



**In re Estate of Rabeca Lumbaragani alias Rebecca Kamalakani (Deceased) (Probate & Administration 8 of 2024) [2026] KEHC 3902 (KLR) (23 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3902 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
PROBATE & ADMINISTRATION 8 OF 2024**

**JN KAMAU, J**

**MARCH 23, 2026**

**IN THE MATTER OF THE ESTATE OF RABECA  
LUMBARAGANI ALIAS REBECCA KAMALAKANI (DECEASED)**

**BETWEEN**

**BATSON MUDASHI ADINGO ..... PETITIONER**

**AND**

**DORCAS KEYA ..... OBJECTOR**

**RULING**

**Introduction**

1. In her Chamber Summons application dated and filed on 19<sup>th</sup> May 2024, the Objector sought that a conservatory order of injunction do issue restricting the Petitioner, his agents, servants, beneficiaries and/or employees from transferring/selling and or dealing in any manner whatsoever with land parcel known as Tiriki/Senende/034 (hereinafter referred to as the “subject land”) pending hearing and determination of the instant Summons for Revocation of Grant. She also prayed that the Chief, Senende Location do attend court for the purposes of being examined.
2. She swore an Affidavit in support of the said application on 19<sup>th</sup> May 2024. She also swore a Further Affidavit on 13<sup>th</sup> October 2024. She averred that she was a beneficiary of the deceased’s estate and that the Letters of Administration herein were confirmed on 6<sup>th</sup> March 2023.
3. She pointed out that there was concealment and/or material non-disclosure to the court as the Chief’s Letter dated 10<sup>th</sup> May 2023 recognised her as a beneficiary. She asserted that she was never involved in the succession proceeding, did not sign any consent form and was never cited to take out letters of administration in the deceased’s estate.



4. She contended that it was in the interest of justice that her plight be heard by the court because the Petitioner herein had obtained the said Grant by means of untrue allegation of a fact essential in point of law with a view to disinheriting her. She stated that she only came to know of the succession proceedings of the deceased's estate upon conducting search and perusing a letter dated 31<sup>st</sup> March 2023 directed to the Chief on the subject property.
5. In her Further Affidavit, she asserted that she was the wife to the late Peter Keya Kavusundu, a grandson of the estate from the first wife's family known as the late Khaluumba Ading'o and that her husband died in the year 2006 and was buried in the subject land. She stated that her family had been living, tilling and making developments in the said subject land since 1976 where her late husband negotiated with his uncles and the sons to the deceased who was the second wife to the late Ading'o Isaamula, their grandfather. She contended that the said subject land was her late husband's inheritance.
6. The Petitioner swore a Replying Affidavit on 3<sup>rd</sup> May 2024 in opposition to the Objector's application. The same was filed on 6<sup>th</sup> June 2024. He averred that he was the registered proprietor of the subject land and was currently in occupation of the same. He stated that he built a home in 2012 and had settled on the same land with his family. He added that he was also cultivating crops and making bricks for his planned permanent house.
7. He asserted that the Objector had not demonstrated in which capacity she had brought the application. He pointed out that the Objector was a stranger to the estate of his grandmother, the deceased herein, and that she was his neighbour and resided in her home on land parcel number Tiriki/Senende/33 with her family.
8. He further averred that the Succession Cause herein had been filed in Kisumu High Court since Vihiga High Court had not started operating and he was working within Kisumu County. He added that the deceased died in Nandi County and was buried at Mugen Sub-location where he obtained the Chief's letter to institute the Succession Cause herein.
9. He asserted that he was aware that the Chief, Senende Location, intermeddled into the deceased's estate and illegally colluded with the Objector to sell a portion of the deceased land to one Samuel Jamwaka without his knowledge and before he completed the Succession Cause and that the same Chief was trying to assist the Objector in depriving him of his right of inheritance to transfer the same to the alleged buyer.
10. He stated that the Objector had not proved that she was bona fide purchaser or a beneficiary of the deceased's estate and that her allegations of untrue facts had not been completely sustained as stipulated under Section 76 of the *Law of Succession Act*.
11. He contended that the Objector moved the court by way of adverse possession in Vihiga Environment and Land Case No E050 of 2023 Dorcas Keya vs Batson Mudashi Adingo where the same was dismissed and was now pending appeal in Vihiga ELC Appeal No E004 of 2024 Dorcas Keya vs Batson Mudashi Adingo. He was categorical that the Objector knew very well that she was not entitled to his land and had nothing attached to the deceased's land apart from her latrine which was built by her son, Gilbert Kapsundu, on the boundary and which prompted him to file Hamisi ELC Case No E012 of 2023 where she was a witness.
12. He was categorical that the Objector had sought injunctive orders in the case Vihiga ELC Appeal No E004 of 2024 Dorcas Keya vs Batson Mudashi Adingo and in Hamisi ELC Case No E012 of 2023 where it was denied and that she wanted to use that to forcefully gain entry to his home and frustrate



his enjoyment of the same. He added that the Objector's husband was buried in land parcel number Tiriki/Senende/33 which grave was completely visible till now.

13. The Objector's Written Submissions were dated 18<sup>th</sup> February 2025 and filed on 13<sup>th</sup> October 2024 while those of the Petitioner were dated 16<sup>th</sup> May 2025 and filed on 19<sup>th</sup> May 2025. The Ruling herein is based on the said Written Submissions that both parties relied upon in the entirety.

### **Legal Analysis**

14. The Objector placed reliance on the case of Jeremiah Ngiri Kibati (Deceased)[2019]eKLR and Re Estate of Elijah Ngari (Deceased)[2019]eKLR where the court cited with approval the case of Japhet Kaimenyi M'ndatho vs M'ndatho[2012]eKLR where it was held that an applicant who sought preservative orders had to satisfy the court that the suit property was at risk of being disposed or alienated or transferred to the detriment, that the refusal to grant orders of inhibition would render the applicant's suit nugatory and that he had an arguable case.
15. She also relied on the case of In the matter of the Estate of Paulo Kiplagat Boiwo (Deceased) [2012]eKLR which cited the case of Giella vs Cassman Brown(1973) EA 358 where it was held that for an applicant to be granted injunctive orders, he must make out a prima facie case and show that he would suffer irreparable loss which could not be compensated by damages and lastly that the balance of convenience should tilt in his favour where doubt existed.
16. She further cited the cases of Nguruman Limited vs James Bonde Nielsen & 2 Others [2014]eKLR where it was held that the aforesaid conditions for injunctive orders were to be applied as separate, distinct and logical hurdles which an applicant was expected to surmount sequentially and African Banking Corporation Limited vs Netsatar Limited & 6 Others Nairobi Milimani HCC No 299 of 2009 (UR) where it was held that a good arguable case was one which was more than barely capable of serious argument but not necessarily one which the judge considered would have a better than fifty (50) percent chance of success.
17. She contended that the demolition of her permanent constructions by the Petitioner amounted to intermeddling and if the court would not grant the conservatory orders, there was risk of loss to whoever would get the said property. She added that there was danger that part of the estate had already been sold and that she was apprehensive that unless preservative orders were issued, there was risk that the estate may be wasted.
18. She argued that by a letter dated 31<sup>st</sup> March 2023, the Petitioner's Advocate recognised her as being part of the said subject land and not as a stranger and were trying to have her evicted hence misleading the court that she was a stranger. She questioned how they would have evicted someone who had never lived on the said subject land.
19. She was emphatic that she had established the risk of the estate being wasted and that she had a prima facie case as a beneficiary of the estate of the deceased. She prayed that her application be allowed.
20. On his part, the Petitioner also relied on the case of Giella vs Cassman Brown (Supra) and the case of Mrao Limited vs First American Bank of Kenya(2003) KLR 125 where it was held that a prima facie case in a civil application included but not confined to a genuine and arguable case. He added that the burden of proving a prima facie case would invariable lie on the applicant who alleged by not granting the said orders, her rights would be infringed as was held in the case of Nguruman vs Jan Bonde Nielsen (Supra).
21. He argued that there was no dispute that he was in occupation of the subject land and that the Objector moved other courts for injunctive orders which she was denied. He added that it was also evidenced



- that the Objector buried her husband on land parcel No Tiriki/Senende/33, a parcel adjacent to the subject land in which the Objector resides.
22. He pointed out that the Objector had not attached any document to prove that she was indeed a bona fide purchaser and a liability to the estate of the deceased. He asserted that as he was in full occupation of the subject land, cultivating crops of different kinds, by granting the orders sought, he would suffer damages that were not compensable. He was emphatic that he could not sell his own home and that the Objector had not proved the conditions for grant of the injunctive orders.
  23. He cited Section 27 of the *Civil Procedure Act* noting that costs follow events and urged the court to dismiss the Objector's application with costs.
  24. Notably, the Objector did not adduce any evidence to prove that she was a beneficiary of the deceased apart from the Chief Letter which was not verified as she was seeking that the said Chief be called for cross-examination. The Petitioner was categorical that he was the registered owner of the subject land and produced a Certificate of Search to that effect.
  25. This court noted that the Objector did not rebut the Petitioner's claims that her parcel was Tiriki/Senende/33 and not the subject land. She did not also respond to the claims on the various court cases in the Vihiga Land & Environment Court. Indeed, a lot had been left to be desired.
  26. In the premises, the Objector had not established a prima facie case and/or show that she would suffer irreparable loss which could not be compensated by damages.
  27. Going further, the balance of convenience laid with not granting the injunctive orders as the Petitioner who had proved to be the owner of the subject land would suffer irreparable loss.
  28. In arriving at the said conclusion, this court had due regard to the case of *Giella vs Cassman Brown* (1973) EA 360 that set out the conditions that must be met before an applicant could be granted an interlocutory injunction. These were as follows that an applicant must show:-
    - a. That he had demonstrated a prima facie case with a probability of success.
    - b. That he would suffer irreparable injury, which could not adequately be compensated by an award of damages if the interlocutory injunction is not granted.
    - c. That the court would grant an interlocutory injunction when in doubt.
  29. In the mind of this court, the Objector's application was premature as it was prudent that her Summons for Revocation dated and filed on 19<sup>th</sup> May 2024 be heard first so as to establish her interest in the estate of the deceased herein. Indeed, it was evident that there were also pending matters in other courts making it difficult for this court to grant the orders that she had sought at this stage.

## **Disposition**

30. For the foregoing reasons, the upshot of this court's decision was that the Objector's Chamber Summons dated and filed 19<sup>th</sup> May 2024 was, therefore, not merited and the same be and is hereby dismissed. As the relationship between the parties was not clear and so as not to strain any relationships should it later be found there such a relationship, the court deviated from the general principle that costs follow the event and hereby directed that each party will bear its own costs.
31. It is hereby directed that the Objector's Summons for Revocation of Grant also dated and filed on 19<sup>th</sup> May 2026 be and is hereby listed for mention on 25<sup>th</sup> May 2026 for further orders and/or directions.
32. It is so ordered.



**DATED AND DELIVERED AT VIHIGA THIS 23<sup>RD</sup> DAY OF MARCH 2026**

**J. KAMAU**

**JUDGE**

