



**In re Estate of the Late Wathuko Chongo alias Wathuko Chongo Wathuko (Deceased)  
(Succession Cause 2171 of 2001) [2024] KEHC 11629 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11629 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2171 OF 2001  
HK CHEMITEI, J  
OCTOBER 3, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE WATHUKO  
CHONGO ALIAS WATHUKO CHONGO WATHUKO (DECEASED)**

**BETWEEN**

**WATHUKO NDERI CHONGO ..... APPLICANT**

**AND**

**NDERI WATHUKO CHONGO ..... 1<sup>ST</sup> RESPONDENT**

**PETER NDERI CHONGO ..... 2<sup>ND</sup> RESPONDENT**

**SERAPHINE WANJIKU WATHUKO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In his application dated 3<sup>rd</sup> November 2022 the Applicant seeks the following orders:-
  - (a) That the certificate of confirmation of grant issued to the said Wathuko Nderi Chongo, Nderi Wathuko Chongo, Peter Nderi Chongo and Seraphine Wanjiku Chongo in this matter on 6<sup>th</sup> May 2013 be amended.
  - (b) That the consent order recorded on the 6<sup>th</sup> May 2013 be varied in respect of the agricultural land in following terms:-
    - (i) The beneficiaries in distributing LR No. Nyandarua/Olaragwai/288, Nyandarua/Mumui/ Olaragwai/185, Nyandarua Mumui/Olaragwai /186, Mawingu scheme plots 49 Mawingu scheme plots 50 ,Kiarutara location 16, kiarutara location 14, Mwagu 16/135 and Turasha ridge plot 3, the court/parties to consider LR Nos



Nyandarua/Olaragwai/229 measuring 44.5 acres which was acquired by the deceased and transferred to the first house.

- (ii) The beneficiaries in distributing LR No Nyandarua/Olaragwai/288, Nyandarua Mumui/ Olaragwai/185, Nyandarua Mumui/Olaragwai /186, Mawingu settlement scheme plots 49 and 50, Kiarutara location 16 and 14, Mwagu 16/135 and Turasha ridge plot 3, the court parties to consider LR No Nyandarua/Mumui/344 which was acquired by the deceased and fraudulently transferred to Nderi Wathuko Chongo of the first house.

2. The Applicant has also prayed for costs of the application.
3. The application is based on the sworn affidavit of the Applicant dated the same date.
4. The application is opposed by the respondents vide the preliminary objection dated 15<sup>th</sup> February 2023 in which they stated that the properties namely Nyandarua/Olaragwai/229 was registered in the name of the late Tabitha Wanjiku and parcel number Nyandarua/ Olaragwai/344 belonged to Nderi Wathuko Chongo and not the deceased herein.
5. The 1<sup>st</sup> Applicant has further in opposition to the application sworn an affidavit dated 21<sup>st</sup> November 2022 to exemplify and to buttress the assertion contained in the preliminary objection.
6. The court has perused the annexures to the replying affidavit above and it is evident that land parcel number Nyandarua/Olaragwai/ 229 was transferred from Settlement Fund Trustees to the late Tabitha Wanjiku on 7<sup>th</sup> October 1977 and at no time the deceased herein was the registered owner.
7. At the same time land parcel number Nyandarua/Mumui/344 was transferred to Nderi Wathuko Chongo on 15<sup>th</sup> December 2008 by one Maina Kimemia.
8. The green cards attached to the said replying affidavit states as much.
9. In view of the above evidence and in view of this courts ruling of 11<sup>th</sup> July 2024 I find that the preliminary objection is meritorious. The Applicant ought to pursue his claim over the two properties in another forum and not this court. His deceased father was never a registered owner of any of the two parcels. If there were any family arrangements then perhaps it ought to have been captured in the consent filed settling the estate.
10. At the same time if there was any fraud as alleged by the Applicant then this court will not be able to deal with the same for the reasons that the deceased was never the registered owner of the two parcels.
11. In the premises I do not find any merit in the application and the same is hereby dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2024.**

**H K CHEMITEI**  
**JUDGE**

