



**In re Estate of William Chogin Chumba (Succession Cause
222 of 1992) [2025] KEHC 812 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 222 OF 1992
SC CHIRCHIR, J
JANUARY 30, 2025
IN THE MATTER OF ESTATE OF WILLIAM CHONGIN CHUMBA**

BETWEEN

STEPHEN KIMUTAI CHUMBA PETITIONER

AND

ANNA KABOI NJENGA INTERESTED PARTY

RULING

1. This cause relates to the Estate of William Chongin Chumba. It has along history, and the issues arising, are myriad. However for purposes of this Ruling, I will try to as much as possible to confine myself to the relevant issues at this stage of the proceedings.
2. The Applicant has brought the chamber summons dated 15th August, 2022 seeking for the following orders
 - i. Spent.
 - ii. That this honourable court be pleased to review and set aside the orders 4 to 7 made on the 3rd day of November, 2021 and issued on the 10th day of January, 2022.
 - iii. That this honourable court be pleased to review and set aside its ruling rendered on the 29th day of July, 2022 together with the consequential orders emanating from the aforesaid ruling.
 - iv. That this honourable court be pleased to issue an order authorizing the Officer Commanding Likuyani Police Station to enforce the ordered restraining the Petitioner/ Respondent either by himself, his agents, servants or personal representatives from entering, encroaching, trespassing, sub-dividing, using, acquiring or in any manner interfering with part or whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110.



- v. That this honourable court be pleased to issue stay orders of any nature restraining Petitioner either by himself or his agents, servants from making any further adverse entries in the records in the land registry that may interfere with part or whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 pending the hearing and determination of the suit herein.
 - vi. That this honourable court be pleased to issue orders of any nature restraining the Petitioner either by himself or his agents, servants from making any further adverse entries in the records in the land registry that may interfere with part or whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 and not to cancel any title deeds pending the hearing and determination of the suit herein.
 - vii. That the interested party/Applicant be hereby enjoined as an interested party in the matter.
 - viii. That pursuant to the above, the interested party/Applicant be hereby granted leave to file any pleadings in the matter and to give oral submissions.
 - ix. That upon leave being granted, the Petitioner/Respondent be directed to serve the proposed interested party with his pleadings.
 - x. That the interested party be granted leave to respond to the Petitioner/Respondent pleadings and Supporting affidavit.
 - xi. That costs of this Application be provided for.
3. From the above prayers , it is evident that apart from the injunctive orders , the other prayers seek for a review of the orders of this court made on 3/11/2021 and the ruling made on 29/7/2022. The Applicant also seeks to be enjoined as an interested party in the suit, and be allowed to file any pleadings.
4. The Petitioner/Respondent has filed a response. Annexed to the respondent's affidavit is a ruling in ELC No. E037/2022 at the Environment and Land Court in Kakamega. The prayers in the said suit were :-
- i. Spent
 - ii. That this honourable court be pleased to issue a temporary injunction restraining 1st defendant/Respondent either by himself, his agents, servants, or personal representatives from entering, encroaching, trespassing, sub-dividing, using, acquiring or in any manner interfering with part or whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 pending the hearing and determination of this application inter partes.
 - iii. That this honourable court be pleased to issue an order authorizing the officer commanding Likuyani Police Station to enforce the orders restraining the 1st Defendant/respondent either by himself, his agents, servants or personal representatives from entering, encroaching, trespassing, sub-dividing, using, acquiring or in any other manner interfering with part of whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110.
 - iv. That this honourable court be pleased to issue stay orders of any nature restraining the 2nd defendant/Respondent either by himself or his agent, servants from making any further adverse entries in the records in the land registry that may interfere with part or whole parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 pending the hearing and determination of the suit herein.
 - v. That the 1st defendant herein be cited for contempt of court and the court to order for his arrest for disobeying court orders in the Judgment dated 20th November, 2018 issues in Kakamega



- vi. That the costs of this application be awarded to the Plaintiff/Applicant.
5. The parties in ELC No. E037 of 2022 are the same parties herein, save that the Land Registrar, Kakamega, is an additional Defendant in the ELC's case.
6. The Applicant lost the case at the interim stage in ELC No. E 037 of 2022, apparently prompting her to move to this court. The Applicant has not disclosed to this court the existence of the ELC No. E037 of 2022. This disclosure has come from the Respondent.
7. A look at the prayers being sought in this case vis- a -vis the ones sought on ELC No. E037 of 2022 show that , with the exception of the prayer to be enjoined in the cause as an interested party, the net effect of the said orders is the same. Thus the Applicant has come to this court , yet there is no evidence that the suit at the Environment and Land Court has been withdrawn.
8. To delve further into this issue of the net effect of the prayers being sought, the Applicant seeks that the court order of 3/11/2021 and 29/7/2023 be reviewed by setting them aside. The order of 3/11/2021 was in the following terms:
 1. That the file in Kakamega HSC No. 243 has been availed. It is in the estate of Eunice Cherotich Chumba and it can not be consolidated with the instant file, in the estate of William Chongin Chumba
 2. That the two files to be handled together.
 3. That since Eunice Cherotich Chumba died, the grant made to her in this matter on 4.9.1992 is hereby revoked on account of death, and I humbly appoint Stephen Kimutai Chumba as the new Administrator of the estate of William Chongin Chumba , and a grant of letters of Administration shall issue to him accordingly.
 4. That the Estate of William Chongin Chumba be distributed as per the certificate of confirmation dated 21.9.1993
 5. That the 16.8 acres devolved to Eunice Cherotich Chumba be distributed in her estate, in Kakamega HCSC No. 243 of 2006.
 6. That the court distributed the estate in 1993, and the new Administrator should distribute the assets as per the certificate of 1993.
 7. That if survivors sold their portions to other individuals, the trustees to the individuals who bought should be done from portions of the beneficiaries after the Land's office does transmission in terms of the certificate of 1993.
9. The second order of 29/7/2022 was simply to shade clarity to , and in furtherance of, the order of 03/11/2021. It did direct the Registrar of Lands to distribute Land parcel No. Kakamega/504/219 as per the Certificate of Confirmation of Grant which issued on 21/9/1993, as amended on 10/11/2021.
10. It is the Applicant's case that the aforesaid title No. Kakamega/soy/219 (which property is to be distributed according to the certificate issued in 1993), no longer exists ;that the tittle was subdivided into title Nos. Kakamega/Soy/2109 and 2110. In effect, therefore, the setting aside of Justice Musyoka'a orders of 3/11/2021, as prayed by the Applicant ,would leave sub-divisions Nos. 2109 and 2110 as the only property available. The Applicant would have retained the two properties and thus achieved her objective.



11. On the other hand , in the suit before ELC , she seeks for declarations that she is the registered owner of Kakamega/Soy/2109 and 2110. If she succeeds, the net effect is the same as she would have obtained if her orders for review herein are granted.
12. In other words, the Applicant has filed a suit in a different court seeking similar prayers, albeit presented in different ways. Simply put, is seeking to kill one bird with two stones.
13. A party cannot file parallel Suits/Applications, seeking similar or related prayers and prosecute them as though there are completely different matters. She has to make up her mind as to under which Suit/ Cause she wants to prosecute her claim .
14. I take note of the fact that the prayer for injunction was disallowed in ELC No. 037 of 2022. However, that did not bring the suit to an end. The suit is alive, and to that extent , the Applicant cannot come to this court to seek orders whose net effect will be the net effect in ELC No. 037 of 2022.
15. I have considered all the prayers, from prayer 2 to 11 of the Application and I am of the view that they cannot be granted as long as Kakamega ELC No. 037 of 2022 subsists.
16. The Application is *sub-judice*. The same is hereby struck off with no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE.

In the presence of:-

Godwin Luyundi- Court Assistant

