which they were entitled to inherit.
18. She further deposes that the Petitioner/Applicant did not distribute these rooms as per their late father's wishes but instead allocated the said rooms and even some of the shops meant for his brothers to himself. She claims that the Petitioner has gone as far as demanding rent from some of his brothers.
19. She stated that all daughters of the deceased were denied their rightful shares. On these grounds, she prays that the grant issued to the Petitioner be revoked and the distribution of the estate be set aside, with a fresh distribution undertaken among all the children of the deceased.
20. In a second affidavit, she reiterates her position, stating that the grant of letters of administration intestate issued to the Petitioner, Iddi Webukha Juma, on 14th May 1999, and the certificate of confirmation of grant issued on 29th July 2009, were fraudulently obtained through misrepresentation and concealment of material facts from the Court.
21. She specifically avers that the Petitioner failed to include the names of the daughters of the deceased in the application for the grant and confirmation, and also failed to disclose the names of liabilities and purchasers of plots from the deceased. She annexes a copy of the family agreement dated 30th December 1997, marked "ZOS (1)," and further asserts that the Petitioner disregarded a family letter dated 12th November 1992, marked "ZOS (2)," which had appointed Abdi Banur Aura as the administrator of the estate.



22. She prays that the subdivision of Land Parcel No East Wanga/lubinu/1123 be cancelled, and new title deeds issued to deserving beneficiaries in accordance with the application filed by Abdi Banur Aura and the ruling of the Court dated 24th March, 2023.
23. She further prays that should the Petitioner decline to sign transfers to deserving beneficiaries, the Objector/Applicant be authorized to sign the transfers unilaterally to facilitate implementation of the Court's orders.
24. Both affidavits by Zuhura Ondiso Shitseswa are sworn in support of the Objector's position and challenge the procedural and substantive regularity of the original grant and distribution effected by the Petitioner.
25. The court ordered that the application be canvassed by way of written submissions. At the time of writing this judgment, only the Petitioner/Applicant had complied and filed his submissions. No submissions or further response were filed by or on behalf of the Objector/Respondent.

Applicant's Case.

26. Vide his submissions dated 27.03.2025, the applicant isolated two key issues for determination as follows:
 - i. Whether the replying affidavit by Mustafa A. Juma is defective
 - ii. Whether the application dated 15.05.2023 is merited.
27. On the first issue, the Applicant submitted that the replying affidavit by Mustafa A. Juma is fatally defective. It was argued that the said affidavit is neither dated nor commissioned, contrary to the requirements of Section 5 of the *Oaths and Statutory Declarations Act*, which mandates that any affidavit be properly sworn before a commissioner for oaths who must indicate the place and date on which the affidavit was taken. The Applicant pointed out that failure to comply with this statutory requirement renders the affidavit irregular, unverified, and legally inadmissible.
28. The Applicant submitted that since the replying affidavit lacks both a date and a commissioner's attestation, the Court ought to strike it out from the record for being incurably defective. In support, the Applicant cited the case of *Laikipia University College v Kibia (Suing as the Legal Representative of the Estate of Peter Maina Mwaura – Deceased)*, Civil Appeal E022 of 2023, where the court held that a defective and responded-to affidavit ought to be struck out. The Applicant therefore submitted that in the absence of a valid affidavit in opposition, the present application stands unopposed.
29. On whether the application filed on 16th May, 2023 is merited, the Applicant reiterated that he had annexed to his supporting affidavit sworn on 15th May, 2023 a total of seven affidavits by the daughters of the deceased. These were deposed by :
 - i. Mwanaisha Makokha Bakari,
 - ii. Fatuma Night Juma,
 - iii. Josephine Nechesa Wanga,
 - iv. Hadija Juma,
 - v. Umami Juma,
 - vi. Halima Shisia Wakhule, and



- vii. Maryam Amweye Juma, all of whom expressly disclaimed their respective shares in the estate in favor of the Petitioner/Applicant, Iddi Juma.
30. The Applicant prayed that the Court treats the said affidavits as evidence of the daughters' wishes in line with the directions issued in paragraph 7 of the ruling dated 24th March 2023, and to recognize the fact that the seven daughters had, of their own volition, elected not to claim any portion of the estate, thereby endorsing the distribution already carried out by the Applicant.
31. The Applicant submitted that the only portion of the estate currently under contention relates to Land Parcels East Wanga/Lubinu/4196 and 4197, measuring approximately 1.33 acres, which are currently held by the Objector/Respondent. It was the Applicant's position that these parcels should be redistributed to accommodate Zuhura Ondiso Juma, the only daughter who has expressed interest in inheriting a portion of the estate.
32. The Applicant further submitted that the estate was initially charged by the deceased to ICDC, with outstanding loan arrears of Kshs 4,284,803, which the Applicant solely repaid in order to redeem the land and secure the estate for distribution. He also submitted that he bore the cost of succession proceedings, including legal, survey, and registration fees.
33. The Applicant prayed that the Court invokes its inherent powers under Rule 73 of the Probate and Administration Rules, to find that the seven affidavits, annexed to the supporting affidavit as exhibits IJ-4 through IJ-11 to constitute sufficient compliance with the Court's earlier directive and provide a clear record of the daughters' positions.

Analysis and Determination.

34. I have looked at the court record, the chamber summons filed on 16.05.2023, the supporting affidavits, the replying affidavits and submissions by the applicant.
35. To me, the issue for determination is on the distribution of the deceased estate which comprises Parcel No E.wanga/lubinu/1123. Before I make a final determination I need the applicant to do the following:-
- i. To avail the seven daughters of the deceased who confirmed that they were in agreement with the mode of distribution to come to court and confirm to the court that they cede their shares to the applicant as stated in their affidavits annexed to this application.
 - ii. The applicant to avail evidence that Parcel Land No E Wanga/lubinu/1123 was charged with ICDC and had loan arrears of Kshs 4,284,803/= at the time of his death.
 - iii. Prove that it is the applicant who paid the loan arrears .
 - iv. An averment that the Applicant is/not interested in being refunded the money he paid to secure the title Land Parcel No E Wanga/lubinu/1123.
 - v. Mention on 24.7.2025 for compliance/further directions.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF MAY, 2025

S.N MBUNGI

JUDGE

In the presence of :



Court Assistant – Elizabeth Angong’a

Ms Malanda holding brief for Mr. Osiega for the Applicant online .

Mr. Manyoni for the objector absent.

Abdi objector present.

