

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISII
ELCLC NO.E011 OF 2025

JOHN PAUL ONDIEKI (Suing as the Personal Representative of the Estate of the late Stephen Ondiek) PLAINTIFF

VERSUS

CORNCELLIA AOKO OMUGA DEFENDANT

RULING

1. The plaintiff commenced this suit through a plaint filed on He sues as the legal representative of the estate of the late Stephen Ondiek (deceased). In the plaint, he has described the defendant as the 7th wife of the deceased and he claims that she has fraudulently caused the land parcel Central Kitutu/Daraja Mbili/246, which was in the name of the deceased, to be transferred to her, and further that she has caused a new title deed to be issued to her reading Central Kitutu/Daraja Mbili/4225. The plaintiff contends that this was illegal as no succession had been conducted and the beneficiaries of the estate of the deceased were excluded. In the plaint, the plaintiff seeks a declaration that it is the estate of Stephen Ondiek (deceased) which is the lawful proprietor of the land parcel Central Kitutu/Daraja Mbili/246 (parcel No. 246) ; an order to cancel the title deed Central Kitutu/Daraja Mbili/4225 (parcel No. 4225) which resulted from subdivision of the parcel No. 246; an order cancelling all title deeds emanating from subdivision of the parcel No. 246; general damages for trespass; and costs of the suit. When he filed the suit, he annexed a limited grant of letters of administration ad litem issued to him on 15 August 2024 in the suit Kisii Chief Magistrates' Court, Misc. Succession Cause No. E086 of 2024, In The Matter of the Estate of Stephen Ondiek (deceased).
2. The defendant filed defence. She contended that she is the only surviving widow of the deceased. She denied the allegations of fraud though she admitted being issued with a title deed to the land parcel Central Kitutu/Daraja Mbili/4225. She otherwise traversed all the claims in the plaint. In her list of documents, she annexed a Certificate of Confirmation of Grant issued on "14 day of 2022" in "Rongo High Court (sic)

Succession Cause No. 247 of 2012”. That grant shows that it was issued to “Evans Owino Ondiek, Willis Ouma Ondiek and Dr. Conciliah Ondiek alias Concellia Aoko Omuga.”

3. When the matter came before me on 8 October 2025, I wondered how come there were two grants issued in respect of the Estate of the deceased and asked the parties to file affidavits to that effect. I could not see how two persons can purport to represent the estate of one deceased person and I thought that this goes to the root of the case since without capacity one cannot file suit on behalf of the Estate of a deceased person.
4. The plaintiff filed an affidavit sworn on 14 October 2025, wherein he deposed that the grant annexed by the defendant which was issued in Rongo Principal Magistrates’ Court Succession Cause No. 247 of 2012, was revoked by the High Court in Homa Bay in Succession Cause No. 76 of 2013. He annexed an order issued on 3 March 2014 to that effect. He deposed that there was no existing grant of representation before he obtained a grant ad litem to commence this suit. He also annexed an affidavit sworn by Davis Odero Osiemo advocate, who confirmed the revocation of this grant, and further deposed that on 3 December 2024, the High Court at Nairobi (Chemitei J), appointed Milcah Ondiek, John Paul Ondiek, and Eng. John Odawa, as administrators of the estate of the deceased. There is attached a grant issued on 3 December 2024 in Nairobi High Court, Succession Cause No. 44 of 2012, In the Matter of the Estate of Archbishop Ondiek Oluoch (deceased). That grant shows that it is issued to the plaintiff herein and Milcah Ondiek and John Michael Odawa Ondiek.
5. The defendant filed an affidavit of her own, sworn on 14 November 2025. She asserts that the grant issued on 14 September 2012, in Rongo Succession Cause No. 247 of 2012 is still valid and has never been revoked. She contends inter alia that the grant ad litem annexed with the plaint is a forgery; and that there was a dismissal of a suit filed by the plaintiff being ELC 024/2025 Ukwala Law Court , based on the validity of the grant relied upon by the plaintiff.
6. I have considered the above. It is the court which raised the issue of locus based on the allegation of the defendant that she is the one who holds a grant of letters of administration for the estate of the deceased. At this point in time, I doubt if the defendant has any valid grant to the estate of the deceased. This is because from the material presented, I see that the grant issued by the Rongo Magistrates’ Court in Rongo Succession Cause No. 247 of 2012 was revoked by the High Court in Homa Bay, in the case Homa Bay High Court, Succession Cause No. 76 of 2013. I have seen the order dated 3 March 2014 revoking that grant. I am also persuaded, prima facie, subject to

being convinced otherwise at the hearing, that the plaintiff obtained a grant ad litem issued on 15 August 2024 in the suit Kisii Chief Magistrates' Court, Misc. Succession Cause No. E086 of 2024, in the Matter of the Estate of Stephen Ondiek (deceased). I have however seen that on 3 December 2024, a full grant was made to Milcah Ondiek, John Paul Ondiek (plaintiff herein), and John Michael Odawa Ondiek. This grant came after the grant ad litem issued on 15 August 2024. Once there is a full grant issued, a grant ad litem is overtaken and becomes obsolete. Well, in the circumstances herein, I see no issue, because one of the holders of the full grant is the plaintiff, and with that, prima facie, subject to being convinced otherwise at a later stage, that would give him capacity to file suit on behalf of the estate of the deceased.

7. I am alive to the fact that the defendant annexed a ruling delivered in Ukwala Magistrates' Court, which struck off a suit by the plaintiff on doubt that the plaintiff had capacity. I have seen the ruling. First, it is of a subordinate court which does not bind this court at all. Secondly, I have serious doubts on the reasoning in that ruling. I say no more.
8. From the foregoing, it is my finding that, on the face of it, prima facie, the plaintiff had capacity to commence this suit. I see no issue on his capacity to file suit, at least at this stage of the proceedings, subject to being convinced otherwise at a later stage.
9. Orders accordingly.

DATED AND DELIVERED THIS 19 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Ndichu h/b for Mr. Mainga for the plaintiff

Defendant acting in person – Absent

Court Assistant – Michael Oyuko