



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Kimaiyo Bwale (Deceased) (Probate & Administration  
52 of 2021) [2025] KEHC 14529 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14529 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 52 OF 2021  
JR KARANJA, J  
OCTOBER 15, 2025**

**BETWEEN**

**DAVID A. SIELE ..... 1<sup>ST</sup> PETITIONER**

**NEHEMIAH KIPLIMO SEREM ..... 2<sup>ND</sup> PETITIONER**

**AND**

**AIRENI CHEMOTOS CHEBWOKO ..... 1<sup>ST</sup> OBJECTOR**

**MARY JEROP KIPCHO ..... 2<sup>ND</sup> OBJECTOR**

**SALINA JEMAIYO SEREM ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. On the 14<sup>th</sup> May 2025 it was directed by the court that the application vide the summons for revocation of grants dated 5<sup>th</sup> February 2025 be heard by oral or “viva-voce” evidence with each part having the liberty of calling a total of four [4] witnesses each. Witness statements from both sides were to be filed and served before the hearing date set for 10<sup>th</sup> June 2025 and parties were given leave to file further affidavits if necessary. These were procedural directives intended to create level playing ground to enable fair and expectations herein of the matter.
2. Towards that end, the hearing effectively commenced on the 17<sup>th</sup> July 2025 with the Applicant/ Objectors testimonies, thereafter, the Applicant sought an adjournment to call a third conceal where is in the person of a chief called Hillary Sitienei who was said to be unwell.

The Petitioner/ Respondents vehemently opposed the application, but the court in its wisdom allowed it and adjourned the matter, to the 9<sup>th</sup> October 2025, when the learned counsel Mr. Rotich, appearing for the objectors brought to the attention of the court that a supplementary list of documents dated 28<sup>th</sup> July 2025 had been filed and served in good time because it became difficult to procure the attendance of the expected witness, Hillary Sitienei, due to his indisposition and hospitalization.



3. The Petitioners conceded having been served with the supplementary list of documents, but opposed it for being a nullity having been filed without the leave of the court. they urged this court to strike out or expunge the list from the record so that the hearing of the matter ma proceed without it and contended that it had the effect of introducing a different narrative in the case.
4. Having considered the objection raised by the Petitioners with regard to the supplementary list of documents dated 28<sup>th</sup> July 2025 and filed herein.

In every civil process, the overriding objective is to facilitate the just expeditious, proportionate and affordable resolution of disputes. A party to such a process is expected and indeed under a duty to assist the court further that overriding objective by participating diligently in the process and to comply with the directions and orders of the court. In that way, a fair trial interms of Ariticle 50 of *the Constitution* would be guaranteed. Indeed, as was held by the supreme court in the case of Raila Odinga & Others Vs. Independent Electoral and Boundary Commission [IEBC] KLR. The court has a constitutional mandate to assure that a trial will be fair and therefore retains the power to disallow one party from tabling evidence that was not provided to the other party as contemplated by the Rules.

5. However, the court may in certain circumstances allow a party to adduce additional evidence which was not furnished to the other party as provided by the rules or in any other manner because its mandate is to do justice to all parties and this cannot be restricted by procedural technicalities in terms of Article 159[2][a] of *the constitution*.

If additional evidence brought by a party would avail that party on opportunity to present his/her case in full without causing undue prejudice to the other part in the suit, then such evidence may be accepted and may be included by way of supplementary list of documents [See Too Vs. Tum [2014] KE ELC 512[KLR]

6. The filing of additional documents to forestate delays in the finalization of a matter by the absence of a witness as happened herein would in essence be further the overriding objectives of a civil process by facilitating just and expeditious disposal of a matter, particularly if the opposite party was notified within time and given adequate opportunity to response to the fresh additional documents or evidence.

The Petitioner's herein admitted that they were served within reasonable time with the supplementary list of documents. They therefore had reasonable and adequate opportunity to counter or respond to the supplementary list. They suffered no prejudice in the circumstances even if the list was filed outside the prescribed time and without the leave of the court which ideally ought to have them obtained by dint of the proviso in Order 3 Rule 2 of the Civil Procedure Rules which is not framed in mandatory terms and is not among the provisions of the Civil Procedure Rules envisaged under Rule 63 of the P & A Rules.

7. In any event, the supplementary list of documents was filed prior to the closure of the Applicant/ Objector's and prior to the opening of the Respondent/Petitioner's case. There was sufficient notification and time for the Petitioners to file counter documents. They cannot therefore be heard to say that they were ambushed.

However, in acknowledging that the Objectors/ Applicant's ought to have sought leave of the court to file the supplementary list of documents after directions had been given and the case commenced and in order that justice be done to both parties, leave is now given to the Objector to file the supplementary list of documents with corresponding leave to the Petitioner/ Respondent to file their supplementary list of documents if necessary before further hearing of the present application on a date to be fixed today.



In sum, the Petitioners/ Respondents objection to the Applicants/ Objectors supplementary list of documents is overruled and dismissed.

Ordered accordingly.

**DELIVERED AND DATED THIS 15TH DAY OF OCTOBER, 2025.**

**HON. J. R. KARANJAH,**

**JUDGE**

