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HCFP&A E013 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCFP&A E013 OF 2025

**IN THE MATTER OF THE ESTATE OF
CHRISANTUS NYAGETARI MANGERA (DECEASED)**

BETWEEN
THOMAS MANGERA NYAGETARI
APPLICANT
AND
GEORGE NYAGETARI1ST
RESPONDENT
BOCHABERI NYAGETARI.....2ND
RESPONDENT
KEPHA NYAGETARI.....3RD
RESPONDENT
DANIEL NYAGETARI.....4TH
RESPONDENT
RICHARD NYAGETARI.....5TH
RESPONDENT
LUCY NYAGETARI.....6TH
RESPONDENT
BONARERI NYAGETARI 7TH
RESPONDENT

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Introduction

1. Before Court for determination is the Chamber Summons dated 31st July 2025, filed by the Applicant, Thomas Mangera Nyagetari. The application is expressed to be brought under Sections 45 and 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law.

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2. The Applicant seeks the following substantive orders:
- 1) An order restraining the Respondents, their agents or any other persons from constructing houses, felling trees, demarcating land, destroying beacons or in any way interfering with administration or management of the deceased's properties known as: a) North Mugirango/Magwagwa I/1625 b) North Mugirango/Magwagwa I/1629 c) North Mugirango/Magwagwa II/558
 - 2) An order compelling the Respondents to produce a full and accurate inventory and render accounts of all activities and alleged illegal sales relating to the above properties from 09th May 2024.
 - 3) An order directing that all proceeds from any sale, lease or commercial activity on the said properties be deposited in Court.
 - 4) A declaration that the Respondents have intermeddled with the estate contrary to Section 45 of the Law of Succession Act.
 - 5) Costs of the application.
3. The application is supported by the affidavit sworn by the Applicant, Thomas Mangera Nyagetari, on 31st July 2025 and a further affidavit sworn on 06th October 2025. In the said

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affidavits, the Applicant depones that he is a son of the deceased and a beneficiary of the estate, and that following the death of the deceased on 09th May 2024, the Respondents commenced dealings with the estate property without his involvement or consent.

4. The Applicant avers that the Respondents have, without authority of law or grant of representation, interfered with the deceased's properties known as North Mugirango/Magwagwa I/1625, North Mugirango/Magwagwa I/1629 and North Mugirango/Magwagwa II/558 by constructing houses thereon, leasing out portions, felling trees, altering boundaries and excluding other alleged beneficiaries from access and management of the estate.
5. The Applicant further depones that the Respondents have failed to render accounts of their dealings with the estate and have engaged in alleged illegal sales and commercial activities to the detriment of the estate. He contends that unless restrained by the Court, the Respondents will continue to waste and dissipate the estate property, thereby prejudicing the interests of the beneficiaries.
6. In support of his claim of beneficiary status and customary recognition, the Applicant relies on the affidavits sworn by David Nyangau and Tom Mangera Maraga on 07th October

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2025, who depone to the family history of the deceased, the Applicant's lineage, and his participation in burial rites and clan processes following the death of the deceased.

7. The application is opposed by the Respondents, who are the admitted children of the deceased, through a Replying Affidavit sworn by Kefah Arwonga Nyagetari, the 3rd Respondent, on 08th September 2025, on his own behalf and on behalf of the other Respondents. In the said affidavit, the deponent denies that the Applicant is a child or beneficiary of the deceased and avers that the deceased was married under a monogamous Christian marriage and was survived only by the Respondents as his lawful children.
8. The deponent further avers that the Applicant has not demonstrated paternity or dependency within the meaning of the Law of Succession Act and contends that affidavits by third parties and letters from local administration are insufficient to establish beneficiary status. He also depones that the Applicant lacks locus standi to institute the present application, having not obtained any Grant of Letters of Administration, whether full or limited.
9. In response to the allegations of intermeddling, the deponent denies that the Respondents have unlawfully dealt with the estate property and avers that no evidence has been placed

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before Court to demonstrate acts of construction, leasing, sale, felling of trees, destruction of beacons or wastage of the deceased's property. The deponent maintains that the application is misconceived, incompetent and an abuse of the process of the Court, and urges its dismissal.

Submissions

Applicant's submissions

10. In support of the application, the Applicant filed written submissions dated 29th January 2026. Counsel reiterated the contents of the Chamber Summons dated 31st July 2025, the supporting affidavit sworn on even date and the further affidavit sworn on 06th October 2025. It was submitted that the deceased was polygamous and had contracted two marriages under Abagusii customary law, and that the Applicant and his siblings from the first house were lawful beneficiaries of the estate.

11. With reference to the affidavits sworn by David Nyangau and Tom Mangera Maraga on 07th October 2025, both described as elders and clan members conversant with Abagusii customs. It was submitted that the performance of burial rites and grave-breaking by the Applicant and his eldest son constituted strong customary evidence of recognised lineage and beneficiary status.

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12. On the issue of intermeddling, Counsel submitted that the Respondents' acts of constructing houses, leasing out portions of land, felling trees, interfering with boundaries and excluding other alleged beneficiaries amounted to intermeddling contrary to Section 45 of the Law of Succession Act.
13. The Applicant cited and relied on **JKK v RKO (Civil Appeal E025 of 2024) [2024] KEHC 17156 (KLR), Veronica Njoki Wakagoto (Deceased) [2013] eKLR** and **In re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR**, urging the Court to issue preservative and injunctive orders to safeguard the estate pending determination of the succession cause.

Respondents' submissions

14. The Respondents filed written submissions dated 30th January 2026. It was submitted that the deceased contracted only one monogamous Christian marriage to Teresa Kwamboka Nyagetari and that the Respondents are the only lawful children and heirs of the estate. Counsel also submitted that the Applicant is a stranger to the estate, has not proved paternity or dependency within the meaning of Section 29 of the Law of Succession Act, and deliberately failed to disclose the Respondents when filing the succession cause.

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15. On locus standi, it was submitted that the Applicant had no grant of letters of administration, whether full or limited, and therefore lacked capacity to institute the application or seek injunctive relief. Counsel relied on **Isaya Masira Momanyi v Daniel Omwoyo & Another [2017] eKLR, In re Estate of James George Maruti (Deceased) [2021] eKLR, Ronald Ondabu Bigogo & 2 others v Kennedy Kenyanza Bigogo & another [2016] eKLR** and **Esso Kenya Ltd v Mark Makwata Okiya [2021] eKLR**, and urged the Court to dismiss the application with costs.

Issues for determination

16. From the pleadings, affidavits and submissions on record, the Court distils the following issues for determination:

- 1) Whether the Applicant has the requisite locus standi to institute and sustain the Chamber Summons dated 31st July 2025**
- 2) Whether the Applicant has met the legal threshold for the grant of injunctive and preservative orders pending determination of the succession cause.**
- 3) Whether, on the material placed before Court, a declaration of intermeddling under Section 45 of the Law of Succession Act is warranted.**
- 4) Who should bear the costs of the application.**

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Analysis and Determination

1) Whether the Applicant has the requisite locus standi

17. The Court has considered the rival submissions by Messrs Bundi & Company Advocates for the Applicant and Messrs Akanga Matende & Company Advocates for the Respondents on the question of locus standi.
18. It is not disputed that as at the time of filing the Chamber Summons dated 31st July 2025, the Applicant had not been issued with any Grant of Letters of Administration, whether full or limited.
19. In **Isaya Masira Momanyi v Daniel Omwoyo & Another** (supra), the Court held that the estate of a deceased person can only be represented in legal proceedings by a person who has been issued with a grant of representation, and that proceedings commenced in the absence of such a grant are null and void ab initio.
20. A similar position was taken in **In re Estate of James George Maruti (Deceased)** (supra), where the Court declined to entertain an application for injunctive relief after finding that the applicant lacked locus standi for want of a

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grant of representation, notwithstanding allegations of interference with the estate.

21. The Applicant relied on **JKK v RKO** (supra), to urge the Court to consider customary law and family recognition. That decision, however, concerned burial rights and the role of customary law in family disputes, and did not deal with locus standi in succession proceedings. It does not therefore displace the binding statutory framework and jurisprudence governing representation of estates.
22. In light of the foregoing authorities and the statutory framework governing representation of estates, the Court finds that the Applicant lacked the requisite locus standi to institute and sustain the Chamber Summons dated 31st July 2025.

2) Whether the Applicant has met the threshold for injunctive and preservative relief

23. The principles governing the grant of injunctive relief were restated in **Esso Kenya Ltd v Mark Makwata Okiya** (supra), where the Court emphasised that an applicant must establish a prima facie case with a probability of success, demonstrate irreparable harm, and show that the balance of convenience tilts in his favour.

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24. The Applicant urged the Court to find that the Respondents' alleged acts of construction, leasing and exclusion amounted to intermeddling warranting injunctive intervention. In support of that argument, reliance was placed on Veronica Njoki Wakagoto (Deceased) (supra) and In re Estate of M'Ngarithi M'Miriti (Deceased)(supra) which address the legal consequences of unauthorised dealings with estate property.
25. Those authorities, however, presuppose the existence of a party properly before the Court with capacity to seek such relief. In light of the Court's finding on locus standi, and without making any definitive findings on the contested facts, the Court declines to grant the injunctive relief sought under this issue.
26. Even on the merits, the allegations of constructing houses, felling trees, demarcating land, destroying beacons or otherwise interfering with the administration or management of parcels North Mugirango/Magwagwa I/1625, I/1629 and II/558 have not been proved to the requisite standard so as to warrant the grant of injunctive or declaratory relief.
27. These disputed factual matters can only be conclusively determined at the hearing of the substantive succession

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cause and do not lend themselves to determination through interlocutory injunctive orders.

3) Whether a declaration of intermeddling is warranted

28. Section 45 of the Law of Succession Act prohibits any person, unless authorised by law or by a grant of representation, from taking possession of, disposing of, or otherwise intermeddling with the free property of a deceased person. The Applicant bears the burden of placing before Court clear, cogent and specific evidence demonstrating such prohibited acts.
29. In Veronica Njoki Wakagoto (Deceased) (supra), the Court underscored that the free property of a deceased person cannot be lawfully dealt with by any person without authority of law, and that such dealings amount to intermeddling. The relevance of that decision lies in its exposition of the legal consequence of unauthorised dealings with estate property.
30. Similarly, in In re Estate of M'Ngarithi M'Miriti (Deceased) (supra), the Court elaborated on the scope of intermeddling, holding that acts such as occupation, leasing, selling, charging or otherwise interfering with estate property without authority fall within the prohibition under Section 45 of the

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Act. That authority is relevant for defining what constitutes intermeddling in law.

31. Applying those principles to the present case, the Court has examined the material relied upon by the Applicant in support of the allegations of constructing houses, felling trees, demarcating land, destroying beacons or otherwise interfering with the administration or management of parcels North Mugirango/Magwagwa I/1625, I/1629 and II/558.
32. The Court finds that the allegations are pleaded in general terms and are supported primarily by contested affidavits. There is no parcel-specific or independent evidence, such as photographs tied to the named parcels, reports from a surveyor or land registrar, valuation reports, administrative confirmations or any other objective material capable of demonstrating, on a balance of probabilities, that the alleged acts occurred.
33. In the absence of such proof, and bearing in mind that a declaration of intermeddling carries serious legal and penal consequences, the Court is not satisfied that the evidentiary threshold required under Section 45 of the Law of Succession Act has been met.

4) Who should bear the costs of the application

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34. Costs ordinarily follow the event unless the Court, for good reason, orders otherwise. This principle is anchored in section 27(1) of the Civil Procedure Act, which vests the Court with discretion on costs while recognising that costs should ordinarily be awarded to the successful party. The Applicant having failed on all the issues for determination, and no reason having been advanced to warrant a departure from that general principle, the Respondents are entitled to the costs of the application.

Disposition

35. In the result, the Court makes the following final orders:
- 1) The Chamber Summons dated 31st July 2025 is hereby dismissed.**
 - 2) The costs of the application shall be borne by the Applicant.**
 - 3) Parties are at liberty to take appropriate steps towards the expeditious determination of the substantive succession cause.**
 - 4) Mention before the DR on 26th March 2026 to confirm gazettelement**

**DELIVERED AT NYAMIRA THIS 05th DAY OF
February 2026**

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WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

For Applicants - Mr. Bundi for Bundi & Company

Advocates

For Respondent - Mr. Marita for Akanga Matende &

Company Advocates