



In re Estate of Joseph Erick Owino alias Joseph Erick Owino Nyaburi (Deceased) (Probate & Administration E058 of 2020) [2026] KEHC 5611 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION E058 OF 2020**

RN NYAKUNDI, J

APRIL 28, 2026

**N THE MATTER OF THE ESTATE OF THE LATE JOSEPH ERICK
OWINO ALIAS JOSEPH ERICK OWINO NYABURI - (DECEASED)**

BETWEEN

EMMANUEL OTIENO OWINO APPLICANT

AND

MARY ANYANGO ONYANGO 1ST RESPONDENT

CHRISTINE OWINO 2ND RESPONDENT

MARY NABUSU OWINO 3RD RESPONDENT

RULING

1. Before this court for determination is a Notice of motion dated 26th March, 2026 brought under the provisions of section 3 and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, Sections 47 and 82(a) of the *Law of Succession Act*, Rule 73 of the Probate and Administration Rules. The applicant seeks reliefs THAT:
 - a. Spent.
 - b. This Honourable court be pleased to grant orders vacating/lifting any restrictions and/or cautions made over the parcel of land known as title No. Eldoret Municipality Block 13/74 to facilitate identification, survey, allocation and transmission to the respective beneficiaries of their respective shares as detailed in the Certificate of Confirmation of Grant dated 14th March, 2022.



- c. This Honourable court be pleased to direct the County Surveyor – Uasin Gishu to undertake a complete survey and demarcation exercise of that parcel of land known as Title No. Eldoret Municipality Block 13/74 as per the proposed sub-division plan attached herewith.
 - d. This Honourable Court be pleased to grant orders directing the Public trustee to execute all instruments necessary for the transmission of the estate to the respective beneficiaries in accordance with the Certificate of Confirmation of Grant dated 14th March, 2022.
 - e. That costs of this application be paid by the 2nd administrator/Respondent.
2. The application is anchored on grounds that:
- a. That this Honourable court delivered the Ruling dated 10th March, 2022 distributing the deceased's estate and thereafter issued a certificate of confirmation of Grant on 14th March, 2022.
 - b. That the estate beneficiaries have however not been able to enjoy their respective inheritance shares owing to the failure by the administrators to work in tandem or agree on the joint execution of their mandate as administrators.
 - c. That the 2nd administrator/respondent has completely refused to execute the necessary instruments that would facilitate the transmission of the estate as ordered by the court citing instruments that would facilitate the transmission of the estate as ordered by the court citing the pendency of her non-existent appeal against the Ruling dated 10th March, 2022 which appeal in any event is a non-starter as the same was filed without leave of this honourable court as provided in law.
 - d. That the 2nd administrator/Respondent has in addition to obtaining restraining orders against dealings in the property known as Title No. Eldoret Municipality Block 13/74. Also applied for an auction to be placed against the said parcel which restrictions have adversely affected the intended distribution of the said asset to its lawful beneficiaries.
 - e. On 20th January, 2026, this Honourable court delivered a Ruling restraining the beneficiaries from dealing with the property known as Title No. Eldoret Municipality Block 13/74 pending identification, survey, allocation and transmission of the beneficiaries' respective shares.
 - f. It is therefore necessary that the orders sought herein are granted to allow identification of the beneficiaries' shares and conclusion of the process of transmission.
 - g. This application has been filed in good faith and in the interest of transmitting the estate as per the certificate of confirmation of Grant that has not been set aside.
 - h. Sufficient reasons have been furnished for this court to exercise its power and discretion to grant the orders sought.
3. The application is supported by the Further Affidavit of the 3rd Administrator/Applicant Emmanuel Otieno Owino sworn on 31st March 2026, in which he deposes as follows:
- a. That pursuant to the ruling dated and delivered on 20th January 2026, the administrators being the 1st, 3rd and 4th organised and planned to meet on the parcel Eldoret Municipality Block 13/74 for purposes of ascertaining each beneficiary's share of the parcel with respect to the 1st house beneficiaries on diverse dates including 30th March 2026.



- b. That they duly undertook the ascertainment of the boundaries and subdivision exercise and the beneficiaries were paired up to enable the subdivision of the parcel into portions capable of registration at the Lands Office as per the Uasin Gishu County by-laws.
 - c. That the surveyor duly prepared a subdivision plan pursuant to the survey exercise as per the beneficiaries' pairing up.
 - d. That all administrators were expected to sign the subdivision plan to enable the same to be presented at the Uasin Gishu survey office for further action and approval.
 - e. That the 2nd Administratrix has refused to endorse the subdivision plan arrived at by the surveyor without any basis.
 - f. That the 2nd Administratrix has further refused to endorse the consent to have the name of Eva Kola Owino (deceased widow) substituted with the name of Douglas Owino to enable the latter to benefit from Eldoret Municipality Block 13/74.
 - g. That the 2nd Administratrix, after delivery of the ruling dated 10th March 2022, voiced her displeasure with the fact that Douglas Owino was not a beneficiary of a share of the parcel Eldoret Municipality Block 13/74, and it therefore defeats logic that the beneficiaries of the 2nd house, having acceded to Christine's plea, she has now changed her position.
 - h. That the 2nd Administratrix is holding all the beneficiaries hostage by not endorsing the subdivision plan and all necessary forms for the transmission of the estate to take place.
 - i. That the 2nd Administratrix is acting in impunity to punish the other beneficiaries of the estate despite the court's clear pronouncement of 21st January 2026 on the ascertainment of the beneficiaries' respective shares and the green light to have the estate distributed as confirmed.
 - j. That it is necessary for this Honourable Court to declare the 2nd Administratrix's actions to be without basis and contemptuous of this court's directions.
4. In response to the application, the 1st Administrator/Respondent Mary Anyango Onyango filed a Replying Affidavit sworn on 6th April 2026 in which she depones as follows:
- a. That the ruling in respect of the application dated 26th March 2026 is due to be delivered on 8th April 2026, and that her advocates became aware of the said application on 2nd April 2026.
 - b. That the said application amongst other prayers seeks to appoint public trustees to administer the deceased estate, and that no basis has been laid for such appointment.
 - c. That the court had appointed four of them as administrators of the deceased estate, namely Mary Anyango Onyango as 1st Administrator, Christine Owino as 2nd Administrator, Emmanuel Otieno Owino as 3rd Administrator, and Mary Nabusu Owino as 4th Administrator.
 - d. That it is only the 2nd Administrator/Respondent Christine Owino who has not been cooperative in the administration of the estate.
 - e. That the best option would be to remove her as administrator of the estate rather than appointing public trustees to administer the same.



- f. That the three of them can manage and administer the estate effectively, expeditiously and competently, and that it is in the interest of justice that the Honourable Court retains the three of them and removes Christine Owino from administering the deceased estate.
 - g. That all the beneficiaries are agreeable to the mode of distribution of the estate as per the confirmed certificate of grant, but Christine Owino has always frustrated the distribution and sharing of the estate with no apparent reason.
 - h. That under their co-administration they have been able to manage the deceased estate account at Diamond Bank, Eldoret Branch, where they collect rent and distribute to all beneficiaries, and that the three of them save for Christine Owino are not in any way unwilling to administer the estate.
 - i. That she is advised by her advocates, which advice she verily believes to be true, that public trustees can only be appointed to administer the deceased estate in accordance with the provisions of Sections 6 and 7 of the Public Trustees Act.
 - j. That she therefore urges the Honourable Court, instead of appointing public trustees to administer, to remove Christine Owino and retain the three of them to administer the deceased estate.
5. Alongside her Replying Affidavit, the 1st Administrator/Respondent filed a Notice of Preliminary Objection dated 6th April 2026 on the following grounds:
- a. That the application offends the provisions of the Public Trustees Act generally and in particular Sections 6 and 7 of the Act.
 - b. That the application offends the provisions of Section 56 of the [Law of Succession Act](#) bearing in mind that there are four Administrators and only one is unwilling to administer the estate accordingly.
 - c. That the Honourable Court has power to remove the unwilling administrator Christine Owino and retain the three administrators, Mary Anyango Onyango, Mary Nabusu Owino and Emmanuel Otieno Owino.
 - d. That it is in the interest of the estate and beneficiaries that the court declines to appoint public trustees to administer the estate and consequently retains the said three administrators who are willing to administer the deceased estate and to finalize the distribution.
 - e. That it is only Christine Owino, the 2nd Administrator/Respondent, who has frustrated the administration of the estate and hence it is only fair and in the interest of justice and all beneficiaries that she be removed from the administration of the estate
6. The 2nd Administrator/Respondent Christine Owino filed a Replying Affidavit sworn on 7th April 2026 in which she depones as follows:
- a. That she is a beneficiary of the estate of the late Joseph Erick Owino alias Joseph Erick Owino Nyaburi and the 2nd Administrator in this matter, hence competent and duly authorized to swear the affidavit.
 - b. That the present application brought by the Applicant is a non-starter, lacks merit, is frivolous, vexatious, bad in law, fatally defective, incompetent, an abuse of due process of court and thus incapable of obtaining the orders sought.



- c. That she is aware that on 20th January 2026, the Honourable Justice R. Nyakundi delivered his ruling in this matter in respect of her application which sought to set aside the orders of the court which had recognized the sale of land by the 3rd Administrator and Maxwell Otieno Owino.
 - d. That the Hon. Justice R. Nyakundi explicitly held under Paragraph 25 of the Ruling that the ruling directed that Eldoret Municipality Block 13/74 be distributed to the first house and shared equally among the beneficiaries; that it did not authorize any individual administrator to unilaterally sell undefined and unidentified portions of the property without first undertaking the necessary steps of identification, survey, allocation and transmission; and that the fundamental flaw in the respondent's approach is the assumption that confirmation of grant automatically entitles beneficiaries to deal with their shares without completing the intermediate steps required by law.
 - e. That she firmly believes the Honourable Court directed itself accordingly both in law and fact in invalidating the purported sale of land and categorically held that an allocation of land in a certificate of confirmation of grant is not tantamount to legal ownership, and that the proper transmission still has to be done to allow a beneficiary to then claim legitimate and determinate ownership of said land.
 - f. That she has no opposition to the prayer in respect of the appointment of a surveyor to carve out each beneficiary's share from the suit parcel, save that it is her prayer that each beneficiary be present when the survey process is being undertaken on the ground to ensure equal involvement and prevent future disputes.
 - g. That she is aware that a meeting was held as administrators and they finally came to an amicable solution to all the troubles plaguing the estate, as can be seen from the copy of the minutes of the meeting held on 17th February 2026.
 - h. That it is the Applicant who is now claiming her legitimate preservation efforts amount to a frustration of the transmission process, when all the administrators know for a fact that there were other issues that had to be sorted before final transmission
 - i. That it is furthermore her prayer that the resolutions passed during the meeting held on 17th February 2026 be adopted in court through a formal consent and the grant be rectified to strike out the late mother Eva Owino and replace her with Douglas Owino and her share to be allocated to him accordingly.
 - j. That she is strongly opposed to the appointment of a Public Trustee to oversee the estate because the administrators are fully capable of administering the estate and effecting transmission of the respective shares to all beneficiaries.
7. In rejoinder, the 3rd Administrator/Applicant filed a Further Further Affidavit sworn on 7th April 2026, in which he depones as follows:
- a. That his application points out the challenges and frustration Christine Owino is subjecting the other administrators of the estate as well as the beneficiaries of the estate in voluntarily stopping the transmission of the estate as directed by this Honourable Court.
 - b. That Christine Owino has unequivocally acknowledged at paragraph 4 of her replying affidavit her actions to preserve an estate that has already been confirmed for distribution, that she has



at all times acted in the best interest of the estate and all the beneficiaries therein and any alleged disagreement has stemmed from her concerted efforts to preserve the estate.

- c. That this Honourable Court on 20th January 2026 expressed itself crystal clear in Orders (b), (c) and (d) directing that temporary brakes be applied restraining the administrators, beneficiaries, their agents or assigns from selling, transferring, charging, or in any way dealing with the property known as Eldoret Municipality Block 13/74 until the shares therein have been properly identified, surveyed, allocated and transmitted to the respective beneficiaries in accordance with the law; and that the administrators are directed to act jointly in the administration of the estate, with any correspondence, applications or relevant documentation relating to the estate to be copied to all co-administrators to ensure transparency and joint decision-making.
- d. That despite the above reproduced pronouncement, Christine Owino is contravening the directions given by not cooperating to oversee the distribution of the estate.
- e. That they held a family meeting and unofficially conceded to include Douglas Owino as a beneficiary of the estate asset Eldoret Municipality Block 13/74 in substitution of the late Eva Kola Owino.
- f. That Douglas Owino is not a child of the 1st house, and that the indication that the name of Eva Kola Owino should be totally erased from the confirmation of grant with the assets due to the late Eva be given to Douglas Owino is unfounded; that Douglas Owino is a beneficiary of the estate of Joseph Eric Owino and has been duly provided for in the confirmation of grant; and that all the other assets due to Eva Kola Owino that are yet to be distributed should be divided equally amongst the beneficiaries who form part of the 1st House.
- g. That they have already caused the land parcel Eldoret Municipality Block 13/74 to be subdivided in equal proportions for the beneficiaries to benefit, being 2 persons per subdivision.
- h. That Christine Owino has refused to endorse the subdivision plan as an administratrix to enable the instrument be registered at the survey office; and that they have conceded to the proposal by Christine to have Douglas take over the share of Eva Kola Owino in respect of Eldoret Municipality Block 13/74 only, and duly prepared and endorsed a consent to that effect.
- i. That Christine Owino has now refused to endorse the consent which has been prepared to accommodate her own view on the inclusion of Douglas Owino to benefit from the estate asset exclusively to be shared by the beneficiaries of the 1st House, and there is no reason whatsoever why she has refused to sign the consent to enable its adoption in court as an order.
- j. That the indication that all the beneficiaries have to be present for the transmission exercise to take place is a façade by Christine to ensure the transmission process does not take place, given that they have scheduled plethora of meeting dates to have the estate asset Eldoret Municipality Block 13/74 subdivided equally and Christine has been frustrating the process by not turning up on the material day while always seeking to push the exercise to a future date indefinitely.
- k. That the refusal by Christine to the proposal to have the Public Trustee administer this estate is so that Christine can continue to frustrate the transmission of the estate to the beneficiaries as adjudged; and that Christine Owino's end game is to benefit from the assets she alleges should be given to Douglas Owino in the absence of Eva Kola Owino.



Analysis and determination

8. I have carefully considered the application dated 26th March 2026, the Further Affidavit of the 3rd Administrator/Applicant sworn on 31st March 2026, the Replying Affidavit of the 1st Administrator/Respondent together with the Notice of Preliminary Objection both dated 6th April 2026, the Replying Affidavit of the 2nd Administrator/Respondent sworn on 7th April 2026, and the Further Further Affidavit of the 3rd Administrator/Applicant sworn on 7th April 2026.
9. To appreciate the issues that fall for determination in the present application, it is necessary to briefly place them in their proper context. The deceased Joseph Erick Owino alias Joseph Erick Owino Nyaburi passed away on 11th June 2018 leaving behind a polygamous estate. This court on 14th March 2022 confirmed the grant and ordered the distribution of the estate, directing among other things that the parcel known as Eldoret Municipality Block 13/74 be distributed to the first house beneficiaries and shared equally among them. That distribution order has at no point been set aside and remains a valid and enforceable order of this court.
10. Following the confirmation of the grant, the 3rd Administrator Emmanuel Otieno Owino and one Maxwell Otieno Owino, without undertaking the requisite steps of identification, survey, demarcation and transmission, purported to sell their respective shares in Block 13/74 to Dr. Florentius Kipchirchir Koech. On 10th July 2025, the advocates for the 3rd Administrator wrote to this court representing that the transfer had been successfully concluded, and on 23rd October 2025 this court, acting on that letter alone, adopted the same and issued confirmatory orders. The 2nd Administrator Christine Owino, who had not been served with the said letter, thereafter filed an application seeking to have the October 2025 ruling reviewed and set aside. On 20th January 2026, this court reviewed and set aside the October 2025 ruling and imposed temporary restraining orders on all dealings in Block 13/74 pending proper identification, survey, allocation and transmission of the respective beneficiaries' shares. The administrators were simultaneously directed to act jointly and to ensure that all correspondence and documentation relating to the estate was copied to all co-administrators.
11. It is in the wake of those orders that the 3rd Administrator now brings the present application dated 26th March 2026, essentially urging that the three willing administrators have taken concrete steps towards implementing the January 2026 directions, that a subdivision plan has been prepared and is ready for presentation to the County Surveyor, and that it is only the 2nd Administrator Christine Owino who stands in the way of the final transmission of the estate. He seeks orders vacating the restrictions on Block 13/74, directing the County Surveyor to undertake the formal survey and demarcation exercise, and directing the Public Trustee to execute the necessary transmission instruments.
12. Before proceeding to the substance of the application, the Notice of Preliminary Objection filed by the 1st Administrator/Respondent Mary Anyango Onyango shall be considered by this court. The law on what constitutes a proper preliminary objection has long been settled. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, Law JA stated as follows:

“....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



Sir Charles Newbold, P.; on the other hand at pg.701 paragraph B-C added the following:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion....”

13. The 1st Administrator's Preliminary Objection targets Prayer (d) of the application which seeks the appointment of the Public Trustee to execute the instruments necessary for transmission of the estate. The grounds upon which the objection is mounted are grounded squarely in Sections 6 and 7 of the Public Trustees Act Cap 168 Laws of Kenya and Section 56 of the [Law of Succession Act](#) Cap 160 Laws of Kenya. No factual investigation is required to resolve these grounds. They raise a pure question of law as to whether the conditions prescribed by those statutory provisions have been met. The objection therefore qualifies as a proper preliminary objection within the Mukisa Biscuit test and this court proceeds to consider it on its merits.
14. Section 6 of the Public Trustees Act provides that the Public Trustee may be appointed to act as administrator of a deceased estate. The provisions states as follows:

“ Grant to Public Trustee

- (1) Where a report of action taken under section 46 of the [Law of Succession Act](#) (Cap. 160) has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the Public Trustee shall cause further inquiries to be made as to the estate of the deceased.
- (2) If it appears to the Public Trustee as a result of inquiries made under subsection (1) as to the estate of a deceased person that—
 - (a) the person died intestate;
 - (b) the deceased, having made a will devising or bequeathing his estate or any part thereof, has omitted to appoint an executor;
 - (c) the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate thereof or otherwise are unable or unwilling to act;
 - (d) probate of the will of the deceased or letters of administration with the will annexed to the deceased's estate has or have not been obtained within six months from the date of the death of the deceased;
 - (e) the deceased has appointed the Public Trustee as an executor of his will; or
 - (f) the whole or any part of the estate of the deceased has been left unadministered and the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been



made, are dead or otherwise are unable or unwilling to complete the administration of the estate, he may apply under the Law of Succession Act (Cap. 160) to the court for a grant of representation and the court shall, except for good cause shown, make a grant of representation to the Public Trustee.”

15. Section 7 of the same Act sets out the specific procedural requirements that must be satisfied before such appointment is made. Reading these provisions together, it is plain that the appointment of the Public Trustee as administrator is not a remedy of first resort in cases of administrative difficulty. In my view, it is a last resort, reserved for circumstances where the machinery of private administration has wholly broken down. In the present matter, the evidence is unequivocal that three out of four administrators, the 1st, 3rd and 4th are willing, able and have been actively engaged in advancing the administration of the estate. That is precisely the deposition of the 1st Administrator/Respondent in her Replying Affidavit. The statutory threshold under Section 6 of the Public Trustees Act cannot be said to have been met where three of four administrators are demonstrably able and willing to act.

16. It is In re Estate of Elijah Mbondo Ntheketha (Deceased) [2017] eKLR where it was held as follows:

“The removal of an administrator amounts to revoking his appointment. Revocation of grants is provided for under section 76 of the Law of Succession Act. An applicant seeking to obtain such revocation must build a case founded on section 76.”

17. In In re Estate of William Nzioka Mutisya (deceased) [2018] eKLR the court observed that:-

“It is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate ... In my view if the Court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing stops the Court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference. This must be so because section 66 of the Law of Succession Act provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made.”

18. Personal Representatives of an estate are subject to supervision of the court and the court has the power to remove them from administration of the estate where necessary. In re estate of Njue Kamunde (Deceased) [2018] eKLR it was held:-

“The applicant contends that the respondent has acted contrary to the law in carrying out her duties as the administratrix and feels that on account of that, she should be suspended and leave her as the sole administratrix of the estate of the deceased who is her late son ... I agree with the applicant that section 47 Law of Succession Act and Rule 73 Probate and Administration Rules can be invoked to remove or suspend him/her ... I also agree that personal representatives are subject to supervision of this court and this court will not shy away from making any orders that may be expedient and necessary for the ends of justice and to prevent abuse of powers conferred to them under section 53 and 79 of the Law of Succession Act.”



19. It is against this legal backdrop that the conduct of the 2nd Administrator/Respondent Christine Owino must be evaluated. The evidence before this court on the material facts is not seriously contested. Following the January 2026 ruling, the 1st, 3rd and 4th administrators organised and attended meetings at Block 13/74, engaged the services of a surveyor, and had a subdivision plan prepared dividing the parcel into three equal portions of 0.2219 Ha each in a manner consistent with the March 2022 distribution order and with the minimum acreage requirements under the Uasin Gishu County by-laws. A consent order was prepared to give effect to the substitution of Douglas Owino in place of the late Eva Kola Owino in respect of that parcel, a proposal that Christine Owino herself had championed in the January 2026 proceedings and at the family meeting held on 17th February 2026. Christine Owino was then called upon to append her signature to the subdivision plan and to the consent order. She refused both. She has also persistently failed to attend the meetings scheduled for the purpose of advancing the subdivision and transmission exercise.
20. It is important to note that in the January 2026 proceedings Christine was the applicant who successfully argued, and this court upheld, that the estate could not be properly administered without joint consultation, proper identification, survey and transmission of each beneficiary's share, and that Douglas Owino's entitlement needed to be resolved. This court vindicated her on each of those grounds. The three willing administrators have since done precisely what she demanded. A surveyor has been engaged, a subdivision plan drawn up, beneficiaries paired up for registration, and a consent prepared for Douglas Owino. She now refuses to endorse any of it. Her replying affidavit offers no credible legal or factual justification for this refusal beyond the bare assertion that there were other issues to be resolved. She does not identify those issues. She does not explain what steps she took between January 2026 and the filing of this application to raise or resolve them through proper channels. The assertion is, in the view of this court, a continuation of the conduct that has characterised the administration of this estate, delay dressed up as diligence.
21. The jurisdiction to remove an administrator is grounded in Section 76 of the *Law of Succession Act*. As was held in *In re Estate of Elijah Mbono Ntheketha (Deceased) [2017] eKLR*, the removal of an administrator amounts to revoking his appointment and such revocation must be founded on Section 76. Personal representatives are subject to the supervision of this court and this court will not shy away from making any orders that are expedient and necessary for the ends of justice. Where, as here, one administrator has persistently refused to endorse the subdivision plan, refused to sign the consent order she herself had championed, and has consistently absented herself from meetings convened to advance the transmission of the estate without any credible justification, sufficient cause has been demonstrated for the revocation of her grant. This court accordingly revokes the grant of Christine Owino as the 2nd Administrator of the estate of the late Joseph Erick Owino alias Joseph Erick Owino Nyaburi pursuant to Section 76 of the *Law of Succession Act*, and directs that the three remaining administrators being Mary Anyango Onyango, Emmanuel Otieno Owino and Mary Nabusu Owino proceed with and conclude the administration and transmission of the estate without further delay.
22. The Administrators on taking oath swore to administer the estate in good faith, diligently and without fear or favour. This is a responsibility which they undertake in personam. The *law of Succession Act* sets out very clear timelines upon which the estate should be transmitted and shares devolve to the beneficiaries. I consider some of the indolent acts and non-performance of the obligations placed before the Administrators by dint of the *Law of Succession Act* a violation of the very same Statute in which they were appointed under the delegate authority. It is very unfortunate that the Administrators in succession matters have played a major role in obstructing justice by limiting inheritance rights to the legitimate beneficiaries positively identified by the Chief and confirmed by the Probate Court itself. It is also unfortunate on the other hand that the six months' period post confirmation of grant for the



Administrators to undertake diligently the distribution of the estate is never adhered to and none of them has ever applied for extension of time so that they can comply with the provisions of the same Statute.

23. The law is very clear as cited above under Section 76 of the *Law of Succession Act* this Court retains the residual powers including the application of Rule 73(1) of the Probate and Administration Rules to revoke or dismiss any Administrator initially appointed to administer the estate but in due course he or she abdicates his or her role of administration. This estate from its historical litigation can easily be classified as a ping pong game and the resultant of it is the deprivation and limitation of the beneficiaries taking possession of their rights to inheritance. This profound provisions of the law must be brought to the attention of the Administrators to recite, rehearse and meditate upon each clause and thereafter pose how far is their conduct can be better explained by any of these provisions in the administration of the estate.
24. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession 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
25. The Court in *Re Estate of Julius Mimano (Deceased)* [2019] eKLR analyzed the unique position in law held by the personal representative of a deceased person by stating as follows:

“...personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section



82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the *Trustee Act*. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”

26. This is a 2020 succession cause in terms of petition, grant of initial letters of administration and subsequent confirmation of grant issued on 14th March 2022. In so far as law is concerned the Administrators ought to have distributed the estate within six months and soon thereafter file a probate account. The review of the record shows no compelling and exceptional circumstances why the estate has not been fully transmitted. The only answer is about wrangles amongst Administrators. This is contempt on the face of the record and punishable as such so that the orders of the court are not brought into disrepute. I echo the words of Justice Odunga (as he then was) in the *Re Estate of William Nzioka Mutisya (Deceased) [2018] eKLR* where he aptly observed:

“It is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate... In my view if the Court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing steps the Court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference.” similarly in *re estate of Njue Kamunde (Deceased) [2018] KLR* the Court held:

“The applicant contends that the respondent has acted contrary to the law in carrying out her duties as the administratrix and feels that on account of that, she should be suspended and leave her as the sole administratrix of the estate of the deceased who is her late son...I agree with the applicant that Section 47 *Law of Succession Act* and Rule 73 Probate and Administration Rules can be invoked to remove or suspend him/her...I also agree that personal representatives are subject to supervision of this court and this court will not shy away from making any orders that may be expedient and necessary for the ends of justice and to prevent abuse of powers conferred to them under Sections 53 and 79 of the *Law of Succession Act*.”

27. In the present succession cause, there are genuine complaints that one of the Administrators has disregarded the judgment of this Court on distribution of the estate which decision is commonly referred to as Certificate of Confirmation of Grant. It provides the matrix and scheme of distribution and in succession law, no any other such judgment which brings the proceedings to finality. It is trite that once a dispute has been submitted to a Court of law, duly constituted under Article 50(1) of the *Constitution* and in accordance to procedure, the fair trial rights under Article 50 have also been complied with by the litigants who have a stake in the matter. Thereafter, a decision is made based on the evidence adduced by that very forum of Court. It is a legitimate expectation that the disputants should be able to rely on that judgment decided according the law to vindicate their rights. When it comes to matters of succession, the express powers of administration of the intestate estate is donated to the Administrators duly appointed under Section 66 of the *Law of Succession Act*. That process involves a participatory and an inclusivity process of the beneficiaries. However, it is my view, when it comes to



conduct of the Administrators or any one of them which is calculated to prejudice, any of the laid down protocols on administration of the estate and which goes to undermine the public confidence then the law should hold them in contempt of Court. The issue of revisiting the issue on contempt to once again call upon the beneficiaries to participate in such a process when the Court has satisfied itself that the Administrator by deed and conduct has not been obedient to the law is making a mockery of why Parliament drafted the provisions of Section 76 of the Act. The dismissal of an Administrator from administering the estate though that position he or she holds is in personam, should not necessarily render the covenants on distribution moot or nugatory.

28. In the instant case, one of the cited Administrators by way of affidavit has not demonstrated why the Certificate of Confirmation of Grant and of such fundamental importance the beneficiaries has not found its way to the distribution table and thereafter liquidate the estate by way of filing a probate account. It is a constitutional imperative that justice to the beneficiaries should not only be done by the Administrators but should manifestly and undoubtedly be seen to be done. The Superior Courts have consistently ruled that statutory timelines particularly those involving limitations for legal remedies like in succession cases, Section 71(1) provides that: After the expiration of a period of 6 months, or such shorter period as the court may direct under Sub Section 3 from the date of any grant of representation, the holder therefore shall apply to the court for confirmation of grant in order to empower the distribution of any capital assets. Similarly, under Section 83(g); within 6 months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
29. In my considered view, these provisions must be strictly followed by the Administrators and on expiry there is a necessity to seek leave of enlargement with compelling reasons why he or she was not able to comply with the law. I further hold a very strong view on this matter that failure to comply generally should result in the dismissal of the claim as time barred with condonation of delay denied unless extraordinary circumstances are proven by the Administrators. The two provisions I have cited above are hard task master and that an Administrator(s) are bound by law to explain every day's delay particularly when a right of inheritance has accrued to the heirs of the estate. The strict enforcement of judgments particularly in succession matters should be subject to civil contempt proceedings where an Administrator fails to comply with the orders of the Court for it undermines the administration of justice.
30. If the Judiciary was conducting research at various levels of our Succession Courts, the nature of the delay and indolence or laxity by the Administrators to comply with Court orders is an abomination of the law. If there are forums where justice also sheds tears, it is in family disputes. From a practical point of view, most cases in succession disputes present details of betrayal and perfidy following the delay in processing and determining such disputes within a reasonable time. The law has failed to give the beneficiaries adequate remedies on inheritance and the emotional damage caused by the breakdown of these relationships within the family lineage is unfortunate for it can be describe in this maxim a miscarriage of justice. There are multiple endless proceedings in the form of seeking justice by the beneficiaries.
31. It should not be forgotten that the drafters of the Succession Act way back in 1981 provided a very clear roadmap of litigation and if followed to the latter justice would not shed tears. Who is going to wipe the tears of the vulnerable, children, widows and the rest of the orphaned class within the family tree who depended on land use during the lifetime of their deceased parents as the source of their livelihood and protection of the right to life under Article 26 of the Constitution. The weeping of the heirs to the estate in our corridors of justice calls for the ministers of justice in the Bench that the tears are



- deeper than all our contemplation as justice is administered across the country. We happen to be the only anointed class of our society to wipe the tears by expediting the resolutions of family disputes.
32. In the instant proceedings the other beneficiaries are longing for justice so that they can inherit the land of their fathers. There is no amount of applications which can suit the anguish of waiting for their shares to be transmitted either within the forum of mediation or by a decision of this Court. Fortunately for them this Court has already spoken and determined the issues of identifying the beneficiaries under Section 29 and also the net estate survived of the deceased.
 33. How long should Probate Courts condone the delay in completion of the administration of both the intestate and testate estates under the *Law of Succession Act*? Generally, the law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium”. As the constitutional maxim in Article 159 provides that justice delayed is justice denied, the objects of the timelines outlined in the Succession Act is to put an end to every legal remedy and have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. It is indeed a requirement under the fair trial rights that trials should begin and be concluded within a reasonable time hence there should be an end to the litigation otherwise it will be a dichotomy if litigation in our Courts is processed in eternity and made immortal. With this in mind, probate matters prosecuted at the expiry of one year should be dismissed as time barred unless the Court establishes sufficient cause for not prosecuting the dispute within 12 months as contemplated in the law.
 34. It may also be important to point out the question of the restrictions and cautions placed over Block 13/74, the position of this court is clear. The temporary brakes imposed by the January 2026 ruling were expressed in unambiguous terms. They were to operate only until the shares in the parcel had been properly identified, surveyed, allocated and transmitted to the respective beneficiaries in accordance with the law. They were a protective measure of a temporary character, not a permanent injunction. Their purpose was to prevent further irregular dealing with the parcel while the proper transmission process was being completed. That process has now been substantially advanced. The surveyor has been engaged, the subdivision plan prepared, and the beneficiaries paired up for registration. To maintain the restrictions in these circumstances would be to deploy a protective order as a tool of obstruction against the very purpose for which it was imposed. This court declines to do so and orders that the restrictions and cautions registered over Block 13/74 be vacated with immediate effect to facilitate the survey, identification, allocation and transmission of the respective beneficiaries' shares.
 35. On the prayer directing the County Surveyor of Uasin Gishu County to undertake the formal survey and demarcation exercise in respect of Block 13/74, this court is equally satisfied that the order is properly founded. Section 47 of the *Law of Succession Act* clothes this court with the jurisdiction to make such ancillary orders as are necessary to give full effect to the distribution of the estate. The subdivision plan prepared by the surveyor and produced before this court reflects a proper and equitable proposal for the division of the parcel into equal portions consistent with the March 2022 distribution order. The formal direction to the County Surveyor is a necessary step to give that plan official sanction and to facilitate the registration of the resultant portions at the Lands Office as required by the Uasin Gishu County by-laws.
 36. Having carefully considered the application, the responses thereto and the applicable law, I am satisfied that the application is meritorious save for Prayer (d) which has been disposed of by the Preliminary Objection.



37. As a result, the following orders shall abide:

- a. That any restrictions and/or cautions registered over Title No. Eldoret Municipality Block 13/74 are hereby vacated and lifted forthwith to facilitate the identification, survey, allocation and transmission of the respective beneficiaries' shares in accordance with the Certificate of Confirmation of Grant dated 14th March 2022.
- b. The appointment of Christine Owino as the 2nd Administrator of the estate of the late Joseph Erick Owino alias Joseph Erick Owino Nyaburi is hereby revoked pursuant to Section 76 of the Law of Succession Act, and the remaining administrators being Mary Anyango Onyango, Emmanuel Otieno Owino and Mary Nabusu Owino shall continue to administer and transmit the estate to the respective beneficiaries in accordance with the Certificate of Confirmation of Grant dated 14th March 2022.
- c. That the County Surveyor, Uasin Gishu County, is hereby directed to undertake a complete survey and demarcation exercise of Title No. Eldoret Municipality Block 13/74.
- d. That the Preliminary Objection is hereby upheld to the extent that Prayer (d) of the application seeking the appointment of the Public Trustee is not merited in law and is accordingly struck out.
- e. That for avoidance of doubt the statutory timelines under Section 71(1) & (3) as read with Section 83(g) of the Law of Succession Act are intended to be followed strictly and in terms of overreach extension of time be sought and applied for by the Administrators.
- f. That a declaration be and is hereby made where time bound resolution of dispute is essential failure to adhere to these timelines without sufficient cause should result in the dismissal of the cause or petition including forfeiture of legal rights which accrue from inheritance litigation.
- g. That the costs of this application shall be borne by the 2nd Administrator/ Respondent Christine Owino.

38. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 28TH APRIL, 2026.

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R. NYAKUNDI
JUDGE

