



**In re Estate of Bunde Odongo & Omutu Odongo (Deceased) (Succession Cause 3 of 2018) [2026] KEHC 376 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
SUCCESSION CAUSE 3 OF 2018**

**OA SEWE, J**

**JANUARY 22, 2026**

**IN THE MATTER OF THE ESTATE OF BUNDE  
ODONGO & OMUTU ODONGO (DECEASED)**

**BETWEEN**

**JOHN OPIYO OSORO ..... 1<sup>ST</sup> APPLICANT  
OMONDI OSORO ..... 2<sup>ND</sup> APPLICANT  
ODONGO OSORO ..... 3<sup>RD</sup> APPLICANT  
DORINE NGOJE ORETA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**JOSEPH ODHIAMBO ..... 1<sup>ST</sup> RESPONDENT  
MARGARET ADHIAMBO ONYANYI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 18<sup>th</sup> October 2024. The said application is expressed to have been brought under Section 50 of the *Civil Procedure Act*, Cap 21, Order 45 Rule 1 and Order 51 Rule 1 of the *Civil Procedure Rules*. It seeks the following orders:
  - (a) That the Court be pleased to review and set aside the ruling delivered and signed at Homa Bay High Court on the 12<sup>th</sup> July 2023 together with its consequential orders.
  - (b) That pending the hearing and determination of the application, the Court be pleased to call for the constituent original file, namely, Homa Bay SRM's Succession Cause No. 56 of 1994.
  - (c) That the costs of the application be provided for.



2. The application was premised on the grounds that the Court revoked the Grant issued to the 1<sup>st</sup> petitioner without calling for the original file for perusal to ascertain what was being revoked. The applicants also contended that the ruling sought to be reviewed had not been specified. The aforementioned grounds and others were set out in their respective Supporting Affidavits filed herein by the applicants.
3. The applicants explained that they obtained their titles by way of purchase from the 1<sup>st</sup> respondent, who was the administrator of the estate of the deceased persons. They averred that they were issued with Title Deeds for their respective pieces of land after the administrator of the deceased followed the procedure provided for in the Law of Succession Act. It was therefore their prayer that the impugned ruling dated 12<sup>th</sup> July 2023 that adversely affects their rights be reviewed and set aside in the interest of justice.
4. In his Replying Affidavit, the 1<sup>st</sup> respondent averred that, while applying for Grant, he left out the 2<sup>nd</sup> respondent who is a daughter to the deceased; and that it was on that account that the 2<sup>nd</sup> applicant applied for revocation of Grant. In his view, the Court made a sound decision by way of the impugned ruling, on the basis of which the parties filed a Consent Order dated 12<sup>th</sup> September 2023. The 1<sup>st</sup> respondent pointed out that the documents relied on by the applicants relate to Land Parcel No. Kanyada/Kotieno/Katuma'a/1277 and not the piece of land No. 855 that they claim to have bought from the deceased. They confirmed that the latter property is the subject of the instant Succession matter.
5. A perusal of the file shows that this is in fact a fairly old matter. When it was filed as Succession Cause No. 3 of 2018, it was indicated that it was formerly Homa Bay SRM's Succession Cause No. 56 of 1994. The applicant was John Philip Opiyo Osoro and he sued as the co-representative of the Estate of Joseph Osoro Obuogi (deceased) against the respondent, Joseph Odhiambo Bunde. Several determinations have been made since; the ruling dated 12<sup>th</sup> July 2023 being one of them. The said ruling was in respect of an application for revocation of Grant filed by Margaret Adhiambo Onyanyi (the 2<sup>nd</sup> respondent in the instant application) against Joseph Odhiambo Bunde the 1<sup>st</sup> respondent).
6. The ruling shows that the estate concerned was that of Bunde Odongo in respect of which the 1<sup>st</sup> respondent was the administrator. The 1<sup>st</sup> respondent had alleged that the said Grant was obtained through fraud and concealment of material facts in that the 1<sup>st</sup> respondent failed to include the name of the 2<sup>nd</sup> respondent as one of the beneficiaries of the estate of Bunde Odongo. The Court (Hon. Kiarie Waweru Kiarie) found merit in the application and allowed it. The Grant was annulled and an order made for the two respondents herein to be appointed as co-administrators of the estate of their father.
7. The parties were to file a Schedule of Distribution of the estate within 30 days from the date of the ruling. The parties thereafter filed a Consent on distribution which was adopted by the Court on 28<sup>th</sup> September 2023. One of the orders adopted was that Land Parcel No. Kanyada/Kotieno Katuma 'A'/885 was to revert to the name of the deceased persons, Bunde Odongo and Omutu Odongo.
8. The documents attached to the affidavit of the 1<sup>st</sup> respondent confirm that Land Parcel No. Kanyada/Kotieno Katuma/2511 is a subdivision from Parcel No. 885 in respect of which there is an appeal pending between the 1<sup>st</sup> respondent and John Phelix Opiyo Osoro, Omondi Osoro and Odongo Osoro. The three individuals are the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants in the instant application. It is also apparent from the ruling delivered in the appeal, namely Homa Bay ELCA No. E017 of 2022 dated 4<sup>th</sup> March 2025 that the issues revolve around the applicant's claim to title of the suit property.



9. In the premises, and without going to the merits of the application, it is my finding that the instant application is untenable in so far as third party purchasers have now approached the Court for review as opposed to the primary beneficiaries. It is now settled that claims to title in respect of deceased persons are best ventilated elsewhere rather than before a probate court. This was well articulated by Hon. Musyoka, J. *In Re Estate of Stone Kathuli Muinde (Deceased)* 2016 eKLR thus:
27. With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.
28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.
29. It is the failure to observe the foregoing, and allowing non-survivors or beneficiaries of the estate to prove their claims against the estate within the probate court that has often made succession causes complex, unwieldy and endless. It is by the same token that it had become necessary for the court to allow joinder of persons to the succession cause who ideally ought not to be party to the cause in the first place.
10. I am entirely in agreement with the aforestated exposition. It is my finding that since the parties are already canvassing their grievances before the Environment and Land Court, which is the Court with jurisdiction to determine their dispute, the application dated 18<sup>th</sup> October 2024 is misconceived and is hereby struck out with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**

.....

**OLGA SEWE**

**JUDGE**

