



**In re Estate of Ruben Wanyonyi (Deceased) (Succession Cause
68 of 1997) [2025] KEHC 17949 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 68 OF 1997
MS SHARIFF, J
NOVEMBER 27, 2025
IN THE MATTER OF THE ESTATE OF RUBEN WANYONYI (DECEASED)**

BETWEEN

ASHON SIKOLIA WANYONYI 1ST PETITIONER

LUKA MAKOKHA WANYONYI 2ND PETITIONER

AND

SELINA NAMALWA MASONI OBJECTOR

RULING

Application

1. What is before Court for determination is a Notice of Motion dated 26th June 2025, brought under the provisions of Sections 1A, 1B, 3A, 6 of the [Civil Procedure Act](#), 2010 seeking the following relief(s);
 - a. This application be certified as urgent and service be dispensed within the first instance.
 - b. The Court be pleased to remove Webuye Municipality Plot 74 from the estate of the deceased herein pending hearing and determination of Environment and Land Case No. 160 of 2017.
 - c. This Court lacks jurisdiction under Article 162 (2) of [the Constitution](#) of Kenya to interrogate the ownership of Webuye Municipality Plot 74
 - d. This Court do strike out the Petitioners/Respondents mode of distribution dated 14th August 2024, as it is subject to fraud under Section 76 of the [Law of Succession Act](#).
2. The Motion application is predicated on the grounds on the face of it and the Supporting Affidavit sworn by Selina Namalwa Masoni, the Objector/Applicant herein, wherein she averred that there is active litigation with regards to land parcel Webuye Municipality Plot 74 before the Environment and Land Court under ELC case number 160 of 2017 with the subject matter being ownership of Webuye



Municipality Plot 74. Further, she averred that the said plot ought to be removed from the list of properties of the estate of the deceased herein as this Court lacks the requisite jurisdiction to determine the issue of ownership and if this Court proceeds to entertain the same it will amount to sub-judice. Finally, she averred that there was no sit down or resolution by the family members on how to dispose off or distribute Webuye Municipality Plot 74.

3. Opposing the Motion application, the 1st Petitioner/Respondent, Ashon Wanyonyi Sikolia, on behalf of the 2nd Petitioner/Respondent swore Replying Affidavit on 14th July 2025, wherein he averred that Webuye Municipality Plot 74 belongs to the estate of the deceased herein and it was listed among the assets of the deceased in form P&A 5 and a grant was confirmed on 23rd April 1998. He averred that the Objector's Motion application is bad in law, resjudicata as it is similar to the application made in succession cause number 51 of 2005 wherein this Court issued a ruling to that effect. Further, he averred that courtesy of this Court's decision in succession cause number 51 of 2005, it cannot proceed to sit on appeal in its own appeal. Finally, he averred that Environment and Land Court lacks jurisdiction to determine matters of land forming part of the estate of the deceased and that this application is an afterthought.
4. The Court directed that the Application shall be heard by way of oral arguments. Ruling was reserved for the 19th November 2025.

Objector's arguments

5. The Objector/Applicant argued the ownership of the subject matter herein, Webuye Municipality Plot 74, is an issue before the Environment and Land Court under case number 160 of 2017 and that the decision by Justice Ougo in Succession No. 51 of 2005 removing the plot from the estate of the late Benson Masoni, further held that High Court lacked the jurisdiction to determine the ownership of the said plot. Counsel for the Objector urged this Court to exclude the plot to allow Environment and Land Court determine the issue of ownership which was the core essence of the ruling issued by Justice Ougo, that anyone with an issue on ownership to approach the relevant Court, which is what they have done.

Petitioners arguments

6. In response, the Petitioners/Respondents argued that in Succession No. 51 of 2005, the Objector herein listed Webuye Municipality Plot 74 as one of the assets comprising of the estate of her late husband, son of the deceased herein, and they proceeded to object the same vide summons of revocation proceedings. Counsel for the Petitioners argued that Justice Ougo held that Webuye Municipality Plot 74 does not form part of the estate of the late Ben Masoni as the same belonged to the estate of the late Ruben Wanyonyi, his father. Further, Counsel argued that Justice Ougo proceeded to remove the same from the assets forming part of the estate of the late Ben Masoni and the ruling still stands as the same was never challenged. Finally, Counsel argues that the Objector's application seems to be setting up this Court to sit on appeal of a decision rendered by a judge equal status. Counsel insists that Webuye Municipality Plot 74 was properly identified to belong to the estate of the deceased herein and this was during the lifetime of the deceased's husband and that the Environment and Land Court under case number 160 of 2017 was withdrawn.

Analysis and Determination

7. Having considered the pleadings in support of the Application and those in opposition, whether in the circumstances of this case the Applicant has made a case warranting grant of the prayers sought,



I find the broad issue that arise for determination herein, in my view, to be whether this Court has jurisdiction.

A. Whether this Court has jurisdiction.

8. As rightly stated jurisdiction is everything without it a Court must lay its pen down. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants.
9. On the issue of the whether the suit plot Webuye Municipality Plot 74 constitutes the “free property” of the deceased, first, it is not in dispute that the said plot was listed as an asset forming part of the estate of the deceased herein in form P&A 5. One Ben Masoni a son of the deceased herein and husband to Selena Namalwa Mason was then alive and even consent to the petition for grant of letters of administration.
10. It is imperative to highlight that vide a ruling delivered by Justice Ougo in Bungoma P & A Cause No 50 of 2005, the Court noted that Webuye Municipality Plot 74 was duly listed as an asset forming part of the estate of the deceased herein and not the late Ben Masoni and that the Court lacked the requisite jurisdiction to interrogate the process that was used to assign the said plot and proceeded to recognize that only the Environment and Land Court had the jurisdiction to do so. This court however maintains that it has jurisdiction to distribute the free assets of the deceased which per Form P & A 5, includes Plot N0 74 Webuye Municipality.
11. The finding notwithstanding, given that the Objector/ 3rd administratrix herein has already taken her claim to the Environment and Land Court under Environment and Land Court vide a counter- claim in case No160 of 2017, it is only fair and just for this Court, at this juncture to stay the proceedings and/or distribution of Webuye Municipality Plot 74 pending determination of that suit
12. This being a family matter, I order that each party shall bear his own costs.

It so Ordered.

DATED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF NOVEMBER 2025.

M.S. SHARIFF

JUDGE

In the presence of:

N/A for the Petitioners

Mr Oira for the objector

Peter Machoni – Court Assistant

