



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mawere Nyambara (Deceased) (Succession Cause  
5 of 2020) [2025] KEHC 15718 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15718 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
SUCCESSION CAUSE 5 OF 2020**

**DK KEMEL, J**

**NOVEMBER 5, 2025**

**IN THE MATTER OF THE ESTATE OF MAWERE NYAMBARA (DECEASED)**

**BETWEEN**

**BECKY ELIZABETH AKINYI AND PRICILAR ATIENO**

**OMONDI ..... APPLICANT**

**AND**

**BARACK AWUOR MAWERE ..... 1<sup>ST</sup> RESPONDENT**

**CALEB MBUYA MAWERE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicants herein filed an application dated 21/5/2025 seeking the following reliefs:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That upon the hearing and determination of the application, the Honourable court be pleased to nullify/cancel all transfers, registrations and distribution of all the deceased's properties being land parcel numbers North Sakwa/Maranda/1136, North Sakwa/ Maranda/1125, North Sakwa/Maranda/1123, North Sakwa Nyawita/1210 and North Sakwa/Nyawita/2111, subsequent transfer of the original number East Gem/Lundha/502 that were not in compliance with the certificate of confirmation of grant dated 21/2/2022.
  - 5) That the court do issue a fresh certificate of confirmation of grant that makes a provision for the shares of the Applicants herein to be registered directly in their names.
  - 6) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondent be condemned to pay the costs of the application.



2. The application is supported by the grounds set out thereunder as well as the supporting affidavit of the 2<sup>nd</sup> Applicant sworn on even date. The Applicants' gravamen is inter alia; that the Applicants are grandchildren of the deceased and thus entitled to benefit from the estate as their deceased fathers were sons of the deceased herein; that the rectified certificate of confirmation of grant dated 21/2/2022 had made provisions for them wherein they were to each receive 3.90 acres from LR North Sakwa/Maranda/1136, 2.81 acres from LR North Sakwa/Maranda/1125, 1.08 acres from LR North Sakwa/Maranda/1123 and 0.0125 from LR North Sakwa/ Nyawita/1210 and which were held in trust for them by the 2<sup>nd</sup> Respondent as they then minors and yet to become adults; that the 1<sup>st</sup> Respondent who is the administrator proceeded to register each share per household in names of representatives of those households; that the 2<sup>nd</sup> Respondent has gone ahead to disinherit the Applicants from their household by selling their shares to third parties to the prejudice of the Applicants; that the Applicants are now apprehensive and need the court to intervene; that the Respondents' conduct has amounted to gross violation of their duties and obligations and agents of this court as trustees in the estate of the deceased.
3. The 1<sup>st</sup> Respondent filed a response vide a replying affidavit sworn on 16/6/2025 wherein he averred inter alia; that he is the administrator of the estate having been issued with a confirmed grant on 21/2/2022; that he has faithfully administered the estate as per the rectified certificate of confirmation of grant and that parcels numbers North Sakwa/Nyawita/1210, North Sakwa/Nyawita/1211 and North Sakwa/Maranda/1125 have been transmitted to the concerned beneficiaries while parcel North Sakwa/ Maranda/1123 has an encumbrance due to an outstanding loan which is yet to be cleared; that he has not engaged in any illegality as alleged to warrant the grant being revoked as it will be expensive for the beneficiaries to start the process all over again; that the Applicants who have become of age should deal with the 2<sup>nd</sup> Respondent and that their shares could still be registered to them directly if they have their ID cards.
4. The Applicants filed a supplementary affidavit dated 23/7/2025 wherein they averred inter alia; that they are now adults and have annexed copies of their ID cards; that parcel number North Sakwa/1136 has since been subdivided into six portions and given new numbers namely North Sakwa/Maranda/4302, 4303, 4304, 4305, 4306 and 4307; that parcel North Sakwa/Maranda/4303 was registered in names of the 2<sup>nd</sup> Respondent and Applicants and to be shared equally; that the 2<sup>nd</sup> Respondent has again subdivided the said parcel into several portions and clandestinely brought in third parties who are not beneficiaries of the estate of the deceased herein; that the 2<sup>nd</sup> Respondent who was entrusted to hold their share in trust as per the certificate of confirmation has gone ahead and in collusion with other third parties to dispose part of the property without their involvement and that they contend that they might not get their shares as earlier distributed; that the Applicants have not participated in any sale of land; that they seek to be given their rightful share of 4 acres each from the properties that have gone through the process of transmission.
5. The application was canvassed by way of oral submissions.
6. Mr Otieno for the Applicants submitted inter alia; that the administrator has not complied with the order of the court vide the confirmed grant in that from the one property (North Sakwa/Maranda/1136) measuring 15.62 acres in which transmission has taken place, the applicants have not received their share; that the 2<sup>nd</sup> Respondent who held the Applicants' shares has not allowed them to get their dues and further subdivided the portion to third parties who are strangers to the estate; that the administrator should be compelled to ensure that the Applicants' shares are given to them as they are now adults in their own right and that they are still young and pursuing studies and that they need to fend for themselves; that the 1<sup>st</sup> Respondent as the administrator should rein in on the 2<sup>nd</sup> Respondent who has gone ahead to register himself directly and is now busy selling off the land; that



- the 1<sup>st</sup> Applicant did not participate in any sale transaction together with the 2<sup>nd</sup> Respondent; that the Respondents failed to consider the Applicants' grievances forcing them to come to court for redress.
7. Mr Ooro F for the 1<sup>st</sup> Respondent submitted inter alia; that this court had earlier directed that no further applications should be filed until the estate is wound up; that the 1<sup>st</sup> Respondent has faithfully distributed parcel North Sakwa/Maranda/1136 wherein he had proposed shares for each house and that several subdivisions were made and registered in joint names of family members; that the claims made by the Applicants should be resolved by the family members from the second house where they belong; that the allegations of sale of property should be handled by the Applicants and 2<sup>nd</sup> Respondent and that the 1<sup>st</sup> Applicant is indicated to have signed a sale agreement with 2<sup>nd</sup> Respondent; that the request for revocation of grant will take the parties back to ground zero; that the dispute is between a brother and sister who should resolve their issues and should not drag the administrator; that the 2<sup>nd</sup> house should organize the transmission of their share.
  8. I have considered the application, rival affidavits and submissions. I find the issue for determination is whether the application has merit.
  9. It is noted from the record that Aburili J issued a rectified certificate of confirmation of grant dated 21/2/2022 wherein the 1<sup>st</sup> Respondent herein had proposed to share the estate between the houses of the deceased. It is also not in dispute that Aburili J later vide a ruling dated 11/10/2022 allowed the Deputy Registrar to proceed to sign transmission forms on behalf some recalcitrant beneficiaries and that the court was later informed on 24/10/2022 that mutation forms had been duly signed and submitted to the lands offices whereupon it was confirmed that there was full execution of orders and thus ordered the file closed. It is clear that the 1<sup>st</sup> Respondent, from his replying affidavit, has availed evidence that the exercise of transmission has taken place and that he has since distributed all the properties except one namely North Sakwa/Maranda/1123 as it has an encumbrance in the form of an outstanding loan.
  10. A perusal of the rectified certificate of confirmation of grant issued by Aburili J, on 21/2/2022 shows that the same is quite comprehensive as it covered all the assets of the deceased and the various houses. Indeed, the 1<sup>st</sup> Respondent as administrator distributed the properties according to the houses and therefore upon transmission, members of each house were to be at liberty to proceed and process their respective titles without seeking the intervention of the Administrator. The administrator in his replying affidavit dated 16/6/2025 has averred that he has faithfully administered the estate and conducted the transmission process as per the rectified grant issued on 21/2/2022 and has gone ahead to confirm that several properties have been transmitted pursuant to the said rectified grant and that all the properties have been distributed leaving only parcel No. North Sakwa/Maranda/1123 which still has an encumbrance due to an outstanding loan which is yet to be cleared. Hence, it would appear to me that there has been substantial distribution of the estate and that the remaining property will be distributed once the encumbrance is removed upon clearance of the outstanding loan. It is also noted that the land parcel North Sakwa/Maranda/1136 has since been sub divided to create several parcels namely North Sakwa/Maranda/4302, 4303, 4304, 4305, 4306 and 4307. It is further noted that the Applicants herein together with the 2<sup>nd</sup> Respondent are to benefit under parcel number 4303. The initial grant had indicated that the 2<sup>nd</sup> Respondent was to hold in trust the shares of the two Applicants herein in trust as they were then still minors. It is now claimed by the Applicants that they have become of age and are adults in their own right and seek to be given their shares directly in their own names instead of being made to wait for the 2<sup>nd</sup> Respondent to distribute to them. Indeed, the Applicants have made allegations against the said 2<sup>nd</sup> Respondent to the effect that he has sub-divided parcel 4303 into several portions and transferred to 3<sup>rd</sup> parties who are not the beneficiaries to the estate. Since the



process of transmission has been concluded and properties sub-divided and new titles issued, then the role of the 1<sup>st</sup> Respondent as administrator of the estate appears to have been accomplished with the only asset remaining for distribution namely North Sakwa/Maranda/1123. It is instructive that an estate can be partially distributed where some assets are distributed while others await determinations by courts or some assets await certain actions to be done so as to make the property as free property of the deceased for distribution among his/her beneficiaries. It is in that context that I agree with the sentiments of the learned counsel for the 1<sup>st</sup> Respondent/Administrator that the said 1<sup>st</sup> Administrator should not be bogged down by beneficiaries whose house/family have not put their house in order and distributed their shares pursuant to the rectified certificate of confirmation of grant dated 21/2/2022. It is also noted that the Applicants herein come from the 2<sup>nd</sup> house where they appear to have some problems with the 2<sup>nd</sup> Respondent who had been given the responsibility to distribute the properties allocated to their house. It is also noted that the Applicants are accusing the 2<sup>nd</sup> Respondent for introducing third parties and/or strangers into the estate by apportioning them some of the properties. The Applicants have alluded to some sale agreements purportedly entered into by the 2<sup>nd</sup> Respondent and the said 3<sup>rd</sup> parties and that they contend that the introduction of the third parties is likely to prejudice them and eventually disinherit them from their rightful entitlement under the estate. However, it must be noted that the distribution of the properties having been carried out by the Administrator leaving only one, and the fact that new titles have been issued, it is appropriate for beneficiaries who have disputes amongst themselves regarding ownership of properties that have been distributed to approach the relevant court for determination. I find that the relevant forum for the Applicants should be the Environment and Land Court pursuant to the provisions of Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. I find the invitation by the Applicants to this court to continue entertaining matters relating to assets that have already been distributed and titles issued must be declined. The request for nullification of new titles is in my view unwarranted as the same will take the parties back to the drawing board yet the task of administration has been substantially concluded. Further, I find the prayer to reverse all the assets to be in the name of the deceased for fresh distribution will cause great prejudice to all the parties. Again, the Applicant's request for a fresh certificate of confirmation of grant is not merited in view of the fact that there is an existing grant dated 21/2/2022 and which has not been revoked. The Applicants should proceed and put their house in order and arrange for transmission of their shares which have been ascertained both in the rectified certificate of confirmation of grant and following the sub-division of Parcel North Sakwa/Maranda/1136 giving rise to parcel North Sakwa/Maranda /4303. Consequently, I find that the Applicants have not persuaded this court to grant the orders sought.

11. In the result, it is my finding that the Applicants' application dated 21/5/2025 lacks merit. The same is dismissed with no orders as to costs.

**DATED AND DELIVERED AT SIAYA THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025**

**D. KEMEI**

**JUDGE**

In the presence of:

Otieno.....for Applicants.

N/A Ooro F.....for 1<sup>st</sup> Respondent.

N/A.....2<sup>nd</sup> Respondent.

Maureen/kimaiyo.....Court Assistant.

