



REPUBLIC OF KENYA



**Lyambila v Lyambila & 2 others (Environment and Land Miscellaneous
Case E018 of 2025) [2025] KEELC 6801 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E018 OF 2025**

EC CHERONO, J

OCTOBER 2, 2025

BETWEEN

AGNES NAKHUMICHA LYAMBILA APPLICANT

AND

SAMUEL WAFULA LYAMBILA 1ST RESPONDENT

PATRICK WANYAMA LYAMBILA 2ND RESPONDENT

BUNGOMA LAND REGISTRAR 3RD RESPONDENT

RULING

1. Before me is Notice of Motion application brought under certificate of urgency dated 26th May, 2025 seeking an order directing the Land Registrar Bungoma to remove a restriction placed on land parcel No. Bungoma/Kamakunywa/4224. The Applicant is also seeking for costs of the application.
2. The said application supported by the affidavit of the Applicant as well as grounds apparent on the face of the application. According to the Applicant, she is the administratrix in Bungoma Succession Cause NO. 144 of 2017 in which the proceedings were fully determined and the objection proceeding dismissed on 30/10/2024. She stated that what is now remaining is the Land Registrar Bungoma to remove the restriction placed on the suit land to enable her subdivide and distribute the same to the beneficiaries of the estate. She stated that she is now aged and sickly and would like to distribute the estate and the mode of distribution has been disclosed to all the rightful beneficiaries.
3. The Applicant also deposed that the Respondents have engaged her in endless court battles which have since been determined in her favour and have now resorted to criminal acts of trespass, causing breach of the peace and illegally selling off portions of the suit land and rendering her homeless on land she is the administratrix. She stated that the continued restriction of the suit land will continue delaying the whole administration of the estate despite the Succession having been concluded and a title deed issued to her for purposes of distribution of the estate.



4. When the application was placed before me for direction as the duty Judge, I did not certify the same urgent but directed that the said application be canvassed by written submissions. When the matter came up for compliance on 24/06/2025, Mr Wamalwa Robert appeared for the 1st and 2nd Respondents while one Mr. Simiyu from the office of the Hon. Attorney General appeared for the 3rd Respondent. Mr. Wamalwa Robert indicated that he had complied with this court's directions. Mr. Simiyu indicated that he was not opposing the application.
5. The 2nd Respondent swore a Replying affidavit on his behalf and that of the 1st Respondent stated that the application under review is frivolous, vexatious and scandalous and that the Applicant is their biological mother and the legal and personal representative of the estate of Benard Lyambila Nduruchi. He deposed that initially before Bungoma Succession Cause NO. 23 of 1998, their father's Land was registered as LR No. Bungoma/Kamakunywa/275 but after Succession, each of the deceased's children was allocated his/her share as per the certificate of confirmation but in breach of trust as an administratrix, the Applicant subdivided land parcel LR No. Bungoma/Kamakunywa/275 to create LR No. Bungoma/Kamakunywa/4224 and 4225 and Land Parcel No. Bungoma/Kamakunywa/4225 was transferred to KAG Church. He stated that KAG Church was not a beneficiary as per the certificate of confirmation and that they have since filed an application in the Succession Cause to have the Applicant removed as administrator and that should the caution be removed, the Applicant shall transfer to strangers to their detriment.
6. In conclusion, the 1st and 2nd Respondents stated that vide Bungoma CMC-Misc.Application No. E0170 of 2025 which is now pending, the Applicant herein sought similar orders hence this application is sub-judice and or res-judicata
7. I have considered the Notice of Motion application dated 26th May 2025, the supporting affidavit, the Replying affidavit and the rival submissions as well as the relevant law. The Applicant in the application under review is seeking an order directing Bungoma Land Registrar to remove the restriction placed on Land Parcel No. Bungoma/Kamakunywa/4224. I have looked at a copy of the certificate of official search annexed by the Applicant marked 'ANL-2'. On part B (Property Section), the Applicant was registered as proprietor on 28/03/2007 and on 17/11/2008, She was issued with a title deed. On 19/05/2023, Patrick Wanyama Lyambila, the 2nd Respondent herein placed a restriction claiming beneficiary interest. That is the restriction which the Applicant now seeks to be removed. From the materials placed before me, the Applicant is registered as proprietor of the suit property in her capacity as the administratrix of the estate of Benard Lyambila Nduruchi for purposes of distribution of the estate to its rightful beneficiaries. The Applicant herein has not been removed and/or substituted as an administrator of the estate of the said Benard Lyambila Nduruchi. My attention has also been drawn to a Chamber Summons application filed by the Respondents in the Chief Magistrate Succession Cause NO. E018 of 2025 seeking orders for inter-alia that the Applicant herein who is the administrator of the estate of the said Benard Lyambila Nduruchi be removed.
8. The reasons given by the Applicant for the removal of the restriction is that the restriction was placed by objectors in Bungoma Succession Cause NO. 144 of 2017 and that the said objection proceedings have since been dismissed and the Succession Cause determined. She stated that the sub-division of the suit land to the rightful beneficiaries of the estate has not been done due to the restriction and that the Respondents have now resorted to criminal acts of trespass thereby causing breach of peace and disposing off the suit land hence the removal of the restriction is extremely urgent to expedite the subdivision and transfer of the estate to the rightful beneficiaries. She stated that this Court in ELC Case NO. 8 of 2021 declared the sale agreements entered between the Respondents herein and some third parties as null and void and that it is now necessary to have the said restriction lifted.



9. I have looked at the Certificate of Grant indicating that the Applicant is the sole administrator of the estate of Benard Lyambila Nduruchi as per the certificate of grant annexed as 'PWC1'. The Applicant has also annexed a copy of title of land parcel No. Bungoma/Kamakunywa/275 which she wishes like to distribute to the beneficiaries while she is still alive. The grant of letters of administration issued in her favour in respect of the estate of Benard Lyambila Nduruchi has not been revoked. As such, the Applicant has a duty to distribute the estate of her late husband Benard Lyambila Nduruchi in accordance with the law. I therefore find that the restriction placed by Patrick Wanyama Lyambila, the 2nd Respondent herein is contrary to the orders of a court of competent jurisdiction and inhibits the lawful distribution of the estate of Benard Lyambila Nduruchi (deceased).
10. I have said enough Suffice to add that this Court had dealt with a related matter between the Applicant and eight (8) persons in Bungoma ELC Case NO. E008 of 2021 who purported to have bought portions of the suit land parcel No. Bungoma/Kamakunywa/4224 and in a judgment delivered on 12th May 2025, this Court inter-alia ordered the said persons to be evicted from the suit property.
11. In view of the matters aforesaid, I find that the Notice of Motion application dated 26th May 2025 is merited and the same is hereby allowed as prayed. Consequently, the following consequential orders are hereby issued;
 1. Bungoma land Registrar be and is hereby ordered to remove the restriction placed on Land Parcel No. Bungoma/Kamakunywa/4224 forthwith.
 2. The parties who are mother and sons to each bear their own costs.

READ, DATED AND SIGNED AT BUNGOMA THIS 02ND DAY OF OCTOBER, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Sichangi for Applicant.

Mr. Wamalwa R for the Respondents.

Bett C/A.

