In re Estate of Kefa Sakwa Wafunafu (Deceased) (Succession Cause 39 of 2015) [2026] KEHC 6153 (KLR) (7 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6153 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

SUCCESSION CAUSE 39 OF 2015

REA OUGO, J

MAY 7, 2026

IN THE MATTER OF THE ESTATE OF KEFA SAKWA WAFUNAFU (DECEASED)

BETWEEN

CAROLYNE NAMWANGI SAKWA ..... 1ST APPLICANT

RAEL KEPHA SAKWA ..... 2ND APPLICANT

AND

HERMAN SIMIYU SAKWA ..... 1ST RESPONDENT

GEOFFREY MASIBO SAKWA ..... 2ND RESPONDENT

MARTIN WAKOLI SAKWA ..... 3RD RESPONDENT

PAUL WANJALA MAKOKOHA ..... 4TH RESPONDENT

AND

IGNATIUS WEKESA MUTIMBIA ..... INTERESTED PARTY

RULING

1. What is before me for determination is the interested party's Notice of Motion dated 2nd March 2026. It is brought under sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 51, Rule 1 of the Civil Procedure Rules, section 47 of the *Law of Succession Act*, and rule 73 of the Probate and Administration Rules. The interested party seeks the following reliefs:

    1. ... Spent;

    2. That this court be pleased to grant an order reopening the interested party's case, and leave to the interested party to file a supplementary affidavit and produce the minutes of 15th January 2015;

3. That costs of this application be provided for.

2. The application is supported by the grounds on the face of the Motion, together with the supporting affidavits of Ignatius Wekesa Mutimbia, the interested party, and Joseph Makhombe Aruti, the secretary who recorded the minutes sought to be introduced in evidence, both sworn on 2nd March 2026. The facts set out are that, by an application dated 16th April 2024, the applicants claimed they had been excluded from their father's share in the distribution. In response, the interested party contended that the applicants were allocated 0.10Ha each, portions of which they later sold to one John Masika Wekesa.

3. The interested party further states that, at the time of filing his response, he was not in possession of the minutes of the meeting at which the estate of their late father was distributed. This was because the minutes were in the custody of his paternal uncle, George Wachilonga, now deceased. He has since obtained a copy of the said minutes from the secretary of the meeting. However, this was obtained after filing written submissions.

4. It was deposed by Joseph Makhombe Aruti that on 15th January 2015, the clan elders held a meeting to distribute the estate of the late Raymond Kefa Sakwa amongst his three children, the applicants and the interested party. He was the secretary of the said meeting. He however could, not trace those minutes earlier on when the interested party requested them. He only obtained a copy of the minutes on 27th February 2026 from George Sakwa, now deceased.

5. It was urged that the application was merited on account of the following reasons: the evidence sought to be introduced was crucial in assisting this court reach at a just determination of the dispute; due to no fault of his own, the interested party only obtained a copy of the minute on 27th February 2026; the interested party will be greatly prejudiced if the orders sought are not granted; and it was in the interest of justice that the application be allowed as prayed.

6. The 3rd respondent filed a replying affidavit sworn on 9th March 2026. He states that the deposition was made on his own behalf and on behalf of the other three respondents, the administrators of the deceased's estate. He further states that the administrators never attended any purported meeting on 15th February 2015. The deponent thus questioned the authenticity of that meeting. It was further stated that land parcel no. Kimilili/Kimilili/112 belonged to the late Kefa Sakwa, not to Raymond Kefa. In any event, the purported distribution was illegal, in contravention of section 45(1) of the *Law of Succession Act*.

7. The respondents further stated that the members named in the minutes, namely Johnstone Wanyonyi Simiyu, Ben Wakoli Kisembe, John Watangwa and Bramwel Mbangu, were strangers, as they were not from the Bawayila Ngachi clan – tachoni. They further denied that Joseph Makhombe Maruti recorded or retained the minutes. They refuted claims that the applicants agreed, by appending their signatures, to have received 0.10Ha. In the respondents' view, the application was a waste of the court's time, as it was pivoted on an illegality. The respondents urged this court to dismiss the application with costs, as it was frivolous, unfounded and an abuse of the court process.

8. The 1st applicant filed her replying affidavit, sworn on 9th March 2026. She argued that the application be dismissed on the following grounds: the interested party was not a proper party to the proceedings, as none of the orders sought affected him; the interested party continues to unjustifiably enjoy more land than he is entitled to so long as the proceedings are delayed; the evidence sought to be adduced would not affect the trajectory of the dispute; the allegation that the applicants accepted to receive ¼ acre from their father's estate was already captured in the interested party's replying affidavit dated 20th February 2025, a fact they have already refuted; the orders sought had the effect of affording the

interested party a second bite at the cherry in an attempt to fill gaps in his case; no reasons had been advanced to justify the grant of the reliefs sought; the interested party had the opportunity to call witnesses to testify on his behalf at the hearing; and she stood to suffer prejudice if the orders sought were granted.

The Submissions

9. The application was canvassed by way of oral submissions on 16th March 2026. Miss Wakoli represented the interested party, while Mr. Maloba appeared for the applicant. The 3rd respondent appeared in person

10. In her oral submissions, learned counsel for the interested party summarised the facts set out in her client's application, submitting that this court was vested with jurisdiction to consider the application solely for the purpose of a fair determination of the dispute. Several decisions were cited to support the proposition that the application was merited and ought to be allowed with costs.

11. Mr Maloba reiterated the contents of the 1st applicant's replying affidavit, submitting that the application was unmerited on the grounds set out therein. Further, the interested party took two years to file the present application, demonstrating that it was brought in bad faith. He prayed that the application be dismissed as unmeritorious and for failing to meet the threshold set out in law.

12. In his oral submissions, the 3rd respondent echoed the averments in the 2nd respondent's replying affidavit, submitting that no reasons were advanced to justify the grant of the orders sought. He likewise prayed that the application be dismissed.

Determination

13. I have considered the application, the rival responses and the parties' opposed submissions, and have analysed the law. The present application seeks to reopen the interested party's case arising from the hearing of the application on 16th April 2024. Secondly, the interested party seeks to adduce further evidence.

14. The law on reopening and the admissibility of additional evidence is well settled. A party in such an application invites this court to exercise its discretion. In that regard, the court is obliged to exercise its discretion judiciously and arrive at a fair conclusion. To determine the present application, I adopt the reasoning of this court in Wavinya Mutavi vs. Isaac Njoroge & another [2020] eKLR, which held as follows:

> "Over the years, Kenya's superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a party's case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the applicant. Fourth, the applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive."

15. Turning to the present application, I note that the interested party seeks to adduce additional evidence arising from the applicants' application dated 16th April 2024. In response to that application, the interested party filed a replying affidavit sworn on 20th February 2025. In that affidavit, the interested party averred that the applicants sold each of their ¼ shares to John Maskia Wegesa. However, the interested party did not exemplify how those shares were distributed. In fact, there was no mention of a clan meeting held on 15th January 2015, at which Joseph Makhombe Aruti served as secretary.

16. Based on my analysis of those facts, it is my considered view that the interested party is seeking to fill gaps in his case and has not demonstrated any bona fide intention in the application. If those averments were true, why did he not mention them in his application? Secondly, if he was all along aware of the meeting, the oral evidence of Joseph Makhombe Aruti and/or his uncle George Wachilonga would have been of significant value at the time his case was heard. Even an averment to that effect would have laid a basis for such allegations if they were indeed true.

17. As rightly stated by the applicants, the interested party seeks only a second bite at the cherry. Additionally, the interested party stated that he came across those minutes by luck. However, that is a weak argument, as no reasonable explanation was advanced as to why he took more than one year to file those minutes. His paternal uncle was, according to the secretary's averments, alive at the time the minutes were obtained. What prevented the interested party from procuring those minutes when filing his response at that time? This negates the claim that the evidence could not have been obtained with reasonable diligence at the time of his hearing. Be that as it may, I find that the minutes sought to be adduced have no significant influence on the outcome of the case.

18. Finally, it is worth noting that while the interested party refers to his uncle as George Wachilonga, the secretary, whose role is to corroborate his evidence, stated that the interested party's uncle was called George Sakwa. How can we determine whether this is the same person? Secondly, no nexus has been established to show the purported interested party's uncle's relationship to the minutes. What was his designation in the minutes and his role in the meeting? I am therefore unable to establish that the interested party was truthful.

19. In my view, I find no merit in the Notice of Motion dated 2nd March 2026. It is hereby dismissed with costs to the 1st appellant and the respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF MAY 2026.

R.E. OUGO

JUDGE

In the presence of:

1st Applicant/ Respondent – Absent

Martin Wakoli /Administrator

For the Interested Party/ Applicant

Wilkister - C/A