



REPUBLIC OF KENYA



**In re Estate of Jeremiah Nyamboche Obiero (Deceased) (Succession Cause 109 of 1999) [2025] KEHC 13858 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13858 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 109 OF 1999**

**JM OMIDO, J**

**SEPTEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF JEREMIAH NYAMBOCHE OBIERO (DECEASED)**

**AND**

**IN THE MATTER OF DAVID ODAGO NYAMBOCHE (PETITIONER)**

**AND**

**IN THE MATTER OF AN APPLICATION BY VITALIS ONONI JEREMIAH (APPLICANT)**

**RULING**

1. The Applicant's notice of motion application dated 19<sup>th</sup> February, 2025 is expressed to be presented under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law and seeks the following orders:

a. That this Honourable Court be pleased to direct the County Land Registrar Nyando to reconstruct the parcel files for the following parcels of land without the certificate of death of David Odago Nyamboche:

Kisumu/Border/92.

Kisumu/Border/3871.

Kisumu/Border/3122.

Kisumu/Border/3119.

Kisumu/Border/101.

Kisumu/Border/119.

Kisumu/Border/3132.

Plot No. 14 Awasi.

Kisumu/Border/79.



- b. That the costs of the application be provided.
2. The grounds upon which the application is premised are as follows:
    - a. That all the above-named parcels of land form part of the estate of the late Jeremiah Nyamboche Obiero.
    - b. That the beneficiaries of the deceased have concluded the succession cause filed at the High Court in Kisumu and are at the stage of distribution and settling of the estate of the deceased.
    - c. That following the fire incident at Nyando Land Registry, several documents were destroyed and there is an ongoing reconstructive process at the registry.
    - d. That for this reconstruction to be initiated, it is a requirement that the proprietors avail documents and lane records in their possession as well as the identity cards or the death certificates in case of the death of a beneficiary or proprietor.
    - e. That one of the beneficiaries in the estate of Jeremiah Nyamboche Obiero namely David Odago Nyamboche is deceased and that it has been a challenge getting his death certificate to enable other beneficiaries reconstruct the land parcel files and proceed with the distribution of the estate.
    - f. That the specific requirement of the death certificate of David Odago Nyamboche (deceased) be dispensed with to pave way for the distribution of the estate.
    - g. ....
    - h. That in the premises, it is only just, fair and equitable that the application herein be allowed in its entirety.
  3. The application is supported by the affidavit of Vitalis Ononi Nyamboche, sworn on 19<sup>th</sup> February, 2025 in which the said deponent restates and expounds on the grounds reproduced above.
  4. The Respondent to the application, Joseph Otieno Odago filed what is purported to be a replying affidavit, which however is not signed or commissioned by a commissioner for oaths and is therefore not an affidavit within the meaning of Section 5 of the *Oaths and Statutory Declarations Act*, Cap 15 Laws of Kenya. This is a mandatory statutory requirement and failure to comply renders an affidavit fatally defective. Courts have repeatedly held that deviations from the said provision are not mere technicalities but go to the substance and hence are incurable.
  5. Be that as it may, the contents of the document merely indicate the parties who benefited or have interests in the specified properties that form part of the estates of Jeremiah Nyamboche Obiero (deceased) and David Odago Nyamboche (deceased). The Respondent is a son of the latter and a grandson of the former.
  6. The Respondent acknowledges in the filed document that there is indeed ongoing a documents reconstructive process at Nyando Lands Registry following a fire incident that gutted the lands offices and thus the need for documents to be furnished to the office. There is therefore, strictly speaking, no opposition to the application.
  7. The challenge the Applicant has expressed is that he is not in possession of the certificate of death of the Respondent's father, who was the Petitioner in the present cause. On 12<sup>th</sup> February, 2025, the Respondent stated that he does not have the said document.



8. The foregoing being the case, in order that this matter progresses towards conclusion, I will proceed to allow the application dated 19<sup>th</sup> February, 2025 as follows:
- a. The Land Registrar Nyando is hereby ordered to reconstruct the parcel files for the following parcels of land without the production by the Applicant of the certificate of death of David Odago Nyamboche:
- Kisumu/Border/92.  
Kisumu/Border/3871.  
Kisumu/Border/3122.  
Kisumu/Border/3119.  
Kisumu/Border/101.  
Kisumu/Border/119.  
Kisumu/Border/3132.  
Plot No. 14 Awasi.  
Kisumu/Border/79.  
Kisumu/Border/93.
- b. That each party to bear their own costs of the motion.
- c. Orders accordingly.
9. This file to be mentioned on 18<sup>th</sup> November, 2025 for further orders. Parties to be notified of the mention date.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**JOE M. OMIDO.**

**JUDGE**

For Applicant: No appearance.

For Respondent: No appearance.

Court Assistants: Mr. Ngoge.

