



**In re Estate of Silbanus Wamboho Wamboga (Deceased) (Miscellaneous Cause E002 of 2024) [2025] KEHC 13190 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CAUSE E002 OF 2024**

**DK KEMEL, J**

**SEPTEMBER 26, 2025**

**IN THE MATTER OF THE ESTATE OF SILVANUS WAMBOGO WAMBOGA..(DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR NULLIFICATION OF GRANT BY:**

**BETWEEN**

**MAGRET WADHALA ..... APPLICANT**

**AND**

**DALAMEA WAMBOGA ..... PETITIONER**

**AND**

**PETER OWINO ANINO ..... INTERESTED PARTY**

**JUDGMENT**

1. By way of a Chamber summons application dated 5<sup>th</sup> January 2024, the Applicant/Objector approached the High Court at Kisumu seeking nullification of the grant of Letters of Administration confirmed in favor of the Petitioner/Respondent herein. The grounds for the intended nullification were that there was concealment of material facts by the Respondent/Petitioner during the petition for letters of grant. It was the considered view of Justice Aburili that since the parties and the estate of the deceased Silvanus Wamboho Wamboga are domiciled in Siaya County, the matter be transferred to Siaya High Court for final determination. This is how this matter has found itself before this court.
2. The Objector was given an opportunity to tender her evidence which she did together with her witnesses and likewise the Interested Party and Petitioner. This court received their evidence. The parties thereafter filed their respective submissions.
3. I have given due consideration to the rival evidence of the parties herein together with their submissions. From the court’s record, this is a 1999 succession Cause. The same was determined vide



a ruling dated 20<sup>th</sup> June 2001 by Birech (Commissioner of Assize) vide Kisumu P &A No. 111 of 1999 and that a certificate of confirmation of grant issued on 21<sup>st</sup> June 2001. The said ruling of 20<sup>th</sup> June 2001 allowed the Objector/Applicant herein leave to appeal but to date no appeal has been filed before the Court of Appeal. The record likewise contains another succession cause No. E379 of 2021 (citation) between the Interested Party herein and the Objector herein filed before the Siaya chief magistrate's court which was dismissed vide a ruling dated 16<sup>th</sup> December 2023. There is also a judgement by Kibunja J vide Kisumu ELC No. 832 of 2015 which was rendered in favour of the Petitioner/Respondent herein and which has not been reviewed or appealed against to date by any of the parties herein.

4. Section 3A of the *Civil Procedure Act* provides that

‘Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.’

5. This statutory provision endows this Court with a managerial role which it may invoke in circumstances where it appears that a party in a suit is trying to use the court's process to defeat justice.
6. The present case seems to be one of those instances. As noted from the ruling dated 20<sup>th</sup> June 2001, the issues sought by the Applicant herein were well ventilated before the court and a decision thereon rendered. The Applicant was granted leave to appeal if she was dissatisfied by the same. The Applicant however did not pursue that course as directed by the court but rather opted to run around different courts re-writing the same application for revocation of grant using different terms. Indeed, the ELC No. 832 of 2015 was determined by Kibunja J in Kisumu but the Objector/Applicant and Interested Party have not lodged any appeal or review over the same. The Objector and Interested party are out to stretch their luck by regurgitating the same issues yet they have not given any reasons why they have not lodged appeals/reviews over the rulings and judgements that have already been rendered by the courts.
7. This Court is of concurrent jurisdiction with Kisumu High court where the matter was heard and determined vide the ruling dated 20<sup>th</sup> June 2001. Again, the parties had litigated before the ELC court at Kisumu High Court which rendered its decision. The Objector and Interested Party have not lodged any reviews or appeals against the said decisions to date. I find the conduct of the Objector and Interested Party seems to be aimed at cleverly getting an opportunity to be entertained through the back door and to have a second bite at the cherry which is not permissible. This court cannot therefore sit as an appellate court on matters that had been adjudicated by a court of concurrent jurisdiction as well as a court of equal status specially dealing with land matters (ELC). It is evident that the Applicant and Interested Party herein are simply out to misuse the court process to defeat justice. This should not be countenanced.
8. In view of the foregoing observations, it is my finding that the Objector's application dated 5/1/2024 and supported by the Interested Party is devoid of any merit. The same is dismissed. Each party to bear their own costs.

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 26<sup>TH</sup> DAY SEPTEMBER 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:



Margaret Wadhala.....Objector  
Peter Owino Anino.....Interested Party  
Dalamea Wamboga.....Petitioner  
Okumu.....Court Assistant

