



**In re Estate of Andrew David Mulei (Deceased) (Succession Cause
177 of 2013) [2025] KEHC 14755 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 177 OF 2013**

NIO ADAGI, J

OCTOBER 15, 2025

IN THE MATTER OF THE ESTATE OF ANDREW DAVID MULEI (DECEASED)

BETWEEN

WILSON MATOLO MULEI (NOW DECEASED) 1ST PETITIONER

JOSEPHINE NZIVA DAVID 2ND PETITIONER

AND

BERNARD KAVITA MWOVE PROTESTOR

RULING

Introduction

1. The deceased, Andrew David Mulei died on 14.02.2010. A Grant of Letters of Administration intestate was made to Wilson Matolo Mulei and Josephine Nziva David, the 1st and 2nd Petitioners/Administrators respectively on 30.05.2013. By Summons for Confirmation of Grant dated 12.06.2014, the Petitioners herein applied for confirmation of the grant.
2. The record shows that prior to the confirmation, the Objector/Protestor protested against the Confirmation of the Grant via his Affidavit of protest dated 21.10.2024 for being a creditor to the estate of Andrew David Mulei (deceased) after he bought a parcel of land plot number Iveti/Iveti/1301 (subject land) at Iveti from the deceased but who had been left out in the distribution of the estate.
3. Directions were given for the protest to be heard via viva voce evidence. That as the hearing of the protest was ongoing and the Protestor had called three witnesses who had testified, the advocate for the 1st Petitioner/Administrator informed court that his client had passed on and that he would rely on the Replying Affidavit already filed by the 1st Petitioner/Administrator in response to the protest and would not be calling witnesses.



4. Later, the advocate for the 1st Petitioner/Administrator filed an application by one Beth Kanini David by way of Summons dated 25.05.2025 claiming that the Protestor was an intermeddler and not a beneficiary of the deceased's estate who had commenced illegal acquisition of the deceased's property being a portion of Iveti/Iveti /1301 and had been trying to sell it to other parties, harvesting trees and cultivating the same to the detriment of the deceased's estate. The Applicant sought for orders that pending hearing and determination of the matter, an injunction be issued restraining the Protestor, his agents or any person acting under his authority from intermeddling, selling, harvesting/cutting trees from parcel of land known as Iveti/Iveti/1301.
5. This ruling therefore relates to the two applications that shall be addressed chronologically as follows;

The 1st Application

6. The 1st application is dated 21.10.2014 that is by way of an Affidavit of protest by Bernard Kavita Mwove the Protestor/Objector where the Protestor depones that he presented the protest in the capacity of being a creditor to the estate of David Mulei (deceased) after he bought a parcel of land plot number Iveti/Iveti/1301 at Iveti from the deceased in or about the year 1996 and particularly on 25.7.2006 at an agreed price of Kshs.450,000/= which sale transaction the Petitioners named herein were aware of. The Protestor avers that he completed the full payment on 30.9.2008 and took possession and occupation of the subject land.
7. That the said sale was witnessed and confirmed by the area chief of Iveti location. The Protestor produced in evidence the said sale agreement in Kamba language and translated to English language. He stated that the deceased died before he could transfer the subject land to him and he has all along been in use, control and occupation of the subject land till late in the year 2011 when the Petitioners started threatening him on repossessing the land.
8. The Protestor further depones that he reported the matter to the D.O Kathiani on 15.11.2011 and the Petitioners and the beneficiaries in the presence of the D.O confirmed that indeed the deceased had sold the land to him. The Protestor attached an extract of the proceedings at the D.O's office to that effect. That despite this confirmation, the Petitioners and the beneficiaries secretly and deliberately filed this Petition and failed to include the Protestor as creditor to the estate and even went ahead to start evicting the Protestor from the lawfully bought land. That his name was omitted in the P & A Form 5 and his interest as a creditor was not considered.
9. The Protestor contends that he strongly protests the confirmation of the grant and urge this court to take note of the fact that he had bought the subject parcel of land directly from the deceased and he should therefore be given the whole parcel of land during the distribution of the Estate. The Respondent depones that the Petitioners are dishonest as they all along knew that he had bought the subject land and confirming the grant, shall render him landless as the land legally bought by him could be given to other persons.
10. The protest is further supported by the protester's supplementary affidavit of 27/5/2015; the 2nd Petitioner/Administrator's affidavit in response to protest of 25/5/2025, and her supplementary affidavit of 14/3/2017; further affidavit of Robert Muthini David of 27/5/2015; the supplementary affidavit of Charles K. Loki, the chief, of 30/10/2018; the list of documents dated 14/3/2017; and the list of witnesses dated 14/3/2017 and the witness statements.
11. In opposing the protest, the 1st Petitioner Wilson Matolo Mulei filed a Replying affidavit sworn on 19.5.2015, arguing that the protest is in bad faith and meant to disinherit him and other beneficiaries from their father's land; the sale agreement is a forgery as the signature on it does not belong to the



deceased; the chief's signature is a forgery as he was not a chief; and that the protester has no interest in the deceased's estate.

Evidence on the protestor.

12. This 1st application was argued through viva voce evidence with the Protestor calling four witnesses to prove his case. The protestor testified as PW1, Charles Kyalo Loki, the Chief of Iveti location was PW2, Josphine Nziva David, the 2nd Petitioner/Administrator was PW3 and Peter Mutweleli Mulei, the deceased's brother was PW4. All these witnesses testified and basically confirmed that indeed the Protestor had bought land parcel number Iveti/Iveti/1301 from the deceased prior to his death and prayed that the same be distributed to the Protestor during distribution of the deceased's estate.
13. PW1 testified under oath that his name is Benard Kavita Mwove, His other name is Benard Kavita Nzioku which are all his names. He stated that he bought from the deceased plot No. Iveti/Iveti/1301 in the year 2006. The purchase price of Kshs.450,000/= was paid by 3 equal instalments of Ksh.150,000/=. The 1st instalment was made on 25.7.2006 which was witnessed by Robert Muthiani Daudi and Moses Kyalo Makai. Moses was the seller's witness while Robert was his witness. The 2nd instalment was made on 05.8.2007 with the same witnesses as in the 1st instalment payment. The 3rd and final instalment was made on 30.9.2008 again with the same witnesses. PW1 produced as exhibits (PExt.1a -1b) the payment agreements written in Kikamba language together with English translated versions attached to his affidavit of protest. He confirmed that the deceased had his own small black quire book while he had his 4-quire black book in which the transactions were recorded. He stated that the two witnesses had filed their respective affidavits on the protest. Robert Muthiani who was his witness could not attend court as he had later died in 2017. He admitted to be knowing Josphine Nziva David (PW3), the 2nd wife to the deceased who agrees that PW1 bought the subject plot from her deceased husband. That the said wife even brought the book the deceased recorded the transaction and gave it to PW1's Advocate. The said wife further swore an affidavit which was attached as part of PW1'S list of documents. He stated that he is the one currently in occupation of the plot since 2006. He farms on the plot and has planted exotic trees for timber for over 12 years. He stated that after the payment of the last instalment, the deceased insisted that they should go to the Chief for stamping and they went to Chief Charles Kyalo Loki (PW2) of iveti location who endorsed his stamp on the agreements. He stated that the subject plot had initially been sold to the deceased by his father but the deceased had called him to buy the same from him. He confirmed that all the agreements had deceased's signature. The deceased told him he had another 1st wife with a family but they separated. The Protestor, PW1 stated that the dispute began with the deceased's son (1st Petitioner/Administrator) whose mother had separated with the deceased and who was claiming the subject plot belonged to the deceased's estate and that the same was never sold to him by the deceased. PW1 stated that he only claimed the mentioned plot from the estate of the deceased.

On being recalled, PW2 produced as PExt.1c his ID card No. 35545803 and agreed the names were different from those in the sale agreements but clarified that both names referred to him. He also produced a copy of the title deed to the land as PExt.1d.

14. On cross examination, PW1 confirmed the names as stated in examination in chief were his. He confirmed to have constructed a permanent house on the subject plot where he currently resides, He stated that the deceased's 2nd wife Josephine had consented to the sale. He also confirmed that the 1st wife had separated with the deceased. The deceased had told him that he engaged in the business of buying and selling land. He had been on the plot and the deceased had never interfered with his quite occupation. He protested when he realized he was left out of the succession matter. At the time of testifying. He had not been sued in any case by the deceased's family.



15. PW2, Chief Charles Kyalo Loki of Mutini village, Iveti location, Kathiani Sub-location, Machakos County testified that he knew the deceased who hailed from his area. He died on 14.02.2010. the Petitioners in the succession case herein are Wilson Matolo Mulei and Josphine Nziva David. Josphine is the deceased's 2nd wife. PW2 confirmed to know PW1 by all his names as shown in the sale agreement and his ID card. He stated that he knew PW1's father long ago. He confirmed the stamps on the sale agreements were his, the deceased, PW1 and two witnesses went to his office in the year 2009 with the 2 books containing the sale agreements and informed him payment had been completed. PW2 produced as PExt.3 his appointment letter of Assistant chief and PExt.4 letter of his appointment as a substantive chief. He stated that his area had not Title Deeds in 2006 and 2007, they came out later. He confirmed that no fraud was committed in the transaction. He saw the seller, buyer and their witnesses.
16. On cross examination, he stated that he became Chief in 2009. Before he was the Assistant Chief of Iveti Sub-location. He confirmed he saw the sale agreement in 2009. The deceased told him that he had been paid for the subject plot and had used the money on treatment. Pw2 confirmed that the deceased had sold the land and I confirmed it was his private land and not an ancestral one.
17. PW3, Josphine Nziva David testified that Andrew David Mulei (deceased) was her husband. They got married in the year 1980. She confirmed knowing Wilson Matolo Mulei who is the deceased's son with his 1st wife called Beth Kanini and the 1st Petitioner in this cause. She stated that when she got married, she was taken to the matrimonial home at Kathiani. The 1st wife was not around as she had separated with the deceased. They first resided in Umoja, Nairobi then relocated to Kimathi Estate, Nairobi. They were blessed with one son known as Nicholas Muia David. She confirmed to be knowing the other four children of the deceased from the 2st wife and stated their names. When she got married the deceased was living with the children who were schooling in Nairobi. She stated that the deceased informed her that he wanted to sell the land in the hill side to the son of the person who had sold it to him. The son was working as a driver of Akamba bus. The deceased met with the said son at their house in Kimathi accompanied by two other people. She confirmed that sale agreements were written and money was exchanged on the three occasions and she produced a 4-Quire black book in which the deceased wrote the sale agreements which she produced as PExt.5. She was the custodian of the deceased's documents and used to keep them in a cupboard. She stated that she saw the original Title to the subject plot in August 2024 at the Land's office and collected it. She made a copy for the Protestor and gave the original to her advocate Mr. Mbithi. She testified that her prayer is that the Protestor be given the subject plot which is not part of the deceased's estate. She confirmed to know where the subject plot is and that the Protestor ha constructed on the subject plot.
18. PW4 was Charles Mutweleli Mulei, a younger brother to the deceased herein. He testified that he knew Benard Kaveta Mwove alias BENARD Mwove Nkuku the protestor. He adopted his witness statement dated 14/3/2017 as his evidence in chief. He stated that he knew the deceased well. He resided with him for primary school to secondary school. They used to reside at Kathiani. The deceased had married two wives, Beth Kanini and Josephine Nziva David. He knew the children of the deceased. He stated that the 1st wife separated with the deceased in the year 1972 an she left to her home in Mugwini village Chamuye Location in Kathiani to reside with her parents. That the two never reconciled and the 1st wife came during the funeral arrangements of the deceased and on the burial day. He stated that the plot in dispute is No. 1301. The plot belonged to the deceased who bought it from the Protestor's father. The Plot has wattle and eucalyptus trees which were planted by the Protestor. That he was cultivating on the disputed land until when it was sold to the Protestor in 1996. The Protestor then took over with the deceased's permission. He testified that the deceased showed him the sale agreements having sold the plot to the Protestor at Ksh.450,000/=. He confirmed that the Protestor occupied the plot and planted trees and is on the plot to date.



19. On cross examination he stated that the disputed plot has a Title deed in the name of the deceased. That before the 1st wife left, they were not living where the deceased was buried. The house there was constructed for the 2nd wife. When the deceased died, the 1st wife came and forcefully occupied the flat build for the 2nd wife. The children chased Josphine away and the 1st wife occupied the flat. He testified that the homestead where the deceased was buried belongs to Josphine, the 2nd wife.

Evidence of the 1st Administrator/Petitioner

20. The 1st Administrator/Petitioner did not call any witness and sought to rely on his Replying affidavit in response to the protest. The 1st Administrator/Petitioner also filed a supplementary list of documents dated 15.6.2016 and witness statements to the protest.
21. Unfortunately, the 1st Administrator/Petitioner died before conclusion of the hearing of the protest, and before tendering his evidence and calling witnesses and is yet to be substituted to date.
22. That substance of the protest is land parcel Iveti/Iveti/1301 wherein the Protestor lays claim to an interest as a bonafide purchaser thereof. That this is a fact that the summons for confirmation of grant in this matter does not feature at all and reflects at No.6 of the schedule that the same is to be distributed equally among all beneficiaries.
23. That in his replying affidavit in response to the protest to confirmation of grant sworn on 19.5.2015, the 1st Administrator/Petitioner avers that the sale agreement is a forgery as the signature therein does not belong to the deceased; the chief's signature is also a forgery as he was not a chief then; and that the protester has no interest in the deceased's estate.

Having carefully considered the affidavit of protest dated 21.10.2024, the evidence adduced by the Protestor, the Replying affidavit sworn on 19.5.2015 by the 1st Administrator/Petitioner in response to protest and the submissions filed by the Protestor, the issue I have to determine is whether the protest is merited.

24. The Protestor has adduced evidence to demonstrate that indeed the deceased had sold to him land parcel No. Iveti/Iveti/1301 prior to his demise. Although the 1st Administrator in his response affidavit to the protest allege that the protest is made in bad faith and meant to disinherit him and other beneficiaries from their father's land and further that the sale agreement to the subject parcel of land is a forgery as the signature on it does not belong to the deceased; the chief's signature is a forgery as he was not a chief; and that the protester has no interest in the deceased's estate, the 1st Administrator/Petitioner failed to attach any evidence of proof of the allegations either to his said affidavit or through oral evidence in Court. This court is aware that the 1st Administrator/Petitioner died before hearing his case. However, the record shows that his advocate had indicated that the 1st Administrator/Petitioner would be relying on the contents of his replying affidavit in arguing the protest.
25. There is no evidence by the 1st Administrator/Petitioner of the alleged forgeries in the form of an admissible forensic hand writing expert's report or other valid evidence, nor an official letter or record or witness statement or affidavit from the Chief's superiors proving that chief Charles K. Loki was not in office performing the official functions of a Chief at the time he affixed his signature and rubber stamp when the deceased, in his lifetime and the Protester presented to him the sale agreement. It is my considered view that nothing would have changed the contents as presented in the replying affidavit by the 1st Administrator/Petitioner or his would be substitute to the allegations.
26. It is also undisputed that it is only the 1st Administrator/Petitioner of all the beneficiaries that is declining to allow the Protestor to get the estate's share of land parcel number Iveti/Iveti/1301.



27. The upshot is that, I find the 1st application by way of an Affidavit of protest dated 21.10.2024 to be merited and I order that the Summons for confirmation of grant dated 12.6.2014 be amended accordingly to have the share of deceased's estate in land parcel Iveti/Iveti/1301 to be transferred to Benard Kavita Mwove, the Protestor.

The 2nd Application

28. The 2nd application is by way of Summons dated 25.03.2025 brought under Section 1, 1A, 1B, 3, 3A, 63 (c) of the *Civil Procedure Act*, Order 40, Order 42 Rules 1, 2, 4 & 8 and Order 51, Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The application is supported by the supporting affidavit of Beth Kanini David sworn on the same 25.3.2025 and seeks for orders that:

- a. Spent
 - b. pending the hearing and determination of this application, injunction orders do issue restraining the Objector/Respondent/ Intermeddler, his agents or any other person acting under his authority from entering into parcel of land known as Iveti/Iveti/1301.
 - c. pending the hearing and determination of this application, injunction order does issue restraining the Objector/Respondent/Intermeddler, his agents or any other person acting under his authority from selling parcel of land known as Ivet/iveti/1301.
 - d. pending the hearing and determination of this application, injunction orders do issue restraining the Objector/Respondent/ Intermeddler, his agents or any other person acting under his authority from harvesting/cutting trees from parcel of land known as Iveti/ivet1/1301.
 - e. pending the hearing and determination of this suit, injunction order does issue restraining the Objector/ respondent/ intermeddler, his agents or any other person acting under his authority from selling parcel of land known as Iveti/Iveti/1301.
 - f. pending the hearing and determination of this suit, injunction orders do issue restraining the Objector/ Respondent/ Intermeddler, his agents or any other person acting under his authority from harvesting/cutting trees from parcel of land known as Ivet1/1vet1/1301.
 - g. the execution of this order be overseen by the Officer in charge/ OCS Machakos Police Station.
29. The application is premised on the grounds on the face thereof that:-
- a. during the pendency of this succession cause, the objector has been intermeddling with the estate's assets to the detriment of the other beneficiaries.
 - b. Sometimes in the year 2013, the Objector/Respondent fraudulently obtained the original title for a parcel of land known as Iveti/Iveti/1301 belonging to the estate of Andrew David Mulei a fact which came to the knowledge of the applicant recently.
 - c. The issuance of the said title was 3 years after the death of Andrew David Mule as he died in 2010.



- d. Since the death of Andrew David Mulei who is the registered owner of the said parcel of land the Objector/Respondent has been trying to sale a parcel of land known as Iveti/Iveti/1301 belonging to the estate of the deceased under the guise that the property belongs to him.
 - e. Further the said objector/ respondent has been cutting down trees and causing wanton destruction to the said parcel of land thus damaging and lowering its value to the detriment of the estate.
 - f. All these has been done with the view of disinheriting the beneficiaries to the estate and without proper authority or letters of administration as provided for by the law.
 - g. It is in the best interest of justice that the orders sought be granted.
30. In opposing the application dated 25.03.2025, the 2nd Petitioner/Administrator and the Protester/ Respondent filed grounds of opposition dated 22.04.2025 as follows that:-
31. The Application is incompetent, bad in law, without legal basis, mischievous wholly misconceived, and an abuse of the process of the court in that :-
- a. The Applicant is not a valid or competent party in this cause and has no audience as the Summons is mischievously filed in contravention of mandatory legal requirements so as to confuse and delay ongoing proceedings on the pending protest.
 - b. The Objector/Protester is not an intermeddler as purported but a purchaser for value and in possession of the subject property from the deceased in his lifetime, with a bona fide purchaser's interest.
 - c. The Objector/Protester has a valid Protest vide an Affidavit of Protest before this court, dated 21/ 10/2014, that is substantially heard as between the Protester and the Administrators
 - d. The 1st Administrator, Wilson Matolo Mulei, who died on 19/1/2025, was the only Administrator opposed to the Protest, whereas the 2nd Administrator has conceded the Protest, which is now legally unopposed by dint of the provisions of Sections 79, 80(2), 81, 82(a), and 83 of the [Law of Succession Act](#).
 - e. The Summons is oblivious to the foregoing provisions of law, and this Court's unfulfilled Orders of 2/12/2024 and 17/2/2025 on the Applicant's Advocate's request for filing of an application for substitution of the dead 1st Administrator, a default/ none performance that warrants grant of the Protest at this stage as unopposed in the circumstances.
32. The 2nd Administrator and the Protester pray that the said Summons be dismissed with costs.
33. I have again, carefully considered this 2nd application by one Beth Kanini David, the supporting affidavit and annexures attached as well as the grounds of opposition filed by the 2nd Petitioner and the Protestor in opposing the application.
34. The Applicant Beth Kanini David depones that she is a beneficiary to the estate of David Mulei alias Andrew David Mulei by virtue of being his wife and thereby competent to file the application and swear the affidavit in support thereof.



- She states that during the pendency of this succession cause, the Protestor/Respondent has been intermeddling with the estate's assets to the detriment of the other beneficiaries. That, sometimes in the year 2013, the Protestor/Respondent fraudulently obtained the original title for a parcel of land known as Iveti/Iveti/1301 belonging to the estate of Andrew David Mulei- Deceased a fact which came to the knowledge of the Applicant recently.
35. She further states that the issuance of the said title was 3 years after the death of the deceased as he died in 2010. She has attached a copy of title deed marked as "BKDI".
 36. The Applicant also states that since the death of Andrew David Mulei who is the registered owner of the said parcel of land the Protestor/ Respondent has been trying to sale a parcel of land known as Iveti/Iveti/1301 belonging to the estate of the deceased under the guise that the property belongs to him. She has attached is a copy of sale agreement dated 16/6/2023 marked as "BKD2".
 37. The Applicant goes on to state that after the attempted illegal sale of the said parcel of land known as Iveti/Iveti 1301 to a person by the name Nicholus Musyoka, the Protestor/ Respondent was arrested and charged with the offence of obtaining money by false pretence in Machakos Law Courts in CMCCR E608 of 2023. She attached a copy of CTS extract marked as "BKD3".
 38. I have keenly scrutinized the documents attached as annexures to the Applicant's supporting affidavit to her instant application. I must say that a copy of Title Deed marked as "BKDI" is in the name of the deceased and not of the Protestor and or any other person. The Applicant has not shown any fraud in that alleged transaction. Surprisingly, the sale agreement attached as "BKD2" is purportedly drawn by the firm of B.M Mungáta & Company Advocates which firm is on record for the Applicant and who ought to have advised the Applicant accordingly on the transaction before filing this application based on the said sale agreement.
 39. Further, the Applicant has attached a copy of CTS extract marked as "BKD3" and alleges that after the attempted illegal sale of the said parcel of land known as Iveti/Iveti 1301 to a person by the name Nicholus Musyoka, the Protestor/ Respondent was arrested and charged with the offence of obtaining money by false pretence in Machakos Law Courts in CMCCR E608 of 2023. I have perused the said CTS extract, and I note that the last case activity shown was on 08.04.2025 with no outcome given. The CTS extract does not also show anywhere the offence or charge the Protestor is facing in that particular criminal case. The Applicant has not availed even the charge sheet to support her allegations and even if she did the Protestor would be deemed innocent until proven guilty. As things stand, there is no evidence on the verdict of the said case or what the position is. I find this ground of the application to be baseless and unfounded.
 40. From the above findings, it is my considered view that the Applicant has failed to demonstrate how the Protestor has fraudulently obtained the original title deed for land parcel Iveti/Iveti/1301 belonging to the estate of the deceased herein. It is my further view that the Applicant ought to have lodged the dispute regarding the Protestor obtaining the original title fraudulently with the Environment and Land Court which would have been better placed and with the requisite jurisdiction to hear and determine such a dispute. This court finds suo moto that it has no jurisdiction to grant the injunction orders sought by the Applicant in the application dated 25.3.2025. It follows that from whichever angle one looks at the applicant's application dated 25.03.2025; it was destined to fail.
 41. I would, accordingly, dismiss the application dated 25.03.2025 for being unmeritorious.



Disposition

42. Having found in the 1st application herein, Adrew David Mulei (deceased) sold suit land known as Iveti/Iveti/1301 to the Protestor herein and put him in possession and occupation on 30.9.2008 to date where of he has developed it by erecting permanent structures and planted trees and does farming. There has been no order for eviction of the Protestor and his family from the suit land.
43. What remains is the formal transfer of subject land into the protestor's name as per his National Identity Card.
44. Accordingly, I make the following orders:-
 - a. I allow the Protestor's application by way of an Affidavit of protest dated 21.10.2024 and I order that the Summons for confirmation of grant dated 12.6.2014 be amended accordingly to have the share of deceased's estate in land parcel No. Iveti/Iveti/1301 to be transferred to Benard Kavita Mwove, the Protestor or as his names appear in his National Identify Card upon confirmation of the Amended summons for confirmation of grant.
 - b. The application dated 25.03.2025 filed by Beth Kanini David is dismissed for being unmeritorious and misplaced.
 - c. The parties are to take directions on the pending application dated 15.05.2025 by Purity Karuana Mbogo for leave to substitute the 1st Petitioner/Administrator who is now deceased.
 - d. Parties will bear their own costs.

Orders accordingly.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS THIS 15TH OCTOBER 2025

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 15TH OCTOBER 2025

