

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 150 OF 2010**

**IN THE MATTER OF THE ESTATE OF PAUL MUHANDA AGONYA  
(DECEASED)**

**JOHN MUREMI  
MUHANDA.....PETITIONER/RESPONDENT**

**VERSUS**

**DIPHINA KHATONDE  
MUHANDA.....ADMINISTRATRIX/APPLICANT**

**ELIAS MOARD MATEGWA.....  
.....INTERESTED PARTY**

**RULING**

1. Before this Court is a Chamber Summons dated 28th January 2026 brought under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.
2. The Applicant seeks orders:
  - a. Certifying the application as urgent;
  - b. Directing the County Land Registrar, Kakamega, to proceed with transmission of land parcels Isukha/Kambiri/1327 and Isukha/Kambiri/1947 without production of original title deeds;
  - c. Costs of the application.

3. The application is premised on allegations that the Respondent, a co-administrator, is withholding original title deeds and thereby frustrating execution of a confirmed grant issued on 19th May 2025.

### **Issues for Determination**

4. The Court identifies the following issues for determination:
  - a) Whether this Court has jurisdiction to grant the orders sought;
  - b) Whether the Respondent has obstructed the administration of the estate;
  - c) Whether the Court can order transmission without production of original title deeds;
  - d) Whether the Applicant is entitled to the orders sought.

### **Analysis and Determination**

#### **a) Whether this Court has jurisdiction to grant the orders sought;**

5. The jurisdiction of this Court is anchored in Section 47 of the Law of Succession Act, which grants the High Court wide powers to entertain any dispute and make such orders as may be expedient in matters relating to estates of deceased persons.

6. Further, Rule 73 of the Probate and Administration Rules preserves the inherent powers of the Court to make orders necessary for the ends of justice or to prevent abuse of the court process.

7. ***In re Estate of Gitau (Deceased)***, the High Court of Kenya held that: ***'The probate court retains inherent jurisdiction to issue such orders as are necessary to ensure proper and expeditious administration of estates.'***

8. Similarly, ***In re Estate of Mwaura Mutungi (Deceased)***, the Court emphasized that:

***'The court powers under Section 47 are wide enough to enforce its own orders and ensure that administration is completed.'***

9. This Court is properly seized of jurisdiction to entertain and determine this application.

**b) Whether the Respondent has obstructed the administration of the estate**

10. Administrators act in a fiduciary capacity and are under a legal obligation to facilitate the administration and distribution of the estate.

11. ***In re Estate of G.K.K. (Deceased)***, the High Court held that an administrator who fails to cooperate or who frustrates

administration is in breach of his fiduciary duty and is amenable to court sanction.

12. Further, **in re Estate of Prisca Ong'ayo Nande** (Deceased), the Court observed:

***'The duty of an administrator is to complete administration without delay; any conduct aimed at delay amounts to abuse of process.'***

13. In the present case, the evidence shows that the Respondent is in possession of the original title deed and has refused to surrender them despite the Court directing completion of transmission within 90 days.

14. That period has since lapsed and efforts through local administration and legal aid mechanisms have been unsuccessful.

15. This conduct clearly demonstrates deliberate non-cooperation and obstruction. The Respondent has obstructed the administration of the estate and frustrated the implementation of the confirmed grant.

**c) Whether the Court can order transmission without production of original title deeds**

16. The central question is whether lack of original title deeds can defeat a confirmed grant.

17. **In re Estate of Charles Ngarithi (Deceased)**, the High Court held:

***'Where an administrator withholds the documents, the court may direct the and Registrar to proceed with transmission based on the confirmed grant.'***

18. Similarly, In re Estate **of M'Ngarithi M'Miriti (Deceased)**, the Court stated:

***'A confirmed grant is sufficient authority for transmission, and administrative hurdles such as absence of title documents cannot override a lawful court order.'***

19. Additionally, in **Republic v Land Registrar Thika Ex Parte Gathoni**, the Court held;

***'A land registrar is bound to give effect to lawful court orders and cannot decline to act where the legal basis for registration has been established.'***

20. The law therefore recognizes that a confirmed grant is the operative instrument for transmission and Justice cannot be defeated by withholding documents.

21. This Court has the power to order transmission without production of original title deeds where circumstances justify such intervention.
22. Where a court directs transmission based on a confirmed grant, the legal effect is that the confirmed grant becomes the operative instrument of transfer, and not the physical title document
23. In **re Estate of M'Ngarithi M'Miriti** (Deceased),  
***'a confirmed grant is sufficient authority for transmission and cannot be defeated by lack of title documents.'***
24. Further, in In **re Estate of Charles Ngarithi (Deceased)**, the Court held that ***administrative obstacles such as withholding of title documents cannot defeat lawful transmission ordered by the Court.***
25. In effect, the law recognises that registration overrides possession of the physical document, and the land register is the ultimate proof of ownership.
26. Further guidance is found **in Republic v Land Registrar Thika Ex Parte Gathoni**, where the Court held that ***'Land Registrars are bound to give effect to court orders and cannot insist on production of documents where lawful authority exists.'***

**d) Whether the Applicant is entitled to the orders sought**

27. The Applicant has demonstrated that there exists a valid confirmed grant dated 19th May 2025.
28. The Court issued clear directions on transmission within 90 days however the Respondent has frustrated compliance with that order and the beneficiaries have been denied their lawful entitlement.
29. The Court is guided by the principle that litigation must come to an end and that successful parties must enjoy the fruits of their judgment.
30. Failure to grant the orders sought would encourage disobedience of court orders, perpetuate injustice to beneficiaries and undermine the authority of the Court.
31. The Applicant has established sufficient grounds for the grant of the orders sought.

## **Conclusion**

32. The Court finds that the Respondent has frustrated the administration of the estate by withholding title documents and failing to comply with court timelines.
33. The Court therefore intervenes to uphold the authority of its orders and ensure completion of the administration process.

## **Orders**

Accordingly, the Court issues the following orders:

1. The County Land Registrar, Kakamega, is directed to proceed with transmission of land parcels Isukha/Kambiri/1327 and Isukha/Kambiri/1947 in accordance with the confirmed grant dated 19th May 2025 without requiring production of original title deeds.
2. Upon transmission, the Land Registrar shall issue fresh title deeds to the beneficiaries, and the previously held titles shall be deemed legally spent and incapable of conferring any rights.
3. The Officer Commanding Station (OCS) shall provide security assistance to ensure compliance if necessary.
4. Costs of the application shall be borne by the Respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**S.N MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Angog'a/Velma