



Mboya (Suing as Legal and Personal Representative of the Estate of Wellington Mbuya Choka) v Orwa & 2 others (Environmental and Land Originating Summons 14 of 2022) [2025] KEELC 8334 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8334 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 14 OF 2022
MN KULLOW, J
NOVEMBER 27, 2025**

BETWEEN

**KELVIN OTIENO MBOYA APPLICANT
SUING AS LEGAL AND PERSONAL REPRESENTATIVE OF THE ESTATE OF
WELLINGTON MBUYA CHOKA**

AND

**DEBORA ADHIAMBO ORWA 1ST RESPONDENT
LANDS REGISTRAR, MIGORI COUNTY 2ND RESPONDENT
HON ATTORNEY GENERAL 3RD RESPONDENT**

JUDGMENT

1. The Applicant, through his Originating Summons dated 16th June 2022, seeks the following substantive orders:
 - a. Declaration that the 1st Respondent, through the aid of the 2nd Respondent, caused transfer of Land parcel Kamagambo/Koluoch/1050 to herself through fraud and illegal falsification of Register without conducting succession proceedings of the estate of the late Wellington Mbuya Choka.
 - b. There be an order directing the 2nd Respondent to rectify the Register of Land parcel Kamagambo/Koluoch/1050, 4204 and 4205, so that title reflects the name of the deceased proprietor Wellington Mbuya Choka and subsequent titles emanating from the parcel be cancelled pending succession proceedings of the estate.
 - c. Costs of the Originating Summons be borne by the Respondents.



- d. Such further and/or other orders as the the Court may deem fit to make.
2. In support of these prayers, the Applicant states that he is the eldest son of the late Wellington Mbuya Choka, who was the registered proprietor of LR Kamagambo/Koluoch/1050 during his lifetime. He avers that the deceased died on 5th December 2011, and that no Letters of Administration have ever been issued in respect of the estate, nor have any family-initiated succession proceedings been undertaken concerning the suit property. According to the Applicant, the law therefore required the land to remain in the name of the deceased until a lawful administrator was appointed.
3. The Applicant claims that despite the absence of any succession process, the 1st Respondent, on 11th October 2017, colluded with the 2nd Respondent the Lands Registrar, Migori County, to effect a direct transfer of the deceased's land into her name. He states that this transfer was carried out long after the death of the deceased and therefore could not have been sanctioned by the deceased himself.
4. He further alleges that the 1st Respondent later subdivided the land into LR Kamagambo/Koluoch 4204 and LR 4205, thereby illegally interfering with estate property and disinheriting the family. The Applicant maintains that the transfer and subsequent subdivisions were fraudulent, unlawful, and amounted to falsification of the land register, warranting the Court's intervention under Sections 26(1).

1st Respondent's Case

5. The 1st Respondent, Debora Adhiambo Orwa, opposes the Originating Summons and states that she was the lawful wife of the late Wellington Mbuya Choka, having been married to him under Luo customary law. She avers that they lived together as husband and wife and were blessed with four children. She produced a marriage affidavit, her NHIF card, and related documents to demonstrate her marital status and the deceased's recognition of her as a spouse. She further states that the deceased was a career police officer who provided for the family until his death in 2011.
6. Her case is that during his lifetime, the deceased owned three parcels of land, including LR Kamagambo/Koluoch/1050, which he personally transferred to her in 2010, long before his death. The 1st Respondent also states that the Applicant and his siblings had been allocated a separate parcel in Karachuonyo/Kamenya, where they had already settled, and that another parcel in Mbita meant for a co-wife was sold by the Applicant without her knowledge.
7. The 1st Respondent further states that she lawfully subdivided LR 1050 into LR 4204 and 4205, with full approval of the Rongo Land Control Board and the County Surveyor, and sold a portion only to meet pressing family obligations, including paying university fees for her daughter.
8. She denies any fraud, insisting that the Applicant is motivated by malice and a desire to deprive her of property lawfully gifted to her by her late husband. She accuses the Applicant of misleading the Court about his relationship to the deceased, secretly obtaining an ad-litem grant, and branding her a "stranger," despite acknowledging her as his step-mother. She therefore prays that the suit be dismissed with costs, terming it frivolous, dishonest, and an abuse of the court process.

Hearing

9. At the hearing, the Applicant, Kevin Otieno Mboya, testified as PW1. He adopted his Originating Summons, supporting affidavit dated 16th June 2022, and documents including the Limited Grant ad litem and Green Card for LR Kamagambo/Koluoch/1050 as his evidence-in-chief. He stated that his late father died on 5th December 2011 and that the suit property was still in his father's name at the time.



10. He testified that the 1st Respondent caused the transfer of the land into her name in 2017 when the deceased was already dead and before any succession proceedings had been undertaken. He claimed that this amounted to fraud and asked the Court to cancel the titles and revert the land to the name of the deceased for proper succession. Under cross-examination, PW1 admitted he had not produced his birth certificate, acknowledged the 1st Respondent as his step-mother, and confirmed signing a consent in the Public Trustee matter relating to valuation of the estate. After brief re-examination, the Applicant closed his case.
11. The 1st Respondent, Debora Adhiambo Orwa, testified as DW1 and adopted her Defence, witness statement, list of documents, and supplementary affidavit. She stated that she was the lawful wife of the deceased and produced marriage documents and an NHIF card showing the deceased had listed her as his spouse. She testified that the deceased had transferred LR 1050 to her during his lifetime and produced the transfer form dated 30th October 2010.
12. She asserted that the delay in completing registration until 2017 was due to personal circumstances and not fraud. She explained that the deceased had provided land for each of his wives and that the Applicant had been allocated a different parcel in Karachuonyo.
13. Under cross-examination, she confirmed that succession proceedings had been conducted at Milimani but only relating to monetary assets. DW2, a nephew of the deceased, corroborated that the 1st Respondent was the deceased's wife and that the deceased had allocated land to his wives. He stated he had no personal interest in LR 1050. The 1st Respondent then closed her case. The 2nd and 3rd Respondents did not file any defence, appear, or present witnesses, and their cases were accordingly marked as closed. Both parties were thereafter directed to file written submissions, which they did.

Submissions

14. The Plaintiff via submissions dated 15th January 2024 submitted that the core issue for determination is the rectification of the register and cancellation of titles to LR Kamagambo/Koluoch/1050 (and LR 4204 & 4205) on the ground that the 1st Respondent effected a fraudulent transfer after the death of the proprietor without any succession proceedings; he therefore contended this Court has jurisdiction under the *Land Registration Act* (notably Section 80 as relied upon) to rectify the register where fraud or falsification is shown.
15. The Plaintiff relied on similar authority where rectification was granted in the face of irregular dealings (citing *Joseph Ondu Nyangiri v Monicah Auma Juma* (2012) eKLR) and argued that the timing of the transfer (2017) after the deceased's death (2011) raised a strong inference of illegality requiring the Court's intervention.
16. The 1st Respondent via submission dated 11th December 2023 submitted that the matter primarily raises succession and distribution questions which fall within the exclusive province of the Probate/High Court and not matters the Environment and Land Court should usurp, and therefore challenged the Court's jurisdiction and the Applicant's locus standi (given the Applicant holds a Limited Grant ad litem).
17. It was further submitted that the Plaintiff has not proved fraud on the balance of probabilities and that the transfer documents were executed by the deceased during his lifetime; the issues identified were (a) jurisdiction, (b) locus standi/capacity to sue, and (c) failure to prove fraud.
18. In support the 1st Respondent relied on authorities delineating the boundaries between probate and land jurisdictions and the limits of ad-litem grants (including *Republic v Chief Land Registrar &*



Another [2019] eKLR, *Kanyua Elijah v Murlithi & Ors* [2020] eKLR, *Re Estate of Alice Mumbua Mutua* [2017] eKLR, the principle in *Alfred Njau & Others v City Council of Nairobi* on locus standi, and cases on the limits of ad-litem powers such as *Kipngetich Kalya Kones* (2021) eKLR), and on the burden of proof *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR for the maxim that he who alleges must prove.

Issues For Determination

19. Having carefully considered the pleadings, affidavits, oral testimony and submissions by counsel, the Court is of the view that two broad issues arise for determination:
 - a. Whether this Court has jurisdiction and whether the Applicant, holding a Limited Grant ad litem, has locus standi
 - b. Whether the impugned transfer and registration of the suit property were fraudulent, unlawful or otherwise void

Analysis and Determination

Issue 1: Whether the Court has jurisdiction and whether the Applicant, holding a Limited Grant ad litem, has locus standi

20. Jurisdiction is a foundational question, for without it a court must, as stated in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd*, immediately "down its tools."
21. The dispute before this Court concerns the transfer and registration of land originally belonging to a deceased proprietor, allegedly undertaken unlawfully and after his demise. Such a complaint rooted in allegations of illegality, fraud, misrepresentation and irregular alteration of entries in the land register falls squarely within this Court's constitutional and statutory mandate under Article 162(2)(b) of *the Constitution* and section 13 of the *Environment and Land Court Act*, both of which expressly empower the Court to examine and determine questions relating to title, validity of registration, and rectification of the register. This position is consistent with the Court's approach in *Joseph Ondu Nyangiri v Monicah Auma Odeny*, where the ELC examined a transfer effected after the death of a proprietor, found the transaction void for want of a grant, and ordered reversion of title to the deceased "pending succession."
22. Turning to locus standi, the Applicant herein acts under a Limited Grant of Letters of Administration ad litem issued on 14th June 2022, pursuant to section 54 of the *Law of Succession Act* and Form 14 of the Fifth Schedule. The nature and scope of such a grant were clearly articulated in *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva* [2016] KEHC 4186, where the Court emphasised that limited grants are created for specific purposes and must be used strictly within their defined limits.
23. The Court further affirmed citing *Greenway v McKay* (1911) 12 CLR 310 that a grant ad litem exists specifically "when the estate of a deceased person is required to be represented in court proceedings."
24. This is precisely the situation before this Court. The Applicant does not purport to distribute or administer the estate; rather, he seeks to protect it by challenging alleged unlawful dealings undertaken after the death of the proprietor. Seeking restoration of the title to the name of the deceased pending full succession does not constitute administration of the estate but falls within the protective remit contemplated by a grant ad litem. It is a proceeding "touching the matters at issue" affecting the estate, and therefore squarely within the scope permitted by law.



25. Accordingly, the Court is satisfied that it has jurisdiction to interrogate the legality and validity of the impugned land transactions, and further finds that the Applicant, acting under a Limited Grant ad litem, possesses sufficient locus standi to maintain these proceedings for the limited purpose of securing and preserving estate property pending proper succession proceedings.

Issue 2: Whether the impugned transfer and registration of the suit property were fraudulent, unlawful or otherwise void

26. The second issue concerns the legality and validity of the transfer of the suit property into the 1st Respondent's name. The Applicant maintains that the transfer was effected after the death of the registered proprietor, without any grant of representation and in circumstances amounting to illegality, fraud and intermeddling with estate property. The 1st Respondent asserts, in response, that the deceased had executed transfer documents during his lifetime and that her registration was therefore proper.
27. It is not contested that the suit property was registered in the name of the late Wellington Mbuya Choka, who died on 5th December 2011, and that no succession cause had been initiated, no grant of representation issued, and no form of authority conferred upon any party to deal with his estate. Any transaction involving the free property of a deceased person must therefore be scrutinized through the lens of section 45 of the *Law of Succession Act*, which forbids any person, unless authorised by law or by a valid grant of representation, from taking possession of or disposing of such property. The effect of this provision is to render void any transfer, sale or registration undertaken before a grant has been issued.
28. This reasoning was applied in the Environment and Land Court in *Joseph Ondu Nyangiri v Monicah Auma Odeny* [2021], where a transfer purportedly made through transmission was nullified on the basis that the property had not been included in the succession cause and no grant authorised its transfer. The Court directed that the land revert to the deceased pending succession, emphasising that dealings with estate assets undertaken without a grant are legally incapable of conferring title.
29. The evidence in the present case shows that the registration of the 1st Respondent as proprietor occurred in 2017, several years after the death of the deceased and entirely without legal authority. The claim that the transfer documents had been executed during the deceased's lifetime cannot rescue the transaction, for a transfer not completed in the lifetime of the proprietor cannot lawfully be perfected after death except through the procedure of transmission and only upon the issuance of a valid grant. The law does not permit a retrospective completion of a lifetime intention outside the statutory framework.
30. It is also important to recall that section 82(b)(ii) of the *Law of Succession Act* expressly prohibits the disposal of immovable property by personal representatives prior to the confirmation of the grant. If even an administrator who holds a valid grant cannot dispose of land before confirmation, it follows with even greater force that a person who holds no grant at all cannot lawfully transfer or cause the transfer of estate property.
31. The irregular registration of the 1st Respondent must therefore be assessed under section 26(1)(b) of the *Land Registration Act*, which authorizes the Court to impeach a title where it was acquired "illegally, unprocedurally or through a corrupt scheme." That provision is reinforced by section 80(1) of the same Act, empowering the Court to rectify the register where a registration was obtained through fraud or mistake.



32. In this case, the transfer was undertaken after death, without a grant, without lawful transmission, and in clear contravention of the governing succession law. A transaction founded upon such an unlawful basis cannot confer any rights in law, and the doctrine of indefeasibility cannot be invoked to uphold a registration that was itself procured in violation of express statutory provisions.
33. For these reasons, the Court finds that the impugned transfer and registration of the suit property in the name of the 1st Respondent were unlawful, invalid and void ab initio. The only legally sound course is for the property to revert to the name of the deceased, where it shall remain pending the institution and determination of proper succession proceedings under the *Law of Succession Act*.

Final Disposition

34. Having found that the transfer and registration of the suit property were undertaken after the death of the proprietor and without any lawful grant of representation, rendering them null and void, the Court issues the following orders:
- a. The registration of the 1st Respondent as proprietor is hereby cancelled.
 - b. The Land Registrar, Migori County, shall rectify the register under section 80(1) of the *Land Registration Act* by restoring the property to the name of the deceased pending lawful succession proceedings.
 - c. Each party shall bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF NOVEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE.

Judgment delivered in the presence of: -

.....for the Applicant

.....for the 1st Respondent

.....for the 2nd Respondent

.....for the 3rd Respondent

Philomena W. Court Assistant.

