



**In re Estate of Chasala (Deceased) (Succession Cause 205 of 2014)
[2026] KEHC 4140 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 205 OF 2014
PJO OTIENO, J
MARCH 25, 2026
IN THE MATTER OF THE ESTATE OF THE
LATE BENINA MWAIZI CHASALA - DECEASED**

BETWEEN

HELLEN MAKUNGU CHESALA ADMINISTRATOR

AND

NIMO ABBAS MOHAMMED 1ST APPLICANT

SAID AMIN MARUK 2ND APPLICANT

RULING

1. This is a ruling to the Summons to review the Rectified Certificate of Confirmation issued on 31st July 2024, filed herein by the Applicants. The dispute involves land parcel No. Kwanza/Namanjalala Block 2/Sante/338 measuring 20.738 HA and the estate of Benina Mwaizi Chasala who died intestate on 13th October 2009. The initial Petition for Letters of Administration Intestate was filed on 21st August 2014 by Sabastian Chasala who described himself as a grandson and beneficiary. The inventory affidavit to the petition listed twenty-nine (29) individuals and entities, suggesting numerous third-party interests or liabilities associated with this parcel, including James E. Maruk.
2. The grant of letters of administration was issued to the Respondent, Hellen Makungu Chesala, identified as the deceased's daughter and who was tasked with the responsibility of administering the estate and reconciling the claims of various purchasers. Following the resolution of administration issues, the Respondent obtained a rectified Certificate of Confirmation on 31st July 2024, and which rectified grant distributed a portion of the principal asset, specifically 1.6 acres of Kwanza/Namanjalala Block 2/Sante/338 to Lochwi Lokwanga Lokindori.
3. The Applicants, Nimo Abbas Mohammed (wife) and Said Amin Maruk (son), are the administrators of the separate estate of the late James Ekai Maruk, who died on 18th February 2015. James Ekai Maruk



was the son of Lochwi Lokwanga Lokindori, the Respondent's listed beneficiary in Cause 205/2014. Lochwi Lokwanga Lokindori and another party, Huldah Bosibori Mogaka, had sought the revocation of the grant issued to the Applicants in P&A 250/2015 but which revocation application was dismissed on 9th October 2017.

4. A Certificate of Confirmation of Grant was subsequently issued in P&A 250/2015 on 24th January 2019. The certificate transmitted 1.6 acres in Sante Farm, Trans-Nzoia, to the Applicants to hold in trust for the beneficiaries of James Ekai Maruk. The Applicants contend this order conclusively established their entitlement to the property. Notably, Lochwi Lokwanga Lokindori, whose name was included in the rectified grant in Cause 205/2014 on 31st July 2024, died shortly thereafter on 11th September 2024 and as the present determination, as the property interest is now vested in her own unrepresented estate.

The Application

5. By an Application dated 30th May 2025, the Applicant seeks the court's intervention in the cause under Section 47 of the [Law of Succession Act](#) and Rules 63 and 73 of the Probate and Administration Rules. The orders sought are that the rectified certificate of confirmation issued to the administrator/respondent on the 31/7/2024 be reviewed by deleting the name of Lochwi Lokwanga Lokindori and to whom 1.6 acres part of title No. Kwanza/Namanjalala Block 2/Sante/338 was transmitted, the same be transmitted to the two joint applicants, Nimo Abbas Mohammed and Said Amin Maruk, to hold in trust for themselves and on behalf of the other beneficiaries to the estate of James Ekai Maruk.
6. The Application is supported by the grounds on the face of the application and reiterated in the Supporting Affidavit sworn by Nimo Abbas Mohammed. The Applicants' case hinges on the conclusiveness of the confirmed grant issued in the estate of James Ekai Maruk in P&A 250/2015. It is asserted that they acquired the property by way of judicial transmission and are therefore the rightful legal owners.
7. The 1st Applicant, Nimo Abbas Mohammed, testified that she and her son are the administrators of her late husband's estate and that their Certificate of Confirmation, issued on 24th January 2019 transmitted the 1.6 acres in Sante Farm to them in trust. That this order followed a full hearing regarding the revocation of their grant, an application filed by Lochwi Lokwanga Lokindori herself. The Applicants construe the dismissal of Lochwi's challenge and the subsequent confirmation of their grant as a definitive judicial finding that the property belonged to James Maruk, thereby binding all subsequent proceedings.
8. In their submissions, the Applicants maintained that the issue of ownership concerning the 1.6 acres is settled by the principle of *res judicata*. They emphasized that the Confirmed Grant of 24th January 2019 is an unappealed court decree, and the Respondent, as administrator of the vendor's estate, Benina Chasala, was legally obligated to honor this order, regardless of any conflicting claims she might have considered.
9. It is their case that the Respondent's action to subsequently list Lochwi in the 2024 rectified grant, in contravention of the 2019 order, was defective and constituted concealment of a material fact; namely, the existence of a prior, unappealed court order. They submit that the Respondent's contention regarding the need for proof of purchase by James Maruk is a misplaced requirement, as their status as beneficiaries of that property was already established by a court of competent jurisdiction.



Response to the Application

10. In response, the Respondent argues that she acted in the best interest of the estate of Benina Mwaizi Chasala by recognizing a demonstrably valid contractual obligation of the deceased. It was her case that Lochwi Lokwanga Lokindori was a direct purchaser from the deceased Benina Mwaizi Chasala and that the Applicants had failed to produce any agreement proving James Maruk purchased the land.
11. The Respondent annexed a Sale Agreement, marked HMC-1 and dated 27th April 2004, identifying Lochwi Lokwanga Lokindori as the purchaser of 2 acres, which was later reduced to 1.6 acres due to incomplete payment. Further, that the said the late James Maruk, whose estate the Applicants represent, signed this 2004 agreement merely as witness No. 5 for his mother, the buyer. The Respondent further stated that Lochwi had been in actual possession of the plot and not the Applicants.
12. In her submissions, the Respondent emphasized the superiority of a documented pre-death sale agreement over a mere distribution order in a collateral succession cause. The Respondent maintained that the Law of Contract mandates production of a sale agreement to prove purchase of land. They averred that the Applicants' confirmation of grant in P&A 250/2015 did not prove purchase from Benina's estate; but only proved internal distribution of assets claimed by James Maruk's estate.
13. The Respondent further states that the findings in P&A 250/2015 cannot bind the Estate of Benina Mwaizi Chasala because being the administrator, she was not a party to that suit, and the judgment concerned James Maruk's marital disputes, not the proprietary interests against Benina's estate. Further, that the Applicants' Certificate of Confirmation was deemed defective because it did not specify the plot number within Kwanza/Namanjalala Block 2/Sante/338 and did not explicitly claim the asset from Benina's estate. The Respondent argued that enforcing an order that was not directed to the estate of Benina Mwaizi Chasala would be improper.
14. Finally, it is submitted that since Lochwi Lokwanga Lokindori is deceased, her interest has vested in her own estate, which is not represented in this application. The Respondent argued that the matter cannot proceed without according the beneficiaries of the deceased's estate a hearing through their legal representative.

Issues, Analysis and Determination

15. The Court having considered the grounds in support of the application, the Respondent's case in her Replying Affidavit, both parties' submissions as well as the evidence tendered herein in its entirety, the court identifies one pertinent issue for determination being, whether the Application, framed as a review under Section 47 of the *Law of Succession Act*, is procedurally viable to challenge the substantive distribution of the confirmed grant in Succ. Cause No. 205 of 2014.
16. To start with, the said Section 47 of the *Law of Succession Act* which the Application is grounded on grants this Court expansive jurisdiction in succession matters. The court however notes that the substantive challenge herein targets the distribution decreed in a confirmed grant of 24th January 2019. The legal framework for nullifying or amending the distribution contained within a confirmed grant is primarily governed by Section 76 of the *Law of Succession Act*, which addresses revocation or annulment.
17. The Applicants allege that the Respondent concealed the judicial order from P&A 250/2015 when obtaining the rectified grant, thereby rendering the proceedings defective. Such an allegation falls



squarely within the grounds for revocation under Section 76(b) or 76(c) Law of Succession Act on concealment of a material fact or untrue allegation of fact.

18. The court takes the position that although the application is styled as a ‘review’ application, the court must apply the rigorous standards set out in Section 76 when assessing whether the confirmed grant contains a defect substantial enough to warrant alteration of vested rights. The application shall therefore be treated as one seeking the removal of Lochwi Lokwanga Lokindori’s name due to an alleged defect in the process of confirming the grant in Succ. 205/2014. The Applicants assert that the dismissal of Lochwi Lokwanga Lokindori’s revocation application in P&A 250/2015 and the subsequent transmission order in that cause render the question of ownership res judicata.
19. The principle of res judicata requires that the matter be directly and substantially in issue in the former suit, between the same parties or parties litigating under the same title. In the circumstances, the previous suit, P&A 250/2015, concerned the composition and distribution of the Estate of James Ekai Maruk. The current suit of Succ. 205/2014 concerns the administration and distribution of the Estate of Benina Mwaizi Chasala, who was the registered owner, vendor.
20. It is not in dispute that the Administrator of Benina’s Estate, the Respondent herein was not a party in the proceedings of P&A 250/2015. As the Administrator of the vendor’s estate, the Respondent’s duties include honouring pre-death contractual liabilities of the deceased, which involved recognizing the rights of purchasers like Lochwi Lokwanga Lokindori. These liabilities constitute an overriding equitable interest that must be discharged before the remaining assets are distributed. The judgment in P&A 250/2015, which was primarily focused on settling dependency disputes within James Maruk’s household, cannot override the proprietary obligations of the vendor’s estate when the administrator of that estate was not joined or heard regarding the contractual status of the land.
21. Therefore, the court holds that the findings made in Kitale HC P&A Cause No. 250 of 2015 are binding only upon the personal representatives and beneficiaries of James Ekai Maruk and do not meet the legal threshold necessary to constitute res judicata against the Administrator of the Estate of Benina Mwaizi Chasala.
22. Having held so, the court now proceeds to determine whether the Applicants’ title derived from the 2019 distribution order in P&A 250/2015 is superior to the Respondent’s reliance on the 2004 sale agreement supporting Lochwi Lokwanga Lokindori’s claim. The court is alive to the fact that property which a deceased person was merely holding in trust for another, or which had been subject to a complete sale during the deceased’s lifetime, does not form part of the distributable estate. Further, that a sale agreement entered into by the deceased creates a constructive trust over the property in favor of the purchaser, and this equitable interest is binding on the deceased’s estate.
23. The court in Re Estate of Mohamed Abdalla Mapapa Probate & Administration No. 24 of 2018 while quoting the position in Adan Chuda Sode vs Madina Oshe Jira & another [2021] eKLR stated:-

“Section 3 of the Law of Succession Act defines an ‘estate’ to mean the free property of a deceased person, while ‘free property’ in relation to a deceased person is defined to mean the property of which that person was legally competent freely to dispose of during his lifetime and in respect of which his interest has not been terminated by his death.”
24. For further illustration, the court proceeded to reiterate the position in re Estate of Job Ndunda Muthike (Deceased) (2018) eKLR where while expounding on the said section it stated that:

“It is therefore clear that any property which the deceased was not legally competent freely to dispose during his lifetime and in respect of which his interest had been terminated



by his death cannot form part of his estate and cannot be the subject of an application for confirmation of grant. In my considered view, I would think that "free property" of a deceased person such as land can be proved by documents such as a title deed, allotment letter, lease agreement, sale agreement etc. The question in this case is whether unregistered land constitutes free property of a deceased person. The answer to this question can be determined by examining the duty of a probate court. The duty of a probate court is to identify the estate of a deceased person, identify the lawful beneficiaries to the estate and distribute the same to the beneficiaries."

25. In the circumstances, the court notes that the Respondent produced a Sale Agreement marked HMC-1 and dated 27th April 2004, predating the death of both Benina Chasala in 2009 and James Maruk in 2015. The Agreement names Lochwi Lokwanga Lokindori as the buyer and shows that the deceased James Ekai Maruk to have been merely a witness to the transaction. Conversely, the Applicants failed to produce any corresponding documentation proving that James Ekai Maruk himself purchased the land from Benina Chasala. Their claim rests solely on the internal distribution order of P&A 250/2015.
26. By the foregoing, if James Ekai Maruk signed the 2004 agreement as a witness to his mother's purchase, the property was not an asset legally available for distribution in his estate in 2019. The court that confirmed the grant in P&A 250/2015 must have done so based on an untrue or inadvertently mistaken premise regarding the true ownership status of that parcel. When faced with documented proof of a prior overriding equitable interest held by Lochwi Lokwanga Lokindori, the Respondent being the Administrator of Benina's estate was not only justified but legally obliged to recognize Lochwi's claim to the property.
27. The distribution in Succ. 205/2014, recognizing Lochwi's status as a purchaser, satisfies Benina Chasala's contractual liability. The distribution order in P&A 250/2015 cannot operate to diminish the vested rights of a purchaser in the vendor's estate. The court finds and holds that the Applicants failed to discharge the burden of proof necessary to invalidate the contractual claim honoured by the Respondent. The inclusion of Lochwi Lokwanga Lokindori in the rectified grant was proper and legally sound.
28. Further, the Applicants seek the deletion of the name of Lochwi Lokwanga Lokindori from the confirmed grant. Upon the confirmation of the grant on 31st July 2024, the late Lochwi acquired a vested proprietary right to the 1.6 acres. Lochwi then died on 11th September 2024. Consequently, this vested right is now an asset of her own estate and any proceeding that seeks to challenge or divest her estate of this property requires the joinder of a duly appointed legal representative for her estate.
29. The court holds that proceeding to adjudicate upon the proprietary rights of a deceased individual without the legal representative of their estate being on record constitutes a fundamental procedural defect. This would violate the principles of natural justice and potentially nullify any resulting order as defective ab initio. As the matter now affecting Lochwi's interest is subject to its own succession, the Court cannot entertain an application seeking to vary her vested right in her absence.
30. In upshot, the Applicants failed to establish a proprietary interest superior to the documented, antecedent contractual claim of the deceased Lochwi Lokwanga Lokindori, the court holds that her inclusion in the rectified grant was justified. Consequently, the instant Application dated 30th May 2025 seeking to review the Rectified Certificate of Confirmation issued on 31st July 2024 lacks merit and is hereby dismissed with costs.
31. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH MARCH, 2026.



PATRICK J O OTIENO
JUDGE

