



REPUBLIC OF KENYA



In re Estate of Joseph Emongura Otiengi (Deceased) (Succession Cause 80 of 2003) [2025] KEHC 15296 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15296 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 80 OF 2003

WM MUSYOKA, J

OCTOBER 27, 2025

IN THE MATTER OF THE ESTATE OF JOSEPH EMONGURA OTIENGI (DECEASED)

RULING

1. I am called upon to determine an application, dated 27th June 2025. It seeks review of orders that I made herein on 29th May 2025. It is at the instance of Rose Amunyet Oketch. She avers that she never instructed the firm of Ochiel Okeyo & Company, Advocates, to act for her, at all, in these proceedings.
2. There is a response by Paul Otieno Aloo and David Kimani. They argue that there is no proper case for review, as the grounds for review advanced, do not fit in, within those envisaged under Order 12 Rule 7 and Order 45 Rule 1 of the Civil Procedure Rules. There is another affidavit by Maxwell Okeyo Ochiel, of Okeyo Ochiel & Company Advocates, he avers that he has never acted for the applicant in the matter, instead he acted for a different party. He pitches that there as an error apparent on the face of the record.
3. I have perused the record. On some of the dates, which Mr. Okeyo appeared in court, he was placed on record, as appearing for the objector and not the applicant. The applicant was recorded as appearing in person as the petitioner. That happened on 2^{3rd} May 2023. On 11th July 2023, Mr. Okeyo was, however, recorded as appearing for the petitioner and on that date the applicant, the petitioner herein, was also in court. When the matter came up, on 18th February 2025 and 20th March 2025, Mr. Okeyo was placed on record as Advocate for the petitioners.
4. Be that as it may. It would appear that Mr. Okeyo was never the Advocate for Rose Amunyet, the applicant herein. I have perused the record herein, and it would appear that Mr. Okeyo was on record for Mr. Chrispinus Ojune Adome. The applicant had always appeared in person, unrepresented.
5. I would agree with Mr. Okeyo and the applicant, that there was an error apparent on the face of the record. It would appear that after Paul Otieno Aloo and David Kimani filed their summons, dated 24th November 2023, they served it on Mr. Okeyo, erroneously believing that he, Mr. Okeyo, represented or acted for the applicant herein, in the matter. They obtained the orders of 13th December 2023, allowing



the application, dated 24th November 2023, on the basis that Mr. Okeyo had been properly served, on behalf of the applicant herein.

6. As the court process was served on the wrong party, the applicant never got a chance to respond to the application, dated 24th November 2023, and to participate at its hearing, on 13th December 2023. The court was misled, by Paul Otieno Aloo and David Kimani, and they should not benefit from their folly. Consequently, I shall allow, as I hereby do, the application, dated 19th December 2024.
7. The matter shall be mentioned, on 27th November 2025, for directions, on the disposal of the application, dated 19th December 2024. Paul Otieno Aloo and David Kimani shall, forthwith, serve Rose Amunyet Oketch, with papers on the application, dated 24th November 2023. There shall be liberty to Rose Amunyet Oketch to respond to that application.
8. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 27TH DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Otanga, instructed by Bogonko Otanga & Company, Advocates for Rose Amunyet Oketch.

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for Chrispinus Ojune Adome.

Mr. Gakuya, instructed by JO Juma & Partners, Advocates for David Kimani and Paul Otieno Aloo.

