In re Estate of Paul Wambua Nzole alias Wambua Nzole (Deceased) (Succession Cause E015 of 2021) [2026] KEMC 78 (KLR) (7 April 2026) (Ruling)

Neutral citation: [2026] KEMC 78 (KLR)

REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

SUCCESSION CAUSE E015 OF 2021

YA SHIKANDA, SPM

APRIL 7, 2026

IN THE MATTER OF THE ESTATE OF PAUL WAMBUA NZOLE ALIAS WAMBUA NZOLE (DECEASED)

BETWEEN

BONIFACE NDONGA ..... 1ST ADMINISTRATOR

STEPHEN KIIO ..... 2ND ADMINISTRATOR

AGNES MBEKE ..... 3RD ADMINISTRATOR

AND

SYLVESTER NTHENGE ..... INTERESTED PARTY

RULING

1. The application for determination is dated 22/5/2025. It was brought by the applicant who designated himself as the interested party. It is an omnibus application brought under various provisions of law under the *Law of Succession Act*, the Probate and Administration Rules, the *Civil Procedure Act* and the Civil Procedure Rules. The application seeks the following orders, others having been spent:

    a. That this Honourable Court be pleased to grant leave to the interested party to set aside the Mediation agreement dated 4/4/2024;

    b. That this Honourable Court be pleased to set aside the Mediation agreement dated 4/4/2024 and filed in court on the same date to the extent of removing Plot No. 31 Kai B Settlement Scheme from the list of properties belonging to the estate of Paul Wambua Nzole (deceased);

    c. That this Honourable Court be pleased to set aside the orders issued on 23/3/2023 for being Res judicata;

d. That this Honourable be pleased to revoke and/or vary the grant of letters of administration issued herein and/or order the exclusion of Plot No. 31 Kai B from the list of properties belonging to the estate of Paul Wambua Nzole (deceased);

e. That the costs of this application be in the cause.

2. The application is supported by the affidavit sworn by the applicant and is premised on 26 grounds, some of which are repetitive. I will only summarize the main grounds as follows:

i. There is a pending land case being Makindu ELC No. E009 of 2023 wherein the applicant has sued Mbeke Munyao, referred to as the 1st administrator herein;

ii. The 1st administrator is aware of the land case but has not disclosed the fact to the court;

iii. Plot No. 31 Kai B is not part of the deceased's free property which can be distributed as part of the estate of the deceased herein;

iv. The mediation proceedings were done during the pendency of Makindu ELC No. E009 of 2023 yet it lists Plot No. 31 Kai B Settlement scheme as part of the estate of the deceased herein;

v. The mediation agreement does not appear to have been signed by all the parties to the succession cause;

vi. The applicant has ownership documents for Plot No. 31 Kai B settlement scheme and this Honourable Court lacks jurisdiction to hear and determine the ownership dispute regarding Plot No. 31 Kai B settlement scheme;

vii. The Honourable court was misled into hearing the application dated 24/3/2021 and made orders yet the application had been struck out.

3. In the affidavit in support of the application, the deponent reiterated the grounds on the face of the application and annexed documents in support thereof. He maintained that he was the registered owner of plot No. 31 Kai B settlement scheme.

The 1St Administrator's Response

16. The 1st Administrator filed a Replying affidavit in opposition to the application. She deposed that the applicant was not a beneficiary of the estate of the deceased. The 1st administrator admitted that she had been sued in Makindu ELC Case No. E009 of 2023. She maintained that the land in dispute was owned by the deceased herein. The 1st administrator further deposed that the applicant had no right to challenge the mediation proceedings as he is not a beneficiary of the estate of the deceased herein. She attached copies of supporting documents.

2nd Administrator's Response

17. The 2nd Administrator also filed a Replying affidavit in opposing the application. He deposed that the applicant had not filed a formal application seeking to be joined as an interested party. That the applicant would have filed an objection or appear as a protester. The 2nd Administrator also stated that the land in dispute was registered in the name of the deceased and that the applicant has not explained how the land got registered in his name ten years after the demise of the deceased herein. The 2nd Administrator further deposed that the court has jurisdiction to hear and determine the applicant's interest without a look at the ELC matter. The 2nd Administrator defended the mediation agreement

stating that it was proper and that it binds the parties thereto. He further deposed that the applicant was challenging orders made in different files. That the issue of Res judicata was misplaced.

Facts Not In Dispute

4. From the application and response by the respondents, the following facts are not in dispute:

a. Plot No. 31 Kai B settlement scheme is a subject of litigation before the Environment and Land Court at Makindu between the applicant and the 1st Administrator;

b. The said parcel of land is listed herein as part of the estate of the deceased Paul Wambua Nzole alias Wambua Nzole;

c. The litigation before the Land and Environment Court concerns, inter alia, ownership of the parcel of land;

d. The dispute before the Environment and Land Court is yet to be determined.

Main Issues Or Questions For Determination

5. Having perused the application and responses, I find that the main issues or questions for determination are as follows:

i. Whether the applicant has properly invoked the jurisdiction of the court;

ii. Whether the applicant is entitled to the reliefs sought;

iii. What other orders should the court make if need be.

Submissions By The Applicant

6. The applicant filed written submissions in support to the application. He submitted that the mediation proceedings and subsequent agreement dated 4/4/2024 were made during the pendency of Makindu ELC case No. E009 of 2023 but the 1st defendant acted in mischief by failing to disclose to the mediator and other relevant parties that Plot No. 31 Kai B was not available for distribution. That the applicant has sought leave to set aside the mediation agreement and although he was not party to the same, he has greatly been affected by the outcome. The applicant argues that he was condemned unheard. The applicant submitted that the orders made on 27/3/2023 (wrongly indicated as 23/3/2023) were Res judicata as they were based on an application dated 24/3/2021 that had been previously heard and determined by a competent court. That the existence of two sets of determination over the same application has brought confusion or mockery of the justice system. On whether to revoke the grant herein, the submissions made by the applicant did not really address the issue but dealt with the issue of whether this court has jurisdiction to determine ownership of the disputed plot of land.

Submissions On Behalf Of The 1St And 3Rd Administrators

7. Submissions were filed indicating that they were so filed on behalf of the 1st and 2nd Administrators. It was submitted that the application was not sustainable as the applicant did not seek leave to be joined in these proceedings as an interested party. The respondents argued that without leave of court, the applicant is a stranger to the proceedings and lacks locus standi to file the application. The respondents relied on the authority of In re estate of Kamau Macharia (deceased) [2025] KEHC 20 (KLR). The respondents argued that the applicant is not a beneficiary of the estate of the deceased and has not laid any claim as a creditor of the estate. It was argued that the application to stay confirmation of grant was premature as no summons for confirmation has been filed herein.

8. The respondent argued that the applicant is not a beneficiary of the estate of the deceased and was not party to the mediation agreement. As such, he lacks the locus standi to apply for the agreement to be set aside. The respondents argued that there was evidence to prove that the land in dispute belonged to the deceased. The respondents submitted that the applicant had not stated how he acquired registration of land registered in the name of the deceased but contended that this court as presently constituted cannot determine the issue of ownership. It was argued that this court lacks jurisdiction to hear and determine the application. That the applicant's claim for ownership of the disputed parcel of land has not crystallized as envisaged by law. The respondents urged the court to dismiss the application with costs.

Submissions By The 2Nd Administrator

The 2nd Administrator did not file submissions.

Analysis And Determination

9. I will begin with the assertion that the applicant did not seek leave to be joined in these proceedings. Indeed, the applicant on his own motion designated himself as an interested party and sought orders herein. These are succession proceedings and not an ordinary civil suit. The issue of whether a party may be joined in succession proceedings as an interested party has been litigated and the superior courts have made pronouncements. In re Estate of David Aura Wesonga (Deceased) [2023] KEHC 20222 (KLR), Musyoka J held:

> "The *Law of Succession Act*, cap 160, Laws of Kenya, and the Probate and Administration Rules do not provide for joinder of interested parties. That would leave room for whoever seeks intervention in a probate matter to just file their application, without seeking leave to be added as a party. There are no parties in a succession cause, for such cause is not a suit in the same vein with the suits envisaged in the *Civil Procedure Act* and the Civil Procedure Rules. I see no reason to grant the prayers sought in the application, dated May 15, 2023, because it is needless. Let the applicant file whatever application that he has in mind, the court shall deal with it on its own merits".

10. In Meto v Metto [2022] KEHC 13349 (KLR), Ogola J held that joinder of parties in a succession cause is a matter of inherent jurisdiction of the court for purposes of ensuring the ends of justice are met and is ordinarily done under section 47 and rule 73 of the *Law of Succession Act* and Probate and Administration Rules respectively. In re Estate of Stone Kathuli Muinde (Deceased) [2016] KEHC 3725 (KLR), Musyoka J stated:

> "In my opinion the court can, in appropriate cases, join parties to a succession cause and refer disputes for arbitration by competent persons and entities. It must be emphasized that joinder or reference to arbitration must be only on the basis of appropriateness. Joinder of parties to a suit is concept in the ordinary civil process, where suits in the proper sense of the word are between two rival or contending sides. Other persons or entities not named as parties in the dispute may be joined, on application, to the suit if they meet certain conditions. The Civil Procedure Rules have provisions on joinder of parties, especially in Order 1 thereof. Usually a person or entity will be joined where they have complementary claims with the parties arising from the same facts. The probate process can be said to be a civil process only to the extent of it not being a criminal process. It is, in most respects, a process completely distinct from that governed by the *Civil Procedure Act*, Cap 160, Laws of

Kenya, and the Civil Procedure Rules. It is regulated instead by the *Law of Succession Act* and the Probate and Administration Rules, which prescribes processes that are clearly removed from those intended for the ordinary civil process. In other words, the probate process is a special jurisdiction with its own processes and procedures. Such special jurisdiction and procedures are saved by section 3 of the *Civil Procedure Act*. The legislation that regulates the probate process has, however, imported into its practice certain provisions of the Civil Procedure Rules. That it has done through Rule 63 of the Probate and Administration Rules. However, the provisions of the civil process relating to joinder of parties are not among the provisions so imported under Rule 63.....With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere. 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 magistrates' 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.....Joinder of parties is not envisioned in the probate process and should be avoided at all costs. It is not provided for under the relevant legislation, and it can only be allowed by the court in exercise of its inherent discretion. It is however my view that making an order to join an interested party in probate causes, even though I have on occasion done so, amounts to exercise of inherent discretion outside of its bounds".

11. In view of the foregoing, it is clear that there is no provision of law that requires a party to apply to be joined as an interested party in succession proceedings. In the same breath, there is no law that expressly provides for joinder of interested parties in succession matters. It appears that the superior courts would hear and determine an application by a person not being a beneficiary or party to the succession cause without leave to be joined being sought and in other instances, some superior courts have dealt with applications by persons seeking to be joined in succession proceedings. In the absence of clear provisions on joinder of parties in succession matters, the courts are left to exercise discretion in that respect. Having made the above analysis, I find that it was not fatal for the applicant to seek the orders without first applying to be joined. I will proceed to determine the application on merits.

12. The applicant is not a beneficiary of the estate of the deceased. He was not party to the mediation proceedings. Rule 34(1) of the Civil Procedure (Court-Annexed Mediation) Rules, provides that:

> " The Mediation Deputy Registrar or other officer designated for that purpose shall, within ten days after the settlement agreement being filed under rule 32, place the settlement agreement before the trial court or other designated officer for adoption".
>
> Rule 39(1) thereof provides:
>
> " No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court."

13. In my view, and being guided by the above rules, I do not think that there is a provision for setting aside a mediation agreement. The law provides for setting aside an order or decree arising from the mediation agreement. This implies that an application to set aside can only be entertained after the mediation agreement has been adopted as an order of the court. The mediation agreement in issue is yet to be adopted. It is thus premature for the applicant to pray for setting aside of the mediation agreement. The agreement has no force of law until it is adopted by the court. Secondly, the application to set aside an order or decree arising out of a mediation agreement can only be filed with leave of court. The applicant herein has sought leave of court to challenge the mediation agreement but the prayer is premature as the agreement is yet to be adopted as an order of the court. For purposes of emphasis, I reiterate that a mediation agreement cannot be set aside. What can be set aside is an order of the court or decree arising from the mediation agreement. Whether a stranger to the mediation agreement can challenge an order or decree arising from the agreement is debatable.

14. The applicant has also asked the court to set aside the orders issued on 23/3/2023 for being Res judicata. The applicant is not a party to the succession cause. I believe the applicant meant orders made on 27/3/2023. I have perused the record. Prior to the filing of the succession cause, there was a citation cause No. 69 of 2019 between the beneficiaries of the estate of the deceased. There is an application dated 24/3/2021 in the citation cause. The record reveals that on 25/3/2021, the court struck out the application on the following grounds:

    a. The application was an abuse of the court process as the citation cause had been finalised and closed on 22/9/2020;

    b. The court was thus functus officio.

16. Quite interestingly, the record in the succession cause shows that on 5/12/2022, the court was informed that there was an application dated 2/3/2020 which was pending. However, the citation cause shows that the said application was marked as withdrawn on 22/9/2020 whereupon the citation file was closed. More interesting is that the court on its own motion, ordered for consolidation of the citation cause with this matter. It should be remembered that the citation cause had already been determined and closed on 22/9/2020. In my view and with all due respect to my senior learned brother who handled the matter, the order for consolidation was irregular. A concluded matter cannot be consolidated with a pending matter as there is nothing to consolidate in a determined matter. Secondly, even if the citation cause was pending, I do not think it would be proper to consolidate a citation cause with a substantive succession cause. That would breed confusion.

17. Ordinarily, a citation cause calls upon a beneficiary to accept or refuse letters of administration. Once the beneficiaries accept to take out letters of administration, there is nothing left to canvass in the citation cause. Another interesting aspect of the record is that after consolidating the closed citation cause with the pending succession cause on 5/12/2022, another order for consolidation was made on a date that is not clear. The order appears right after the court signed off on 27/3/2023 but the subsequent proceedings are dated 3/7/2023. There is however no Coram for 3/7/2023. Furthermore, the court proceeded to hear and determine the application dated 24/3/2021 yet it had already been struck out on 25/3/2021. I must admit that the record is irregular.

18. As already indicated, the applicant was not party to the proceedings. Does he have the locus standi to apply for review? To begin with, pursuant to rule 63 of the Probate and Administration Rules, Order

45 of the Civil Procedure Rules applies to succession proceedings. In the authority of Accredo Ag & 3 others v Steffano Uccelli & another [2017] KECA 85 (KLR), the Court of Appeal held:

> " Our understanding of Order 45 is that it has two distinct parts and accords locus standi in review applications to two distinct persons. Under sub rule (1) thereof, the review application may be brought by 'any person considering himself aggrieved' and under sub rule (2), by 'a party who is not appealing from the decree or order'. Consequently, Order 45 recognizes that review may be sought either by; a non party or by a party to the proceedings.....In short, he has to prove that though he maybe a non party, he is no busybody and that the decision he seeks to have reviewed affects his cognizable rights. Recognizing Order 45 as allowing the inclusivity of a non party to institute review does not expose it to abuse by busy bodies. On the contrary, when read holistically, Order 45 is in fact designed to facilitate the exercise of the court's inherent powers, and to protect the rights of persons directly affected by decisions which they were not made parties to."

19. In view of the foregoing, I find that the applicant would have locus standi to apply for review of orders made herein, although he was not a party to the proceedings provided he shows that he was directly affected by the decision. However, the applicant has not relied on any of the grounds under Order 45 of the Civil Procedure Rules. He relies on the ground of Res judicata, which is not a ground for review. In my view, Res judicata could properly be raised before a matter is determined and not after by way of review. I find that the applicant has not properly invoked the jurisdiction of the court under Order 45 of the Civil Procedure Rules. Besides, the application was brought after close to two years since the orders were made and no explanation for the delay was given.

20. Order 45 of the Civil Procedure Rules expressly provides that an application for review must be brought without unreasonable delay. Nevertheless, Res judicata could not apply since no new application seeking similar orders was filed. The court erroneously proceeded to determine an application that had already been struck out. The proper ground would have been "error apparent on the face of the record." The wording of Order 45 implies that an application for review ought to be entertained on application by an aggrieved party. There is no express provision for the court to act suo motu. I have agonized over the issue of whether a court can review its orders on its own motion where there are glaring irregularities as in this case.

21. In the authority of James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] KECA 470 (KLR), the Court of Appeal was dealing with the issue of whether a court can on its own motion set aside an irregular default judgment. The court held:

> " In an irregular default judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside ex debito justitiae, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue or whether there has been inordinate delay in applying to set aside the irregular judgment."

22. Order 10 of the Civil Procedure Rules does not expressly provide that default judgment can be set aside by the court on its own motion. Drawing an analogy from the above authority, I am of the view that the court has inherent powers to review its orders where the order in question is a nullity and is so obvious that it can be corrected without prejudice to the parties. Consequently, I proceed on my own

motion, to review and set aside the order for consolidation of this matter with the citation cause No. 69 of 2019 as well as the orders made on 27/3/2023 ex debito justitiae.

23. The applicant has also prayed for revocation of grant. Section 76 of the Law of Succession provides as follows:

> " A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
>
> (a) that the proceedings to obtain the grant were defective in substance;
>
> (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
>
> (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
>
> (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
>
> (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
>
> (ii) to proceed diligently with the administration of the estate; or
>
> (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
>
> (e) that the grant has become useless and inoperative through subsequent circumstances."

24. A reading of Rule 44 of the Probate and Administration Rules indicates that only the High Court has jurisdiction to revoke a grant of representation. However, section 47 of the *Law of Succession Act* provides that:

> " The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:
>
> Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice."
>
> Furthermore, section 48(1) thereof provides:
>
> " Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7 of the Magistrates' Courts Act (Cap 10)."

25. In the authority of Musine v Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased) [2023] KEHC 20217 (KLR), Musyoka J held:

> "The law, with respect to revocation of grants in succession causes pending before the magistrate's courts, has changed. Prior to January 2, 2016, the High Court enjoyed exclusive jurisdiction to revoke all grants of representation, whether made by itself or the magistrate's court. The Magistrate's Court had no jurisdiction to revoke grants that it had power to make. However, all that changed on January 2, 2016, when the *Law of Succession Act* was amended, by the coming into force of the *Magistrates' Courts Act*, No 26 of 2015. Section 23 of the *Magistrates' Courts Act*, 2015, amended section 48(1) of the *Law of Succession Act*, which had granted exclusive jurisdiction to the High Court to revoke grants made by the magistrate's court, and extended that jurisdiction to the magistrate's court. That meant that the exclusive jurisdiction conferred on the High Court, to revoke all grants, regardless of the court that had made them, was ended, and jurisdiction was extended to the magistrates, who now, effective from January 2, 2016, got jurisdiction to revoke the grants made by them."

26. I have perused the material on record. By the time the Administrators were petitioning for a grant of letters of administration intestate in 2021, the applicant was not registered as proprietor of the land in dispute. From the documents submitted, he received the letter of offer on 4/10/2023. It is not known when he was registered as proprietor. It cannot therefore be said that the administrators made any false statements or misrepresentations at the time of filing the petition. Furthermore, the applicant is only interested in one parcel of land. His interest cannot warrant revoking the grant. It is also to be remembered that the ownership dispute is yet to be determined. On what basis will the court be revoking the grant? In the same breath, without determination of the issue of ownership of the land, this court cannot make a finding that the parcel of land does not form part of the estate of the deceased. The court cannot exclude the parcel of land at this stage. The application for revocation of grant has no basis.

27. From the Preamble of the *Law of Succession Act*, it is evident that a succession court deals with the intestate and testamentary succession and the administration of estates of deceased persons and issues connected therewith and incidental thereto. This means that the primary mandate of a succession court is:

    a. Determining who are the rightful heirs and beneficiaries;

    b. Identifying and distributing the estate of a deceased person; and

    c. Overseeing the Administration of the estate in accordance with the law.

28. It is clear that the applicant is not claiming to be a beneficiary of the estate of the deceased herein. His claim is that he is the rightful owner of plot No. 31 Kai B settlement scheme and as such, the same should not form part of the estate of the deceased. It is a claim for title to land. My view is that this court sitting as a succession court cannot determine disputes touching on ownership or title to land.

29. In re Estate of Atibu Oronje Asioma (Deceased) [2022] KEHC 11046 (KLR), Musyoka J had this to say:

> "Does this probate court have jurisdiction to determine the dispute framed in the application dated October 2, 2018? The starting point should be with the mandate of the probate court. The probate court is constituted for one sole purpose, distribution of the property of a dead person. The law which governs this area of distribution of assets of a dead person is the *Law*

of Succession Act, cap 160, Laws of Kenya. The preamble says it is 'An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons, and for purpose connected therewith and incidental thereto.'

The central areas of concern, in probate and administration, are the dead person and his property. With regard to the dead person, what is of importance would be, whether there is proof of his death; and, once that is established, the next consideration will be determination of the individuals entitled to the property. If he died testate, having left a valid will, it will be the individuals named as beneficiaries in the will; if he died intestate, without a will, it will be the persons entitled under the applicable law of intestacy. With respect to property, there is only one critical consideration, whether he owned any property. Modern property is subject to registration, and whether a person owns a piece of property is evidenced by documents of registration or ownership. What is in dispute here is land, what would evidence ownership of the subject property would be evidence of registration of the same in the name of the deceased. The probate court only distributes assets that are undisputedly owned by the deceased. Assets that are unccumbered or the subject of ownership disputes are not undisputedly owned by the deceased, and are not available for distribution by the court until the encumbrances are removed or the ownership disputes resolved. Property available for distribution is defined in section 3 of *Law of Succession Act* as the free propriety of the deceased. The design of the *Law of Succession Act* is that the mandate of the probate court is limited to distribution of the assets, and where a dispute arises on ownership of any asset, then the same should be placed in another forum, and not the succession cause, for litigation and determination". (Emphasis supplied)

30. In the authority of In re estate of Kimani Kimithia [2008] eKLR, Ibrahim J (as he then was) held that succession proceedings were not the appropriate way to challenge the title of the deceased to assets said to comprise his estate, on claims that such assets were subject to a trust in favour of the claimant. It was stated that such claims ought to be subjected to separate proceedings, where the claimants have to prove the trust, and thereafter seek revocation of the title or partition, which requires declaratory orders on the existence of the trust. The court further held that it was not the function of the succession cause, where the claimant was neither a beneficiary nor dependant of the deceased, and that succession proceedings were not appropriate for resolution of seriously contested claims against the estate by third parties.

31. The above analysis brings me to the conclusion that the application is generally untenable. However, one thing stands out. That there is a pending dispute before the Environment and Land Court at Makindu over the ownership of plot No. 31 Kai B settlement scheme, which has been listed herein as part of the estate. In as much as this court as presently constituted cannot hear and determine the ownership dispute, the court cannot close its eyes and proceed as if no dispute exists. I agree with the 2nd Administrator that the applicant could have filed a protest against the confirmation of grant. However, the avenue chosen by the applicant is not alien to law. It is only that the applicant sought omnibus orders and in the wrong manner.

Disposition

32. Consequently, I make the following orders:

    a. The application dated 22/5/2025 is substantially disallowed;

    b. The prayer to set aside the mediation agreement is dismissed;

c. The orders of consolidation of this cause with Citation cause No. 69 of 2019 as well as the orders made on 27/3/2023 are hereby vacated for the reasons given;

d. The prayer for revocation of grant is hereby dismissed;

e. The Administrators are at liberty to file summons for confirmation of grant. However, Plot number 31 KAI B Settlement Scheme shall be left out of the distribution of the estate of the deceased, temporarily, to give time to the parties to litigate over ownership of the same in the pending case at the Makindu Environment and Land Court. Determining whether the property belongs to the deceased in the face of a substantive ownership dispute would amount to exercising jurisdiction reserved for the Environment and Land Court.

f. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 7TH DAY OF APRIL, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

HON. Y.A. SHIKANDA