



**Ndengu & 5 others v Okech (Civil Miscellaneous E006 of 2024)
[2025] KEHC 6142 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL MISCELLANEOUS E006 OF 2024**

DK KEMEL, J

MAY 16, 2025

IN THE MATTER OF THE ESTATE OF ELLY ODODA

AND

**IN THE MATTER OF THE SUMMONS FOR REVOCATION OF
LIMITED GRANT OF LETTERS OF ADMINISTRATION AD LITEM**

BETWEEN

**SIMON KHASAKHALA NDENGU 1ST APPLICANT
DAUDI MBATI OBURAMBO 2ND APPLICANT
JARED OMBEWA AMUSA 3RD APPLICANT
DISHON AMWIATSI ANYONJE 4TH APPLICANT
WYCLIFFE AMWUATSI KOME 5TH APPLICANT
VIOLET AWINJA NGOYA 6TH APPLICANT**

AND

KRISTABEL ODERA OKECH RESPONDENT

RULING

1. The Applicants herein filed the application dated 3rd May 2024 seeking the following orders:
 - a. A stay of proceedings in Siaya CMC ELC No.E097 of 2023
 - b. That the grant of letters of administration Ad Litem issued to Kristabel Odera Okech on 22nd August 2023 be revoked.
 - c. That the costs of the application be awarded to the Applicants.



2. The application is supported by the grounds set out thereunder and the affidavit of the 1st Applicant herein sworn on even date. The Applicants' gravamen is inter alia; that the grant of letters of administration Ad litem was made to the Respondent on 22/8/2023; that the proceedings to obtain the said grant ad litem were defective in substance as the relationship between the Respondent and deceased are in doubt; that the grant of letters ad litem were obtained fraudulently by making of a false statement or by concealment from the court of something material to the case; that the grant of letters ad litem was obtained by means of an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance or inadvertently; that the Respondent has failed to proceed diligently with the administration of the estate; that the Respondent ignored the rule of limitation of actions as she approached the court rather late in the day after 18 years; that the Respondent did not serve the Applicants who were in occupation of the suit land; that the Respondent acted clandestinely and denied the Applicants an opportunity to challenge the Respondent's alleged relationship with the deceased; that the Respondent's identity is in dispute since in some of her documents her ID card is indicated as a resident of Kisumu while other documents indicated her to be a resident of Gombe in Gem.
3. The record shows that learned counsel informed the court that it lacked jurisdiction to grant the orders sought and maintained that the matter was premature before this court. The counsel for the Applicants rubbished the sentiments of counsel for the Respondents and maintained that he will proceed with the matter.
4. The application was canvassed by way of written submissions. However, it is only the Applicants who filed submissions dated 25/4/2025.
5. I have considered the application and the submissions filed. It is not in dispute that the Applicant has confirmed that the Respondent had obtained a grant of letters ad litem on 22/8/2023 vide Siaya Chief Magistrate's Court Misc Succession Cause No. E089 of 2023. If that is the position, it is obvious that the Applicants should have filed the application seeking for revocation of the grant of letters ad litem before the said court which had issued the grant ad litem and not this court.
6. It is also noted that the Applicants are seeking for an order that this court stays Siaya Chief Magistrate's court ELC No. E097 of 2023. If that is the position, then the Applicants should have moved to the ELC court at Siaya which is a court of equal status to the High Court and which has powers to grant the orders sought by the Applicants by dint of Article 162 (2) (b) of *the Constitution*. It is thus clear that this court does not have the requisite jurisdiction to stay the ELC case in the lower court.
7. In the result, it is my finding that the Applicants' application dated 3/5/2024 lacks merit. The same is dismissed with no order as to costs.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 16TH DAY OF MAY 2025.

D. KEMEI

JUDGE

In the presence of:

Ojwang Agina.....for Applicants

Ochanyo.....for Respondent

Okumu.....Court Assistant

