



**In re Estate of Nyaiboria (Deceased) (Succession Cause
32 of 2022) [2026] KEHC 6007 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6007 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 32 OF 2022**

RK LIMO, J

MAY 6, 2026

IN THE MATTER OF THE ESTATE OF JOHN MAGENA NYAIBORIA – DECEASED

BETWEEN

ROBERT MAGENA NYAIBORIA 1ST PETITIONER

HELLEN CHEPNGENO MAGENA 2ND PETITIONER

AND

GRACE MORAA KAUNDA ALIAS OMBAKI APPLICANT

RULING

1. This cause relates to the estate of the late John Magena Nyaiboria (deceased) who died on 2nd May 2004.
2. This court after some protracted disputes among the dependants on 9/2/2026 determined the dispute vide a judgment delivered on 14/10/2025 where the grant was confirmed and the estate of the deceased was distributed equally among all the 8 children (dependants) of the deceased with each dependant getting 4.366 acres. This court also appointed Robert Magena Nyaiboria and Hellen Chepngeno Magena as the administrators of the estate.
3. It is apparent that the 1st administrator became reluctant to execute requisite forms to facilitate transmission of shares to respective beneficiaries forcing Grace Moraa Ombaki to file an application dated 4/11/2025 asking for assistance of this court. When the said application dated 4/11/2025 was pending, the 1st respondent filed an application dated 26/1/2026 seeking for rectification of grant and specifically to have shares going to his sisters reduced from 4.366 acres to 3.366 acres each so that he could get extra acreage.
4. This court entertained both applications and allowed the application dated 4/11/2025 giving the Deputy Registrar the mandate to execute Transmission Forms on behalf of the reluctant administrator



- (the 1st administrator). At the same time this court found no merit in the application dated 26/1/2026 and disallowed it.
5. Grace Mora Kaunda alias Ombaki has now moved the court vide an application dated 17/4/2026 which substantively seeks to have the 1st administrator committed to civil jail for contempt of court.
 6. The grounds listed by the applicant are as follows;
 - a. That on 23/10/2025 this court confirmed the grant and each beneficiary's share was ascertained.
 - b. That a surveyor visited the parcel No.Trans-Nzoia/Cherangany/254 and demarcated the parcel according to the confirmed grant and identified 4.366 acres for each of the beneficiaries and placed beacons to mark the boundaries.
 - c. That the 1st administrator refused to cater for survey fees and the fee was paid by Kenneth Ombaki a son to the applicant.
 - d. That the 1st respondent had refused to sign relevant Transfer documents to enable each beneficiary get their individual shares.
 - e. That the applicant applied to this court to have the Deputy Registrar execute the documents.
 - f. That the respondent has been using delaying tactics knowing that the applicant is sickly and hoped she would die before securing her rights.
 - g. That the respondent moved into the applicant's portion by ploughing it without her permission.
 - h. That the applicant's son reported the illegal action by the respondent and the police took action by arresting and charging him.
 7. The applicant has sworn supporting affidavit sworn on 17/4/2026 where she has reiterated the above grounds.
 8. She avers that on 15/3/2026, the 1st administrator forcefully entered into the applicant's 2 acres and forcefully ploughed it using his tractor.
 9. That a report was made to the police by her son vide OB No.26/25/03/26. She has exhibited an OB extract from Cherangany police station.
 10. She avers that the 1st respondent was arrested and charged in court for trespass and has exhibited a copy of the charge sheet to demonstrate the same.
 11. That when her son went to fence her parcel, the 1st respondent attacked him. She has annexed a copy of P3 Form to prove the allegation.
 12. At the oral hearing the applicant's son contended that the 1st respondent threatened him that he would kill him in front of police at Kachibora police station and he promptly reported. He exhibited a copy of charge sheet indicating that the 1st respondent was charged vide Cr.912/26. He expressed fears for his life stating that the assault inflicted upon him followed a threat by the respondent.
 13. He faulted the response filed by the respondent contending that the respondent was using his sister to cover for his misdeeds.
 14. The respondent, Robert Magena Nyaiboria has opposed this application through an affidavit sworn on 4/5/2026 where he denies disobeying the court's orders with respect to confirmation of grant.



15. He avers that survey work was done which he claims did not sit down well with him because it failed to cater for access roads and the parcels are too narrow.
16. That though he disagreed with the survey work, he settled on his portion.
17. He avers that one Susan Kwamboka a daughter to the applicant contracted him to plough 2 acres in the applicant's portion.
18. That he ploughed 1.5 acres and after ploughing he was arrested and arraigned before CM's Court Kitale on 26/3/2026 for trespass.
19. He denies threatening anyone.
20. He submitted through counsel that the criminal cases facing him in the lower court are sub judice and are yet to be determined.
21. This court has considered this application and the response made. The applicant has invoked the powers of this court under Section 5 of the Judicature Act, Section 49 Law of Succession Act and Rule 73 of Probate and Administration Rules.
22. Contempt of court is wilful disobedience of a lawful court order or decree. Section 5 of the Judicature Act grants this court the same power to punish for contempt as the High Court of Justice in England. This power extends to upholding the dignity and the authority of court and promote the rule of law. Disobedience of court orders can lead to anarchy if not checked. This court being a custodian of justice and rule of law is expected to take seriously allegations of contempt of court.
23. In this matter, the applicant has raised pertinent grounds to demonstrate that the respondent Robert Magena Nyaiboria has committed acts of contempt or disobedience of the orders issued in this court as per confirmation of grant. The respondent has denied but the following issues stick out namely;
 - i. The respondent concedes that he went using his tractor to plough the applicant's 1.5 acres but uses one Susan Kwamboka a daughter to the applicant as an excuse. When challenged by court at the hearing on whether he had express authority of the owner, Grace Moraa he conceded that he did not have. It should be noted that this court when distributing the estate to the 8 children of deceased in this cause only granted the 8 children 4.366 acres each. Those are the named beneficiaries in the confirmed grant. The alleged Susan Kwamboka is not a beneficiary and could not have any capacity to allow the respondent permission to enter her mother's parcel without her express authority. She could not authorize the respondent to disobey a court order.
 - ii. The respondent's conduct in this matter has always demonstrated reluctance on his part to share the estate with his siblings on account that they are daughters. That conduct was clearly seen when even after this court had determined the mode of distribution, he declined to execute Transfer Forms. Secondly, the applicant has sworn an affidavit deponing that the respondent refused to meet the surveyor's fees in an attempt to delay subdivision and demarcation of the estate as per Certificate of Confirmation. This has not been contested or denied by the respondent.
 - iii. Thirdly the applicant's averment that the respondent has been hostile is demonstrated by the criminal charges now facing the respondent on account of alleged unlawful actions committed after this court had rendered itself on the mode of distribution of the estate.



- iv. The allegation of threats to life to the applicant's son Kenneth Ombaki cannot be taken lightly because the same if proven is geared towards circumventing the course of justice. That is unacceptable.

This court in light of the above finds merit in the application dated 17/4/2026. The respondent is found culpable of disobedience of a valid court order and must be sanctioned. But before I sentence him, I will give him a chance to offer any mitigation if any.

DELIVERED, DATED AND SIGNED AT KITALE THIS 6TH DAY OF MAY , 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

RULING DELIVERED IN OPEN COURT

In the presence of

Kennedy Ombaki

Robert Magena

Hellen Chepngeno

Duke/Chemosop- Court assistants

