



REPUBLIC OF KENYA



**In re Jama Guled Abdi (Deceased) (Succession Cause E1305 of 2023)
[2025] KEHC 12740 (KLR) (Family) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1305 OF 2023
HK CHEMITEI, J
SEPTEMBER 18, 2025
IN THE MATTER OF JAMA GULED ABDI (DECEASED)**

BETWEEN

**MOHED JAMA GULED 1ST PETITIONER
DECO JAMA GULED 2ND PETITIONER
KAWASAR JAMA GULED 3RD PETITIONER**

AND

**MINARA HOMES LIMITED 1ST RESPONDENT
JIBRIL JAMA GULED ABDI 2ND RESPONDENT**

RULING

1. This ruling relates to the summons dated 6th February, 2024 filed by the Applicants, Mohed Jama Guled, Deco Jama Guled and Kawasar Jama Guled, seeking for orders that:-
 1. Spent.
 2. Pending the hearing and determination of this application, this honourable court be pleased to issue an injunction restraining the Respondents herein whether by themselves, their servants, agents, employees and/or anyone acting on their authority from building, constructing, selling, charging, leasing, subdividing, alienating, wasting or otherwise intermeddling with the properties of the deceased known as LR No. 209/1584 (IR 2237) and LR No. 209/5324 (IR 14461) situate in Nairobi County.
 3. Pending the hearing and determination of this application, this honourable court be pleased to issue an order compelling the 2nd Respondent herein, Mr. Jibril Jama Guled Abdi, to render



a proper and accurate account of all the rental income from the premises known as LR No. 209/5324 (IR 14461) situate in Nairobi County from 20th September, 2022 when Jama Guled Abdi passed on to date.

4. Pending the hearing and determination of the Petition dated 2nd October, 2023, this honourable court be pleased to issue an injunction restraining the Respondents herein whether by themselves, their servants, agents, employees and/or anyone acting on their authority from building, constructing, selling, charging, leasing, subdividing, alienating, wasting or otherwise intermeddling with the properties of the deceased known as LR No. 209/1584 (IR 2237) and LR No. 209/5324 (IR 14461) situate in Nairobi County.
5. This honourable court be pleased to issue an order compelling the 2nd Respondent herein, Mr. Jibril Jama Guled Abdi to be depositing rental income from the premises known as LR No. 209/5324 (IR 14461) situate in Nairobi County in court until the Petition dated 2nd October, 2023 is heard and determined.
6. The costs of this application be borne by the Respondents in any event.
2. The application is based on the grounds thereof and supported by affidavits sworn by Mohed Jama Guled, Deco Jama Guled and Kawasar Jama Guled on 6th February, 2024; and supplementary affidavit sworn by Mohed Jama Guled on 27th February, 2024.
3. They aver inter alia that they are both administrators and beneficiaries of the deceased's estate. The deceased had four wives - Marma Hirsio, Abshiro Said Warsame, Miriam and Safio - and several children, as detailed in the chief's letter on record.
4. The properties LR No. 209/1584 (IR 2237) and LR No. 209/5324 (IR 14461) in Nairobi County are part of the deceased's free estate, registered in his name. The Respondents have unlawfully intermeddled with the estate, causing other beneficiaries' undue hardship, in violation of Section 45(1) of the Law of Succession Act. Without the consent of other beneficiaries, they have constructed apartments on LR No. 209/1584 (IR 2237) and Mr. Jibril Guled Abdi has been collecting rent from LR No. 209/5324 (IR 14461) without accounting for it. The estimated rental income is Kshs. 120,000/= per month from 20th September, 2022 to date.
5. The Applicants urge the court to issue preservation orders under Section 71 of the Law of Succession Act to prevent the estate's waste before its lawful distribution. The Respondents have no authority to deal with the estate without letters of administration and have failed to produce any sale agreements, land transfer documents or evidence of stamp duty payments to legitimize their dealings. These omissions render the purported transfers illegal and fraudulent.
6. There was no consent from the deceased's wives or family for any sale or transfer of the properties and the chief's letter confirms the existence of multiple rightful beneficiaries.
7. They further aver that the lack of Ministry of Lands consent further invalidates the alleged transactions, making them null and void. The core issue is the lawful distribution of the estate, which the Respondents have sought to undermine without justification or explanation.
8. The Applicants reaffirm that the properties remain part of the deceased's estate pending distribution. Any register entries purporting transfers are fraudulent and should be nullified by the court. The Respondents have not denied that the properties belong to the deceased or that many beneficiaries were excluded from these dealings. Assertions that the properties changed hands before the deceased's death lack proof and should be dismissed.



9. The Respondents have provided no evidence of legal compliance for the transfers. An injunction therefore is necessary to prevent further unauthorized dealings with the properties until the application and petition are determined. The Applicants argue that no two family members can disinherit others through fraudulent means.
10. The application is opposed vide replying affidavits sworn by Abdullahi Abdi Garane and Jibril Jama Guled Abdi on 2nd February, 2024 and 26th February, 2024.
11. Abdullahi Abdi Garane, a director of the 1st Respondent, states that he is duly authorized and competent to swear the affidavit. He clarifies that the correct property reference is LR No. 209/1585 (IR 2237), not LR No. 209/1584 as indicated in the application. This parcel has since been converted to Nairobi/Block 40/36 and does not belong to the deceased's estate. Instead, it is owned by Minara Forest Garden Ltd, having been acquired from the late Abshira Said Warsame through a joint venture arrangement. The Petitioners have allegedly tampered with the evidence by removing entries numbered 12 to 24 from the copy of the surrendered title attached to their affidavit.
12. Entry No. 24 on the official surrendered title shows that the property belonged to Abshira Said Warsame before being transferred to Minara Forest Garden Ltd via a transfer dated 20th January, 2021.
13. He averred further that since LR No. 209/1585 (IR 2237) was not owned by the deceased at his death on 20th September, 2022, it is not part of his estate. Moreover, the 1st Respondent is not the registered owner of this property and has been wrongly sued. It is contended that the Petitioners' application is grounded on forged documents, false information and perjury, warranting its dismissal with costs.
14. Jibril Jama Guled Abdi, residing in Virginia, USA, further explains that the deceased was his father, and the Petitioners are his step-siblings. He asserts that he is the registered owner of LR No. 209/5324 (IR 14461). The Petitioners are accused of altering the copy of the title in their affidavit by omitting entries 12 to 15, which document the following: Entry 12: Transfer from Jama Abdi to Tawakal Airlines Ltd on 19th July, 1995, Entry 13: Charge by Tawakal Airlines Ltd to Housing Finance Company Ltd on the same date, Entry 14: Discharge of the charge on 3rd February, 2004, Entry 15: Transfer to Jibril Jama Guled Abdi on 16th June, 2004.
15. Therefore, LR No. 209/5324 (IR 14461) was not part of the deceased's estate at his death and should not be treated as such. Jibril further claims that the signatures of Deco Jama Guled and Kawsar Jama Guled on the supporting affidavit dated 6th February, 2024 must have been forged by the 1st Petitioner, as both individuals reside in the United Kingdom and were not in Kenya when the affidavit was commissioned - an act amounting to criminal conduct. He concludes that the application is premised on forged documents, fabricated information and perjury; and urges the court to dismiss it with costs.
16. The Applicants have not filed written submissions.
17. The Respondents have filed written submissions dated 15th May, 2025, placing reliance on the following:
 - a. *In re Estate of Gideon Kibitok Tarus (Deceased)* Succession Cause No. 92 of 2005) [2024] KEHC 276 (KLR) where the court held that property that does not belong to the deceased cannot be available for distribution in a succession cause.
 - b. *In re Estate of Stone Katbuli Muinde (Deceased)* (2016) eKLR where it was observed as follows:

“It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere. Such claims to



ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit property brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that court can give effect to it.”

- c. Giella v Cassman Brown (1973) EA 358 where the principles for the grant of an injunction as follows:

“First, an application 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 adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of probabilities.”

- d. Kenya Breweries Ltd & Another vs Washington O Okeya [2002] eKLR where the court of appeal held as follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different standard than was required for a prohibitory injunction.”

Analysis and Determination

18. I have read the application before this court, the response thereto, the annexures in support and filed submissions.
19. It appears to me that of the first instance the suit parcel of land as per AAG1(c) of the replying affidavit sworn on 23rd February 2024 is registered in the name of Minara Forest Garden Limited and title issued on 22nd November 2021. If this is the case then the above company has not been made a party in this case and even if the application was to succeed the orders would be issued in vain.
20. Secondly there is evidence that the transaction and paper trail in particular may have been fraudulently done by virtue of the fact that some records from the register are missing. If that is the case then the proper court sized with jurisdiction to interrogate will be the Environment and Land Court.
21. As a matter of fact, my wholesome reading of the application does not convince me that this court is in a position to adjudicate on any malpractices the rival parties are alleging to have been done in the process of conveying the same to the current registered proprietors. It appears that as at that time the deceased was still alive the property passed hands and therefore it does not form part of his estate.



22. I further state so because the deceased died on 20th September 2022 whereas the title was issued to Minara Forest Garden Limited on 22nd November 2021.
23. In the premises and without going into other issues which I think fits the Environment and Land Court bill, this court does not find the application meritorious and the same is hereby dismissed.
24. Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 18TH DAY OF SEPTEMBER, 2025

H K CHEMITEI

JUDGE

