



In re Estate of John Imbiakha Mbusa (Deceased) (Succession Cause 585 of 2008) [2025] KEHC 473 (KLR) (27 January 2025) (Ruling)

Neutral citation: [2025] KEHC 473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 585 OF 2008**

S MBUNGI, J

JANUARY 27, 2025

IN THE MATTER OF THE ESTATE OF JOHN IMBIAKHA MBUSA (DECEASED)

BETWEEN

ROBERT ISIAHO MATEKWA PETITIONER

AND

LUCIA LUSEKA JUMBA (DECEASED) OBJECTOR

AND

CHRISTOPHER MAINA MATEKWA APPLICANT

RULING

1. The applicant filed a motion dated seeking the following orders:
 - I. That this Honorable court be pleased to reopen the succession cause herein and order land parcels LR Isukha/Mukhonje 2030 and 2031 illegally created by the petitioner/respondent herein be reverted back to the original land parcel LR Isukha/Mukhonje/1932 in the names of the objector/applicant herein.
 - II. That the costs hereof be provided for.
2. The application was premised on the following grounds:
 - a. That the Petitioner/Respondent herein without the express consent of the Applicant herein colluded with a surveyor to steal land from the Objector/Applicant.
 - b. That the Petitioner has allocated himself part of the Applicant's land parcel LR Isukha/Mukhonje/1932 by subdividing it into two to create land parcel 2030 and 2031.



- c. That after subdividing land parcel LR Isukha/Mukhonje/2031 leaving land parcel LR Isukha/Mukhonje/2030 in the names of the Applicant, thus indirectly disinheriting her.
 - d. That the application herein is necessary so that the said anomaly is rectified and corrected.
 - e. That litigation must come to an end.
 - f. That it is in the interest of justice that the application herein is allowed.
3. The application was supported by an affidavit sworn by the applicant where she stated that following judgment entered on 30.11.2011, she was awarded the LR Isukha/Mukhonje/1349. Thereafter, an objection filed by one Margaret Malesi (daughter to the deceased), and they entered into a consent where she ceded part of the estate creating subdivisions LR Isukha/Mukhonje/1932 and 1933.
 4. The applicant stated that instead of the two agreed subdivisions, the land surveyor went ahead and created three subdivisions, hence allocating more land to the respondent herein which he was not entitled to.
 5. The respondent filed a replying affidavit where he stated that to his knowledge, the applicant had died on 15.08.2022 hence it was impossible that she filed an application, or swore an affidavit dated 21.03.2022 but filed on 03.11.2023.
 6. He further stated that following this court's judgment on 30.11.2011, they entered into agreement as a family and agreed that the LR Isukha/ Mukhonje/1349 be subdivided into two portions namely LR Isukha/ Mukhonje/1932 and 1933 in favor of the objector and the respondent respectively.
 7. He told the court that the subdivision was done by consent of the applicant who appeared before the Shinyalu Land Control Board and signed all the documents for the transfer and land control board consent in his favor.
 8. The respondent further stated that he indeed bought land from one Margaret Malesi who transferred the same to the respondent after the conclusion of the succession proceedings.
 9. Lastly, he stated that this court is functus officio in the matter as the land has since changed ownership, and should the applicant have any issues with the acreage, she ought to lodge them at the proper forum.
 10. The matter was canvassed by way of written submissions.

Petitioner's/Respondent's Submissions.

11. The respondent submitted the application ought to be dismissed on the ground that the estate of the deceased has since been transmitted, thus this court is functus officio on the estate of the deceased.
12. He submitted that the transmission of the estate of the deceased has since been done and new title deeds issued to their respective owners.
13. It was his submission that the subdivision and registration of the titles was successfully done with the help and knowledge of the applicant who sanctioned the entire process, and further, that LR Isukha/Mukhonje/2030 still remains in the names of the applicant.
14. He prayed that the application be dismissed, averring that it was an abuse of court process, curated to waste precious judicial time and placed reliance in the case of *Re Estate of the late Ismael Muchiri Nkinyangi(deceased)* 2021 eKLR.



Objector's/ Applicant's Submissions.

15. The applicant submitted that the objector and respondent are both sons to the initial objector, Lucia Luseka Jumba (now deceased) who purchased land from John Mukabi Mbusa.
16. The applicant averred that following the death of John Mukabi Mbusa, the petitioner herein, secretly proceeded to initiate succession proceedings for the estate, without consulting the purchaser who was his mother and his siblings including the applicant herein. This resulted to her filing an objection in the proceedings and judgment was entered in her favor on 30.11.2011.
17. Consequently, the suit Land was transferred to her name. Thereafter, an objection was filed by one Margaret Malesi, a daughter of the deceased and an agreement was reached between them to subdivide the suit land to create new land parcels LR Isukha/ Mukhonje/1932 and 1933 for Lucia Luseka and Margaret Malesi respectively.
18. The applicant submits that after the resolution of the objection, the petitioner herein again proceeded to secretly cause the subdivision of LR Isukha/ Mukhonje/1932 which was in his mother's name, into two parcels and allocated himself one of the portions, LR Isukha/ Mukhonje/2031.
19. It is the objector's submission that this illegal and fraudulent conduct by the respondent is what gave rise to the current application by the initial objector who swore and signed the affidavit attached to the application before her demise.
20. The applicant prayed that the two land parcels LR Isukha/ Mukhonje/2030 and 2031 be reverted back to the name of the deceased (Lucia Luseka Jumba) so that the land is available for inheritance by all rightful heirs.

Analysis and Determination.

21. I have looked at the application, the supporting affidavit, the replying affidavit, submissions by both parties and the annexures attached.
22. The first issue for determination is whether the court is functus officio for if it is, there will be no need to deal with the issues raised by the parties.
23. A court becomes functus officio when it has dealt with matters placed before it to finality.
24. In the case of *Re Estate of the late Ismael Muchiri Nkinyangi(deceased)* 2021 eKLR the court held that
“...A court is functus officio when it has performed all its duties in a particular case... The functus officio doctrine is one of the mechanisms by means of which the law gives the expression to the principle of finality...”
25. The duty of this court was to determine and distribute the estate of John Mukabi Mbusa. This duty was done vide Judgment dated 30.11.2011 when a confirmed grant was issued to the applicant, Lucia Luseka Chumba (now deceased) and transmission was done. The land was registered in her name.
26. Whether the subsequent subdivisions and registration of resultant parcels in the names of Robert Isiaho Matekwa, Christopher Maina Matekwa and Lucia Luseka Chumba were legally and procedurally done is a question which cannot be answered by this court. The role of this court ended after distribution and subsequent transmission of the estate's asset to the beneficiary. The legality of what happened to the land thereafter can only be determined by the Environment and Land Court.



27. Therefore, this court agrees with the submissions of the petitioner/respondent herein that this court is functus officio.
28. The application dated 21.03.2023 is hereby dismissed.
29. Since this matter involves family members, each party to bear its own costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF JANUARY, 2025.

S.N MBUNGI

JUDGE

In the presence of:

Petitioner/Respondent – absent

Objector/Applicant – present

Mr. Elung'ata for the applicant – absent

Ms. Andia for the respondent – present online

Court Assistant – Elizabeth Angong'a

