



In re Estate of Richard Njoka Murwamwara alias Richard Njoka (Miscellaneous Succession Application 36 of 2011) [2026] KEHC 517 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEHC 517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS SUCCESSION APPLICATION 36 OF 2011
RM MWONGO, J
JANUARY 28, 2026
IN THE MATTER OF THE ESTATE OF RICHARD
NJOKA MURWAMWARA ALIAS RICHARD NJOKA**

BETWEEN

PATRICK NJOKA RICHARD APPLICANT

AND

ODARIA WANJA 1ST RESPONDENT

ELIZABETH WAMBURA 2ND RESPONDENT

LUCY MARIGU 3RD RESPONDENT

AGNES NJOKI 4TH RESPONDENT

EUNICE KAARI 5TH RESPONDENT

CATHERINE RIIMI 6TH RESPONDENT

BEATRICE GICUKU 7TH RESPONDENT

FLORA THAARA 8TH RESPONDENT

AND

CHARLES KINYUA NJOKA ADMINISTRATOR

AND

EDWIN NDWIGA NJOKA BENEFICIARY



RULING

The Applications

1. Two applications are the subject of this ruling. The first is that in which the applicant/intended interested party filed summons seeking orders against the respondent applicants. The second is one in which the respondents/applicants filed summons seeking orders against the administrator & beneficiary/respondents. The court determined that the two applications be canvassed simultaneously.

Summons dated 22nd January 2025

2. The applicant/intended interested party filed an application dated 22nd January 2025 which was supported by grounds set out on its face and in the supporting affidavit thereof. In it he seeks the following orders against the respondents/applicants:
 1. That this application be heard ex-parte and service be dispensed with in the 1st instance;
 2. That pending the hearing of this application this honourable court be pleased to stay implementation of the orders issued on 24th July 2024 and all consequential orders;
 3. The honourable court be pleased to review and or set aside the orders issued on 24th July 2024 and all consequential orders;
 4. That the honourable court be pleased to join the applicant Patrick Richard Njoka as an interested party in this cause;
 5. That the honourable court be pleased to set aside all the proceedings in respect to the application dated 11th August 2023.
3. The applicant stated that he is a son of the deceased and the respondents are his siblings. That the court distributed the estate of the deceased through its order issued on 24th July 2024, but he was left out since he was not a party to the proceedings leading to that order. He stated that his input on the issue of distribution was not sought despite the fact that he is a beneficiary of the estate. It was also his argument that Runyenjes Plot numbers 187 and 147 were co-owed by the deceased and 12 other people, hence it is not the whole property that can be inherited by the beneficiaries of the estate of the deceased.

Summons dated 09th January 2025

4. The 8 respondents/applicants filed summons dated 09th January 2025 seeking the following orders against the administrator and beneficiary/respondents;
 1. That the Estate Land Parcel Number Kagaari/Kanja/1909 be shared as per the attached plan to the Twelve Beneficiaries and as provided in the Confirmed Grant;
 2. That the Officer in charge of Runyenjes Police Station do provide security to be paid for by all the Beneficiaries;
 3. That all the Beneficiaries do pay for the Survey, Registration and transfer charges; and should the administrator & beneficiary/respondents refuse and or neglect to pay, the same be calculated or agreed upon as the costs and extraneous expenses of the Application;



4. That the Honorable Court order that should the 1st administrator/respondent refuse and or neglect to sign any of the documents required for the subdivision, Land Board Application, Transmission of the Estate to the Beneficiaries, and in the alternative an order do issue that the Deputy Registrar to sign and execute all the documents pertaining the Estate of the late Richard Njoka Murwamwara on behalf of the other Beneficiaries who have refused to fully act, co-operate and execute the Confirmed Grant;
 5. That the Honorable Court do make any other orders that may be necessary to facility the distribution of this Estate to the Beneficiaries.
5. It was the respondents/applicants' case that the estate of the deceased which comprises of Kaagari/Kanja/1909 and Runyenjes Plot Numbers 147 and 187 was already distributed amongst the 11 beneficiaries in equal shares. That they had started pursuing distribution through survey of the land for subdivision purposes. However, the administrator & beneficiary/respondents refused to co-operate in the process and they threatened their lives when they went to take up the properties. They stated that the administrator & beneficiary/respondents have since denied them access to the land despite there being an order bequeathing it to them.

Replying Affidavit

6. The applicant/intended interested party/beneficiary/respondent filed his replying affidavit opposing the summons dated 09th January 2025. He stated that he disagreed with the distribution of the estate as ordered by the court and urged that the orders ought to be reviewed or set aside. He also stated that he has not denied the 8 respondents/applicants' access to their inheritance as bequeathed by the court's order.

Parties' Submissions

7. The applicant/intended interested party/beneficiary/respondent relied on his replying affidavit. He submitted that even though the court ordered distribution of Runyenjes Plot Numbers 147 and 187, it is impossible to implement that order because those properties were co-owned by the deceased alongside other proprietors. For this reason, and as prayed in the summons dated 22nd January 2025, he submitted that the court should set aside its orders delivered on 24th July 2024 distributing the estate. He relied on Rule 73 of the Probate and Administration Rules.
8. The respondent applicants submitted that the order of the court delivered on 24th July 2024 has not been challenged on appeal and there is no legal basis for setting it aside. That even though the applicant/intended interested party/beneficiary/respondent was not a party to the proceedings leading to confirmation of the grant, he was named as a beneficiary and was given a portion of the estate. That on this basis, the summons dated 22nd January 2025 should be dismissed.
9. They argued that the court should lean towards determining a matter with finality which, in this case, it did. Reliance was placed on section 47 of the *Law of Succession Act*. They also argued that the applicant had not sought revocation of the grant according to section 76 of the *Law of Succession Act*. That, in any event, the distribution complies with section 38 of the *Law of Succession Act* and equality was achieved.

Issues for Determination

10. The issue for determination is whether the applications have merit.



Analysis and Determination

Application dated 22nd January 2025

11. The applicant in the summons dated 22nd January, 2025 is seeking setting aside of the court's order distributing the estate because he was not involved in the process, and that 2 of the properties distributed did not belong wholly to the deceased alone. He named the 12 co-owners of the properties Runyenjes plot numbers 147 and 187 with the deceased.
12. It is trite law that he who alleges must prove. Section 108 of the *Evidence Act* provides:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
13. The allegations made by the applicant in the summons dated 22nd January 2025 that the 2 properties were co-owned by the deceased and 12 others have not been proved. There is nothing placed before the Court to show that there are other co-owners that are, in fact, interested in parts of the properties. There is no evidence laid before court to be considered to the required standard to influence the Court to set aside its findings on distribution of the estate.
14. The applicant's argument that he was not involved in the proceedings is also not sensible. He was acknowledged as a beneficiary of the estate and he inherited the estate alongside 10 other named beneficiaries. This factor does not constitute a reason to set aside the court's findings on distribution of the estate. In any event, the court did apply section 38 of the *Law of Succession Act* to distribute the estate and with that decision, the matter is since settled.
15. As for his prayer to be enjoined as an interested party, the applicant/intended interested party/beneficiary/respondent is an undisputed beneficiary of the estate of the deceased. As such, he has an automatic right to be a party and is at liberty to bring his application in that capacity as beneficiary. There is no need for him to be enjoined as an interested party to the proceedings since he is already a beneficiary of the estate. In essence, a joinder would be superfluous and to the extent discussed herein, the application dated 22nd January 2025 lacks merit.

Application dated 9th January, 2025

16. After the distribution of the estate was ordered by the court, it turns out that the order has not been put into effect given certain hurdles disclosed in the summons dated 09th January 2025. The applicants in that application are seeking orders that will enable execution of the distribution ordered in the certificate of confirmation of grant.
17. The respondents/applicants have alleged that the applicant/beneficiary/ respondent, the 1st administrator/respondent and the 2nd beneficiary/respondent have continually denied them access to the property. That, regardless, they went on to secure the services of a surveyor to subdivide the land to give effect to the court order, but now it has become necessary to get further orders from the court.
18. The order of this court made on 24th July 2024 vide certificate of confirmation of grant was not made in vain. Court orders are meant to be obeyed without reservations as they are solemn pronouncements (see the case of *B v Attorney General* [2004] 1 KLR 431).



19. Moreover, as provided under section 83(g) of the *Law of Succession Act*, it is the duty of an administrator of an estate to ensure that the estate is distributed completely within 6 months of confirmation. The provision is as follows:

“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.”

20. Given that the order of this court distributing the estate is still in place, the 1st administrator/respondent is not in a position to decide whether or not the beneficiaries will take up their portions of the estate. Rather, it is a statutory duty assigned by law to the administrator to ensure that the estate is completely administered and an account be rendered in court following such administration. Indeed, there are penalties which the court can impose on an administrator who fails to do his/her duty as required by law.

Disposition

21. Taking into account that more than 6 months have passed since confirmation of the grant, and that the estate has still not passed to the beneficiaries, it is my view that the orders sought through the summons dated 09th January 2025 should be granted as follows:

1. Land Parcel Number Kagaari/Kanja/1909 being a part of the estate of the deceased herein be distributed in accordance to the summons for confirmation of grant issued on 26th August 2024 and the survey plan annexed to the supporting affidavit to the summons dated 09th January 2025;
2. The officer in charge of Runyenjes Police Station be and is hereby ordered to provide security to ensure physical access to and occupation of the beneficiaries’ portions on the named land as well as access to it by surveyors for purposes of subdivision;
3. All the named beneficiaries shall cater for their share of survey and transfer expenses in equal shares;
4. Upon completion of the survey and subdivision formalities, the administrator, Charles Kinyua Njoka, is hereby ordered to immediately, but in any event within 30 days of receipt of the necessary documents, sign all documents required for the subdivision, Land Control Board Consent Application and Transmission of the Estate to the Beneficiaries;
5. If the administrator fails to comply with order (4) hereinabove, the Deputy Registrar shall sign all the transfer documents in place of the Administrator. This order shall take effect after the end of 30 days of the administrator’s receipt of the transfer documents; and
6. The administrator is hereby ordered to give a full account to the court of administration of the estate of the deceased within 6 months of this ruling.

22. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28TH DAY OF JANUARY, 2026.

R. MWONGO

JUDGE



Delivered in the presence of:

Ms. Wanjiku holding brief for N. Mbogo for Applicants

Mageto holding brief for M. Ndeke for Respondents

Francis Munyao - Court Assistant

