

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 977 OF 2009

IN THE MATTER OF THE ESTATE OF AURIC BENJAMIM
WAMBUA (DECEASED)

JOSEPHINE NDUNGE WAMBUA &
ALEX MAINGI WAMBUA.....
PETITIONERS

VERSUS

JUSTUS MUSAU WMABUA & BENARD MUTISYA
WAMBUA (Suing as legal representative of the Estate of
WAMBUA NDOLO
(DECEASED).....OBJECTORS/APPLICANTS

RULING

1. Before the court for determination is the summons application dated 6th May 2025, seeking orders that land parcel Number Mavoko Town Block 3/2199 currently registered in the names of Auric Benjamin Wambua; John Kitau Wambua and Josephine Ndunge Wambua be cancelled and ownership revert to the name of Wambua Ndolo (deceased), in accordance with the judgment and decree delivered and issued in Machakos Chief Magistrates Court Civil Case No 98 of 2013. The application is supported by the grounds set out on its face

and the supporting affidavit of Justus Musau Wambua sworn on 6th May 2025.

2. The applicant contends that he, together with Benard Mutisya Wambua are the legal representative of the estate of Wambua Ndolo (deceased). He alleges that there is an apparent error on the face of the record. According, to the judgment and decree in Civil Case No. 98 of 2013, the court ordered that land parcel Mavoko Town 3/2199 registered in the named of Auric Benjamin Wambua, John Kitau Wambua and Ndunge Wambua should revert to the names of Wambua Ndolo(deceased). However, following the revocation of the grant confirmed on 18th January 2015 vide a ruling delivered on 30th September 2024, the resultant title deed was cancelled and the land erroneously reverted to the name Benjamin Wambua.
3. The Applicant now seek correction of this error, asserting that the title deed should be registered in the name of the deceased Wambua Ndolo and not Benjanim Wambua. He urges that failure to correct this mistake risks disinheriting some beneficiaries of the estate of Wambua Ndolo.
4. In support of his claim, the applicant produced a copy of the decree dated 23rd October 2014 extracted from the judgment delivered on 24th September 2014. The decree declared that the transfer of Plot No 323 Lukenya Ranching and Co-operative Society from Wambua Ndolo

(deceased) and subsequently registration as Land Parcel No Mavoko Town Block 3/2199 in the names of Auric Benjamin Wambua; John Kitau Wambua and Ndunge Wambua was illegal null and void for want of letters of Administration. The court ordered that the parcel of land revert to the name of the deceased Wambua Ndolo, pending formal succession proceedings.

5. A copy of the Ruling of this Court dated 30th September 2024 was also produced. In paragraph 13 (ii) of the Ruling, the court ordered *that registration of plot no 323 Lukenya ranching and co-operative society, subsequently registered as Mavoko Town 3/2199 under the names of Auric Benjamin Wambua, John Kitau Wambua and Ndunge Wambua and any subdivision arising therefrom be and are hereby cancelled and the said parcel of land be reverted back to the name of the deceased Benjamin Wambua.*
6. The error as identified by the applicant lies in the reference to the deceased as Benajmin Wambua instead of Wambua Ndolo.
7. Upon perused the record, it is evident that the petitioners had moved the court to implement the decision of the court issued in Machakos CMCC No 98 of 2023. That decision, declared the transfer of the suit property Mavoko Town 3/2199 to the names of Auric Benjamin Wambua, John Kitau Wambua and Ndunge Wambua as illegal null and void for want of letters of administration.

A reversionary order was issued for the parcel of land to revert to name of the deceased Wambua Ndolo. This fact was well acknowledged in the earlier paragraphs of the Ruling dated 30th September 2024 and affirmed by the decree issued by the court.

8. In **National Bank of Kenya Vs. Ndungu Njau, Civil Appeal No.211 of 1996**, the court emphasized that an error or mistake must be self evident and should not require an elaborated argument to be established; (See also **Nyamogo & Nyamogo Advocates v Kago [2001] eKLR**).
9. Based on the foregoing, the error in this case is apparent on the face of the record. It is clear that the intention of the reversion was to restore ownership of the land to Wambua Ndolo. The reference to Benjamin Wambua is a clerical mistake that warrants correction.
10. Consequently, the application is allowed, paragraph 13(ii) of the Ruling delivered on 30th September 2024 shall be amended to read;

Registration of Plot No 323 Lukenya ranching and cooperative society, subsequently registered as Mavoko Town Block 3/2199, under the names of Auric Benjamin Wambua, John Kitau Wambua and Jospheine Ndunge Wambua and any sub division arising therefrom be and are hereby cancelled and the said parcel

of land be reverted back in the name of the deceased WAMBUA NDOLO .

11. Costs shall be in the cause

Orders accordingly.

Signed, dated and delivered at Machakos this 13th day of November 2025.

RHODA RUTTO
JUDGE

In the presence of;

.....Petitioners

.....Objectors

Selina Court Assistant