



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Ouma Masakhalia alias Alphonse Ouma (Deceased) (Succession Cause 90 of 2013) [2025] KEHC 18978 (KLR) (22 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 90 OF 2013
WM MUSYOKA, J
DECEMBER 22, 2025
IN THE MATTER OF THE ESTATE OF OUMA
MASAKHALIA ALIAS ALPHONSE OUMA (DECEASED)**

RULING

1. I am tasked with determining a Motion, dated 30th August 2025. It seeks stay of orders that were made on 10th July 2025, the setting aside of those orders, and leave to reopen the hearing of the application dated 28th May 2025 and to file a response to it.
2. The principal argument is that the process was not properly served, and the respondents proceeded as if there was no other party in the matter. It is also argued that the Advocate for the applicant could not attend to the matter, as he was in hospital, looking after a patient. There is also the argument that the service of 9th July 2025 was took close to the hearing of 10th July 2025, and it denied the applicant and his Advocate time to adequately prepare for hearing.
3. The respondents have reacted, by filing a joint affidavit. They do not dwell much on the issues raised, instead they argue that the application, dated 30th August 2025, was brought in bad faith.
4. The parties argued the application orally, on 29th October 2025.
5. What I should consider and determine is whether I should grant the orders sought. Whether I should do so will depend on the arguments made.
6. On argument is that there was no service. There is, however, an affidavit of service, sworn on 12th June 2025, indicating that service of that application, of 28th May 2025, was effected, by email, on 9th July 2025, on Mr Onsongo, the Advocate for the applicant. It would not be accurate, therefore, to argue that there was no service.
7. The other argument is that the said service was not proper. The matter was coming up on 10th July 2025, yet service was effected on 9th July 2025, just a day from the date scheduled for hearing. It is argued that that did not give the party served adequate time to prepare for the hearing. I agree. There is the 3-clear-days rule, which is meant to meet that objective, of giving the other side adequate time to prepare.



8. I find the said affidavit of service, of 12th June 2025, curious and suspicious. It was returning a service that was effected on 9th July 2025, for a hearing scheduled for 10th July 2025. Yet, it was sworn or commissioned on 12th June 2025. That would mean it was sworn and commissioned some 27 days before the service. It was returning the service, before the said service had been effected.
9. Why that anomaly? The service on 9th July 2025, for a hearing scheduled for 10th July 2025, offended the 3-clear-days rule, which made the service improper. I suspect that the back-dating of the affidavit of service was meant to mislead the court, into thinking that the service was effected roughly a month prior to the hearing. Talk of parties coming to court without clean hands.
10. The other argument is that Mr. Onsongo, the Advocate for the applicant, had his hands full, as he was kept busy in hospital, with a patient. That was a notorious fact, at around that time.
11. I am persuaded that a case exists, for exercise of the discretion sought, for the reasons that obviously emerge from what I have discussed above. Consequently, I shall grant all the prayers sought, in the application, dated 30th August 2025. The applicant has 30 days to file and serve a response to the application, dated 28th May 2025, with corresponding leave, of 7 days, upon service, for the respondents to file a supplementary affidavit, if need be, on any new issues raised.
12. The application, dated 28th May 2025, shall be heard afresh, on 17th February 2026. There shall be no order on costs. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 22ND DAY OF DECEMBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onsongo, instructed by Obwoye Onsongo & Associates, Advocates for the applicant.

Ms. Achala, instructed by Abalo & Company, Advocates for the respondents.

