

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL APPEAL NUMBER E002 OF 2024(CONSOLIDATED

WITH CIVIL APPEAL E015 OF 2024)

IN THE MATTER OF THE ESTATE OF PAUL OGUTU

AYIMBA alias PAULO OGUTU alias OGUTU AYIMBA-

DECEASED

MARY AYIMBA 1ST

APPELLANT

MICHAEL ODHIAMBO AYIMBA 2ND

APPELLANT

RAPHAEL OBONG'O OGUTU..... 3RD

APPELLANT

-VERSUS-

PETER OTIENO OGUTU 1ST

RESPONDENT

ALOICE AYIMBA OGUTU..... 2ND

RESPONDENT

RULING ON DIRECTIONS

1. The Respondents herein have filed an application dated 15th April 2026 seeking to strike out the various applications which have been filed by the 3rd Appellant herein Raphael Obong'o Ogutu and also to bar the said Appellant from further defaming the Respondents and their Advocates as well as Court officers. The parties took directions to canvass the said application by way of written submissions. The parties are now awaiting a ruling thereon.

2. However, upon perusal of the entire file, it is noted that this Court determined this appeal vide its judgment dated 23rd January, 2025. Upon determination of the appeal, the parties were directed to proceed to the trial Court for the hearing of the summons for confirmation of grant dated 14th July, 2021 which was to be heard afresh by the trial Court and that the status quo regarding the occupation of

the properties by the beneficiaries was to be maintained pending determination of the said summons for confirmation of grant.

3. The Appellant did not indicate any intention to appeal against the said judgment and therefore, he together with the Respondents are deemed to have moved to the trial Court to ventilate on the pending summons for confirmation of grant. Apparently, the 3rd Appellant while proceeding before the trial Court, has filed several applications before this Court in this particular file in which the appeal has been concluded. These applications are dated 30th November, 2025, 11th December, 2025, 9th February, 2026 and 13th March, 2026. This is despite the fact that this Court duly determined the appeal and had the file closed and further that any new matters, if any, ought to be filed via new appeals or new suits or appeals to the Court of Appeal. It is instructive that the 3rd

Appellant has not indicated whether he has lodged an appeal to the Court of Appeal against the judgment of this Court dated 23rd January, 2025 or that he has filed an application for stay of execution of the judgment pending an appeal to the Court of Appeal.

4. Looking at the whole issue, and in view of the fact that the appeal herein has since been concluded and the file closed, I find that the filing of any matters which have no relation to any appeal in the Court of Appeal should be rejected. If the parties are aggrieved about the manner in which the lower court is handling the matter, they ought to approach this Court through another fresh appeal or suit as the case maybe but not to continue with fresh proceedings in a matter which has been concluded. It is instructive that the Court's judgment dated 23rd January 2025, has not been set aside or reviewed either by this Court or the Court of Appeal. That being the position, I find

that all the present pending applications have been filed improperly before the Court and that the same are an abuse of the Court process.

5. In view of foregoing observations, I proceed to issue the following directions; -

- i) The applications dated 30th November, 2025, 11th December, 2025, 9th February, 2026, 13th March, 2026 and 15th April, 2026 are hereby ordered struck out.
- ii) The parties, if aggrieved by the judgement, dated 23rd January 2025, are still at liberty to move to the Court of Appeal for redress.
- iii) The parties should proceed with the lower Court matter as directed vide the judgment dated 23rd January, 2025 and if issues arise warranting the intervention of the High Court, they should lodge them via new appeals or suits etc.

iv) Each party shall bear their own costs of the affected applications.

Dated and Delivered at Siaya this 13th day of May 2026.

D. K. Kemei,

JUDGE.

In the presence of; -

M/s Achieng for Okongo.....for 1st and 2nd

Appellants

Raphael Obong' Ogutu..... 3rd Appellant

Oduol.....for 1st & 2nd

Respondents

M/s Mourine.....Court Assistant