



REPUBLIC OF KENYA



**In re Estate of Muluka (Deceased) (Succession Cause 441 of 2004)
[2026] KEHC 2397 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 441 OF 2004**

AC BETT, J

FEBRUARY 20, 2026

IN THE MATTER OF THE ESTATE OF NOM OKARO MULUKA (DECEASED)

BETWEEN

BILHA OLINGO MULUKA 1ST APPLICANT

SOPHIE AKOLA MULUKA 2ND APPLICANT

JUDITH AYUMA MULUKA 3RD APPLICANT

AND

JOSEPH MARTIN MULUKA RESPONDENT

RULING

1. The Applicants are Administrators of the estate of the deceased herein. They were issued with a Grant of Letters of Administration intestate on 18th October 2022, which was confirmed on the same day.
2. According to the Certificate of Confirmation of Grant, the five beneficiaries were to inherit an equal share of the three properties comprised in the estate of the deceased. At the same time, Bilha Olingo Muluka would have a life interest over each property.
3. On 20th June 2023, the Administrators filed an application in which they cited the Respondent Joseph Martin Muluka, a beneficiary of the estate, as an intermeddler for unilaterally allocating himself a portion of the estate, among other acts. It was the Administrators' case that the Respondent had encroached on the portion traditionally reserved for the firstborn.
4. In a ruling dated 11th March 2024, the court issued a mandatory injunction directing the Respondent to remove any demarcations or boundaries he had erected on L.R. No. Butso/Esumeiya/241, remove any locks on the deceased's homes or other buildings and to make good any property of the estate that he had interfered with. He was also restrained from entering or remaining on the said parcel



- of land or any other property forming part of the deceased's estate. The court further directed the Administrators to proceed with the distribution of the estate and complete the exercise within 90 days.
5. On the same date of 5th April 2024, the Respondent, who had filed a Notice of Appeal against the ruling dated 11th March 2024, sought orders of stay of execution of the orders emanating from the said ruling. The said application was dismissed on 29th April 2025.
 6. Thereafter, the Administrators filed an application dated 18th June 2025 in which they made the following prayers:-
 - a. That this Honourable Court do make a pronouncement that the Petitioners/Applicants as appointed Administrators of the deceased's estate execute their mandate on behalf of the court which at every instance remains responsible for administration of the estate.
 - b. That in a ruling delivered on 11/3/24, the court made a pronouncement that indeed the Respondent had intermeddled in the administration of the deceased's estate.
 - c. That in a further ruling delivered on 29/4/24, the Honourable Court dismissed the application by the petitioner seeking stay of the orders of 11/3/24, pending an intended appeal.
 - d. That this Honourable Court do find and pronounce the administrators have largely completed administration of the estate, subject to filing of the requisite completion certificate; and that any issues that may arise or that may remain to be arbitrated in respect of the manner of distribution of the estate can only be addressed by this Honourable Court.
 - e. Costs be in the cause.
 7. The application is premised on the grounds set out on the face of it and an affidavit sworn on 18th June 2025 by Sophie Akola Muluka. The application stems from actions taken by the Respondent who is alleged to have lodged a complaint with the police to the effect that the Administrators are privy to the demolition and removal of a house he was construction on part of L.R. No. BUTSOTSO/ESUMEIYA/241, which forms part of the estate of the deceased, which culminated in the Administrators being summoned by a detective to answer questions on an alleged offence of malicious damage to property contrary to Section 339 of the Penal Code.
 8. It is the 2nd Administrator's averment that the complaint by the Respondent has resulted in incessant summons of the Administrators from the police, which the Administrators consider harassment, as they removed the offending structures in their capacity as Administrators.
 9. The application was canvassed through written submissions.

Analysis and Determination

10. From the parties' submissions, I can identify two issues for determination:-
 - a. Whether the Applicants/Administrators acted within the scope of the ruling and order of this Honourable court dated 11th March 2024.
 - b. Whether the Administrators' acts of demolition fall within their lawful authority as Administrators.
 - c. Whether the application has merit.
11. Pursuant to Sections 82 and 85 of the *Law of Succession Act*, the management of the estate of a deceased person vests in the legally appointed personal representative and once the Grant of Letters of



Administration has been confirmed, the administrator's role shifts from merely preserving the estate of the deceased to finalizing its administration.

12. Section 83 mandates the administrator to ascertain and pay all debts, taxes and reasonable expenses of obtaining the Grant and administering the estate and thereafter distribute the remaining assets to the rightful beneficiaries in accordance with the Certificate of Confirmation of Grant, except where there is a continuing trust. The administrator is obligated to complete distribution within six months and to render a full and accurate inventory of the assets and liabilities, and a full and accurate account of all dealings with the estate to the court.
13. The Law of Succession Act does not mandate an administrator to unilaterally demolish structures erected on the deceased's property during the pendency of the Succession Cause without the benefit of a court order authorizing the demolition.
14. The court has to determine whether the order dated 11th March 2024 mandated the Administrators to demolish the Respondent's house.
15. The Respondent avers that he constructed the house on a portion of land allocated to him around early 2023, which was before the application dated 19th June 2023 was filed. The said application culminated in the order dated 11th March 2024. Conversely, the 2nd Administrator avers that the Respondent did not have any consent to erect any structures on title No. L.R. No. Butso/Esimeiya/241 and refers the court to the orders of temporary injunction issued by the court on 19th June 2023, which state as follows:-

“In view of the foregoing, I hereby proceed to make the following order;

A mandatory injunction do hereby issue directing the Respondent to remove any demarcations, boundaries he has erected on parcel No. Butso/Esimeiya/241 and remove any locks from the building and to make good any property of the estate that he has interfered with.”

16. It follows that by 19th June 2023, there was a mandatory injunction directing the Respondent to remove offending demarcations, boundaries and structures from the subject parcel of land. The ruling dated 11th March 2024 only confirmed the order.
17. While the Administrators argue that the order permitted them to pull down the Respondent's building since he refused to do so despite being served with notice from Counsel, the Respondent contends that the ordinary, contextual and purposive interpretation of the terms of the order excludes the demolition of a dwelling place. He argues that the words, “demarcations” and “boundaries” are merely descriptive of boundary markers such as fences, beacons, hedges or survey pegs erected for purposes of delineating portions of land and that it could never have been the court's intention to have a “fully constructed family house” which existed long before the ruling and built with the consent of the 1st Administrator before she was taken ill.
18. The order dated 11th March 2024 was as follows:-
 - “(a) A mandatory injunction do hereby issue directing the respondent to remove any demarcations, boundaries he has erected on parcel no. Butso/Esimeiya/241 and to remove any locks on the deceased's home or other buildings and to make good any property of the estate that he has interfered with.



- (b) The Respondent, by himself, his workmen, servants or hirelings, is hereby restrained from entering, remaining, or carrying out any developments on the whole of that parcel of land known as Title No. Butso/Esimeiya/241 or any other property forming part of the deceased's estate or from collecting any rent from any premises forming part of the estate or from interfering with the estate in any manner.
- (c) The 1st, 2nd and 3rd Administrators are hereby ordered to proceed to distribute the estate and complete this exercise within the next 90 days.
- (d) This matter will be mentioned on a date to be given during the delivery of the Ruling to confirm compliance with all the aforesaid orders.”

19. The order appears express and simple and should not have led to the present dispute except for the interpretation of the phrase “make good any property of the estate he has interfered with”.

20. It is not in dispute that the Respondent erected a building on the subject property that is part of the deceased estate during the pendency of the succession proceedings, and having done so, was found to have intermeddled in the estate. The Respondent did not appeal against the said ruling, and he can therefore not go back and ask the court to make a fresh finding that he had been granted consent to build on the land. In making this finding, I am guided by the contents of Page 6 Paragraph 14 of the ruling where the learned Judge stated:-

“The respondent by purporting to sub-divide the Title No. Butso/Esimeiya/241, by constructing on the same, by collecting rentals, disposing of livestock and seeking to forcefully occupy the widow’s house, all constitute acts of intermeddling within the context of the aforesaid decision.”

21. Regarding the interpretation of the Order, the term ‘make good’, in reference to a constructed house, can be interpreted to mean to demolish or remove the house to restore the land to its original state, since it requires the person to remedy the wrongful action, effectively reversing the intermeddling.

22. Previously, the court found the Respondent to have intermeddled with the estate of the deceased, hence the issuance of the mandatory injunction. The mandatory injunction placed the Respondent under an obligation to remove the buildings that he was held to have erected on the land. The Respondent acted in defiance of the court. His defiance did not entitle the Administrators to demolish the building in the absence of a specific order of eviction or demolition. The Administrators ought to have moved the court through contempt proceedings or an application to the court to authorize a Court Bailiff to demolish the buildings pursuant to Order 21 Rule 28 of the Civil Procedure Rules.

23. As much as the Administrators are mandated to protect the estate, they cannot execute a mandatory injunction except through the Court Bailiff or the Police. In *Republic v. Ruth Wanjiru Njiraina & 4 others* [2014] eKLR, the Court observed that where a party has a favourable judgement, he must abide by the law and follow due process in execution, to allow otherwise would be to engender chaos in the administration of justice, as private citizens would seek to resolve disputes individually, the risk of breaching the peace.

24. Although the Administrators acted unprocedurally in demolishing the Respondent's house, their actions were premised on the judicial decision that held that the Respondent was an intermeddler and directed him to rectify the situation. In doing so, they aver that they acted in good faith, and I find their explanation reasonable in the circumstances. To allow criminal proceedings for malicious



- damage against the administrators who were acting in pursuit of their quest to distribute the estate in conformity with the Certificate of Letters of Administration within the time set by the court would be to allow the Respondent to abuse the process of the court.
25. The Respondent wants the court to find that the demolition of his house was malicious and unlawful, and for orders of compensation and/or mesne profits for the destruction of his house. He also wants the court to find that the Administrators acted in contempt of the court order dated 11th March 2024. The Respondent seeks the aforesaid orders, despite not having filed any application, as the application before the court is the Administrators' application.
26. Whereas Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules grant courts extensive discretion to make such orders as may be expedient for the management and protection of the estate of a deceased person, it is trite that orders are not made in vacuo. Moreover, the court notes that the Respondent was declared an intermeddler and, having defied the mandatory injunction, does not have clean hands. The court has a duty to ensure that its process is safeguarded. The Respondent cannot be allowed to employ the criminal process to intimidate and punish the Administrators who were acting in good faith in an attempt to enforce the order that he failed to obey.
27. In his replying affidavit, the Respondent has disputed the Administrators' claim that the distribution is largely complete. On their part, the Administrators did not furnish any evidence to prove their claim that they have largely completed the administration of the estate. The estate comprised three parcels of land, namely LR. No. Butsotso/Esumeiya/241, E.wanga/Isongo/916 and Butsotso/Esumeiya/2043. It is also apparent that the estate owns some rental properties. The Administrators ought to have adduced evidence of the extent to which the implementation of the confirmed Grant has progressed. This would assist the court in determining to what extent the estate has been distributed, as the phrase 'distributed' is not indicative of the extent. If the delay in finalization is due to the Respondent's recalcitrance, then the Administrators should take the necessary steps to enable them execute the transmission documents as the estate should not remain in limbo long after the Grant has been confirmed.
28. Accordingly, I make the following orders:-
- (a) That despite finding that the Administrators overstepped their mandate in demolishing the Respondent's house, they did so in good faith and in an attempt to execute their mandate to protect, preserve and distribute the estate.
 - (b) That the Administrators are not liable in criminal law for the demolition of the Respondent's house.
 - (c) That the Administrators do file an affidavit and a statement of accounts in relation to their management and distribution of the estate within 30 days.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 20TH DAY OF FEBRUARY 2026.

A. C. BETT

JUDGE

In the presence of:

Ms. Nekesa holding brief for Mr. Wasilwa for the Administrators

Mr. Egonza holding brief for Mr. K'ounah for the Objector

Court Assistant: Polycap

