



**In re Estate of Walter Amollo - Deceased (Succession Cause
E002 of 2021) [2025] KEHC 18036 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE E002 OF 2021
ACA ONG'INJO, J
DECEMBER 4, 2025**

IN THE MATTER OF THE ESTATE OF: WALTER AMOLLO DECEASED

BETWEEN

DAMARIS MALELA PETITIONER

AND

LEAKEY ODIWUOR AMOLLO OBJECTOR

RULING

1. The intended Interested Parties by application dated 4th August 2025 sought that they be joined in the amended summons for revocation dated 3rd March 2025. The said application was premised on the grounds on its face and supporting affidavit sworn by Wilkins Ochoki Advocate for the intended Interested Parties. Their argument is that if they are not joined they risk losing their respective suit properties without being heard.
2. An elaborate and intense perusal of the court record both in the physical file and CTS shows that the Applicant in application dated 15th March 2021 sought that the court issues conservatory orders to the estate property against the Respondent, his agent, or whomsoever from selling, charging, mutating, transferring, leasing or dealing in any way with all that parcel known as Waware 285.
3. The Applicant also sought that the grant made to the Respondent be revoked.
4. The application was heard by way of written submissions and in a ruling delivered by Wendoh J on 13th December 2022 it was found that the Applicant's father Walter Otieno Mikwa already had his parcel No. 286 and the Respondent's father had land No. 285 and there was no evidence that the subject land was ever held in trust for the Applicant's father and he did not file an objection in Migori CMC Succession Proceedings No. 301 of 2002. It was also held that the objection raised by the Applicant's father in Migori CMCC No. 255 of 2018 claiming that the late Charles Olilo Amolo held the land in question in trust for him was dismissed.



5. The summons for revocation of grant dated 15th March 2021 was dismissed as the Applicant had not established a direct interest in the estate of the deceased in this cause. It was further held that the suit land had already devolved to Charles Olilo Amollo and the persons entitled to make a claim in the said estate are the wife of Charles Olilo Amollo and/ or siblings of the Respondent if they are alive as they rank in higher priority as dependants to the estate of the estate of Charles Olilo Amollo.
6. The application dated 15th March 2021 was therefore dismissed with costs and the Trial Judge said that the other issues fall by the way as the application was devoid of merit.
7. When I took over this matter I have noted that the record indicates that application dated 15th March 2021 for revocation was pending hearing and determination and severally the matter came up for mention citing the said application as pending hearing and determination. Directions were even taken on 2nd May 2024 for hearing of the said application for revocation by way of written submissions.
8. On 31st October 2024 Mr. Outa Advocate informed the court that the application pending for hearing was for revocation of grant and he indicated that they had filed their submissions dated 30.6.2024. An order was made that the said application and submissions be served on the Respondent in person and the Chief of Waware Location was to avail all beneficiaries.
9. When Mr Sam Onyango Advocate appeared in court on 10th February 2025 he indicated that the Respondent had taken his file and intended to act in person.
10. Mr. Outa Advocate then sought leave to amend the application for revocation as the Administrator Charles Olilo Amollo had died
11. On 25th February 2025 Chief of Waware Location Mr. Paul Ojwang Ogweno attended court and confirmed he served all the parties and also provided a letter dated 7th February 2025 identifying all the beneficiaries to the estate of the deceased William Amolo Mikwa.
12. Mr. Outa Advocate said that Charles Olilo Amollo did not file summons for confirmation but transmitted estate land to people other than the beneficiaries and the real beneficiaries were not aware of the petition.
13. The Chiefs letter dated 7th February 2025 was filed and supplied to both Advocates on record and leave was granted to the Applicant in application dated 15th March 2021 to make necessary amendments to the application and file and serve within 7 days. Upon service the Respondent was ordered to respond to the application within 14 days.
14. On 25th March 2025 Mr. Outa said that he filed and served the amended summons and a further date was taken to enable Respondent to file a response to the amended summons. On 19th June 2025 the Advocates and parties were absent in court and a further mention date taken. On 19th June 2025 Mr. Outa Advocate indicated they had not been served with a response and proposed that the amended application be heard by way of written submissions.
15. This court gave final directions for filing of response and submissions and took a date for ruling.
16. This court has deliberately recounted the record to establish that although counsel in this matter made the court believe that application dated 15th March 2021 was pending for determination as to whether or not to revoke grant made to Charles Olilo Amollo the said application was already dismissed by a ruling delivered on 13th December 2022 and an application that was dismissed is non-existent and cannot be amended. Unless and until the Applicant in the application dated 15th March 2021 appeals against the ruling delivered therein, the finding made by Wendoh J will remain in force.



17. In the circumstances the application by the intended interested parties to be joined as parties to the amended application for revocation is not sustainable being that the Applicant Damaris Malela is seeking orders that were already dismissed.
18. The amended summons for revocation is res judicata and is struck out for being null and void. The application dated 4th August 2025 is also struck out for reasons the summons for revocation which they want to join is an abuse of court process the same having been adjudicated before.

DATED, SIGNED, AND DELIVERED AT MIGORI THIS 4th Day of December, 2025.

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ANNE ONG'INJO

JUDGE

