



**In re Estate of Wasere Ogasia Omanje (Deceased) (Succession Cause 9 of 2023) [2025] KEHC 12827 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12827 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
SUCCESSION CAUSE 9 OF 2023  
DK KEMEL, J  
SEPTEMBER 19, 2025  
IN THE MATTER OF THE ESTATE OF WASERE  
OGASIA OMANJE (DECEASED)**

**BETWEEN**

**ROBERT OTIENO OMANJE ..... APPLICANT**

**AND**

**RICHARD OKETCH UMANI ..... RESPONDENT**

**RULING**

1. Before this Court is an amended summons dated 6/6/2025 brought under Rules 49 and 73 of the Probate and Administration Rules and section 74 of the Law of Succession Act. The said summons seeks the following orders:
  - i. That the grant of letters of administration intestate herein be confirmed as per the mode of distribution as set out in the annexed schedule of distribution.
  - ii. That each party therefore the wholerty bear their own costs.

The said summons is supported by an affidavit dated 6<sup>th</sup> June 2025 sworn by Robert Otieno Omanje, the Applicant herein. The Applicant's case is inter alia; that he had earlier moved the court to revoke the grant made to the Respondent herein; that the court issued a fresh grant in the names of both the Applicant and Respondent and that the only property of the deceased North Gem/Lundha/1200 was to be shared equally; that he has since discovered vide a letter dated 2/5/2025 from the area chief which confirms that he is the only surviving heir in terms of consanguinity; that the Respondent has not been mentioned by the said chief; that he is the sole beneficiary of the estate of the deceased and thus the whole property should be allocated to him; that he is apprehensive that his right to inherit his share as a sole beneficiary will be short-lived if the grant is not amended.



2. The Respondent herein opposed the application vide a replying affidavit dated 11<sup>th</sup> June 2025 wherein he stated inter alia; that this court on 30/10/2024 ordered the parties herein to list the names of the beneficiaries of the estate and that on 25/4/2025 it appointed them as joint administrators and directed them to file the requisite summons for confirmation of grant; that the issue raised by the Applicant has already been dealt with by this court and that if the Applicant was aggrieved by the ruling dated 25/5/2025 then he ought to lodge an appeal; that the purported letter has been written by an assistant chief instead of the chief who had earlier written the introductory letter; that the only property of the estate should be shared equally between the petitioners.
3. The said application is canvassed by way of written submissions. Both parties duly complied.
4. The gist of the Applicant's application is that the applicant has brought in a letter from the assistant chief indicating that he is the only beneficiary to the deceased's estate. He is thus seeking that the whole of the deceased's estate be given to him.
5. The Respondent on the other hand has vehemently opposed the said application on the ground that the said chief's letter is an afterthought. That the same is made by the assistant chief yet the chief of that area is not aware. Further, that the Court has already made a decision based on the evidence that the parties adduced at hearing and thus the application should be dismissed and the estate be distributed equally between the applicant and the Respondent.
6. I have considered the application, the rival affidavits and submissions plus the authorities relied upon. I find the issue for determination is whether the application has merit.
7. It is instructive that vide the ruling of this court dated 25/4/2025, this court revoked the previous grant and issued it in the joint names of the Applicant and Respondent and further directed the petitioners to file the appropriate summons for confirmation of grant. Apparently, the Applicant herein filed a summons for confirmation dated 9/5/2025 wherein he proposed that the property of the deceased be shared equally between the two administrators. However, the Applicant herein later changed his mind and filed the present application seeking to lock out the Respondent.
8. Rules 49 and 73 of the Probate and Administration Rules state as follows:

Rule 49: A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.

Rule 73: Nothing in these Rules 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.
9. It is noted that vide the ruling dated 25<sup>th</sup> April 2025, this Honorable court considered the evidence adduced by both parties during the hearing hereof including their respective family trees, and concluded that both parties were nephews to the deceased and the closest according to the degree of consanguinity than the other members close in priority to the deceased. The court therefore made an order that both the Applicant and the Respondent be made joint administrators to the deceased estate. The court then directed them to file a schedule of distribution of the estate between the beneficiaries.
10. After the court had already ruled and issued a grant of letters of administration in favor of both the Applicant and the Respondent, the Applicant went and acquired a letter from an assistant chief, allegedly indicating him as the only beneficiary, thus seeking that the estate be distributed wholly to him.



11. It is not in dispute that this court had allowed the parties to file documents before setting the matter for hearing. At the time of setting the matter for hearing, no party raised an objection and that the same can be said to have been by consent. The same proceeded and that a date for the court's determination was likewise set by consent of both parties. This Court therefore went ahead and rendered its decision on the issues raised vide the ruling dated 25<sup>th</sup> April 2025. Hence, for the Applicant to raise an issue that was already determined by the court is tantamount to a misapprehension of Rule 73 of the Probate Rules and is an abuse of the Court process. I need not remind the parties that judicial time is very precious and that a court cannot make an order in vain. This court having made a determination that the two parties herein were the only surviving relatives of the deceased and who were directed to file summons for confirmation of grant thus became functus officio on the issue raised in the instant application.
12. As the parties have presented rival schedule of distribution of the estate, it is the view of this court that both parties being the only surviving relatives of the deceased should share the property equally. Indeed, the Applicant herein had earlier filed summons for confirmation of grant wherein he had proposed that the estate be shared equally. However, he changed tune and filed the present application on the basis that the area assistant chief had confirmed him as the only surviving beneficiary and now wants to throw his co-administrator under the bus. It is instructive that the Applicant did not see the need to invite the area chief to shed light on the issue of the beneficiaries or even secure an affidavit from the author of the latest chief's letter. It is clear that the Applicant is out to dislodge his co-administrator so as to remain alone in the estate of the deceased. I find the conduct of the Applicant to be actuated by malice and greed so as to benefit himself alone at the expense of his fellow administrator. I am of the considered view that the only property of the deceased namely North Gem/Lundha/1200 should be shared equally between the Applicant and Respondent. It is the duty of this court as conferred by Rule 73 of the Probate Rules to ensure the ends of justice are met and to prevent abuse of the courts process by directing the property to be shared equally.
13. In view of the foregoing observations, it is my finding that the Applicant's amended application dated 6/6/2025 lacks merit. The same is dismissed. I further proceed to make the following final orders:
  - a. The Grant of Letters of Administration Intestate to the estate of Wasere Ogasia Omanje(deceased) issued to Richard Oketch Umani and Robert Otieno Omanje on 25<sup>th</sup> April 2025 is hereby confirmed.
  - b. The estate of the deceased comprising of LR No. Gem/Lundha/1200 be distributed equally between the two Administrators.
  - c. Each party to bear their own costs.Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Korongo.....for 1<sup>st</sup> Administrator/Respondent

Otieno.....for 2<sup>nd</sup> Administrator/Applicant

Okumu.....Court Assistant

