



REPUBLIC OF KENYA



**In re Estate of Wilson Oduor Wamacal (Deceased) (Succession Cause
179 of 2011) [2026] KEHC 1673 (KLR) (16 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 179 OF 2011
WM MUSYOKA, J
FEBRUARY 16, 2026**

IN THE MATTER OF THE ESTATE OF WILSON ODUOR WAMACAL (DECEASED)

RULING

1. There are 2 applications to be determined. One is dated 17th September 2020, and the other 29th September 2020. I shall discuss the 2 in turn.
2. That dated 17th September 2020 is by the administrator, Andrew Ochola Oduor. He seeks 3 principal orders: an injunction to restrain Javan Wesonga Abban, from evicting Mary Weyanga Oduor, Ayub Tawa and any other member of the family from East Wanga/Isongo/2651, or any other purported illegal subdivision, to wit East Wanga/Isongo/3666; that all the subdivisions of East Wanga/Isongo/2651, being East Wanga/Isongo/3665 and 3666, be cancelled, and restored to East Wanga/Isongo/2651; and the Kakamega Land Registrar be directed to effect the order.
3. In the affidavit in support, sworn by Andrew Ochola Oduor, the administrator, it is averred that when he sought transmission of the estate, he established that East Wanga/Isongo/2651 had been subdivided, and the register/file closed, and new titles issued. That was done 5 years after the death of the deceased. The subdivision was supposedly done in execution of orders made in Kakamega CMC Award East Wanga/Isongo/3666No. 41 of 2006. He argues that the tribunal lacked jurisdiction to order subdivision of the title, and the subordinate court adopted illegal orders, which ought not have been enforced. He further argues that there was sanitization of an illegal process.
4. The respondent, Javan Wesonga Abban, filed a reply to the application. He claims that the deceased had sold to his father 3 acres out of East Wanga/Isongo/1249. After the purchase, his father settled on the land. He claims that the deceased tried to defeat his father's rights, by selling the 3 acres to Harrison Kodia, and caused East Wanga/Isongo/1249, to be subdivided into East Wanga/Isongo/2651 and 2652. East Wanga/Isongo/1251 was retained in the name of the deceased, while East Wanga/Isongo/1252 was registered in the name of Harrison Kodia, who tried to evict the family of the respondent from the land, leading to the filing of the Tribunal matter, being No. 5 of 2005. The Tribunal ordered that Harrison Kodia move out of East Wanga/Isongo/1252, and leave it to the father of the respondent, and that he, Harrison Kodia, should be given East Wanga/Isongo/1251, instead.



- That award was made a decree of the court, in CMC No. 41 of 2006, but the deceased refused to sign the transfer, hence the decree was issued. That decree was given effect, by the lands' registry, and the process of registration was completed after the deceased had died. The father of the respondent got his title, East Wanga/Isongo/3666, and registered East Wanga/Isongo/3665, in the name of the deceased.
5. The application, dated 29th September 2020, seeks issuance of a fresh grant, to the administrator herein and to Javan Wesonga Abban. It is at the instance of Javan Wesonga Abban. He prays to be given 3 acres out of East Wanga/Isongo/2651, as a liability of the estate, by virtue of the decree in Kakamega CMC Award No. 41 of 2006. His case is that the deceased died before he could transfer to him the 3 acres out of East Wanga/Isongo/2651. He avers that the deceased had done everything to effect transfer, and died before the completion of the process. He would like to be appointed a co-administrator of the estate, to enable him protect his interest in the land.
 6. The administrator, Andrew Ochola Oduor, responded, vide an affidavit that he swore on 12th October 2020. He terms Javan Wesonga Abban an intermeddler, for he had not provided proof of a sale from the deceased. He dismissed the decree of the Tribunal as non-binding.
 7. A viva voce hearing was conducted, on the 2 applications. The hearing happened on 24th June 2021. The administrator called 4 witnesses, while the respondent called 1. The parties did not file written submissions.
 8. There is only 1 issue for me to determine, and that is whether I should allow the applications.
 9. The issues raised, in both applications, turn on ownership of the land. There are allegations of sale of land, before the deceased died on 26th November 2007. There was a dispute at the Tribunal, in 2005. An award was made, which was adopted by the court, in 2006. After obtaining the decree, the respondent moved the lands registry, for his title. The deceased died in 2007, when the process of obtaining the title was ongoing, and the title was eventually issued, after his demise. The respondent, therefore, has title to the land, and it is that title that the administrator is challenging. He would like the respondent restrained from utilising the land, and evicting the family of the deceased from the land, and the title deed, issued to the respondent, cancelled, and reverted to the estate.
 10. The dispute turns on ownership of land, as indicated above. It is about how the land was bought, a decree passed on it by a court, and registration done thereafter. I am being invited to cancel that title, after determining the ownership dispute. The dispute is between the estate and a third party. I had occasion, in *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] KEHC 8289 (KLR) (Musyoka, J) and *In re Estate of Mbai Wainaina (Deceased)* [2015] eKLR (Musyoka, J), to rule that jurisdiction over such disputes lie with the Environment and Land Court. That is where the dispute herein should have been filed. Similar sentiments were expressed in *In re Estate of Thenge Kang'ethe (Deceased)* [2025] KEHC 4102 (KLR) (Githua, J). The High Court has no jurisdiction over the issue.
 11. On the revocation application, the respondent argues that the administrator has failed in his duties, under section 83(e) of the *Law of Succession Act*. He says that the administrator had not acknowledged him as a liability, and given to him his 3 acres.
 12. There are 2 issues arising. Firstly, the 3 acres the respondent claims are not in any way assets in the name of the deceased, but are registered in the name of the respondent. The issue of the administrator failing to transfer the 3 acres does not arise. He got a court order, awarding him the 3 acres, which order he had enforced, a title was processed and issued to him, albeit after the demise of the deceased. In the circumstances, there would be nothing for the administrator to transfer to him. It is the same 3 acres that the administrator would like reverted to the estate. The process, of the registration of the 3 acres, in the name of the respondent, started before or preceded the demise of the deceased.



13. The second issue is that that sale happened between the father of the respondent and the deceased. The respondent did not buy the 3 acres that he claims. He is claiming what was bought by a dead person. As stated, in *Ibrahim vs. Hassan & Charles Kimenyi Macharia*, Interested Party [2019] eKLR [2019] KEHC 10121 (KLR), he would require to take out representation to the estate of his father, to be clothed with the requisite authority, to enable him claim the 3 acres, on behalf of his father, if he has to.
14. Thirdly, the respondent seeks to co-administer the estate with the administrator herein. Yet, he does not claim to be a child of the deceased. He does not claim as a child, but as a creditor. Under section 66 of the *Law of Succession Act*, Cap 160, Laws of Kenya, children have a prior right to administration, over creditors. A child ought not be forced, by a creditor, to share administration. A case has to be made out, for a joint administration to be ordered in the circumstances. I am not persuaded that such a case has been made out herein, for the reasons that ought to be clear, from the preceding paragraphs.
15. In view of everything said above, I do not find merit, in the 2 applications. They are for dismissal, and I do hereby dismiss the same. Each party shall bear their own costs. Any party aggrieved, by the dismissal order, has leave, to challenge the order at the Court of Appeal. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 16TH DAY OF FEBRUARY 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Munyendo, instructed by Oscar Wachilonga & Associates, Advocates for Mr. Andrew Ochola Oduor, the administrator.

Ms. Khatshi, instructed by Itaya & Company, Advocates for Javan Wesonga Abban, the respondent.

