



**In re Estate of Francis Mugambi (Deceased) (Succession Cause
522 of 2012) [2025] KEHC 15211 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 522 OF 2012
SM GITHINJI, J
OCTOBER 28, 2025
IN THE MATTER OF THE ESTATE OF FRANCIS MUGAMBI (DECEASED)**

BETWEEN

WINFRED NKUENE KIRIMI PETITIONER

AND

JECINTA GAKII OBJECTOR

AND

NICHOLAS KOOME INTERESTED PARTY

FRED MURIMI INTERESTED PARTY

JOAN MUKAMI INTERESTED PARTY

RULING

1. For determination is the Chamber Summons dated 22/8/2024 under section 47 of the *Law of Succession Act* and Rules 75, 76 and 82 of the *Probate and Administration Rules*, seeking that;
 1. The honorable court be pleased to remove the Petitioner/Respondent as the legal administrator of the deceased estate for failure to account the proceeds of the deceased estate and appoint applicant.
 2. The honorable court be pleased to amend the grant issued to the Petitioner/Respondent dated 5th June, 2018 to reflect the court of appeal finding in *Civil Appeal No. 97 of 2021* where court gave LR no Abogeta/Lower Chure/1167 to the Objector/Applicant.
 3. The honorable court be pleased to issue an order of eviction to the petitioner on LR no Abogeta/Lower Chure/1167 to enable the Objector/Applicant to implement the judgment of court of appeal in *Civil Appeal No. 97 of 2021*.



4. The honorable court be pleased to order the Petitioner/Respondent to account and share the proceeds/rent/money received on properties on LR no Ntima/Igoki/5968 as per the honorable court ruling dated 12th May, 2020 from 24th January, 2019 to date.
 5. The honorable court be pleased to order the proceeds/rent/money collected from properties on LR no Ntima/Igoki/5968 be put into a joint account in favour of all beneficiaries.
 6. The honorable court be pleased to empower the OCS Nkubu Police Station provide security during the eviction of the Petitioner/Respondent on LR no Abogeta/Lower Chure/1167.
 7. Costs of the application be provided for.
2. The application is premised on the ground that pursuant to the revocation of this court's mode of distribution by the Court of Appeal, there is a need to amend the grant issued to the Petitioner/Respondent. The Respondent has been in occupation of LR no Abogeta/Lower Chure/1167 which is the Applicant's matrimonial property, and is undesirous of moving out of the property in peace. The Respondent has never accounted or shared with the Applicant the rent received from LR no Ntima/Igoki/5968, and it is in the interest of justice that the orders sought are issued.
 3. The Respondent herein, Winfred Nkuene Kirimi swore Affidavit on 7/2/2025 in opposition to the application. She averred that since the judgment of the Court of Appeal, she has made great effort to finalize administration of the estate and the family held several meetings with all the beneficiaries to open a joint account for collection of rent proceeds from Ntima/Igoki/5968 and to distribute Title Number LR no Abogeta/Lower Chure/1167. She has been diligently paying off the loan arrears from her funds and the little income generated from the said property. After the joint account was opened for the collection of the rent proceeds, the Applicant received a cheque of Ksh. 53,150 as her share thereof. She is apprehensive that if the orders sought by the Applicant are granted, all the beneficiaries will be locked out of their ancestral land and denied their birth rite. The Court of Appeal judgment in *Civil Appeal No. 97 of 2021* did not in any way bestow the entirety of the ancestral land on the Applicant, and therefore, the eviction orders sought against all the beneficiaries in the application are an abuse of the court process. The statements made in the Applicant's affidavit are an embellishment of facts aimed at arm-twisting the court into granting the orders sought and, she is willing to administer the estate accordingly for all the beneficiaries.
 4. The Respondent further filed grounds of Opposition dated 7/2/2025 that:
 1. The said application is fatally defective on the face of it as the same is not framed in conformity with requisite forms provided in the Probate & Administration Rules.
 2. In the foregoing it is materially impossible to respond to the said application which on one hand seeks rectification of the Grant; and which application also seeks to have the same Grant revoked on the other hand.
 3. The substance of the application is based on a misconstrued adoption of the Court of Appeal judgment in *Civil Appeal No. 97 of 2021*, on which it is purportedly based.
 4. The judgment of the Court of Appeal did not call for the revocation of the Grant made to the Respondent herein and the said grant has not been rendered inoperative by the said judgment.
 5. The judgment of the Court of Appeal did not bestow the entirety of Title Number Abogeta/Lower Chure/1167 on the Applicant as wrongly purported in the instant application and therefore the eviction orders sought are moot.



6. The Applicant's application is therefore misconceived, mischievous, in bad faith, incompetent, frivolous and vexatious and the same ought to be dismissed.
5. The 1st and 3rd Interested Parties swore an affidavit on 7/2/2025 in opposition to the application. They averred that the homestead at Title Number Abogeta/Lower-Chure/1167 is their ancestral home and the current home of the majority of the beneficiaries. The Respondent recently vacated the original family house for the Applicant's use in accordance with the Court of Appeal's judgment. It is apparent that the application seeks to weaponize the judgment of the Court of Appeal to disinherit the beneficiaries of the estate, and it is the Applicant who continues to frustrate the family's efforts to distribute the estate to the beneficiaries.
6. The Applicant swore a further supporting affidavit on 20/5/2025 in support of her application.
7. The Respondent swore a further Replying Affidavit on 25/7/2025 in opposition to the application.
8. The application was directed to be canvassed by way of written submissions, which were only filed by counsel for the Respondent.

Disposition

9. Having considered the application, the responses thereto, the submissions on record and the authorities relied on, I find the issue for determination to be whether it is merited.
10. The Petitioner has demonstrated her commitment to conclude the administration of the estate, and there is no sufficient cause for her removal as an administrator.
11. The prayer for the opening of a joint account for collection of the rent proceeds from LR no Ntima/Igoki/5968 is superfluous because it has been established that such an account is already operational and the Applicant has been receiving her periodic share therefrom.
12. In its Ruling dated 24/1/2019, this court (A. Ong'injo J) rendered thus; "In the circumstances the estate of the deceased will be distributed to the petitioner, the protester/objector and the children of the deceased. LR Ntima/Igoki/5968 – 0.0371 acres. Due to its size – rents accruing shall be divided equally unless the beneficiaries agree on a suitable formula. For LR Abogeta/ Lower Chure/1167 the beneficiaries shall share it equally save that the matrimonial house which has now been occupied by the petitioner since the deceased died shall remain occupied by her."
13. Pursuant to that decision on distribution of 24/1/2019, a certificate of confirmation of the grant was duly issued on 5/6/2019, which is erroneously captured as 5/6/2018. I invoke the powers of this court under section 99 of the [Civil Procedure Act](#), to rectify that error.
14. In its Judgment dated 24/5/2024, the Court of Appeal rendered thus; "24. However, from the evidence on record, the deceased constructed the matrimonial property at LR no Abogeta/L-Chure/1167 prior to getting married to the appellant. This was during the subsistence of his marriage to the respondent. The deceased and the respondent lived in the said matrimonial home. The evidence by OW2 and OW3 established that the appellant did not reside at the matrimonial home during the deceased's lifetime. The appellant, in her testimony, told the court that when she married the appellant in 1990, they settled in Meru town. 25. The appellant moved to the said matrimonial home after the deceased's death. The respondent stated that she resided at the matrimonial home until 2009, when she left due to cruelty that she was subjected to by the deceased. There was ample evidence on record that the respondent contributed towards the development of the matrimonial home, and was only forced to leave it after feeling unsafe. It is our considered view that the matrimonial home, where the respondent lived with the deceased and raised her children, should be inherited. 26. From the foregoing, the appeal



is dismissed, save for the order of this Court that the matrimonial home at LR no Abogeta/Lower Chure/1167 be retained by the respondent.”

15. It is imperative that the certificate of confirmation of grant issued on 5/6/2019 is amended to align with, and give effect to the Court of Appeal decision of 24/5/2024. It is pertinent to note that the point of divergence between this court’s decision and that of the Court of Appeal decision is the matrimonial home on LR no Abogeta/Lower Chure/1167, which will now be occupied by the Applicant. The Court of Appeal’s did not in any way disturb the existing occupation of the property by the other beneficiaries.
16. The upshot from the foregoing considerations is that the application dated 22/8/2024 is merited and it is allowed in the following terms:
 1. The prayer for removal of the Respondent/Petitioner as the Administrator of the estate is hereby rejected.
 2. The certificate of confirmation of grant issued to the Petitioner on 5/6/2019 is hereby amended to reflect the Court of Appeal judgment dated 24/5/2024.
 3. The Respondent/Petitioner shall henceforth give vacant possession of the matrimonial home on LR no Abogeta/Lower Chure/1167 to the Applicant herein.
 4. The Respondent/Petitioner is reminded of her duty under Section 83 of the [Law of Succession Act](#) to expeditiously complete the administration of the estate. Costs be in the cause.

DATED AND DELIVERED AT MERU THIS 28TH OCTOBER, 2025.

S.M. GITHINJI

JUDGE

Mention on 24/3/2026.

Apperances:-

Mr. Mutunga for Objector/Applicant.

Miss Miriti for the Respondent.

