

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO E539 OF 1995

IN THE MATTER OF THE LATE JAIRO OKUNYANYI (DECEASED)

**IN THE MATTER OF AN APPLICATION FOR NULLIFICATION AND OR
REVOCATION OF GRANT IN THE MATTER OF THE PARCEL OF LAND
KNOWN AS KISA/MUNDOBELWA/61**

BETWEEN

SHANTI

WECHE

ASANGO-----ADMINISTRATOR/RESPONDENT

VERSUS

**MACEDONIAN MISSIONARY SERVICE-----
APPLICANT**

RULING

1. The applicant filed a chamber summons application under section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules seeking the following orders;
 - a) *THAT this Application be certified urgent and be heard during High Court vacation on a priority basis(spent)*
 - b) *THAT pending the hearing and interparties and determination of this Application that this Honourable court be and hereby issues temporary orders of stay of further proceedings in the cause herein.*
 - c) *THAT pending the hearing and determination of this application, interparties the Land Registrar Kakamega be and is hereby restrained from registering any transfers or disposition of any nature over title number KISA/MUNDOBELWA/61 or any titles created out of it.*

- d) THAT the Grant made herein and confirmed on 23/02/2022 be annulled and/or revoked on account of failure by the Administrator to disclose material facts.*
- e) THAT any titles issued and or arising from KISA/MUNDOBELWA/61 pursuant to the certificate of confirmation of Grant issued by this Honourable Court be and are hereby cancelled.*
- f) THAT in the alternative, the Land Registrar be restrained by a temporary order of injunction from giving effect in whatever manner the certificate of confirmation of Grant issued by this Honourable Court on 23/02/2022 or as may have been subsequently amended pending the hearing and determination of this application interparties.*
- g) THAT the costs of this application be provided for.*

2. The application is premised on the grounds and the supporting affidavit by Ernie Hopper, the chairman of the applicant organisation, which offers church missionary service in Kenya and elsewhere.
3. He avers that they had set up a church in the land parcel Kisa/Mundobelwa/61 measuring 0.3 HA, which formed part of the estate of the deceased for the last 30 years, a fact well known by the administrator and the other beneficiaries.
4. They state that they informed the administrator that the commitment was made in writing that the applicant was a beneficiary; however, the administrator secretly excluded them from the list of beneficiaries, and the process of distribution had advanced, given that the court already confirmed the grant.
5. The applicant asserts that the administrator had failed to inform the court of their interest in the estate and thus prays for a temporary injunction restraining the land registrar from effecting the transfer pursuant to the confirmed grant.
6. According to the applicant, they have been in peaceful occupation of the land for over 25 years and by way of adverse possession, they are entitled to be registered as the owner of the portion.

7. In response to the application dated 26th August 2024, the administrator/ respondent claimed that the application is frivolous, vexatious and scandalous.
8. They aver that the orders the applicant seeks cannot be granted by this court as it lacked jurisdiction.
9. They aver that the applicant did not buy the land from the deceased, and such cannot challenge the grant and certificate of confirmation. They state that the applicant is not a liability or a creditor and thus lacks locus standi to file the application, and that they can contest ownership of the land at the environment and land court and that they did not have any title to prove they owned the land.
10. They aver that they had not proved the ingredients to allow for a revocation or annulment of the grant and that the application ought to be dismissed with costs.
11. In their written submissions dated 8th July 2025, they raised two issues for determination whether the applicant, the church, can sue in its own name. They quoted the case of **National Bank of Kenya Ltd vs. Christian Community life church**, stating that the church registered as a society cannot sue and be sued in its own name but in the name of the officials.
12. On whether the applicant is a liability to the estate of the deceased, they claim that the applicant did not buy the land from the deceased but from a child of the deceased and thus a stranger to the estate.
13. They hold that the applicant has not proved any ingredients laid under section 78 of the Law of Succession Act, and thus the application should be dismissed, and that L.R. No. Kisa/Mundobelwa/61 was closed on the subdivision.

Analysis and determination

14. I have analysed the application, the replying affidavit and submissions. I note that the deceased died on 12th August 1978. His estate comprised the suit land L.R Kisa/Mundobelwa/61 measuring 5.0 Acres, and according to the chief's letter dated 23/10/1995, he was survived by two widows and 15 children and one liability.

15. The grant was confirmed on 23rd February 2022 by Hon. William Musyoka, and the estate was shared among the deceased children, which was later subdivided after the grant was confirmed.
16. The applicant has now filed the current application seeking to be recognised as a beneficiary since he has stayed in the land for 25 years and constructed a church however they have not provided any documentary evidence to prove that they had purchased the property from the deceased.
17. Section 76 allows revocation where a grant has been obtained by fraud, concealment of material facts, mistake, or has become useless/inoperative; courts exercise the power cautiously to protect the sanctity and finality of confirmed grants. The applicant must plead and prove these exceptional grounds.
18. Here, the applicant's averments are that the administrator "secretly excluded" them from the list of beneficiaries and further stated that a written commitment was made in writing confirming that they have been in occupation of the land and marked boundaries, and they should be included in the list of beneficiaries.
19. I however, note the applicant never purchased the said parcel from the deceased, and there was no indication how they came into occupation of the land. Section 45(1) of the Law of Succession Act prohibits intermeddling, that is ***"...taking possession or disposing of, or intermeddling with, any free property of the deceased."***
20. The Court of Appeal in **Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR** held that no person may handle or deal with estate property without a grant.
21. Likewise, in *Re Estate of Kibe (Deceased) [2016] eKLR*, the Court held that persons who occupy, build on or dispose of estate property before the grant is confirmed are intermeddlers.
22. From the application, the applicants have admitted that they have been in occupation of the land for 25 years which is way after the demise of the deceased so they never purchased the land from the deceased, they never confirmed how they came into occupation of

the said land but state that they constructed the church and put up boundaries and have remained in occupation and claim adverse possession

23. The applicant's actions amount to intermeddling, which is a statutory offence under section 45(2). The law is clear that: ***“A wrongdoer cannot be permitted to benefit from his own unlawful acts.”***
24. The applicant, therefore, approaches the Court with unclean hands, seeking equitable relief after unlawfully appropriating estate property. Equity does not aid trespassers or intermeddlers.
25. The applicant further claims for adverse possession since they had stayed in the land for more than 12 years; however, this is a succession court that deals with the distribution of the estate of the deceased and not with ownership of land. In ***Samuel Miki Waweru v Jane Njeri Richu [2007] eKLR***, the Court of Appeal held: ***“A claim for adverse possession can only be brought by originating summons under the Civil Procedure Rules in the Environment and Land Court.”***
26. Likewise, *Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR* established the legal test for adverse possession and affirmed ELC’s exclusive jurisdiction.
27. Accordingly, sitting as a succession court, this court has no jurisdiction to declare ownership by adverse possession; order rectification of the land register; cancel titles issued after confirmation of grants on grounds of adverse possession
28. The appropriate court to deal with the issues they had raised is the Environment and Lands Court, where a suit may be filed against the administrator or beneficiaries who hold title.
29. The final issue for determination is whether the applicant has the locus standi to bring the suit, given the fact that he is not an immediate beneficiary to the estate of the deceased.
30. Section 76 allows applications for revocation by persons interested in the estate. Courts have consistently held that the phrase does not

include strangers claiming land through occupation or purchase from beneficiaries. See:

31. In **Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR**, persons claiming portions of estate land through occupation or dealings with heirs have no standing under s.76.
32. The applicant did not purchase the land from the deceased. It claims an occupation of 25 years but produced no sale agreement, no acknowledgement by the deceased, and no evidence of being a creditor or dependant.
33. Therefore, the applicant does not fit within the defined categories of persons entitled to seek revocation. His interest, if any, is against the beneficiaries, not the estate, and as such must seek his claim from the beneficiary who sold him the land.
34. Having considered the pleadings, this court makes the following findings:
 - a. *The applicant is not a beneficiary, dependant, creditor, or purchaser from the deceased, and therefore lacks locus standi to move this court under section 76.*
 - b. *The applicant has not established any ground for revocation under section 76.*
 - c. *The applicant's acts constitute intermeddling contrary to section 45.*
 - d. *Allegations of adverse possession fall outside the jurisdiction of the succession court and must be litigated before the Environment and Land Court.*
 - e. *The application is misconceived, incompetent, and devoid of merit.*
35. Consequently, the Court makes the following orders:
 - a) The Chamber Summons dated 26th August 2024 is hereby dismissed in its entirety.
 - b) Costs of this application shall be borne by the applicant.
 - c) Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
THIS 26th DAY OF NOVEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr. Mulama for the Appellant present online.