



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Philip Mbaisa Machiru (Deceased) (Succession Cause
736 of 2007) [2026] KEHC 5594 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 736 OF 2007**

AC BETT, J

APRIL 27, 2026

IN THE MATTER OF THE ESTATE OF PHILIP MBAISA MACHIRU (DECEASED)

BETWEEN

ENOCK ISIAHO MMBAITHA PETITIONER

AND

SELINA MUMBOKA SHIVAVA OBJECTOR

AND

PHILIP SHIBIRA APPLICANT

RULING

1. Before me for determination is an application dated 25/9/2019 that seeks the following orders:-
 1. That the Honourable Court be pleased to review and or set aside its orders issued on 7/7/15 dismissing the suit herein for want of prosecution.
 2. That the Applicant herein be allowed to substitute his deceased mother the Objector in the proceedings herein.
 3. That costs of this application be provided for.
2. The application is supported by the affidavit of Philip Shibira Chibini, the Applicant who avers that the Objector herein died on 15/11/2013 whereof the suit stalled was dismissed for want of prosecution on 7/7/2015. The Applicant avers that he is desirous of substituting the Objector and having the matter heard to its logical conclusion having secured limited Grant on 30/7/2019. The Objector avers that the deceased is his mother and since the dispute involves ancestral land that is currently occupied by his family, it would only be fair that his application be allowed.



3. The application was opposed by the Petitioner who filed a replying affidavit sworn on 3/3/2020 in which he avers that the application lacks merit as the subject property had since been registered in his name and therefore this court lacks jurisdiction to entertain the application.
4. The Petitioner further averred that vide Kakamega CMCC No. 184 of 2009, a court of competent jurisdiction had made a decision that the Applicant be evicted from the suit property. He annexed a copy of a Judgement in Kakamega ELC No. 124 of 2015 between himself as the Plaintiff and Stephen Mulinya Anene and Gladys Keguti Likanga as the Defendants where the court issued a permanent injunction restraining the Defendants from trespassing on L.R. NO. KAKAMEGA/SHIRU/902, an order that the remains of Maria Mulinya be exhumed therefrom within six (6) months, and an order that the Defendants vacate the said land within six (6) months and in default, eviction order to issue.
5. Along the line, the Objector passed on and on 16/12/2020, the court allowed the Applicant herein to substitute her. On 9/3/2021 directions were taken and the proceedings indicate that ruling was delivered on 27/7/2022 and indeed there is a detailed ruling on the record in which the court allowed the summons for revocation of Grant and revoked the Grant of Letters of Administration. The court made further orders as follows:-
 - “(i) The County Surveyor shall visit the land and measure its size. He/she will prepare a plan showing which portion is claimed by the Objector and that which is claimed by the Respondent. Such plan shall be filed with the Court and served on the Parties not later than 15th September 2022.
 - ii. Thereafter, this matter shall be listed for further directions.
 - iii. The Registrar of Lands is directed to attend court on the next date and bring with him the file relating to the parcel of land in dispute.
 - iv. List for Directions on 4th October 2021.
 - v. Hon. Deputy Registrar to serve orders on the Land Registrar and Surveyor.”
6. In the circumstances, this court is baffled as to why the Applicant, who has all along been represented by Counsel, has wasted the court’s precious and scarce judicial time in prosecuting an application that was long overtaken by events. For clarity, it is noted that indeed on 7/7/2015, the court closed the file under Rule 73 of the P&A Rules for failure by the parties to activate the matter. After that, the Applicant filed the present application and on 9/10/2019 attended court alongside Mr. Khayumbi for the Petitioner. Counsel for the Petitioner sought fourteen (14) days leave to file a response to the Applicant’s application and after several appearances during which both Counsel exhibited some elements of confusion, the prayer for substitution was allowed by consent on 16/12/2020. Although the record is unclear, the parties were to file submissions but on 9/3/2021, Counsel for the Applicant had not filed submissions. Counsel for the Respondent indicated that they would rely on their replying affidavit and asked for a ruling date. Ruling was reserved for 22/7/2021 but the parties did not attend and was re-scheduled to 22/7/2022 when the ruling referred to above was delivered.
7. On 12/10/2022, the Petitioner filed an application dated 8/9/2022 for review of the ruling dated 27/7/2022 and for an order that the application dated 25/11/2019 be set down for determination.
8. Despite filing the application dated 8/9/2022 and securing directions that the parties file written submissions in respect thereto, the Petitioner proceeded to file written submissions to the application dated 25/9/2019. The submissions are dated 16/12/2024. The Applicant was no better, as he filed written submissions dated 28/10/2025 to an application which had long been determined.



9. Suffice to say that it appears that the inadvertence arose on 27/7/2023 when the Hon. S. Chirchir J. issued directions that the application dated 25/9/2019 be heard on 22/1/2024, this despite Counsel for the Applicant informing the court that the application being mentioned was dated 8/9/2022 and had not been served. Despite the inadvertence, it was incumbent on Counsel for the parties to guide the court and file submissions in respect to the correct application. As it is, the court has wasted its time as it was only upon sitting down to write its ruling that it discovered the anomaly.
10. The upshot is that the court must set down its pen as it has no jurisdiction to hear an application that has been heard and determined.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF APRIL 2026.

A. C. BETT

JUDGE

In the presence of:

No appearance for the Applicant

Ms. Ihachi for the Petitioner/Respondent

No appearance for the Objector

Court Assistant: Polycap

