



**In re Estate of Ngoniole Shikhole Makamu (Deceased) (Succession Cause
379 of 2006) [2026] KEHC 386 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 379 OF 2006**

S MBUNGI, J

JANUARY 22, 2026

IN THE MATTER OF THE ESTATE OF N S M (DECEASED)

BETWEEN

OLIVIA KHAMALI MAKAMU PETITIONER

AND

MILDRED MUHONJA KANJI RESPONDENT

RULING

1. The applicant filed a summons under section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules seeking the following orders;
 - a. That this application be certified urgent and heard ex parte in the 1st instance. (spent)
 - b. That the Honourable court be pleased to issue a temporary injunction restraining the respondent either in person or through her mother, E M J, relatives, workers, local administration, or any other person acting under her instructions from constructing, fencing, cutting down trees, harassing or evicting other beneficiaries including purchasers, or in any other manner whatsoever committing acts of waste on the deceased's estate which comprise of land parcel No. Isukha/Virhembe/571 pending the hearing and determination of this cause.
 - c. That the status quo prevailing as at the time of filing of this cause be maintained pending the hearing and determination of this cause
 - d. Costs be provided for.
2. The application was premised on the grounds and the supporting affidavit sworn by the applicant on the same day, where she avers that she is the co-administrix to the estate and that the respondent and her mother, who have been occupying a portion of the estate, have allocated themselves another portion



- and are in the process of constructing new houses and are threatening other beneficiaries who brought their shares from the deceased on the claim that the title was cancelled when the grant was revoked.
3. She contends that the respondent's actions are uncalled for and a risk to the public order, and that the respondent is acting unprovoked and with disregard for the legal process.
 4. In response to the application, the respondent filed her replying affidavit dated 31st December 2025, where she denied being in occupation and use of the portion of the land or having allocated themselves another portion of land or carrying out construction of new houses.
 5. She denied the allegation that the deceased had sold off a part of the estate, claiming that the deceased had no liability, claiming that the said liability bought the portion from the applicant and as such, they are strangers to the estate and their portion is illegal, and the subdivision should be nullified.
 6. She denied being in breach of peace, claiming that the applicant and the illegal purchasers who caused havoc, and prays that the land parcels be reverted to the name of the deceased.
 7. She prays that the application be dismissed for lack of merit.
 8. At the time of writing this judgment, none of the parties had filed their submissions.

Analysis and determination.

9. I have considered the summons dated 21st February 2025 together with the supporting affidavit. I have also considered the replying affidavit sworn by the respondent on 31st December 2025.
10. The main issue for determination is whether the applicant has met the threshold for the grant of a temporary injunction and preservation orders over the estate property, Land Parcel No. Isukha/Virhembe/571, pending the hearing and determination of the succession cause.
11. The court is guided by the principles set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, as restated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, in determining interlocutory injunctions the main elements to be determined are that there has to be a prima facie case with a probability of success; likelihood of irreparable harm; and, the balance of convenience.
12. The first issue for determination is whether the applicant has established a prima facie case. The applicant has stated that she is the co-administratrix of the estate and that the respondent, together with her mother, has unlawfully allocated herself an additional portion of the estate land and commenced construction of new houses while threatening other beneficiaries and alleged purchasers. The applicant further avers that these acts are being carried out in disregard of the court process and pose a risk to public order.
13. The respondent, on the other hand, denies occupying or developing any additional portion of the land and disputes the existence of purchasers, asserting that any purported sale did not involve the deceased and that such purchasers are strangers to the estate. She further contends that it is the applicant and the alleged purchasers who have caused disturbances and prays for reversion of the land to the name of the deceased.
14. It is not in dispute that some of the claims raised by the parties cannot be dealt with at this interlocutory stage; however, what is clear is that the estate of the deceased remains undistributed and is still under the control of administrators. Section 45(1) of the *Law of Succession Act* expressly prohibits any person from taking possession of, disposing of, or otherwise intermeddling with the free property of a deceased person without authority of law.



15. The Court of Appeal in *Gitau & 2 Others v Wandai & 5 Others* [1989] KLR 231 was categorical that any unauthorised dealing with estate property, whether by beneficiaries or third parties, amounts to intermeddling and is prohibited. Similarly, in *Re Estate of M'Ngarithi M'Miriti (Deceased)* [2017] eKLR, the court held that construction and subdivision of estate land prior to confirmation of the grant constitutes unlawful intermeddling.
16. In the present case, the respondent's denial notwithstanding, the allegations of construction, fencing, threats, and interference with other beneficiaries signal a real risk of intermeddling and wastage of estate property. This court is persuaded that the applicant has demonstrated an arguable case warranting the court's intervention to preserve the estate pending a full hearing.
17. On irreparable harm, the court is satisfied that continued developments, fencing, or alteration of the estate land may permanently change the character of the property and complicate eventual distribution. In *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR, the court emphasised that the primary duty of a succession court is preservation of the estate, as damages are often an inadequate remedy where land and family interests are concerned.
18. On the balance of convenience, the scales tilt in favour of preserving the estate as it is before the distribution of the estate, hence granting of the injunction and maintain status quo will not determine ownership, but it will safeguard the property for the benefit of all beneficiaries pending determination of the cause. This approach accords with the court's inherent jurisdiction under Rule 73 of the Probate and Administration Rules and the wide discretion donated by Section 47 of the [Law of Succession Act](#).
19. In the circumstances, I am satisfied that the applicant has met the threshold for the grant of temporary injunctive and preservation orders.
20. Consequently, I make the following orders:
 - a) A temporary injunction is hereby issued restraining the respondent, whether by herself, her mother E M J, relatives, workers, local administration, or any other person acting under her authority, from constructing, fencing, cutting trees, harassing or evicting beneficiaries or alleged purchasers, or in any other manner committing acts of waste on Land Parcel No. Isukha/Virhembe/571, pending the hearing and determination of this succession cause.
 - b) The status quo prevailing as at the time of filing this cause shall be maintained pending the hearing and determination of this cause.
 - c) Any party found to be intermeddling with the estate contrary to Section 45 of the [Law of Succession Act](#) shall be liable to appropriate sanctions.
 - d) Costs of this application shall be in the cause
21. Right of Appeal 30 days Explained.
22. Hearing on main cause on 30.7.2026.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 22ND DAY OF JANUARY, 2026.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a/Nekesa



Mr. Shaka for Everlyne, present.

Mr. Munyendo for Oliver , present.

Parties, present.

