



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2847 OF 2014**  
**IN THE MATTER OF THE ESTATE OF ISAYA GATHERU**  
**MBUTO(DECEASED)**

**RULING**

1. The Application dated 18<sup>th</sup> July 2025 is presented by the Applicant herein and seeks voiding of sale of parcels of land belonging to the deceased after his death and before confirmation of Grant. The Application is unopposed. The respondent failed to file response notwithstanding the directions issued on 17<sup>th</sup> September 2025.
2. Accordingly, when the application came up on 11<sup>th</sup> November 2025, I allowed the application and pursuant to rule 32 of the High Court (Organization and Administration) (General) Rules reserved the reasons for 21<sup>st</sup> November 2025.
3. It is submitted that the following assets were disposed of irregularly as the grant was yet to be confirmed-

- a. Oloitokitok/ Emperon 456 (including new title 3304-3312) Subdivisions
- b. Oloitokitok/ Ngama 989,512 and resultant 2683
- c. Oloitokitko/ Ngama 966
- d. Oloitokitok/ Ngama 1498 (including new titles 2615,2617 and subdivisions)
- e. Oloitokitok/ Olkaria 404
- f. Kajiado/ Olchoro- Onyore 5222
- g. Kajiado/ Olchoro- Onyore 5220
- h. Dagoretti/ Mutu-ini 120
- i. Dagoretti/ Mutu-ini 316
- j. Dagoretti/ Mutu-ini T198
- k. Dagoretti/ Mutu-ini T78
- l. Two acres known as Oloitokitok/ Dagoretti/ "Mama Waithera"- purchased by the deceased from a women as Mama Waithera
- m. Two acres known as Oloitokitok/ Ngama "Makutano- received by the deceased in a land exchange from a man known as Makutano
- n. Approximately 10-17 acres of Land in Narok- location known to the family but currently untitled
- o. Two acres identified as LR No. Oloitoktok/ Councilor- Location known to the family but without registered title.

4. Section 82 (b) (ii) of the law of succession Act expressly prohibits the sale of immovable property prior to the confirmation of grant. In the case of **re Estate of Paul M'Maria (Deceased) [2017] eKLR**, the Court held that;

**[10]The restriction provided by law that no immovable property shall be sold or distributed before confirmation of grant is not merely directory or an embellishment. It is a statutory command with fatal consequences on any transaction done in contravention of the said law. Accordingly,**

**acquisition of immovable property of the estate in contravention of the Law of Succession Act is tinctured with killer poison; and is unlawful acquisition; thus, property so acquired does not enjoy the protection of property rights under article 40(6) of the Constitution. See the claw-back provision of the Constitution that: -40(6)The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.**

**5. Further in Santuzzabilioti alias Mei Santuzza (deceased) v Giancarlo Felasconi (2014) eKLR, the court held:-**

**This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancelation of the title deed. Further, a succession court can order a cancelation of title deed if a deceased's property is being fraudulently taken away by non beneficiaries such as where the property is being sold before a grant is confirmed.**

- 6.** The properties enumerated under paragraph 3 (l-o) are yet to vest in the deceased and therefore at this stage do not comprise part of the estate. The order for cancellation of title and reverting of title to estate of the deceased will therefore only apply to the properties enumerated under para 3 (a-j).
- 7.** The land registrar to comply with the said order within 45 days. Mention on 17<sup>th</sup> February 2026 to confirm compliance.
- 8.** Since the parties are family members there shall be no order as to costs.

It is so ordered

**DATED and DELIVERED VIRTUALLY at NAIROBI this 28<sup>TH</sup>  
DAY of NOVEMBER, 2025.**

**P. M. NYAUNDI  
JUDGE**

**In the presence of;-**

Fardosa Court Asisstant

Chebet holding brief for Kinyanjui for Applicant