

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 304 OF 2010**

**IN THE MATTER OF THE ESTATE OF HARON LUKANDU OMWITAKHO  
ALIAS HARUNI LUKANDU (DECEASED)**

**FREDRICK MAKANGA LUKANDU.....**

**.....PETITIONER**

**VERSUS**

**DANIEL LUKANDU MAENDE.....1<sup>ST</sup> BENEFICIARY**

**JOSEPHINE LUKANDU.....2<sup>ND</sup> BENEFICIARY**

**SILAS ASITSA LUKANDU.....3<sup>RD</sup>**

**BENEFICIARY/APPLICANT**

**RAMSEY WANGATIA LUKANDU.....4<sup>TH</sup>**

**BENEFICIARY**

**BAPTIST CHURCH.....5<sup>TH</sup> BENEFICIARY**

**RULING**

1. Before this court is a Notice of Motion dated 2<sup>nd</sup> January 2026 brought by the 3<sup>rd</sup> beneficiary/Applicant, Silas Asitsa Lukandu, seeking restraining orders against the petitioner from constructing on or interfering with the access road measuring 0.25 Acres and the demarcated boundaries of land Parcel No.East Wanga/Lubinu/49 pending the hearing and determination of this application and or succession cause.
2. A Grant of Letters of Administration Intestate was issued on 23<sup>rd</sup> August 2010 to the Petitioner, Fredrick Makanga Lukandu, and subsequently confirmed on 18<sup>th</sup> March 2025. The Certificate of Confirmation of Grant distributed the estate among the beneficiaries and specifically provided for an access road measuring 0.25 acres to

facilitate access to various portions of the land allocated to the beneficiaries.

3. Following confirmation of the grant, the County Land Registrar and Surveyor allegedly visited the suit land in the presence of all beneficiaries and carried out demarcation in accordance with the confirmed grant, including identification of the access road.
4. The present dispute arises from allegations by the 3rd Beneficiary/Applicant, Silas Asitsa Lukandu, that the Petitioner has commenced construction on the said access road, thereby obstructing access to other beneficiaries and interfering with the implementation of the confirmed grant.
5. The Petitioner opposes the application contending that he is constructing within his homestead, that no lawful mutation has been completed, and that the Applicant is acting prematurely and without proper legal basis.

### **Issues for Determination**

6. The Court identifies the following issues:
  - a. Whether this Court retains jurisdiction and supervisory authority over the administration of the estate after confirmation of grant.
  - b. Whether the Applicant has established a prima facie case warranting the grant of injunctive orders.

- c. Whether the Applicant will suffer irreparable harm if the orders are not granted and where the balance of convenience lies.
- d. Whether the application is merited.

**a. Whether the Court retains supervisory jurisdiction**

- 7. succession proceedings do not terminate upon confirmation of grant. The probate court retains continuing supervisory jurisdiction until full administration and distribution of the estate is completed.
- 8. In **Re Estate of G.K.K. (Deceased) [2017] eKLR**, the Court held that ***succession proceedings are conducted under the continuous supervision of the Court to ensure proper management, preservation, and distribution of the estate.*** The Court emphasized that administrators are fiduciaries acting under the authority of the Court and remain accountable throughout the process.
- 9. Similarly, **In Re Estate of M'Ngarithi M'Miriti [2017] eKLR**, the Court stated that even after confirmation of grant, the Court retains authority to supervise implementation to ensure that distribution is carried out strictly in accordance with the confirmed certificate.
- 10. Sections 79, 82 and 83 of the Law of Succession Act which vest administrators with fiduciary duties to hold estate property in trust for all beneficiaries.
- 11. Accordingly, this Court retains full supervisory jurisdiction and is properly seized of the present dispute.

### **b. Whether a prima facie case has been established**

In **Giella v Cassman Brown & Co. Ltd** the guiding principles for grant of injunctive relief were set out where the Court held that an applicant must establish:

1. A prima facie case with a probability of success;
2. Likelihood of irreparable injury; and
3. If in doubt, the balance of convenience.

12. The definition of a prima facie case was elaborated in **Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR**, where the Court held that it is a case which discloses arguable rights which have been infringed or are threatened.

13. In the present case, the Applicant has annexed the confirmed grant and a sketch map indicating the access road. He further alleges ongoing construction on the said access road.

14. **In Re Estate of Thiong'o [2015] eKLR**, the Court held that where actions by a beneficiary threaten to defeat implementation of a confirmed grant, the Court is entitled to intervene to preserve the estate pending determination.

15. Additionally, **In Re Estate of M’Njeru [2018] eKLR**, the Court held that interference with access roads or common utilities in a subdivided estate constitutes sufficient ground for injunctive relief pending resolution of boundary disputes.

16. The Petitioner does not deny construction but claims entitlement to his portion. However, such contention raises a boundary and implementation dispute which cannot be resolved at interlocutory stage.

17. The Court therefore finds that the Applicant has established a prima facie case.

**c. Whether irreparable harm will be suffered and balance of convenience**

18. **In Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court held that irreparable harm is injury which cannot be adequately compensated by damages.

19. The Applicant contends that obstruction of the access road will deny beneficiaries access to their homes. Courts have consistently held that denial of access to property constitutes irreparable harm.

20. **In Kenya Breweries Ltd v Washington Okeyo [2002] eKLR**, the Court held that where interference threatens the usability of property, damages are not an adequate remedy.

21. Similarly, In **Re Estate of Wambui Njuguna [2016] eKLR**, the Court emphasized that preservation of estate access routes is essential to prevent conflict and irreparable breakdown of estate utilization.
22. On the balance of convenience, status quo should be preserved where competing claims exist as held by court in **Fisher v Bell{1961}1 QB 394.**
23. This was further reiterated in the case of **Mbuthia V Jimba Credit Finance Corporation & Another {1988} KLR 1** where the court of Appeal held that where the court is in doubt, it will decide the application on a balance of convenience, and in doing so, it will preserve the property in dispute so that it is not wasted or altered pending determination.
24. In the present case, maintaining the status quo ensures that no party alters the implementation of the confirmed grant before determination.

#### **d. Whether the application is merited**

25. From the foregoing analysis, the Court finds that it retains supervisory jurisdiction over the estate ,that a prima facie case has been established, that irreparable harm is likely if the access road is obstructed, and that the balance of convenience favours preservation of the status quo pending determination of the dispute.

26. The Petitioner's argument that he is constructing within his homestead is a substantive issue to be determined at full hearing and cannot override the need to preserve the integrity of the confirmed grant.

## **Conclusion**

Accordingly, the court orders that:

- i. The application dated 2nd January 2026 is hereby allowed.
- ii. A temporary injunction is issued restraining the Petitioner from constructing on, interfering with, or in any manner dealing with the access road measuring 0.25 acres on Land Parcel No. East/Wanga/Lubinu/49 pending hearing and determination of this cause.
- iii. A further injunction is issued restraining interference with demarcated boundaries pending determination.
- iv. The OCS concerned shall ensure compliance and maintenance of peace.
- v. Costs shall be in the cause.
- vi. Mention 28.10.2026.
- vii. Right of Appeal 30 days.

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

**S.N MBUNGI**

**JUDGE**

**In the presence of:-**

CA: Velma/Angong'a

Mr Munyendo for the Objector present, objectors present.