

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCLC NO. 412 OF 2025

EDWARD OWINO ODUNDO.....1ST
PLAINTIFF
MARGARET SUNGA ODUNDO.....2ND
PLAINTIFF
JAMES ODUOR ODUNDO.....3RD
PLAINTIFF
JANE ATIENO ODUNDO.....4TH
PLAINTIFF
ALICE AKINYI ODUNDO.....5TH
PLAINTIFF
GEOFREY OTIENO ODUNDO.....6TH
PLAINTIFF
BEATRICE AKINYI ODUNDO.....7TH
PLAINTIFF
SELIJA ATIENO ODUNDO.....8TH
PLAINTIFF

VERSUS

OLIVER OMONDI ODUNDO.....
.....DEFENDANT

JUDGMENT

1. The plaintiffs filed the originating summons dated 13th August, 2025, expressed to be brought under **Article 159 (2)(d)** of the **Constitution, Order 37 Rule 1** of the **Civil Procedure Rules, Sections 1A,1B** and **3A** of the **Civil Procedure Act**, seeking orders that:-

a. The defendant be compelled to execute and return to the plaintiffs' advocates the following

transfer documents within seven (7) days of issuance of this order:-

- i. Form LRA-42 Transfer by personal representative to persons entitled under a will/ intestacy in respect of Nairobi/ Block 68/1043 (Formerly L.R. No. 209/8294/138).**
 - ii. Form LRA-33 transfer of interest in land in respect of Nairobi/ Block 68/1043 (Formerly L.R. No. 209/8294/138) to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.**
- b. The defendant be compelled to forthwith give approval on the Ardhisasa platform for the transfer of Nairobi/Block 68/1043 (formerly L.R. No. 209/8294/138) to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.**
- c. Should the defendant fail to comply with order (a) and (b) hereinabove his signature and approval be dispensed with and the Deputy Registrar of this Honourable court do sign the transfer documents and the Land Registrar do approve the conveyance of all that property known as LR. No. 209/8294/138 to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.**

d. This honourable court be pleased to issue any further orders it may deem fair and appropriate given the unique circumstances of this case.

2. The originating summons is premised on the grounds *inter alia* that the plaintiffs and the defendant are the biological children of the 2nd plaintiff and the late Michael Pius Odundo. The originating summons was supported by the affidavit of Dr. Edward Odundo, the 1st plaintiff sworn on even date. The 1st plaintiff deposed that he is the administrator of the estate of their late father who died intestate on 25th January, 1990. He deposed that *vide* succession proceedings in Succession Cause No. 694 of 1990, a certificate of confirmation of grant was issued on 11th April, 1997 to Maurice Odhiambo Odundo (deceased) and himself.

3. The plaintiff deposed that as the administrators of the estate of their late father, they were charged with managing and distributing the deceased estate to the beneficiaries including the suit property. That as a result of the 2nd plaintiff who is their mother ill health, they discussed as a family and agreed to raise medical funds for her treatment through selling the suit property. Further, that the 1st and 2nd interested parties (sic) expressed their interest to purchase the suit property, and the sale transaction is stuck at the completion stage since the defendant has declined to execute the relevant transfer documents.

4. The 1st plaintiff deposed that the defendant's action in refusing to sign the transfer documents is unreasonable and a threat to the general wellbeing of their mother whose health is at stake. He deposed that the suit property was their mother's matrimonial home, and the decision to sell the same and use the proceeds to take care of her has been made in good faith, and it is in the interest of justice that the court comes to their aid to avoid further frustration.
5. The defendant filed his replying affidavit sworn on 5th September, 2025 in opposition to the application. He deposed that Dr. Edward Odundo, the 1st plaintiff is a stranger to this suit, and this court lacks the jurisdiction to hear and determine this matter as it belongs to the probate and administration division of the High Court. That by virtue of **Section 83 (f) and (g)** of the **Law of Succession Act**, the 1st plaintiff has no powers to administer and distribute the assets of the estate. Further, that the 2nd to the 8th plaintiffs have not executed any documents granting the 1st plaintiff the authority to file the suit.
6. The defendant pleaded particulars of breach of the duties of an administrator and further deposed that Margaret Aketch Odundo has been omitted as a party to this suit, and her consent has not been obtained by the 1st plaintiff. Further, that the rental income

generated from the estate as well as the business income from Mini Pub is sufficient to cater for their mother's health and even generate surplus.

7. The defendant deposed that at the time of the sale agreement, the 1st plaintiff did not have the capacity to enter into the agreement, and the same is ultra vires. Further, that the suit property has never been put to sale and a valuation of the same was not done before the transaction. He deposed that the sale agreement is illegal and void, and has no provision for the consent of the beneficiaries as they are the ultimate owners.
8. While acknowledging the ill health of their mother, the defendant deposed that he cannot rubber stamp an illegality as the sale of the suit property cannot be the only way for the family to provide for their mother. Further, that the 1st plaintiff has never given an updated statement of account for the entire estate, and he ought to be compelled to disclose the same. The defendant pleaded particulars of fraud and deposed that the difference of Kshs.4,500,000/- in the agreement and the transfer is material, and potentially exposes the beneficiaries of the estate to criminal and tax liabilities.

9. The defendant sought the following orders:-
- a. A declaration that the sale agreement dated 29 January 2025 is illegal, null and void ab initio.*
 - b. An order compelling the 1st plaintiff to give a full account of the incomes, assets, liabilities and the administration of the estate of the late Michael Pius Odundo from 31 December 1990 to date; and*
 - c. Dismissal of the originating summons dated 13th August 2025 with costs.*
10. In response thereto, the 1st plaintiff filed his supplementary affidavit sworn on 9th September, 2025. The 1st plaintiff reiterated the contents of his supporting affidavit. He deposed that their mother's average bill per year for the last three years has been in excess of Kshs. 5,700,000/- which they have settled over the years. However, due to the harsh economic times, their resources have been strained and as a result, a decision was reached to sell the suit property to enable them raise sufficient funds for medical care. He deposed that the suit property was distributed equally to all the beneficiaries including the defendant, and committed that upon the sale of the suit property, the defendant's share of the purchase price will be delivered to him. He deposed that since the confirmation of the grant, and as the administrators of the estate of their late father, they have ensured that all the assets were shared equally among all the beneficiaries of the said estate.

11. The 1st plaintiff further deposed that the issues relating to the estate of their father have nothing to do with this suit following the confirmation of the grant. Further, that all the assets were distributed to all the beneficiaries and there is nothing left to be administered, and the defendant has kept away from any responsibility concerning their mother's health. Further, that the rental income cannot cater for one month's medical expenses. The 1st plaintiff deposed that the discrepancy in the figures on the transfer documents was an innocent mistake and the same has been corrected.

12. The 1st plaintiff further deposed that the defendant is the sole reason why the titles in respect to the distributed assets have not come in the joint names of all the beneficiaries as he has refused to cooperate with the rest of the beneficiaries. Further, that the defendant is fully aware that the properties range between Kshs.14,000,000/- and Kshs.16,000,000/- and the purchase price is thus a good bargain. He clarified that the defendant's portion of the purchase price will be given to him and the same can be recorded as an order of the court. He deposed that the sale of the suit property is their last resort and the only viable option available to the children which act was agreed by the 2nd plaintiff as well.

- 13.** The 1st plaintiff deposed that the sale of the suit property is carried out by all plaintiffs and the defendant is aware owing to the several meetings that have been held which he has actively participated in. He deposed that Dr. Edward Odundo and Edward Owino Odundo are one and the same person.
- 14.** The defendant filed a further affidavit sworn on 19th September 2025, and reiterated the contents of his replying affidavit. Further, the defendant deposed that the income generated from the estate of their late father generates revenues in excess of Kshs.1,500,000/- every month. That in a fraudulent attempt meant to deprive the beneficiaries of the estate, the 1st plaintiff transferred the business from Mini Pub to a partnership known as Nairobi West Mini Pub. He questioned why the 1st plaintiff would sign an agreement in January, 2025 and purport to seek consent in August, 2025.
- 15.** The defendant deposed that the bone of contention is the distribution of the estate which has not been done to date, and that the onus is on the 1st plaintiff to produce the titles of the estate showing the said distribution. He deposed that the authorities to plead have glaring differences and it is critical to ascertain whether the 2nd plaintiff sought independent legal advice. The defendant deposed that Margaret Aketch Odundo has not signed any

documents, and the intent of the meetings was to receive his consent through deceit.

- 16.** The originating summons was canvassed through written submissions. The plaintiffs filed their written submissions dated 9th October, 2025. The defendant filed his written submissions dated 16th October, 2025.
- 17.** I have carefully analyzed and considered the originating summons, the replies thereof and the rival submissions. It is not in dispute that the suit property was devolved to all the parties herein including Margaret Aketch Odundo pursuant to the confirmation of grant dated 11th April, 1997. In the said grant and besides the suit property, the properties known as LR. No. NBI/Block 37/258/30 situated at Nairobi West Kodi Road and plot no. NBI/Block 32/281 situated at Highview Estate Phase 1 were the properties of the late Michael Pius Odundo. The three properties as confirmed from the grant are to be shared equally to all the beneficiaries.
- 18.** In this case, both parties admit that the 2nd plaintiff who is the mother of the 1st plaintiff, and the defendant is in ill health and requires round the clock medical attention owing to her age. As a result, the plaintiffs have incurred huge medical expenses to ensure that their mother's medical needs are catered to. In support

thereof, the plaintiffs annexed copies of medical receipts paid to different facilities, a fact which the defendant does not dispute.

19. However, the 1st plaintiff stated that the defendant has refused to execute transfer documents to enable sale of the suit property to cater for their mother's medical needs. The defendant raised quite a number of issues including; that the court lacks jurisdiction as this is a matter that is the preserve of the High Court, Family Division, that the 1st plaintiff lacks locus, and that the rest of the plaintiffs including Margaret Aketch Odundo who has been left out have not given authority to file the instant suit. I have perused the pleadings herein, and I note that the plaintiffs have filed the authority to take proceedings and sign affidavits dated 13th August, 2025. Having perused the evidence on record, it appears that Margaret Aketch Odundo who is a beneficiary of the said estate has not been included as a party to this suit and thus her authority has not been sought. It follows therefore that if the orders are to issue, her consent ought to be sought.

20. On whether this court has jurisdiction, the defendant argued that this is a matter that is a preserve of the High Court. I do not that from the pleadings, the plaintiffs seek intervention of this court to sell the suit property owing to the failure by the defendant to execute the transfer instruments. While the defendant questions

the dates and purchase price of the suit property presented in court and terming them as defective, he has not disputed that he has refused to sign the same. Indeed, he is well aware that the plaintiffs were keen to dispose the suit property to raise money for their mother's medical needs. Having stated as such, and pursuant to **Section 13** of the **Environment and Land Court Act**, this court has jurisdiction to determine this matter in as far as sale and any interest in the suit property is concerned.

21. The defendant went on to state that by virtue of **Section 83 (f)** and **(g)** of the **Law of Succession Act**, the 1st plaintiff cannot deal with the estate of the deceased after lapse of six months since the confirmation of the grant.
22. It is necessary to note that as a beneficiary of the estate of the deceased, it was his duty to challenge any failure by the administrators of the estate to administer the said estate dutifully by approaching the Family Division for the necessary intervention.
23. **Section 83** of the **Law of Succession Act** provides as follows:-

“Personal representatives shall have the following duties—

- a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;***

b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

d) to ascertain and pay, out of the estate of the deceased, all his debts;

e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

g) within six months from the date of confirmation of the grant, or such longer period as the court

may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

24. In my view, the above provision of the law is conditional with regard to the disclosure of the assets and liabilities of the estate of the deceased. From the date of confirmation of grant, and if at all the defendant claims that a full and accurate inventory of the estate has not been disclosed, there was nothing stopping him from moving the court to enforce the above provision. More importantly, and as I note most of the averments made by the defendant are

unsubstantiated and lacked evidence to support the same. Fraud as alleged has not been proved at all. In my view, the transfer documents can be amended to cure the errors and they are not fatal to this suit. The defendant should be compassionate and take responsibility of his mother's health by cooperating with the rest of the siblings or family members.

25. The only glaring discrepancy that the court has noted is the omission of Margaret Aketch Odundo whose names appear in the sale agreement and transfer instrument, but not in this suit. It is necessary that her consent is sought. In that case, I find merit in the originating summons dated 13th August, 2025 and I proceed to grant the following orders:-

1. The defendant is hereby ordered and directed to execute and return to the plaintiffs' advocates the following transfer documents within seven (7) days from the date hereof:-

i. Form LRA-42 Transfer by personal representative to persons entitled under a will/ intestacy in respect of Nairobi/ Block 68/1043 (Formerly L.R. No. 209/8294/138).

ii. Form LRA-33 transfer of interest in land in respect of Nairobi/ Block 68/1043 (Formerly L.R. No. 209/8294/138) to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.

- 2. The defendant is hereby ordered and directed to forthwith give approval on the Ardhisasa platform for the transfer of Nairobi/Block 68/1043 (formerly L.R. No. 209/8294/138) to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.**
- 3. In the event that the defendant fails or refuses to comply with the above orders, his signature and approval be dispensed with and the Deputy Registrar of this Honourable court do sign the transfer documents and the Land Registrar do approve the conveyance of all that property known as LR. No. 209/8294/138 to the purchasers, Hassan Sheikh Abdiaziz and Ilham Dahir Sheik.**
- 4. The plaintiffs to seek the consent of Margaret Aketch Odundo.**
- 5. The parties to appear in court after six months from the date hereof to confirm compliance with these orders.**
- 6. I make no orders as to costs.**

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 11TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
11/12/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Agwara for the Plaintiffs

Mr. Ogutto for the Respondent

ORIGINAL