



In re Estate of the Late Mukonyi Muyakani - Deceased (Succession Cause 312 of 2013) [2025] KEHC 13226 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 312 OF 2013
S MBUNGI, J
SEPTEMBER 24, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE MUKONYI MUYAKANI (DECEASED)

BETWEEN

**JOHNSTONE MUKONYI 1ST ADMINISTRATOR
STEPHEN MUKONYI 2ND ADMINISTRATOR
ELIFAS BARASA KAKAI 3RD ADMINISTRATOR**

AND

NAMUKURU GRACE LUMBASI BENEFICIARY

RULING

1. The applicant filed a notice of motion application dated 30th April 2025 under section 47 of the [Law of Succession Act](#) seeking the following orders;
 - a. That this Application be certified urgent and be heard exparte in the 1st instance(spent)
 - b. That the Honourable court be pleased to restrain the 3rd beneficiary/ Respondent from encroaching into the Beneficiary/ Applicant's portion of land parcel number North Kabras/ Malava/ 599 pending the hearing and determination of this Application interparties.
 - c. That the Honourable court be pleased to direct the Administrators/ Respondents to distribute the estate as per the Certificate of confirmation of grant issued by the Honourable court in respect of land parcel number North Kabras/Malava/ 599
 - d. That the administrator/ Respondents be directed to demarcate the portion of the Beneficiary/ Respondent Elifas Barasa Kakai from the portion of the person who sold him his portion of land.
 - e. That the costs of this Application be provided for



2. The application is premised on the grounds set out on its face and on the supporting affidavit sworn on the same day by the applicant. She stated that this court allocated her 9.95 Acres of the land parcel number North Kabras/Malava/ 599 when the grant that was issued to the administrator was confirmed.
3. She claimed that the 3rd beneficiary/respondent had been allocated 1.5 Acres from the land parcel number North Kabras/Malava/599 however he was not in occupation of the land at the time of confirmation.
4. She confirms that she was in occupation of her portion of land which she had fenced after it was sold and surveyed.
5. She claimed that it was the administrator who went ahead and allocate the 3rd beneficiary / respondent his portion from her share of the land since he was not occupying his land at the time of distribution of the estate.
6. She raised an objection from the suggestion of the administrator to have the 3rd beneficiary benefit from her share of the estate since he did not buy any portion of land from his portion of land.
7. She avers that she sought the assistance of the area chief to stop the survey process until the issue with the 3rd beneficiary was resolved however the 3rd beneficiary disobeyed the order and later came with a gang of people and brought down the fence and began demarcating her land.
8. According to the applicant, the respondent uprooted her sugarcane and proceeded to build a house and a toilet without her consent or any legal authority and further assert that the 3rd beneficiary/ Respondent damaged her sugarcane worth Kshs. 76,320/=
9. She claimed that the 3rd Beneficiary/ Respondent defied the local authority warning and had started cultivating and occupied her portion of the land and further that her effort to evict him has been futile since the local administrator refused to interfere with an ongoing case in court.
10. She denied the allegation that she sold her land to the 3rd Beneficiary/ Respondent and hence he is not entitled to occupy her portion of land and demand that the Administrator to allocate him land from the portion belonging to the person who sold him his portion of land.
11. She prays that the court orders the Administrator/ Respondent to distribute the estate as per the certificate of the confirmed grant land parcel number North Kabras/Malava/ 599 to ensure that each beneficiary gets what was allocated to them.
12. She claims that she will suffer irreparable loss if the court fails to grant her the orders that's he prays for.
13. There was no response filed by the respondent to the application.
14. The court directed that the application be canvassed by way of a written submissions. At the time of writing the ruling, the applicant was the only party that had filled their submission.

Submissions.

15. The applicant submitted that this court had issued a certificate of confirmation of the grant to the administrator where she was allocated 9.95 Acres from the land parcel North Kabras/Malava/599 which she had purchased from the late Mukoyi/Muyukani



16. She submitted that her portion was well demarcated on the ground as the deceased had already divided for her portion. She avers that the 3rd beneficiary brought his portion from the administrator/respondent hence his portion should be demarcated from the administrator's portion.
17. According to her the administrator bought surveyors to the parcel of land who went ahead to demarcate the 3rd Beneficiary portion from her portion of land and hence reducing her portion of land by 1.5 Acres leaving her with 8.45 Acres contrary to the 9.95 Acres that had been allocated to her in the certificate of confirmed grant.
18. She submits that the 3rd respondent share should be from the administrators share since he was the one who sold him is share and not from her share.
19. She alleges that the 3rd respondent forcefully entered her share of the land and fenced it despite her allocation by the court.
20. She urges the court to issue an order evicting the 3rd respondent from her parcel of the land and he be restrained from interfering with her actual share of the estate and continuing with his activities on her portion of land until survey is done according to the certificate of confirmed grant.

Analysis and Determination

21. From the pleadings, affidavit, and submissions, this court has identified the following issues for determination:
 - a) Whether the 3rd Respondent's actions of occupying and utilizing the Applicant's portion of land parcel North Kabras/Malava/599 constitute an unlawful interference with her proprietary rights as a beneficiary.
 - b) Whether the Administrators (1st and 2nd Respondents) have failed in their duty to distribute the estate in accordance with the Certificate of Confirmation of Grant.
 - c) Whether the Applicant is entitled to the reliefs sought, including an injunction, orders for proper demarcation, and costs.
22. The applicant invoked section 4 of the *Law of succession Act* which vests the High Court with jurisdiction to determine disputes arising in succession matters.
23. Section 71(2) provides that upon confirmation of a grant, the court shall direct how the estate is to be distributed among the beneficiaries. Once confirmed, the Certificate of Confirmation of Grant is binding on the administrators, who are duty bound to distribute the estate in accordance with its terms.
24. According to the applicant, the administrator went contrary to this court orders and the certificate of confirmed grant by allocating the 3rd beneficiary her portion of land in North Kabras/Malava 955 which was 9.55 acres and allocated him 1.5 acres of her portion without her consent and express authority.
25. In Re Estate of Charles Kibe Karanja (Deceased) [2015] eKLR, the High Court held that administrators are fiduciaries who must adhere strictly to the terms of the confirmed grant. The court stated:

“The role of an administrator is to ensure the estate is distributed as per the court's confirmation of grant. Any unauthorized deviation undermines the rule of law and the beneficiaries' rights.”



26. It is my view that the administrator by allocating the said 1.5 acres of land to the 3rd beneficiary without the courts order constitutes a breach
of their fiduciary duty under Section 83 of the *Law of Succession Act*, which mandates administrators to distribute the estate in accordance with the confirmed grant.
27. In Re Estate of M’Ngarithi M’Mukindia (Deceased) [2017] eKLR, the court granted an injunction to restrain a beneficiary from interfering with another’s allocated portion. The court held that; “Once a grant is confirmed, each beneficiary is entitled to their share without interference. Any unauthorized entry or use of another’s portion is unlawful and warrants court intervention.”
28. According to the applicant’s uncontroverted affidavit, the 3rd Respondent forcibly entered her portion, uprooted her sugarcane, demolished her fence, and commenced construction without her consent.
29. His actions, coupled with the alleged defiance of the local chief’s orders, suggest a clear violation of the Applicant’s proprietary rights under Article 40 of the *Constitution*.
30. The Respondents’ failure to file a response or submissions leaves the Applicant’s evidence unchallenged. In Re Estate of Peter Mwangi Kagotho (Deceased) [2019] eKLR, the court held that uncontroverted affidavit evidence, if credible, is sufficient to grant the reliefs sought, provided they are legally grounded.
31. The Applicant’s affidavit is detailed, outlining the allocation of 9.95 acres to her, the 3rd Respondent’s allocation of 1.5 acres, and the unauthorized demarcation and occupation by the 3rd Respondent. This evidence meets the threshold of proof on a balance of probabilities.
32. In conclusion, it is my finding that the Applicant has demonstrated, through uncontroverted affidavit evidence, that the 3rd Respondent has encroached upon her 9.95-acre portion of land parcel North Kabras/Malava/599 by uprooting crops, demolishing her fence, and constructing structures.
33. These actions constitute an unlawful interference with her proprietary rights. The court is satisfied that an injunction is warranted to prevent further encroachment pending proper demarcation.
34. The Administrators’ alleged action of allocating the 3rd Respondent’s 1.5-acre portion from the Applicant’s share, contrary to the Certificate of Confirmation of Grant, is a breach of their fiduciary duty under Section 83 of the *Law of Succession Act*.
35. The court finds that the Administrators must be compelled to distribute the estate in accordance with the confirmed grant and to demarcate the 3rd Respondent’s portion from the appropriate share, as the Applicant alleges that the 3rd Respondent’s entitlement derives from a sale by the Administrators, not her.

Findings

36. It is this court’s finding that the Applicant has met the threshold for the grant of the orders sought, as established in *Giella v Cassman Brown & Co Ltd* [1973] EA 358, which requires a prima facie case, irreparable harm, and balance of convenience.
37. The Applicant has demonstrated a prima facie case of unlawful interference, potential irreparable loss through continued encroachment, and a balance of convenience favouring the preservation of her allocated portion.
38. Based on the foregoing, the court makes the following orders:



- a) The Application dated 30th April 2025 is allowed.
- b) An injunction is hereby issued restraining the 3rd Respondent, Elifas Barasa Kakai, his agents, servants, or assigns, from encroaching, cultivating, constructing, or in any way interfering with the Applicant's portion of 9.95 acres of land parcel North Kabras/Malava/599, pending the proper demarcation and distribution of the estate.
- c) The 1st and 2nd Respondents, Johnstone Mukonyi and Stephen Mukonyi, as Administrators, are directed to distribute the estate of the deceased, Mukonyi Muyakani, in strict accordance with the Certificate of Confirmation of Grant issued by this court in respect of land parcel North Kabras/Malava/599 within 60 days from the date of this ruling.
- d) The Administrators are further directed to demarcate the 3rd Respondent's 1.5-acre portion from the appropriate share, ensuring that the Applicant's 9.95-acre portion remains intact as per the confirmed grant.
- e) The 3rd Respondent is ordered to vacate the Applicant's portion of land within 30 days and to cease all activities thereon, failing which the Applicant may apply for eviction orders.
- f) The costs of this application shall be borne by the 3rd Respondent.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24th DAY OF SEPTEMBER, 2025.

S.N. MBUNGI

JUDGE

In the presence of;

Applicants' Counsel

C/A: Elizabeth Angong'a

Parties Advocates absent though aware of ruling date.

Court Assistant to upload the ruling to CTS.

