



**Chawana & another (Suing as the Administrators of the Estate of Johnstone Maganga Chawana)  
v Katembo & another (Sued as the Administrators of the Estate of Swaleh Kassim Kiso  
(Deceased)) (Succession Cause 1 of 2014) [2025] KEHC 18807 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18807 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
SUCCESSION CAUSE 1 OF 2014  
AN ONGERI, J  
DECEMBER 19, 2025**

**BETWEEN**

**ALFRED MAGHANGA CHAWANA ..... 1<sup>ST</sup> PETITIONER  
FLORA NGUMBI CHAWANA ..... 2<sup>ND</sup> PETITIONER  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF JOHNSTONE  
MAGANGA CHAWANA**

**AND**

**ABDUL ZENGE KATEMBO ..... 1<sup>ST</sup> INTENDED RESPONDENT  
ATHUMAN KATEMBO ATIBU ..... 2<sup>ND</sup> INTENDED RESPONDENT  
SUED AS THE ADMINISTRATORS OF THE ESTATE OF SWALEH KASSIM  
KISOI (DECEASED)**

**RULING**

1. The application coming for consideration in this Ruling is the one dated 1<sup>st</sup> April 2025 brought under Section 47 of the *Law of Succession Act* and under Rule 73 of the Probate and Administration Rules, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 73(1) of the *Land Registration Act*, 2012 and Sections 1A, 1B and 3A of the *Civil Procedure Act*, CAP 21 Laws of Kenya and all other enabling Statutes seeking the following orders:-
  - i. That this honorable court be pleased to enjoin the intended respondent as a party to the succession cause herein.
  - ii. That an order do issue reversing the transfer of land parcel No. Taita Taveta/Upper Kariokor/8 which was transferred illegally by the Respondent through intermeddling after the demise of the deceased to Yussuf Hassan Mohamed and be returned to the names of the deceased herein.



- iii. That an order do issue reversing the transfer of land parcel No. Taita Taveta/Upper Kariokor/8 which was transferred illegally by the Respondent through intermeddling after the demise of the deceased to Yussuf Hassan Mohamed and be returned to the names of the deceased herein.
  - iv. That the costs of this application be borne by the Respondent.
2. The application is based on the following grounds:-
- i. That the Applicant herein is the joint administrator of the estate of the late Johnstone Chawana Maganga who was the sole heir of the estate of the Amina Wakio Juma – deceased.
  - ii. That the late Amina Wakio Juma was the registered proprietor of all that piece of land known as Taita Taveta/Upper Kariokor/8 which is the subject matter of HCPA No. 1 of 2024 – Voi as well as the proceedings herein.
  - iii. That the late Johnstone Maganga Chawana became the sole heir of Amina Wakio Juma – deceased vide a written will dated 10<sup>th</sup> May 1985.
  - iv. That the late Johnstone Maganga Chawana petitioned the High Court in HCPA No. 1 of 2014 for Probate with Will annexed and the same was duly granted by the Honorable Court.
  - v. That the Applicant was acting in person when filing the confirmation of grant application, which was later revoked following an objection by the Interested Party in a separate miscellaneous file in Miscellaneous No. E003 of 2018.
  - vi. That the said objection proceedings were improperly handled in a separate file instead of being heard within the main succession cause.
  - vii. That despite there being an active High Court stay order, the Interested Party proceeded to file a fresh succession cause before the Kadhi’s Court and obtained a grant of letters of administration without disclosing the existence of these proceedings.
  - viii. That the grant issued by the Kadhi’s Court was obtained fraudulently, through material non-disclosure and in direct contravention of the stay orders issues by this Honourable Court.
  - ix. That it is in the interest of justice and proper administration of the estate that all disputes concerning the estate of the deceased be handled in this main succession cause and that any irregularly issued grants be nullified.
3. The Respondent filed a Replying Affidavit dated 2<sup>nd</sup> May 2025 in which it is deposed as follows:-
- i. That I am the 1<sup>st</sup> intended Respondent herein and duly authorized to swear this affidavit on behalf of the estate of SWALEH KASSIM KISOI (Deceased).
  - ii. That I have read and understood the contents of the Applicant’s Notice of Motion dated Pt April 2025 and Supporting Affidavit sworn of similar date and I respond as follows:
  - iii. That the Applicants in their application dated 1st April 2025, have not adduced any grounds to warrant the issuance of the orders sought.
  - iv. That in response to paragraphs 2, 9 and 21 of the Supporting Affidavit and Grounds 1, 4 and 5 of the Notice of Motion the Applicant’s authority as administrator of the subject estate is void ab initio because the High Court revoked the initial grant of 2014 in the Misc. Civil Suit No. 3 of 2018 as the Court found that the same was obtained fraudulently.



- v. That the revocation was upheld in 2018 by this Honorable Court, the Court relied on the Directorate of Criminal Investigations (DCI) report which confirmed the 1985 Will and Death Certificate produced by the Applicant were forged.
- vi. That the Applicant's attempt to rely on the revoked grant in paragraph 12 and 13 of the Supporting Affidavit is disingenuous.
- vii. That in response to paragraphs 6 of the Supporting Affidavit and Grounds 3 of the Notice of Motion regarding the 1985 will the alleged 1985 Will is a forgery, as conclusively proven by the DCI report.
- viii. That the deceased, Amina Wakio Juma, could not have executed the Will in 1985 since she died in 1994 at age 75 and because the 1985 will itself was erroneous as it indicated that the deceased, Amina Wakio, was 40 at the time of execution which was false and was proven to be false by the DCI report upon investigation.
- ix. That the Applicant's reliance on this forged Will is criminal, and the High Court rightly dismissed it.
- x. That the Applicant's allegation of bias in the DCI findings under paragraph 18 of Supporting Affidavit is baseless. The DCI's conclusions were evidence-based and upheld by the Court. The Applicant should be placed under strict proof thereof.
- xi. That in response to paragraphs 3 and 8 of the Supporting Affidavit and Grounds 1 of the Notice of Motion the allegation that the applicant was the sole heir is unequivocally false and misleading.
- xii. That the Applicants are not direct heirs of the late Amina Wako but only relied on forged will which disinherited the all the heirs of the estate of the deceased.
- xiii. That the fact that the applicant is relying on a forged will to indicate that Johnstone Maganga Chawana was the only heir is disingenuous, untrue and misleading to this Honorable Court.
- xiv. That paragraph 6 of the applicant's supporting affidavit indicates that Arnim. Waldo did not have any heirs. This is categorically false as the DCI report and the 1978 Will clearly shows that Swaleh Kassim Kisoï was the rightful and only true heir.
- xv. That the miscellaneous application No. 3 of 2018 was instituted by the Petitioners/Applicant which application was dismissed and led to the revocation of the grants obtained by the Petitioner/Applicant.
- xvi. That the Applicants never appealed nor sought review of the said ruling in miscellaneous application number 3 of 2014 and were therefore contended with it.
- xvii. That since the Petitioner himself in his life time and on conclusion of miscellaneous Application 3 of 2018, never challenged the revocation, of his letters, Respondents, continued possession and use of the subject and the sale and transfer of the same to a third party, the Petitioner was guilty of laches and the applicant herein are estopped from pursuing the same.
- xviii. In response to paragraphs 23 and of the Supporting Affidavit and Prayer 2 of the Notice of Motion the Kadhi's Court the legal heirs of estate jurisdiction over Muslim succession disputes under Article 170(5) of *the Constitution*. The grant issued to Swaleh Kassim Kisoï's estate was properly obtained, valid and therefore binding.



- xix. That the Applicant, a non-Muslim, lacks standing to challenge Islamic succession principles.
  - xx. That the Applicant's allegation of fraud in the Kadhi's Court proceedings in paragraph 25 of Supporting Affidavit is unfounded, baseless and unsupported. The Court conducted hearings transparently and complied with Shariah law and the same was done under public domain.
  - xxi. That in response to paragraphs 29 and 30 of the Supporting Affidavit the applicant's failure to appeal within time or challenge the Kadhi's Court grant constitutes acquiescence and the applicant should accordingly be estopped from challenging the same.
  - xxii. That the Applicant should be estopped from re-litigating issues conclusively determined by the Kadhi's Court and the High Court in Misc. Civil Suit No. 3 of 2018 based on the principle of res judicata.
  - xxiii. That in response to Prayer 3 of the Notice of Motion and paragraph 28 of the Supporting Affidavit the transfer of Land Parcel Taita Taveta/Upper Kariokor/8 to Yussuf Hassan Mohamed was lawful and properly obtained, based on the Kadhi's Court approved grant.
  - xxiv. That the Applicant's demand for reversal of the Khadi's approved grant is frivolous, since the Applicant lacks locus standi.
  - xxv. That the Applicant's entire case is premised on fraud, forum-shopping, and abuse of court process.
  - xxvi. That in holistic response to the application dated 1st April 2025, I aver that the application is frivolous, vexatious, incompetent and an abuse of the process of this Honorable Court for the foregoing reasons.
  - xxvii. That in view of what I have stated hereinabove, the Notice of Motion Application dated 1st April 2025 is without merit and ought to be dismissed with costs.
4. The parties filed written submissions as follows; The Petitioners submitted that they seek the revocation of a grant of letters of administration and its certificate of confirmation issued by the Kadhis Court, arguing that these were obtained through a defective and fraudulent process that undermines the authority of the High Court.
  5. The central of their case rests on several interconnected points.
  6. Firstly, they emphasize that the High Court at Voi was already actively seized of this succession matter, having issued a confirmed grant to the Petitioners in 2018 and, subsequently, an order in November 2018 that stayed any further dealings with the suit property.
  7. The Respondents' decision to initiate parallel proceedings in the Kadhis Court in 2021, without disclosing the existing High Court case and its restraining order, is characterized as a deliberate act of forum shopping and an abuse of the court process designed to circumvent the High Court's authority.
  8. Secondly, the Petitioners challenge the very jurisdiction of the Kadhis Court over this dispute.
  9. They contend that not all parties involved profess the Muslim religion, as the Petitioners themselves do not, and they never submitted to the Kadhis Court's jurisdiction.
  10. The proceedings are therefore fundamentally defective under the constitutional limits placed on the Kadhi's Court.



11. Furthermore, the Respondents' failure to notify the Petitioners of the Kadhis Court case, despite their known and vested interest from the prior High Court proceedings, constitutes a concealment of material facts that taints the grant with fraud.
12. Thirdly, the Petitioners detail a pattern of unlawful intermeddling with the estate.
13. They argue that the Respondents, lacking a valid grant from the proper court, had no legal authority to sell the suit property.
14. That the evidence indicates the property was transferred to a third-party purchaser even before the Kadhis Court grant was confirmed, in direct violation of the [Law of Succession Act](#), which prohibits the sale of immovable estate assets before confirmation of a grant.
15. They further submit that the purchaser cannot claim the status of a bona fide buyer, as the sale agreement explicitly acknowledged that the transfer was contingent upon the completion of succession proceedings, placing the purchaser on constructive notice of the underlying legal infirmities.
16. In conclusion, the Petitioners urge the High Court to exercise its supervisory and unlimited original jurisdiction to set aside the Kadhis Court grant, nullify the subsequent fraudulent transfer, and restore the property to the estate of the deceased.
17. They pray for the main succession cause in the High Court to be heard and determined on its merits to finally establish the rightful beneficiaries, arguing that this course of action is essential to cure the procedural defects, punish the abuse of process, and prevent a grave injustice.
18. The Respondents submitted that this Application is an attempt to resurrect a claim long-settled by the court.
19. The central argument is that the application is legally impermissible and constitutes an abuse of process, stemming from a foundation of fraud.
20. The Respondents' narrative begins with the history of the dispute, highlighting that the Applicants' entire claim to the estate of Amina Wakio Juma was based solely on a 1985 Will.
21. This Will was conclusively found to be a forgery by the Directorate of Criminal Investigations and, critically, by this Honourable Court itself in a final ruling dated 22nd November 2018.
22. That ruling revoked the Grant of Letters of Administration obtained by the Applicants, a decision they never appealed.
23. Consequently, their legal interest in the estate was extinguished, rendering them strangers to the cause with no locus standi.
24. The Respondents contend that, following the lawful vacuum created by the 2018 revocation, the rightful heirs proceeded to administer the estate through the Kadhi's Court in 2021, resulting in the confirmed grant and subsequent transfer of the property to a bona fide purchaser.
25. The current application, filed years after these decisive events, is characterized as a belated and indirect attack on both the High Court's 2018 ruling and the Kadhi's Court's 2021 process, rather than a proper appeal.
26. The submissions systematically dismantle the application on multiple legal grounds.
27. They argue it is res judicata, as the validity of the forged Will which was the sole basis of the claim, has already been litigated and finally decided between the same parties.



28. They further assert the Applicants are guilty of laches and acquiescence, having unreasonably delayed for years while the Respondents and an innocent purchaser altered their positions, causing severe prejudice.
29. The doctrine of unclean hands is invoked, emphasizing that a court of equity cannot aid a party whose claim is rooted in forgery and fraud officially recognized by the court.
30. Ultimately, the Respondents portray the application as devoid of merit and a gross abuse of the court's process.
31. It is seen as a vexatious attempt to harass the lawful beneficiaries, waste judicial resources, and unjustly disturb settled matters and third-party rights.
32. They pray for the application to be dismissed in its entirety with costs, upholding the principles of finality in litigation and the integrity of the judicial process.
33. The issues for determination in the application dated 1st April 2025 are as follows;
  - i. Firstly, whether the applicants have the requisite locus standi to bring this application in light of the prior revocation of their grant,
  - ii. Secondly, whether the doctrine of res judicata bars the present application,
  - iii. Thirdly, whether the proceedings and grant issued by the Kadhi's Court were lawful and valid, and
  - iv. Fourthly, whether the orders sought for the joinder of the intended respondents and the reversal of the transfer of the suit property are merited.
34. On the first issue, while it is correct that the initial grant issued to the petitioners/applicants was revoked by this Court in 2018 based on findings that the will of 1985 was a forgery, their standing in the present application is not extinguished.
35. The revocation of a grant does not, ipso facto, render a party a complete stranger to the estate where the main question of rightful succession remains unresolved.
36. The applicants, as the previous administrators, have a legitimate interest in ensuring that the estate is administered lawfully by the correct forum.
37. Their application raises grave allegations of intermeddling and fraud in subsequent processes, which this Court, as a court of justice and equity, has a duty to scrutinize to prevent an abuse of its own processes.
38. The technical objection on locus standi must therefore yield to the overarching need to ascertain the truth and uphold the rule of law.
39. Regarding the second issue, the plea of res judicata advanced by the respondents is unsustainable.
40. The cause of action and the subject matter in the present application are distinct from those in the miscellaneous application that led to the revocation in 2018.
41. The previous ruling dealt solely with the revocation of the applicants' grant based on the fraudulent will.



42. The current application, however, challenges the validity of a parallel succession cause in the Kadhi's Court, the alleged fraudulent procurement of a grant therein, and the subsequent intermeddling and transfer of the suit property.
43. These are fresh issues that were not substantially in issue nor adjudicated upon in the earlier proceedings.
44. For the doctrine of res judicata to apply, the matter must have been directly and substantially in issue in the former suit, between the same parties, and decided by a competent court. These conditions are not met here.
45. Concerning the third and most critical issue, the conduct of the respondents in instituting fresh succession proceedings in the Kadhi's Court was manifestly wrong and a clear abuse of the court process.
46. At the time the respondents filed their cause in the Kadhi's Court in 2021, there was an active and valid stay order issued by this Court on 22nd November 2018, prohibiting any further dealings with the suit property, Land Parcel Taita Taveta/Upper Kariokor/8.
47. The respondents' failure to disclose the existence of the High Court succession cause and the restraining order to the Kadhi's Court was a material non-disclosure that vitiates the entire process.
48. This constitutes forum shopping of the most egregious kind, aimed at circumventing the authority of this Court.
49. Litigants must not be permitted to pursue parallel proceedings in different courts on the same subject matter.
50. Furthermore, the jurisdiction of the Kadhi's Court under Article 170(5) of *the Constitution* is limited to determining questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings where all the parties profess the Muslim religion.
51. The applicants, as administrators of the estate of Johnstone Maganga Chawana, have deposed that they do not profess the Muslim faith and never submitted to the Kadhi's Court's jurisdiction.
52. This raises a fundamental jurisdictional defect. For the Kadhi's Court to exercise jurisdiction in succession matters, all parties must be Muslims. Where this is not the case, any grant issued is null and void ab initio.
53. The respondents' actions subsequent to obtaining the grant from the Kadhi's Court also amount to unlawful intermeddling.
54. The evidence suggests that the transfer of the suit property to Yussuf Hassan Mohamed was executed even before the grant was confirmed, in blatant contravention of Section 82 of the *Law of Succession Act*, which prohibits the sale of any immovable property of a deceased person before confirmation of a grant.
55. This was an illegal transaction. The purported purchaser cannot claim the protection of a bona fide purchaser for value without notice, as the sale agreement itself, as referenced, acknowledged that the completion of the transaction was subject to the conclusion of succession proceedings.
56. This placed the purchaser on inquiry notice. A purchaser who fails to make inquiries when put on notice assumes the risk of the transaction being set aside.



57. In the final analysis, the interests of justice, the integrity of the judicial process, and the proper administration of the estate demand that this application be allowed.
58. The conduct of the respondents in flouting a court order, initiating proceedings in a forum without proper jurisdiction, and transferring estate property unlawfully cannot be condoned.
59. The paramount duty of this Court is to safeguard the estate from such fraudulent and irregular dealings and to ensure that the question of the rightful beneficiaries is determined in a consolidated, transparent, and lawful manner.
60. Consequently, the application dated 1st April 2025 is hereby allowed in the following terms;
  - i. That an order be is hereby issued joining Athuman Katembo Atibu and Abdul Zenge Katembo (sued as administrators of the estate of Swaleh Kassim Kiso) as respondents in this Succession Cause No. 1 of 2014.
  - ii. That, Further, an order be is hereby issued declaring the grant of letters of administration and the certificate of confirmation of grant issued in respect of the estate of Amina Wakio Juma (deceased) by the Kadhi's Court at Voi in Kadhi's Succession Cause No. 5 of 2021 (or as otherwise numbered) to be null and void ab initio.
  - iii. That Consequently, the subsequent transfer of Land Parcel No. Taita Taveta/Upper Kariokor/8 to Yussuf Hassan Mohamed, which was founded upon the said null and void grant, is hereby annulled.
  - iv. That the Land Registrar, Taita Taveta County, is directed to cancel the said transfer and restore the registration of the property in the name of Amina Wakio Juma (deceased), pending the lawful and final determination of the administration of her estate in this cause.
61. The costs of this application shall be borne by the respondents

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF DECEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Petitioner/Applicant

..... for the Intended Respondent

