

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
SUCCESSION CAUSE NO. E006 OF 2024

IN THE MATTER OF THE ESTATE OF JEPHTAN ODERAH

ELIZABETH OONDO ODUOR.....APPLICANT

VERSUS

CHAGALA EBBY MMBONE.....RESPONDENT

RULING

1. The Applicant herein has filed an application dated 21/10/2025 seeking principally for an order that this court sets aside the parcel of land known as North Gem/Ndere/774 from the list of distribution of the estate of the deceased pending the hearing and determination of Siaya Chief Magistrates' Court ELC No. E020/2025.
2. The application is supported by the grounds set out thereunder and by the supporting affidavit of the Applicant sworn on even date. The Applicant's gravamen is inter alia; that the land registered as North Gem/Ndere/774 originally belonged to one Paul Onyango Oduor; that the said parcel was erroneously registered in

the name of Jephtah Adhaya Odera as a result of the erroneous swapping of parcel numbers North Gem/Ndere/8 and North Gem/Ndere/9; that the Applicant has filed the ELC No. E020/2025 to have the Land Registrar to correct the anomaly as the Respondent has forcefully entered parcel of land belonging to Paul Onyango Oduor; that the Applicant is the Administrator of the estate of Paul Onyango Oduor; that the deceased had purchased land from one Odongo Wamure Saita alias Vitus Odongo Wamure who was registered owner of parcel North Gem/Ndere/10; that during registration of the lands North Gem/Ndere/8 and 10 were erroneously swapped; that the deceased in respect of these proceedings did not enter into any sale transaction with Paul Onyango Oduor; that the Respondent forcefully entered onto the parcel belonging to Paul Onyango Oduor; that there is a live dispute over parcel North Gem/Ndere/774 to establish whether the same forms part of the estate of the deceased herein; that it is proper that the said parcel be set aside pending determination of the ELC case.

3. The Respondent filed a replying affidavit sworn on 14/11/2025 wherein she averred inter alia; that the deceased herein purchased several parcels of land during his lifetime; that the deceased herein bought part of parcel number North Gem/Ndere/748 from Vitus Odongo Wamure on 20/1/1987 and the size was 200M X100 M at Kshs16,000/= and that a consent to transfer by the Land

Control Board was obtained on 1/5/87; that the same parcel was later sub divided into two portions namely 774 and 773 and that parcel 774 was registered in the name of the deceased while parcel 773 remained with the seller; that the deceased planted trees on parcel 774; that during the burial of the deceased, nobody came forward with any claims onto the land; that the suit land was purchased way back in 1987 which is more than thirty years ago; that no objection was raised during the life time of the deceased and hence the application is an afterthought; that the suit offends the provisions of Section 7 of the Limitation of Action Act; that parcel North Gem/ Ndere/774 forms part of the estate of the deceased; that the application lacks any merit and should be dismissed with costs.

4. The Applicant filed a supplementary affidavit dated 5/2/2026 wherein she averred inter alia; that the issue for determination in the ELC No. E020/2025 Court case is on the ownership of the parcel North Gem/Ndere/774 which has been listed herein as one of the assets for distribution; that the eucalyptus trees plantation is on the land belonging to Paul Onyango Oduor; that the allegations that the deceased planted trees on the land is false.

5. The application was canvassed by way of written submissions. The Objector opted not to participate on the dispute between the Applicant and Respondent while

counsel for the Applicant relied on the affidavits in support of the application. Learned counsel for the Respondent filed submissions dated 11/12/2025.

6. Mr. Agina, for the Respondent submitted that the application offends the provisions of Section 7 of the Limitation of Actions Act in that the stipulated period of 12 years have lapsed and hence the suit is statute barred and that this court has no jurisdiction to entertain the matter owing to the limitation yet this court's duty is limited to distribution of assets of deceased and that the Applicant should agitate her claims in the ELC. It was further submitted that the Applicant is engaged in a multiplicity of suits since she has already filed Siaya CM ELC No. E020 of 2025.

7. I have given due consideration to the application, rival affidavits and submissions filed. It is not in dispute that the Applicant's late husband and the deceased herein did purchase their respective portions of land from Vitus Odongo Wamure. It is also not in dispute that each of them took vacant possession of their portions. It is also not in dispute that the Applicant has already lodged a civil suit namely Siaya CM ELC No. E020 of 2025 which is pending determination. I find the issue for determination is whether the application has merit.

8. It is trite that the mandate of the Probate and Administration Court is to determine the assts of the

deceased as well as identify the rightful beneficiaries and their respective shares and to finally distribute the estate. Musyoka J in the case of re Estate of Alice Mumbua Mutua (deceased) [2017] eKLR held as follows:

“The Law of Succession Act and the Rules made thereunder are designed in such a way that they confer jurisdiction to the Probate Court with respect to determining the assets of the deceased, survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the Probate Court in the circumstances would be to facilitate collection and preservation of the estate, identifications of survivors and beneficiaries and distribution of the assets.”

It is noted from the Applicant’s application that her gravamen is that her late husband had purchased land from one Vitus Wamure just like the deceased herein did and that there has been a swapping of the registration numbers requiring the Land Registrar to intervene so that each of the land owners can get their correct land parcel. It is also not in dispute that the Applicant herein is not seeking for revocation of Grant or participate in the distribution of the estate but only seeks to have the

property namely North Gem/Ndere/774 be isolated or set aside and to await the determination of Siaya CM ELC No. E020/2025. Hence, it is clear that the Applicant has already presented her claim in the said ELC court against the Respondent herein. This leaves no doubt that the Applicant's dispute is a claim to the suit land North Gem/Ndere/774. That being the position, it is my considered view that questions on ownership of property in the form of land is outside the jurisdiction of this court and is the preserve of the Environment and Land Court by dint of the provisions of Article 162 (2) (b) of the Constitution as well as Section 13 of the Environment and Land Court Act. As the Applicant has properly lodged her claim in the ELC, she should proceed to seek all the requisite orders from the said court. The conduct of the Applicant in placing her claim in the ELC and then approaching this court amounts to one engaging in lottery and which should not be countenanced by this court. Indeed, the Applicant has not stated that she seeks to be considered during the distribution of the estate and hence she should agitate her claims before the ELC court.

9. The Applicant who seeks to come on board as an objector in these proceedings was under obligation to establish her interest on a balance of probabilities. The Applicant has confirmed that she has a stake to land parcel number North Gem/Ndere/774 but goes on to state that the said land had been swapped with another and that she needs

the Land Registrar to step in and rectify the register. I find the dispute to be one which can be adequately dealt with by the ELC court. As the Applicant has already lodged a case in the relevant court, she should proceed and ventilate her case there. I find that the prayer sought herein can easily be granted by the ELC court by dint of the provisions of the Land Act and the Land Registration Act where suit number E020/2025 is pending determination between the parties herein. If the Applicant's application is declined, I find that no prejudice will be suffered firstly, for the reason that the Environment and Land Court can easily grant the orders sought and secondly, the orders issued by the Environment and Land Court would still be applicable to the requisite parcels of land even after the distribution of the estate of the deceased by this court.

10. Finally, it is noted that the Applicant has placed her application before this court while fully aware that it lacks jurisdiction to determine the issue of land ownership and whether two parcels registration numbers were erroneously swapped thereby requiring the intervention of the Land Registrar for the sole reason of trying her luck in the succession court yet she already has a pending matter between her and the Respondent in the Environment and Land Court. I find that the Applicant has not placed before this court sufficient material to warrant the orders sought.

11. In the result, it is my finding that the application dated 21/10/2025 lacks merit. The same is dismissed with costs to the Respondent.

Dated and delivered at Siaya this 9th day of April 2026.

D. KEMEI

JUDGE

In the presence of:

N/A Ooro E.for Applicant.

Ojwang Agina.....for Respondent.

Maurine.....Court Assistant.