



REPUBLIC OF KENYA



**In re Estate of Olum Ngala (Deceased) (Succession Cause
33 of 2013) [2024] KEHC 5291 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE 33 OF 2013**

KW KIARIE, J

MAY 21, 2024

BETWEEN

LUCAS OGOLA OYIMBA APPLICANT

AND

CHARLES OCHIENG OGUTU 1ST RESPONDENT

STIVIN OUMA OGUTU 2ND RESPONDENT

RULING

1. Lucas Ogola Oyimba, the applicant, moved the court through Chamber Summons dated the 12th day of September 2023 under Rules 49, 63 and 73 of the [Probate and Administration Rules](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#). He is seeking the following orders:
 - a. That this honourable court be pleased to review orders made on 15th December 2014 confirming the grant of letters of administration intestate issued on 24th June 20214 to Charles Ochieng Ogutu and Sitivin Ouma Otieno to include Lucas Ogola Oyimba as a beneficiary entitled to a portion measuring 2 acres of Land Parcel No Kanyamwa/Kojwang/Kochola-Kadwet/198 in this cause.
 - b. That this honourable court be pleased to issue an order directed to the Land Registrar, Homa Bay County, directing him to rectify the register of land Parcel No Kanyamwa/Kojwang/Kochola-Kadwet/198 by deregistering Land Parcel Nos Kanyamwa/Kojwang/Kochola-Kadwet/2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532 and 2533 and reverting the same to the name of Olum Ngala, deceased pending fresh schedule of distribution and subsequent issuance of a proper certificate of confirmation of grant.
 - c. That an order for a fresh mode of distribution does issue.
 - d. That the cost of the application be provided for in favour of the applicant.



2. The application was based on the following reasons:
 - a. On 17 September 2020, Hon. Justice G.M. Ong'ondo delivered a judgment in ELC Case No 7 of 2022 (formally ELC Case No 396 of 2017) compelling the petitioners to transfer a portion measuring two acres of land parcel No Kanyamwa/Kojwang/Kochola-Kadwet/198 to the objector. However, the said land parcel has since been subdivided, and subsequent subdivisions have been registered in the names of beneficiaries of this estate.
 - b. That no appeal has been preferred against the judgment of Hon. Justice G.M.A. Ong'ondo in ELC case No 7 of 2022.
 - c. The petitioners applied for a stay of execution in ELC Case No 7 of 2022; however, the same was dismissed with costs on January 31, 2023.
 - d. That it is in the interest of Justice that a review for orders made on 15th December 2014 do issue to avoid unjust enrichment by the beneficiaries.
3. The respondents opposed the application and contended that the application lacked merit.
4. Rule 49 of the *Probate and Administration Rules* directs on the mode of applying to the court relating to the estate of a deceased person for which no provision is made elsewhere in the Rules.
5. Rule 63 provides as follows:
 - (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.
 - (2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.
6. The Rule imports the provisions of the *Civil Procedure Rules* for application in a limited manner: Orders 5, 10, 11, 15, 18, 25, 44, and 49. Order 45, under which a review may be made, was not included. In the case of *Priscilla Vugutsa Kamaliki v Mary Runyanyi Ochieng* [2016], eKLR Judge Nekoye Sitati said the following:

The first issue for this Court to determine is whether the instant application is properly before the Court. The application is expressed to be brought under Section 1A, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act* Order 40 Rule 4 and Order 51 Rule 1 of the *Civil Procedure Rules*. It is worth noting that the *Law of Succession Act* is a self-contained Act, and provisions of the *Civil Procedure Act*, unless specifically imported into it, are not applicable. A look at Rule 63 of the *Law of Succession Act* reveals that the provisions under which the present application is brought are not some of the provisions imported into the *Law of Succession Act*. What this means, therefore, is that the instant application is incompetent for want of form and is, therefore, fit for striking out.
7. The instant application was brought under the wrong provisions of the law. Secondly, the ELC court has all the necessary tools to enforce its judgments. The application is, therefore, struck out with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF MAY 2024



KIARIE WAWERU KIARIE
JUDGE

