



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Late Francis Muhiga Ndori (Deceased) (Succession Cause  
164 of 1996) [2025] KEHC 9708 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9708 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 164 OF 1996  
RN NYAKUNDI, J  
JULY 8, 2025**

**BETWEEN**

**FELIX CHUMBA MUHIGA ..... PETITIONER**

**AND**

**HELLEN MURANJE MUHIGA ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD MUHIGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court there are three applications in total. The first one is a certificate of urgency accompanied with a notice of motion dated 11<sup>th</sup> June 2025 expressed be brought under section 45 of the *Law of Succession Act*, Order 40 Rule 1; Order 51 Rule 3 of the Civil Procedure Rules 2010, seeking the following orders:
  - a. That pending the hearing and determination of this Application, conservatory orders and a temporary injunction do issue restraining the Respondent whether by himself, his agents, servants, workmen or any other person acting under his instruction or authority from:
    - i. Entering and trespassing upon or remaining upon the suit property;
    - ii. Commencing, continuing or undertaking any construction, building or development activities whatsoever on the suit property;
    - iii. Interfering with, damaging, destroying or in any manner altering the current state and condition of the suit property;
    - iv. Harassing, intimidating, threatening, assaulting, abusing or molesting the Applicant or any person authorized by her in relation to the suit property.



- b. That pending the hearing and determination of the cause herein, conservatory orders and a temporary injunction do issue restraining the Respondent whether by himself, his agents, servants, workmen or any other person acting under his instruction or authority from:
    - i. Entering upon, trespassing upon or remaining upon the suit property;
    - ii. Commencing, continuing or undertaking any construction, building or development activities whatsoever on the suit property;
    - iii. Interfering with, damaging, destroying or in any manner altering the current state and condition of the suit property;
    - iv. Harassing, intimidating, threatening, assaulting, abusing or molesting the Applicant or any person authorized by her in relation to the suit property.
  - c. That the OCS Shamakhokho police station does supervise compliance with these orders.
  - d. That Costs of this Application be provided for.
  - e. That this Honorable Court be pleased to grant such further or other relief as it may deem fit.
2. The application is anchored on grounds that:
- i. The Applicant is the lawfully appointed Administrator of the Estate of the Late Francis Muhiga Ndori, having been granted Letters of Administration by this Honorable Court on 12<sup>th</sup> June, 2024 and final distribution was on 17<sup>th</sup> December, 2024.
  - ii. That the Respondent is a son of the Applicant alongside her other children in order of birth, Rosemary Muteitsi Majina, Felix Chumba Muhiga, Kennedy Mayo Muhiga, Celestine Matere (deceased), Florida Khayeri Muhiga, Selere Ayuma Muhiga, Martina Muhiga, Hillary ndori Muhiga, denis Muranje Muhiga, Phidelia Mikhago Muhiga, Richard Shugh Muhiga.
  - iii. In the morning of 6<sup>th</sup> June, 2025, the Respondent without any known or lawful authority entered upon the matrimonial home of the Applicant and commenced unauthorized construction therein. The Matrimonial property belongs to the applicant as per the distribution of property attached to the grant and it is referenced as Kakamega/Shamakhokho/148/149/150 & 151
  - iv. He similarly intimidated the Applicant and his other siblings and their requests that he ceases animosity fell on deaf ears.
  - v. The applicant is co-owner in the matrimonial home with the last-born son, Richard Sugh Muhiga, Selere Ayuma Muhiga, Phildelia Mikhago Muhiga. And the matrimonial property is in property reference as Kakamega/Shamakhokho/148/149/150 & 151
  - vi. In the distribution of the Estate, Felix similarly received his portion of inheritance in a process that involved the entire nuclear and extended families, elders and local administrators and after a mediation process under this Honorable Court.
  - vii. The Applicant, Felix is therefore not entitled to forcefully or in any way get into the property and purport to construct a house without consent.
  - viii. The Respondent's actions constitute intermeddling with estate property contrary to the provisions of Section 45 of the *Law of Succession Act*.



- ix. The Respondent's unauthorized presence and activities on the suit property violate the Applicant's rights as Administrator and her right to peaceful enjoyment of the estate property.
  - x. There exists imminent danger of irreparable harm, violence and damage to the suit property if the Respondent's unlawful activities are not immediately restrained.
  - xi. The matter is extremely urgent as the Respondent continues his unlawful activities daily thereby causing further damage and prejudice to the Estate.
  - xii. It is just and equitable that the orders sought be granted.
3. The second application dated 26<sup>th</sup> June 2025 is expressed under the provisions of under section 76 of the Law Succession Act, Order 40 Rule 1 and Order 51 Rule 3 of the Civil Procedure Rules 2010, in which the applicant seeks orders as follows:
- a. Spent.
  - b. That the Grant of Letters of Administration purportedly issued to the Respondent on 20<sup>th</sup> September 2024 be revoked, cancelled and set aside for having been obtained fraudulently, without proper notice to interested parties, and in contravention of the existing Amended Grant dated 12<sup>th</sup> June, 2024.
  - c. That pending the hearing and determination of this Application, a temporary injunction does issue restraining the Respondent, whether by himself, his agents, servants, workmen or any other person acting under his instruction or authority from representing himself as an administrator or co-administrator of the estate of the late Francis Muhiga Ndori, interfering with, dealing in, alienating, transferring, or disposing of any estate property in any manner whatsoever, executing any documents or entering into any transactions purporting to bind the estate.
  - d. That it be declared that the Amended Grant of Letters of Administration issued on 12<sup>th</sup> June, 2024, appointing Hellen Muranje Muhiga as the sole administrator, is the valid and subsisting final grant as confirmed by this very court.
  - e. That the Registrar of this Honorable Court be directed to expunge from the court records the purported Grant of Letters of Administration dated 20<sup>th</sup> September 2024, issued to the Respondent.
  - f. That the Respondent be cited for contempt and be committed to civil jail for expressly disobeying the orders of this Honorable Court issued and notified to them on 19<sup>th</sup> June, 2025.
  - g. That the Respondent be cited for contempt of court and be committed to civil jail for expressly disobeying orders of this Honorable Court issued on 12<sup>th</sup> June, 2024 and 17<sup>th</sup> December, 2024.
  - h. That the costs of this Application be borne by the Respondent.
    - i. That this Honorable Court be pleased to grant such further or other relief as it may deem fit.
4. The application is based on grounds that:
- a. The Applicant is the lawfully appointed sole Administrator of the Estate of the Late Francis Muhiga Ndori, having been granted Amended Letters of Administration by this Honorable Court on 12<sup>th</sup> June, 2024 in the presence of both parties.



- b. After the confirmation, the court did direct on the same day that the family sits together and distributes the estate and file the distribution in court by the 18<sup>th</sup> September, 2024.
- c. The Court further directed that parties appear in court thereafter on the 19<sup>th</sup> November, 2024. This was in the presence of both parties.
- d. There were no other proceedings in the intervening period relating to the grant that was confirmed on 12<sup>th</sup> June, 2024.
- e. That Counsel for the Respondent was present and never objected to the confirmation of grant being made to the Applicant.
- f. That the Respondent ordinarily resides in the United States, is hostile to the siblings and applicant and has refused efforts to sit and dialogue with the family. Indeed, he does not speak to his own mother, the applicant or care about her welfare.
- g. The Respondent is the son of the Applicant and one of the beneficiaries of the estate who received his share of inheritance during the final distribution conducted on 17<sup>th</sup> December, 2024 and already had a separate piece of land given to him in Kakamega/Erusui amounting to three acres that is almost 2 kilometers from the mother's matrimonial property.
- h. Without the knowledge, consent, or approval of the Applicant and other beneficiaries, without any known hearing in court or notification for such hearing or mention notice or court attendance, the Respondent fraudulently obtained a Grant of Letters of Administration on 20<sup>th</sup> September, 2024, purporting to be appointed as co-administrator of the estate.
- i. The Respondent's move to obtain the said grant of 20<sup>th</sup> September, 2024 was made in bad faith and with intent to defraud, as he was fully aware of the existing Amended Grant dated 12<sup>th</sup> June, 2024, which had revoked his earlier appointment and designated the Applicant as sole administrator.
- j. The Respondent failed to comply with the mandatory requirements under Section 76 of the *Law of Succession Act*, including proper notice to all interested parties and obtaining family consensus before applying for the grant.
- k. The Respondent, who resides in the United States of America, has demonstrated lack of commitment to the estate administration by failing to attend court proceedings and abandoning his responsibilities as initially appointed co-administrator.
- l. The Respondent does not speak with his mother the Applicant.
- m. The grant of 20<sup>th</sup> September, 2024, was obtained through misrepresentation of material facts to the court and constitutes an abuse of the court process.
- n. The Respondent is similarly aware of the distribution dated 17<sup>th</sup> December, 2024 which distributed the estate and through which he has no share in the matrimonial property Kakamega/Shamakhokho/148/149/150/151.
- o. He has his own property and it is instructive that he was literally removing his mother out of her matrimonial home and completely disinheriting her in his proposed distribution which was presented and disregarded by the elders before the final distribution.
- p. On 6<sup>th</sup> June, 2025, the Respondent having visited Kenya, insisted on residing in his brother's house in the matrimonial home of his mother and brought his wife to live in the same house.



- q. The younger brother inherits under the distribution of 17<sup>th</sup> December, 2024 with the mother and sisters, the matrimonial property.
  - r. He has then proceeded to contemptuously bring materials for construction and started construction against the applicant's will.
  - s. The court granted conservatory orders and directed that he stops all further construction on 19<sup>th</sup> June, 2025.
  - t. On the 20<sup>th</sup> June, 2025, he continued with the construction unabated with his workers.
  - u. While in Court, the Respondent's Counsel was informed to speak with his client and inform him of the orders and ask him to stop further construction.
  - v. Counsel for the Applicant similarly wrote to both the Respondent and his Counsel informed them of the contempt urging that the action ceases.
  - w. The Order from the court could not be extracted on the same date, 19<sup>th</sup> June, 2025 which was a Friday in spite of Counsel's best effort and neither did the Applicant through Counsel get assistance on Monday, Tuesday or Wednesday prompting the writing of a complaint letter to the Deputy Registrar of the High Court.
  - x. The Respondent's actions amount to contempt of this Honorable Court's orders and undermine the integrity of the estate administration process.
  - y. The Respondent ought to be punished for contempt of court by way of committal to civil jail or by way of payment of a fine or both.
  - z. The fraudulent grant poses an imminent threat to the estate as it may facilitate unauthorized dealings, misappropriation of estate property, and cause irreparable harm to the beneficiaries.
  - aa. The Applicant, as the lawful sole administrator, has a statutory duty under Section 82 of the Law of Succession Act to protect the estate from unauthorized interference and fraudulent activities.
  - ab. It is in the interests of justice and proper estate administration that the fraudulent grant be revoked and the lawful Amended Grant be upheld.
5. Further in support of the 2 applications the affidavit Hellen Muranje Muhiga respectively dated 11<sup>th</sup> June 2025 and 26<sup>th</sup> June 2025. The substratum of the first affidavit asserted as follows:
- a. That I am the Widow of the Late Francis Muhiga Ndori (Deceased), who passed away on 15<sup>th</sup> April, 1996, and the Mother to the Respondent herein.
  - b. That I am conversant with the facts of this matter by virtue of my position as the Administrator of the Estate of the Late Francis Muhiga Ndori, having been granted Letters of Administration on 6th September, 1999 and the grant was issued on 12th June, 2024.
  - c. That the Respondent, without any lawful authority, court order or my consent as the Administrator: -
    - i. Forcibly entered upon the suit property;
    - ii. Brought construction materials onto the property;
    - iii. Commenced unauthorized construction and building activities on the property;



- a. Threatened and intimidated me when I attempted to stop his unlawful activities.
- b. That I am informed by my Counsel on record which advice I believe as true that the Respondent's actions constitute intermeddling with estate property contrary to Section 45 of the *Law of Succession Act* and are causing me great distress and anxiety.
- c. That further to the foregoing, I made a report to the Serem Police Station following the threats on 6<sup>th</sup> June, 2024 vide OB No. 31.
- d. That I reasonably believe that the Respondent intends to continue with his unlawful activities and may complete the unauthorized construction and/or cause further damage to the property if not restrained by this Honorable Court.
- e. That the Respondent's continued unlawful presence and activities on the suit property violate my rights as Administrator and cause irreparable harm to the Estate.
- f. That this matter is extremely urgent as the Respondent continues to trespass upon the property daily, undertaking construction activities and altering the state of the property.
- g. That it is in the interest of justice that the orders sought in the Notice of Motion be granted to preserve the suit property and protect the interests of the estate.

6. The applicant did not stop there in her second affidavit dated 26<sup>th</sup> June 2025 she deposed as follows:

- a. During the said distribution, each beneficiary including the Respondent received their rightful share of inheritance, and the process was concluded with the full knowledge and participation of all interested parties. The Respondent over and above other shares, was given a title to land very close to the matrimonial property where he could build and live.
- b. On 20<sup>th</sup> September, 2024, the Respondent fraudulently obtained a Grant of Letters of Administration purporting to appoint him as co-administrator of the estate without my knowledge, consent, or that of other beneficiaries.
- c. The grant is not lawful for the following reasons; -
  - i. The grant confirming the Applicant only as sole administrator was issued in the presence of both parties on 12<sup>th</sup> June, 2024
  - ii. There were, thereafter, no other proceedings involving both parties regarding the grant was held
  - iii. Counsel for the respondent never opposed the grant confirmed in court on 12<sup>th</sup> June, 2024.
  - iv. The court on 12th June 2024 directed the Applicant to undertake distribution and file by the 18th September, 2024 and thereafter the court on 19th November, 2024 and then 17th December, 2024 the order for distribution was granted.
  - v. The respondent having been Represented, failed to attend court



- a. The Respondent's alleged grant was made with fraudulent intent, as he was fully aware of the existing Amended Grant dated 12<sup>th</sup> June, 2024, which had revoked his appointment and designated me as sole administrator and there was no hearing prior to its grant in September, 2024.
  - b. The Respondent failed to serve me or other interested parties with notice of his application for the fraudulent grant, thereby denying us the opportunity to oppose the same as required by law.
  - c. The Respondent, who resides permanently in the United States of America, has demonstrated lack of commitment to the estate administration by failing to attend court proceedings, including the final distribution session in December 2024.
  - d. The fraudulent grant poses an imminent threat to the estate as it may facilitate unauthorized dealings, alienation of estate property, and misappropriation of estate assets by the Respondent.
  - e. As per the distribution, the matrimonial property belongs to me, my last-born son Richard and his sisters.
  - f. The Respondent's actions constitute contempt of this Honorable Court's orders and amount to abuse of the court process, thereby undermining the integrity of estate administration.
7. In the same litigation the applicant filed a notice of preliminary objection dated 28<sup>th</sup> April 2025 with the predominant legal issue that the court is functus official.
  8. The applicant further buttressed her applications with brief submissions and cited the following legal provisions and case law:
 

“Section 45(1) of the *law of succession Act* provides as follows: except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under the Act no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of deceased person.”
  9. As to what constitutes acts of intermeddling learned counsel for the applicant based reliance on the following principles as articulated in the cited cases Benson Mutuma Muriungi v CEO Kenya Police Sacco & Another [2016] eKLR, Re Estate of Nom Karol Molucca (Deceased) [2024] eKLR, Veronica Njoki Wakagoto (Deceased) [2013] eKLR, Re Estate of Ndiba Thande (Deceased) [2013] eKLR and Estate of Paul M'Maria (Deceased) [2017] eKLR.
  10. The gist of this case law is that the action is by the respondent Felix Chumba Muhiga who is also a direct beneficiary of the estate of the late Francis Muhiga Ndori is intermeddling with free property of the deceased and by his conduct and unlawful acts the estate will be at risk of being diminished or interfered with in a manner that would put it at risk and limit the rights of inheritance to other beneficiaries.
  11. It was further learned counsel contention that the respondent's conduct amounts to contempt of court. Learned counsel invited the court to be guided by the principle in Halsbury's Law of England (4<sup>th</sup> edition), Re Estate of Mary Rose Wairimu Dames alias Mary Wairimu Dames (Deceased) [2025] eKLR, Milka Wangoi Kamau & Another v Habby Misoga Lugadiru (2014) eKLR.



12. The learned counsel went further to submit that the applicant has brought herself within the provisions of sections 45 & 47 of the *Law of Succession Act* as read with Rule 73 of the Probate and Administration Rules. Similarly learned counsel urged this court to appreciate the provisions of Order 40 Rule 1 of the Civil Procedures Rules 2010 which empowers the court to grant conservatory orders to preserve the status quo and prevent irreparable harm. In addition towards this end learned counsel cited the guidelines in the case of *John Marete Kirema & Another v Gladys Karimi Muthamia & 3 others* (2013) eKLR Makau J and *Giella vs Cassman Brown & Co. Ltd* (1973) EA 358.

### **Analysis and determination**

13. This succession cause presents a rather unfortunate spectacle of intra-family litigation that has persisted for nearly three decades since the demise of Francis Muhiga Ndori in 1996. What began as a straightforward succession matter has metamorphosed into protracted litigation characterized by multiple applications, counter-applications, and seemingly irreconcilable positions between family members who should ordinarily be working in harmony to preserve their patriarch's legacy.
14. The trajectory of this matter reveals a worrying pattern. Initially, this Court issued a comprehensive ruling on 10<sup>th</sup> July 2024 in which detailed directions were given for the resolution of outstanding issues, including specific provisions for mediation and settlement of disputes. The Court had noted then that the estate remained undistributed for over 27 years. Despite those clear directions and the adoption of a partial mediation agreement as an order of Court, the parties now return with fresh applications that essentially revisit the same underlying disputes.
15. The current applications before this Court are twofold: first, an application for conservatory orders and temporary injunctions to restrain alleged trespassing and unauthorized construction activities; and second, an application seeking revocation of a purported Grant of Letters of Administration allegedly obtained fraudulently in September 2024. However, a careful examination of the chronology reveals that these applications arise against the backdrop of the Court's earlier ruling of July 2024, which had already provided a roadmap for resolution of the very issues now being re-litigated.
16. It is particularly concerning that this dispute appears to involve primarily two family members; the Applicant (Hellen Muranje Muhiga) and the Respondent (Felix Chumba Muhiga) out of a large family of eleven children. The other beneficiaries, save for Richard Muhiga who features as the 2<sup>nd</sup> Respondent, appear conspicuously absent from these proceedings, raising questions about whether this litigation truly serves the broader family interests or merely represents a personal dispute that has unfortunately found its way into the court system.
17. Central to the current dispute is the question of ownership and occupation of a residential house situated on property reference Kakamega/Shamakhokho/149&150. This very issue was identified and addressed in the Court's 18<sup>th</sup> July 2024 ruling, where the court specifically directed that this issue be resolved through the mediation process.
18. The emergence of a purported Grant of Letters of Administration dated 20<sup>th</sup> September 2024 further convolutes the matter and represents a troubling attempt to circumvent this Court's established judicial framework. If such a grant was indeed issued, it would directly contradict the existing orders and directions established by this Court's July 2024 ruling, which had confirmed Hellen Muranje Muhiga as the sole administrator and provided clear directions for the completion of estate distribution. This development suggests a pattern of deliberate attempts to undermine settled judicial determinations, taking the Court back and forth on issues that have already been adjudicated.



19. Before delving into the merits of the applications, this Court must grapple with the fundamental question of whether these proceedings represent a genuine attempt to resolve estate administration issues or constitute an abuse of the court process through the re-litigation of matters already addressed. The principles of *res judicata*, finality of litigation, and the orderly administration of justice demand careful consideration of the relationship between these applications and the Court's previous determinations.
20. Before proceeding to the substantive determination of these applications, this Court must address the preliminary objection raised by the Applicant that the Court is *functus officio*. This objection is fundamentally misconceived. Section 83 of the [Law of Succession Act](#) imposes continuing statutory duties upon personal representatives, including the obligation to produce full and accurate inventories and accounts of estate dealings when required by the court. Subsection (h) specifically empowers this Court to require such accounts either of its own motion or on the application of any interested party in the estate. These provisions demonstrate that the Court retains supervisory jurisdiction over estate administration until the estate has been finally and completely distributed to all beneficiaries. The very existence of ongoing disputes regarding estate property, allegations of intermeddling, and questions surrounding the validity of grants of representation confirm that the administration process remains incomplete. In such circumstances, the Court cannot be said to be *functus officio*, as its supervisory role under the Act continues until all estate matters are properly resolved and the estate fully distributed in accordance with the law.
21. It is against this contextual backdrop that I shall proceed to consider whether the applications before this court are merited, bearing in mind the overarching need to bring finality to a succession matter that has dragged on for far too long to the detriment of all concerned parties and the efficient administration of justice.

The Injunction application dated 11<sup>th</sup> April, 2025

22. The legal framework governing the grant of injunctive relief is well established in our jurisprudence. The foundational principles were articulated in *Giella vs Cassman Brown* (1973) EA 358 and have been consistently applied by our appellate court, including in *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) (2014) eKLR, where the Court of Appeal observed that;

“in an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. it is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

23. The Court of Appeal in *Floris Piezzo & Another –vs- Giancarlo Falasconi* (2014) eKLR, while considering whether an injunction can issue in a Succession Cause expressed itself as follows;

“We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high Court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the Court had jurisdiction to grant an injunction in a Succession Cause. The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the



contrary position. However, the High Court was persuaded that Rule 73 of the Probate and Administration Rules reserved the Court's inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders."

24. In re Estate of Jeremiah Ngiri Kibati (Deceased) [2019] eKLR and Re Estate of Elijah Ngari (Deceased) [2019] eKLR, the court in dealing with the issue of issuance of conservatory orders in succession matters cited with approval the decision of this court in Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria [2012] eKLR noting that an applicant in an application for preservatory orders: -

"has to satisfy the following conditions: -

- a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless Preservatory orders of inhibition are issued.
- b. That the refusal to grant orders of inhibition would render the applicant's suit nugatory.
- c. That the applicant has arguable case."

25. On the question of whether the Applicant has established a prima facie case, I am in agreement with the Court of Appeal's definition in *Mrao Ltd v First American Bank of Kenya and 2 others* (2003) KLR 125, which was also cited with approval in *Moses C. Muhia Njoroge & 2 others v Jane W Lesaloi and 5 others* (2014) eKLR, where a prima facie case was defined as:

"A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later."

26. While the Applicant may have some arguable rights as administrator of the estate, the fundamental question that arises is whether the grant of an injunction would serve any meaningful purpose in the circumstances of this case. The evidence reveals that the Respondent has already received his share of inheritance during the final distribution conducted on 17<sup>th</sup> December 2024, including a separate piece of land given to him in Kakamega/Erusui amounting to three acres that is almost 2 kilometers from the mother's matrimonial property. Given this context, any construction activities undertaken by the Respondent on the disputed matrimonial property would ultimately be to his own detriment should it be established that he has no lawful claim to the property.



27. On the question of irreparable harm, I find that the Applicant has failed to demonstrate how she would suffer irreparable injury that cannot be adequately compensated by damages. The test for irreparable harm, as set out in Halsbury's Laws of England, Third Edition, Volume 21, page 352, requires that:

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”

28. In the present case, any construction activities undertaken by the Respondent on property to which he has no lawful claim would constitute improvements to the estate property that would ultimately benefit the lawful owners. Should the Respondent proceed with construction and it subsequently be established that he has no right to the property, he would bear the loss of his investment in construction materials and labor. The matrimonial property would remain intact and potentially enhanced by any improvements made.

29. The Court is also mindful of the principle that injunctive relief should not be granted where it would serve no meaningful purpose or where the applicant seeks protection from harm that is more theoretical than real. The Applicant's concern about intermeddling with estate property rings hollow when the alleged intermeddling would result in improvements to the property at the Respondent's expense and risk.

30. In the circumstances, I find that the application for injunctive relief fails to meet the established threshold and appears to be more of a tactical maneuver in ongoing family disputes rather than a genuine attempt to protect estate property. The application is accordingly dismissed.

31. In the circumstances, I find that the application for injunctive relief fails to meet the established threshold and appears to be nothing more than a battle between two family members, which this Court should not be dragged into. The application represents a tactical maneuver in ongoing personal disputes rather than a genuine attempt to protect estate property. The application is accordingly dismissed.

The application for revocation of Grant dated 26<sup>th</sup> June, 2025

32. The second application before this Court seeks revocation of a Grant of Letters of Administration issued to the Respondent on 20<sup>th</sup> September 2024. Having examined the court records, I can confirm that such a grant does indeed exist and was issued by this Court.

33. The Grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession thus:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) That the proceedings to obtain the grant were defective in substance;



- (b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) To proceed diligently with the administration of the estate; or
  - (iii) produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) That the grant has become useless and inoperative through subsequent circumstances.

34. The court records clearly establish that on 12<sup>th</sup> June 2024, this Court issued an Amended Grant of Letters of Administration appointing Hellen Muranje Muhiga as the sole administrator of the estate. This grant was made in the presence of both parties and their respective counsel, with no objection raised by the Respondent's counsel.
35. Subsequent to this confirmation, the Court issued specific directions for the completion of estate administration, including orders for distribution which were ultimately completed on 17<sup>th</sup> December 2024. Throughout this period, there is no indication on the court record of any application by the Respondent seeking to challenge the June grant or to be reappointed as co-administrator.
36. The grant of 20<sup>th</sup> September 2024 appears to have been issued without proper consideration of the existing Amended Grant dated 12<sup>th</sup> June 2024. More concerning is the apparent absence of any notice to the Applicant or other interested parties, which constitutes a fundamental breach of procedural fairness and natural justice.
37. It is possible that the Court was inadvertently misled about the true state of affairs regarding the estate administration. The absence of proper notice to interested parties may have resulted in the Court proceeding without full knowledge of the existing. Such circumstances fall squarely within the provisions of Section 76(b) and (c) of the *Law of Succession Act*, which provide for revocation where a grant is obtained through concealment of material facts or untrue allegations of essential facts.
38. In the interests of justice and proper estate administration, the grant dated 20<sup>th</sup> September 2024 cannot be allowed to stand. Its continued existence would create legal uncertainty and potentially undermine the completed distribution process that was concluded in December 2024 under the authority of the valid June 2024 grant.
39. Before I can proceed to disturb the distribution order of 17<sup>th</sup> December 2024, it is imperative to examine the substance of the dispute that underlies these applications. A careful analysis of the evidence reveals that the confirmation of grant and subsequent distribution in December 2024 allocated shares



to all beneficiaries of the estate. Significantly, none of the other ten beneficiaries have raised any complaint or objection to their respective allocations under the distribution.

40. The sole point of contention appears to emanate from the Respondent's dissatisfaction with the distribution, particularly regarding his claim to a residential house situated on the matrimonial property. This narrow focus of the dispute raises questions about the appropriateness of seeking wholesale revocation of a grant when the real issue is confined to ownership of a single structure.
41. In the circumstances, this Court is of the considered view that rather than embarking on the drastic remedy of revocation, which would effectively unravel an entire distribution process that has been accepted by all other beneficiaries, the more appropriate course would be to address the specific dispute regarding the house ownership through proper evidential procedures.
42. The Court notes that in his pleadings, one Richard Muhiga has asserted that the disputed house was built by the joint effort of all of us siblings excluding the applicant herein and he has some of the receipts to show that. Conversely, the Respondent Felix Chumba Muhiga claims exclusive ownership of the house based on his alleged contributions.
43. These competing claims raise triable issues that can only be resolved through proper presentation of evidence. The party claiming ownership of the house should be in a position to produce documentary evidence supporting such claim, including but not limited to architectural drawings, house plans, building permits, receipts for construction materials, payment vouchers for labor, or any other relevant documentation that would establish their contribution to the construction of the disputed structure.
44. Rather than disturbing the entire distribution framework, justice would be better served by requiring the disputing parties to present concrete evidence of their respective contributions to the construction of the house. The party with the stronger evidential foundation would then be identified as the rightful owner, with appropriate adjustments made to the distribution if necessary.
45. Though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make impossible to law down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This has led to the acceptance of the principles that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do real and substantial justice and prevent an abuse of their process.
46. The history of this litigation dates back to 1996 and there seems to be no sufficient cause for the long delay to transmit the estate to the beneficiaries. The law in context is very clear that the Applicable provisions given the facts of this case fall within section 35, 36, 37, & 38 of the [Law of Succession Act](#). It has come to the notice of this court that the legal controversy seems to be within the enforcement of inheritance rights between Felix Chumba Muiga and his mother Hellen Muranje Muhiga. This court reflecting on the various applications filed by either the son or his mother it all revolves around a particular infrastructural development and the alleged house constructed on the same suit land by Felix but whose vacant possession with his brother Richard Muhiga. I should therefore think that this court exercising its jurisdiction under the [law of Succession Act](#) by distributing the estate such an issue could have been taken up by the administrators as it is essentially not a justiciable dispute under the Succession Act. Indeed, if there are any legitimate occupation rights and land use prior to the certificate of confirmation of grant such interests and rights are within the spectrum to the duties of the administrator or administrators duly appointed to administer the intestate estate as they carry their duties with due diligence and faithfully to take into account such compelling and substantial concerns



during the drafting of the distribution matrix. The question before the court all along has been whether the alleged house constructed by Felix was for use by his brother Richard Muhiga or to the best of his knowledge and belief it was exclusively for his own occupation. Given the recent applications, it appears that an order of certificate of confirmation of grant cannot make to do complete justice between the beneficiaries. What is further the jurisdiction and powers of this court under Section 1(A), 1(B) 3(A) of the Civil Procedure Act as read with Rule 73(1) of the Probate and Administration Rules, due to the very nature of this contestation of a small share of this estate involved in reference to the building/ house apparently stated to have been built by Felix there need literally to call for an additional evidence for this court to exercise discretion in a manner to put this matter to rest. During the pendency of this post confirmation proceedings the administrator Hellen Muranje annexed photographic impressions in support of the unlawful Acts of intermeddling largely by his son Felix. As seen in the application, the administrator of the estate Hellen Muranje invited this court to issue interim orders of injunction or conservatory orders as against his son Felix Chumba. It is trite that injunctions in Kenya as described in various authorities are a form of preventive relief granted by court to restrain a party from performing a specific act or to compel then to perform a specific act. They are often sought to maintain the status quo pending the outcome of a case. In the case of *Giella vs Gassman Brown* (1973) E.A 358 the court held as follows: “The condition or grant of an interlocutory injunction are now, I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately be compensated by an award of damages, Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”

47. The court of Appeal went on to articulate in finer language in the case of *Mrao v First American Bank of Kenya Limited and 2 Others* (2003) eKLR by defining what is a prima- facie case thus one would say that in civil cases it is a case in which on the material presented to the court a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicants case upon trial. That is clearly a standard which is higher than an arguable case. In the case of *Nguruman Limited Vs Jan Bonde Nielson & 2Others* (2014) eKLR the court of Appeal expounded on this when it held that
  - a. Establish his case only at a prima facie level
  - b. Demonstrate irreparable injury if a temporary injunction is not granted, and
  - c. Ally any doubts as to (b) by showing that the balance is in his favour.
48. On a serious question to be trite the court in the case of *Mbuthia v Jimba credit Corporation Ltd* (1988) KLR the court observed that it is not required to make final findings of contested facts and law but only need to weigh the relative strength of the party’s cases. The strength of the probability, depends on the nature of the rights asserted and the practical consequences likely to flow from the interlocutory order sought.
49. So what is this court being asked by the Applicant? It is to issue interlocutory injunction within the parameters of the authorities cited above. First and foremost, by the very fact that the estate has gone through confirmation proceedings and a final decree in the form of a certificate of confirmation of grant issued it is unlikely that there will be a serious issue to be tried substantively between the beneficiaries unless and until it falls within the scope of Section 76 of the Law of Succession Act.
50. In respect of this case and at a glance of the certificate of confirmation of grant, this court is not privy to the scheme of distribution adopted by the administrator Hellen Muranje and his co-administrator



if the instrument on record is anything to go by the extend of the transmission of the shares to each individual beneficiary. This material evidence will then inform as to whether Felix Chumba is intermeddling or trespassing into another person's parcel of land and if not stopped the aggrieved beneficiary will suffer irreparable harm which cannot be quantified in monetary terms or which the Applicant cannot be adequately compensated by way of damages. I consider on the face value of the facts of this case so far that the grievances touching on the issue of the claim of a house having been built by one of the beneficiaries or by contribution by other members of the estate is a dispute which is within the province of the administrator or administrators to the intestate estate. It is not purely a jurisdictional issue of this court. However as this court provides an oversight authority over the transmission of the estate until there is liquidation and discharge of the administrators as provided for under Section 83(g) of the Succession Act there is need to issue interim structural interdict tailored to meet the ends of justice.

51. In light of the foregoing analysis, the following orders do abide:

- a. That substantively grant of temporary injunction as envisaged in *Giella vs Gassman, Mrao v First American Bank, & Nguruman Limited* is denied. In the alternative, the administrator/ administrators shall provide an interim probate account on the scheme of distribution of the estate following the decreed certificate of grant of confirmation issued by this court.
- b. That for good order and in terms of Sections 1(A) 1(B), 3(A), 80 of the *Civil Procedure Act* as read with Order 45 Rule 1 of the CPR and Rule 73(1) of the Probate and Administration Rules, Felix Chumba is unlikely to offer the necessary governance support in the distribution of the estate in conjunction with his mother Hellen Muranje.
- c. That it is therefore just that his purpose appointment be revoked for he suffers no prejudice or injustice.
- d. That Grant of Letters of Administration dated 20<sup>th</sup> September 2024 issued to Felix Chumba Muhiga is revoked and set aside. The operative grant remains the Amended Grant of Letters of Administration dated 12<sup>th</sup> June 2024 issued to Hellen Muranje Muhiga.
- e. That Felix Chumba Muhiga and Richard Muhiga shall file affidavits within 21 days detailing their claims to the disputed house. The affidavits must be supported by documentary evidence including house plans, receipts, and construction records.
- f. That in the interim the ongoing construction or repairs be frozen pending compliance with clause ( e) of this order.
- g. That Each party shall bear their own costs.
- h. That matter is scheduled for conferencing on 29.7.2025 for further directions.

52. Orders accordingly.

**DATED SIGNED AND DELIVEED AT ELDORET THIS 8<sup>TH</sup> DAY OF JULY, 2025**

.....  
**R. NYAKUNDI**

**JUDGE**

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