

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT PROBATE AND ADMINISTRATION CAUSE NO.**

**60 OF 2015**

**IN THE MATTER OF THE ESTATE OF KAHUHO WAHOME**

**(DECEASED)**

**HOUSTON MUCHIRI WERU.....**  
**OBJECTOR**

**VERSUS**

**PETER WARUTERE KAHUTO**

**ROSE**

**NYAWIRA**

**MURIITHI....RESPONDENTS/ADMINISTRATORS**

**JUDGEMENT**

1. The Objector in this matter **HOUSTON MUCHIRI WERU** has filed an objection dated **16<sup>th</sup> August 2023** challenging the Summons for Confirmation of Grant dated **14<sup>th</sup> September 2022** as filed by the Respondents/Administrators **PETER WARUTERE KAHUHO and ROSE NYAWIRA MURIITHI.**

2. The objection was canvassed by way of written submissions. The objectors filed the written submissions dated **9<sup>th</sup> November 2025** whilst the Respondents relied on their written submissions dated **11<sup>th</sup> December 2025**.

### **BACKGROUND**

3. This succession cause relates to the estate of the late **KAHUHO WAHOME** (hereinafter '**the Deceased**') who died intestate on **27<sup>th</sup> March 1996**. A copy of the Death Certificate Serial No. **911351** was filed in Court on **26<sup>th</sup> January 2015**.
4. The Deceased was survived by a widow **NELLIA WAMUYU KAHUHO** and several children. The estate of the Deceased comprised only one asset being the parcel of land known as **LR NO. KONYU/ICHUGA/1642** measuring approximately **1.133 Hectares**. (hereinafter the '**Suit land**')
5. Following the demise of the Deceased and pursuant to a consent entered into on **13<sup>th</sup> October 2021** Grant of letters of Administration Intestate were issued in the joint names of the Respondents **Peter Warutere Kahuhu** and **Rose Nyawira Muriithi**.

6. The Administrators then filed a Summons for confirmation of Grant dated **14<sup>th</sup> September 2022** in which it was proposed that **LR NO. Konyu/Ichungu/2587** would be shared out equally between the children of the Deceased. The objector then filed this objection to confirmation of the Grant.
7. The Objector states that he is an innocent purchaser for value. He avers that he was duped by two of the beneficiaries **Peter Warutere Kahuho** and **James Wahome Kahuho** into paying them a sum of over **Kshs 2,600,000** for the purchase of **1.5 acres** out of the suit land. That the two showed him an original title to the suit land emanating from **Nyeri High Court Succession No. 544 of 2009** to persuade the Objector that they had proper authority to sell. The objector believing that said title was clean proceeded to pay the two this amount of **Kshs. 2.6 million.**
8. The Objector states that the parties met and it was agreed that his interest in the suit land would be taken care of during distribution. However no mention has been made of his claim in the mode of distribution as proposed in the summons for

Confirmation of Grant. For this reason the Objector opposes the confirmation of the Grant.

### **ANALYSIS AND DETERMINATION**

9. I have carefully considered this objection, as well as the written submissions filed by both parties. The questions which arise is firstly whether the Objector has locus standi in this matter and secondly whether the objection before the court has merit.

10. On the first issue the question is whether the Objector has

#### **'Locus**

**Standi'**, in this succession cause. The term '**Locus Standi'** is a latin term which literally means "**place of standing**". It refers to the right of a party to be heard in a particular suit.

11. This is a succession Cause. The duty of the Court is to distribute the

estate to the genuine heirs/Beneficiaries of the estate. In a succession cause the parties who have proper locus standi would include the heirs/beneficiaries of the estate as well as any legally recognized creditors of the estate.

12. The Objector herein does not claim to be a beneficiary of the estate.

He has not claimed to be a son and/or relative of the Deceased. The Objector stakes his claim to part of the estate as a “**purchaser**” A purchaser **is not** a beneficiary to an estate and has no right to be considered in the distribution of the estate. As such I find and hold that the Objector has no locus standi in this matter.

13. Having said that I will proceed to consider whether the Objection has

merit. The Objector states that he was duped by **Peter Warutere**

and **James Wahome** both sons of the Deceased into paying them **Kshs 2.6 Million** for the purchase of **1.5 acres** of the estate land. That the two brothers misrepresented to the Objector that they held a confirmed grant in respect of the Deceased’s estate issued under **Nyeri Succession No. 544/2013**. That the two further misrepresented to the Objector that the suit land would be subdivided and portions sold to him. It later transpired that all this was a lie concocted by the two brothers to mislead the objector into giving them

money. No succession cause **No. 544/2012** existed and no grant had ever been issued under that non-existent cause.

14. Whilst the court sympathises with the Objector his remedy does not

does not lie in filing this objection. His remedy lies elsewhere.

15. It must be remembered that this Grant is yet to be confirmed. As such

no party had the legal authority to sell any part of the estate to a third party. The fact that **Peter Warutere** is one of the administrators of the estate **does not** grant him right or authority to sell off any part of the land before confirmation of the Grant. **Section 82** of the **Law of Succession Act Cap 160 Laws of Kenya** sets out the powers of personal representatives to an estate. The proviso to **Section 82** states that

**“no immovable property shall be sold before confirmation of the Grant.”**

16. Therefore notwithstanding the fact that **Peter Warutere** was one of

the administrators of the estate, he had no legal authority to sell any part of the estate as the Grant was yet to be confirmed. **Section 45** of the **Law of Succession Act** provides that

**“45 (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.**

**(2) Any person who contravenes the provisions of this**

**section shall -**

**(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.....”**

17. In **RE ESTATE OF VERONICA NJOKI WAKAGOTO**

**(Deceased) [2013] eKLR Hon. Justice William Musyoka** stated that:-

**“The effect of Section 45 is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence”.**

18. **Section 45** of the Law of Succession Act therefore prohibits any intermeddling with the estate of a Deceased person. Under **Section 45** any form of intermeddling may attract a criminal sanction. As such any purported sale of land before the Grant has been confirmed is null and void.

19. In **Re Estate of M’ Ngarithi M’ Miriti (Deceased) [2017]**

**eKLR**

where the High Court held as follows:-

***”this grant is yet to be confirmed and as such the restriction on distribution of estate’s capital or immovable properties under section 55 and 82(b) (ii) of the Law of Succession Act applies. Accordingly, there is nobody yet with authority to sell the estate property herein to any person including David Gikinda. Accordingly, the sale to or acquisition of the immovable property of the estate by David Gikunda is completely in violation of the law, and therefore null and void. Whatever, the 3<sup>rd</sup> administrator may have attempted to sell is part of the estate to which this proceedings relate and I shall proceed as such. If he is occupation, he shall be evicted forthwith” ....***

20. The objector further objects to the proposed mode of distribution of

the estate on grounds that the same runs contra to a consent entered into between the parties. The Objector states that on **14<sup>th</sup> December 2021** the parties entered into a consent to the effect that the objector’s interests would be

taken into account in distributing the estate. I have carefully and anxiously perused the Court file. The record does not show any consent entered into on **14<sup>th</sup> December 2021**. However on **13<sup>th</sup> October 2021** in the presence of all parties the court did record a consent in the following terms:-

**“(a) That the grant issued on 18/05/2018 is hereby revoked and that two administrators namely Rose Nyawira Muriithi and Peter Warutere Kahuho be appointed and issued with a fresh grant.**

**(b) That the parties including the interested parties to discuss mode of distribution and file an application for confirmation to be filed within 30 days by either of the administrators.**

**(c) Mention on 25/01/2022 to confirm compliance.”**

21. This consent as recorded by the Court **did not** state that the interests of the Objector would be taken into account during

distribution. The parties were only directed to discuss the issue. Thereafter the matter was referred for court Annexed Mediation but no settlement was reached as per the report of the Mediation - Deputy Registrar dated **14<sup>th</sup> March 2025**.

I therefore find that the objectors claim that the mode of distribution goes contrary to a consent entered into between the parties is misleading to say the least.

22. The gist of the matter is that the objector is claiming a portion of the estate land on the basis of having purchased the same. Never mind that the objectors claim is riddled with illegalities, the objector is making his claim before the wrong forum.

23. Matters relating to the ownership use and occupation of land have now under **Article 162** of the **Constitution of Kenya 2010** been mandated to be determined by a specialized court being the **Environment and Land Court ('ELC')**. **Section 13** of the **Environment and Land Court Act** provides for the jurisdiction of that court as follows:-

### **13. Jurisdiction of the Court**

#### **(1) The Court shall have original and appellate**

**jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162(2) (b) of the Constitution, the Court shall have power to hear and determine disputes -**

**(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**

**(b) relating to compulsory acquisition of**

**land;**

**(c) relating to land administration and management;**

**(d) relating to public, private and community land**

**contracts, choses in action or other instruments granting any enforceable interests in land; and**

**(e) any other dispute relating to environment and land. [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1]**

24. Therefore, the correct and proper forum before which the Objector ought to ventilate his claim to the suit property is the **ELC**. The **Environment and Land Court** is the only court exclusively mandated by law to determine the question of '**ownership**' of the suit property.

25. In **RE ESTATE OF STONE KATHUBI MUINDE (Deceased)** [2016] eKLR Hon. Justice William Musyoka held that:-

**“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil**

**process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrate's courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.** (own emphasis)

26. The Applicant is not claiming the suit property as a beneficiary to the estate. He is claiming as a '**purchaser**' an animal not recognized in succession proceedings. He ought to pursue his claim in the **ELC**.
27. Finally I find no merit in this objection. The same is dismissed in its entirety. Cost to be met by the Objector.

**Dated in Nyeri this 13<sup>th</sup> day of March 2026.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

ORIGINAL