



**In re Estate of Estate of Asoga Shabanga (Succession Cause
66 of 2021) [2025] KEHC 9860 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 66 OF 2021**

JN KAMAU, J

JULY 8, 2025

IN THE MATTER OF THE ESTATE OF ASOGA SHABANGA

BETWEEN

BURTON ASONGA SHAVANGA PETITIONER

AND

BENJAMIN SHAHASI ASOGA OBJECTOR

RULING

1. On 8th July 2025, this court delivered a Ruling in which it found that one Julius Masiva Obuga had filed documents on behalf of the Objector herein, which was a preserve of qualified advocates under the *Advocates Act* Cap 16 (Laws of Kenya). The court, therefore, remanded him in the Vihiga Law Court cells as it sought further input from the Law Society of Kenya (LSK).
2. When the matter was mentioned later in the day, the Chair of the Law Society of Kenya (LSK) Kakamega Chapter, Innocent Ondieki, was flanked by several advocates and members of the Council and they submitted that the issue of individuals masquerading as advocates through use of Powers of Attorney was prevalent in this Region.
3. The LSK Kakamega Chapter sought that the said Julius Masiva Obuga be remanded at Vihiga Police Station for three (3) days to enable investigations to commence and witnesses to record statements. They also sought that during this time, the place where Julius Masiva Obuga operated be searched to recover any pleadings that might be used in this matter. The LSK was apprehensive that the said Julius Masiva Obuga was a flight risk and that he was likely to abscond if he was released before being charged. Other counsel in the Region also urged this court to cite him for contempt in the face of the court and sentence him to fourteen (14) days' imprisonment.
4. On his part, the said Julius Masiva Obuga denied that he was masquerading as an advocate. He indicated that he has always attended several courts in Kenya as a petitioner or as an interested party.



He was emphatic that he appeared in court to represent the Objector herein, as he could not represent himself. He added that he was a senior citizen aged over eighty (80) years and could not abscond as he had a fixed place of abode. He urged this court not to remand him as the Constitution of Kenya, 2010 was clear that one could not be remanded in custody where the penalty was a fine or imprisonment of not more than six (6) months.

5. In response thereto, the LSK was clear that it was not known what offences the said Julius Masiva Obuga would be charged with, but that in any event, charges for masquerading as an advocate or quackism attracted a sentence of three (3) years, and hence the arguments by the said Julius Masiva Obuga that he could not be remanded had no legal basis.
6. This court had in its previous Ruling determined that the said Julius Masiva Obuga had purported to represent the Objector herein as he was not an advocate qualified to do so. This court's task in this Ruling was limited to determining whether the said Julius Masiva Obuga could be remanded pending investigations and charges being preferred or not.
7. Notably, Article 49(1) of the Constitution of Kenya, 2010 provides as follows:-
 1. An arrested person has the right—
 - i. to be informed promptly, in a language that the person understands, of—
 - ii. the reason for the arrest;
 - iii. the right to remain silent; and the consequences of not remaining silent;
 - g. at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
 - h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
8. As was held in the case of Betty Jemutai Kimeiywa v Republic [2018] eKLR, the powers of arrest are subject to Article 49 of the Constitution of Kenya that relate to the rights of an arrested person whereafter the provisions of Article 49 (1) (g) and (h) on charging, detention, release and release on bond of the person arrested are then dealt with.
9. At the time of an impending arrest and considering detention or release of a person, the test is whether an offence known by law can be preferred against a person and not whether that offence was provable to the standard required in criminal cases, which is proof beyond reasonable doubt. As was held in the case of Betty Jemutai Kimeiywa v Republic (Supra), the test for validity of arrest was the reasonable grounds for suspicion and not establishing a “prima facie” case. Whether a prima facie case has been established is the duty of a trial court.
10. It was sufficient that the said Julius Masiva Obuga was informed, through the Ruling of this court that was delivered today, the reason for his detention in line with Article 49(1)(g) of the Constitution of Kenya, having been brought before this court within twenty four (24) hours of his detention.
11. In the case of Chris Phillip Obure v Republic [2020] eKLR, it was held that where a person had been arrested, his or her continued detention was only allowable if there were compelling reasons to detain him while balancing his or her right to liberty of an individual. The constitutional threshold to detain a person under Article 49(1)(h) of the Constitution of Kenya had to be demonstrated otherwise, it would be unlawful.



12. The charges that the said Julius Masiva Obuga was likely to face necessitated him to be remanded so that investigations could commence and statements recorded without him interfering with witnesses whereafter the ODPD which has the sole mandate to prosecute would make a determination as to whether to charge him or not. The detention at this juncture was therefore in line with the provisions of Article 49(1)(h) of the Constitution of Kenya. The said Julius Masiva Obuga was at liberty to make a formal application for bond.
13. Whereas as the LSK and its representatives had submitted that the said Julius Masiva Obuga be cited for contempt in the face of the court for appearing before this court and presenting himself as competent to draw pleading and represent a party in the proceedings herein, this court was reluctant to make such a determination as it could embarrass the investigations and the trial court in the event it was found that the threshold of charges being preferred against him had not been reached and/or he was found by the trial court not to have been guilty of the charges that were to be preferred against him. The court was therefore not persuaded that it should make such adverse findings at this point.
14. This court noted that the said Julius Masiva Obuga was a senior citizen and considered that a long detention in custody while the investigations were ongoing had the possibility of prejudicing him in the event the ODPD opted not to prefer any charges against him and/or he was found not to have been guilty of the offences that would be preferred against him during trial. This, of course, was not to imply that senior citizens could not be incarcerated or detained when they have offended the law. It only meant that this court had to balance his right to liberty as provided in Article 29 of the Constitution of Kenya that provides as follows:-
Every person has the right to freedom and security of the person, which includes the right not to be—
 - a. deprived of freedom arbitrarily or without just cause;
 - b. detained without trial, except during a state of emergency, in which case the detention is subject to Article 58.

Disposition

15. For the foregoing reasons, the upshot of this court's decision was that having considered the nature of the offence that was to be investigated and balancing the rights of the said Julius Masiva Obuga, it is hereby directed as follows:-
 1. That the said Julius Masiva Obuga shall be detained at Vihiga Police Station, Vihiga for a period of three (3) days, which period shall run from 8th July 2025 which is from the time he was placed in the Vihiga Law Courts cells. This order shall lapse if and when he is charged in court with the offence being investigated herein and/ or discharged lawfully by the police and/or the Office of Director of Public Prosecutions do not prefer charges against him.
 2. For avoidance of doubt, the detention period shall lapse on 11th July 2025 at 0900 hours when it is expected that the investigations which will have been conducted will be sufficient for the police to make a decision regarding any charges that should be preferred against the said Julius Masiva Obuga.
 3. That any party will be at liberty to apply for any other appropriate and/or relevant and/or desired orders to uphold the rule of law.
16. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 8TH DAY OF JULY 2025



J. KAMAU
JUDGE

