



**In re Estate of Daniel Munyasa (Deceased) (Succession Cause  
78 of 2012) [2025] KEHC 17484 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 78 OF 2012**

**S MBUNGI, J**

**NOVEMBER 27, 2025**

**IN THE MATTER OF ESTATE OF DANIEL MUNYASA(DECEASED)**

**BETWEEN**

**HENRY LUKOSE MUNYASA ..... 1<sup>ST</sup> APPLICANT**

**MUSA AKATSIVA MANYASA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FLORENCE LIHAVI LUSENO ..... RESPONDENT**

**RULING**

1. The genesis of the present application is that the applicants herein filed a Notice of Motion dated 18th November 2024 brought under Certificate of urgency as the administrators of the estate of the late Daniel Munyasa. Stating the Respondent and her family were in collusion with the county surveyor, purporting to violently close a road of access that had been in use since the 1970s and to open a new road of access through the Applicants land, contrary to the land registrars report on record.
2. The applicants sought, inter alia, a temporary injunction restraining the respondent from trespassing, blocking, or opening a new road of access through parcel Idakho/Shieso/83, an order directing the county surveyor to fix the boundaries in line with the Land Registrar's report dated 5th July 2021, and summons to compel the county surveyor, Mr. Geoffrey Edasi, to appear for cross-examination. There were chaos brewing on the ground which required immediate readdress of the Honorable court.
3. The application was supported by the affidavit of the Applicants, which advances this grounds. That there had been an existing road of access leading to Land Parcel No. Idakho/Shieso/85 owned by the respondents. The said road of access was approved by the Land registrar following a survey done by the county surveyor, one Jane Fundia.



4. However, another surveyor, Mr. Geoffrey Edasi, without justifiable reason and in apparent collusion with the Respondent, purported to recommend the creation of an alternative road of access traversing the 1st Applicant's land, being Parcel No. Idakho/Shieso/83.
5. The Respondent, together with her children, had allegedly resorted to acts of violence, including physical assault upon the Applicant, in their misguided attempt to force the opening of the said road across the Applicant's land.
6. It was asserted that this situation had generated confusion on the ground and posed a real threat to public peace unless this Honorable Court intervened urgently.
7. The Applicants, in their further supporting affidavit, stated that they were the administrators of the estate. Pursuant to an order of this Honorable Court, the Land Registrar was directed to visit and determine the proper road of access to land parcel No. Idakho/Shieso/185. Although the visit was carried out on 28th April 2021, two conflicting reports were subsequently prepared on different dates.
8. The Applicants averred that this contradiction has escalated the dispute, particularly by drawing in the church occupying parcel No. 84. They emphasized that there had always been a clear access road passing next to the church, which the Respondent herself had used throughout her life, but which she now sought to block while attempting to open another road through parcel No. Idakho/Shieso/83 in collusion with the said church.
9. The Applicants further deposed that two different sketch maps had been produced for the same area: one by the Land Registrar and another by the County Surveyor. The sketch map prepared by the Land Registrar reflects the path on the ground, while the County Surveyor's sketch is inconsistent and has only served to inflame the conflict. They believed the County Surveyor acted under external influence, contrary to the long-standing status quo.
10. Accordingly, the Applicants maintain that the old access road, left in place by their late father and recognized by the Land Registrar, should be properly included on the official records and map.
11. In her Reply dated 25th November 2024, the Respondent averred that the Applicants are her brothers-in-law; that land parcel No. Idakho/Shieso/83 remains registered in the name of the deceased, Daniel Munyasa, from whom access is sought; that distribution of the said land ought to be effected among all beneficiaries with a road of access created pursuant to subdivision; that the Applicants, being administrators, have failed to transmit the estate and the grant issued to them ought to be revoked for appointment of new administrators; that the sketch maps relied upon by the Applicants are misleading, one relating to parcel No. 83 (the subject of this cause) while the other unnecessarily introduces parcels Nos. 84 and 85 to complicate the matter; that the Applicants' demand for a different access road was intended to disinherit the Respondent's shop allocated to her late husband, a fact already noted by the Land Registrar; and that consequently, the Applicants' application is misdirected, oppressive, an abuse of due process, and ought to be dismissed with costs.
12. The Applicants, through a Supplementary Affidavit filed on 26th June in response to the Respondent's Replying Affidavit dated 25th November 2024, contend that this matter was heard and the grant confirmed, but a dispute persisted regarding a road of access to the Respondent's portion of land parcel No. Idakho/Shieso/83. They assert that their late father, during adjudication, created a road of access serving the Respondent's share, which passes adjacent to Plot No. Idakho/SHIRU/84 hosting a church donated by the deceased, who could not have intended to land lock himself.
13. They further averred that a shop situated on Henry's portion, formerly belonged to their father, is now being unlawfully occupied by the Respondent, and that her insistence on creating a new access road



through their portion is solely to reach this shop which does not form part of her entitlement. They rely on a family meeting held on 8th October 2019 under the area chief, where resolutions were made (and signed by the Respondent and her son) that each party vacate any encroached portion, yet the Respondent had refused to comply and continued to operate the shop. Both the county surveyor's and land registrar's maps identify the disputed shop, with the registrar's sketch clearly showed the Respondent's direct access road beside the church and parcel No. Idakho/Shieso/85. The Applicants submitted that succession was concluded, save for this dispute, and emphasized their willingness for the Deputy Registrar to conduct a site visit, which would confirm the Respondent's existing access and demonstrate that her claim for a new road was unfounded and would amount to trespass. They denied seeking to obstruct the matter's conclusion, maintained that the Respondent's husband was never allocated the shop by their father who died intestate.

14. Both the Applicants and Respondent filed their written submissions as the court had ordered. On 9th April 2025 the Respondents submitted their submissions. Later on 26<sup>th</sup> June the Applicants submitted their submissions with a Supplementary Affidavit attached.
15. The applicants submitted that although the grant was confirmed and only transmission remained, a dispute arose when she began claiming ownership of a shop on the late Henry Lukose Munyasia's land, alleging it had been gifted to her husband, and further demanded a new access road through the 1st applicant's homestead. The conflict escalated when her son violently attacked the 1st applicant while attempting to open the road. Reports by the County Surveyor and Land Registrar contradicted each other, but under Section 18(2) of the [Land Registration Act](#), the Land Registrar is the final authority, and he confirmed the existence of a long-standing road between parcels 84 and 85, recommending map amendments to reflect it. There is no evidence the shop was ever bequeathed, as the deceased died intestate, and a family resolution of 8th October 2019, signed by the respondent's son among others, required parties to vacate encroachments. Accordingly, the respondent is a trespasser on the shop portion, and the court is urged to adopt the Land Registrar's recommendation on access and allow the application as prayed.
16. The Respondents argued that the summons dated 18th November 2024, brought under section 47 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration Rules, sought to improperly convert a succession matter into a boundary dispute over parcels Idakho/Shieso/83 and 85, which falls outside the jurisdiction of a probate court. They emphasized that Idakho/Shieso/83 is the sole asset of the deceased's estate, lawfully administered under a confirmed grant, while Idakho/Shieso/85 is neither estate property nor shown by evidence to belong to the Respondent, making the Applicants' claims baseless and an abuse of due process. Since the probate court is confined to dealing only with the free property of the deceased and cannot determine land ownership or boundary disputes, which fall under the jurisdiction of the Environment and Land Court, the Respondents urged dismissal of the application as misconceived, lacking merit, and calculated only to derail the proper administration of the estate.

### **Analysis And Determination**

#### 17. The Shop Dispute

The respondent claims that a shop situated on parcel 83 was allocated to her late husband by the deceased. The deceased died intestate, and there is no evidence of such bequeathal. The property has already been subjected to succession proceedings, a grant issued and confirmed. Unless and until the grant is revoked under Section 76 of the [Law of Succession Act](#), the distribution remains binding. The respondent cannot, through collateral proceedings in this motion, reopen the issue of entitlement to the shop.



This is not an inheritance gift recognized in intestacy; the respondent's claim lacks legal backing within the succession cause.

18. From the pleadings and submissions, the main issues emerging were:
- i. Whether this succession court has jurisdiction to determine disputes relating to the road of access and boundary demarcation.
  - ii. Whether the applicants have made out a prima facie case for temporary injunctive relief against the respondent.
  - iii. Whether the respondent's allegations regarding the shop and transmission of the estate affect the confirmed grant.
  - iv. Whether the involvement of conflicting survey reports justifies court intervention at this stage.
19. Law of Succession Act, Cap 160 The property of a deceased person must be handled in accordance with the law. The appropriate law in this case is the Law of Succession Act, Cap 160. Section 47 of that Act provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

Any person who deals with the property of a deceased person other than in the manner authorized by court is deemed an intermeddler.

- i. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- ii. Any person who contravenes the provisions of this section shall—
  - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
  - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

Section 47 gives the High Court wide powers in succession matters, but only in relation to the free property of the deceased.

20. This is what Section 45(1) of the Act says: - “Except so far as expressly authorized by this Act or by any other written law or by a grant of representation under the Act no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”

In such an event, the aggrieved party would move the court under Section 45 of the Laws of Succession Act which prohibits intermeddling with the property of a deceased person by any person



not authorized to do by the law which authority emanates from a grant of representation. The provision confers criminal liability on a person who intermeddles with the free property of a deceased person. This is the more reason why it was and may still be incumbent upon the Applicant to report the alleged intermeddling with the impugned estate property to the relevant law enforcement agency.

Thus in the context of the respondent not only claiming the shop but also a new road of access passing through the homestead of the 1<sup>st</sup> applicant's shop.

21. Although this court is of the view that it has no powers to deal with land ownership disputes and related matters and may not in that regard grant the orders sought herein by the Applicant against the matter of the estate of Daniel Munyasa (Deceased) it retains its inherent powers under Rule 73 of the Probate and Administration Rules while dealing with succession matter to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. This is in addition to the powers conferred to a succession court under Section 47 of the Act [supra].

Rule 73 of the Probate and Administration Rules gives the court inherent power to make orders for the ends of justice.

22. *Land Registration Act*, 2012 Section 18(2) provides that no court shall entertain boundary disputes unless the boundaries have been determined by the Land Registrar. The Succession Court has limited jurisdiction: it deals with the identification, preservation, and distribution of the deceased's estate.

Determining the "valid" road of access (i.e., whether through parcel 83 or between parcels 84/85) is essentially a boundary/land use dispute, which falls squarely within the mandate of the Land Registrar and ultimately the ELC.

The Land Registrar had already determined there was an existing road; conflicting surveyor reports suggest an administrative, not probate, issue.

23. *Environment and Land Court Act*, 2011 - Confers jurisdiction over boundary, ownership, trespass, and access disputes to the ELC, not the succession court. In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR (cited by the Respondent): Probate courts cannot determine ownership or boundary disputes; such issues lie with civil courts or the ELC.
24. This court lacks jurisdiction to conclusively determine the dispute over the road of access or boundaries. The parties are at liberty to pursue the same before the Land Registrar and, if necessary, the Environment and Land Court.
25. The claim regarding the shop cannot be determined in this application; the confirmed grant stands unless properly revoked.
26. Transmission of the estate should proceed in accordance with the confirmed grant, subject to resolution of the access road dispute before the competent authority.
27. Each party to bear his or her own costs.

**DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**S.N. MBUNGI**

**JUDGE**

In The Presence Of;

C/A; Elizabeth Angong'a.



Appellant, present.

Objector, present

