



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Mbusya Lai Kamweli (Succession Cause 108 of 2010)  
[2025] KEHC 3121 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3121 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 108 OF 2010  
MW MUIGAI, J  
FEBRUARY 28, 2025**

**BETWEEN**

**SAMMY M MBUSYA LAI ..... ADMINISTRATOR**

**AND**

**CHARLES MBUSYA ..... ADMINISTRATOR**

**RULING**

**Disposition**

1. On the 31st May 2023 this delivered ruling gave the following orders:-
  1. The Protest filed on 12/2/2020 is dismissed.
  2. The Summons for Confirmation of Grant of 17/7/2019 to proceed for distribution of the deceased's estate as per the written consents of all beneficiaries and Administrators.
  3. Each party to pay its own Costs.

**Application for Orders**

2. On 28/6/2024 Sammy M. Mbusya 1<sup>st</sup> Administrator filed an application seeking the following orders.
  1. Spent
  2. That the application herein be certified as urgent and heard ex-parte and orders granted in terms of prayers 2 due to its urgency.
  3. That pending the hearing and determination of this application, the honourable court do hereby issue conservatory orders of injunction against the 1<sup>st</sup> administrator/respondent, his agents, and/or representatives from further transferring, subdividing and/or in any manner interfering with Yatta/Mathingau/1449.



4. That the honourable court be pleased to review and/or set aside its orders of 31<sup>st</sup> May, 2023.
5. That the honourable court herein be pleased to rectify the grant to substitute the 2<sup>nd</sup> administrator Martha Kalondu Mbusya with Charles Mbusya
6. That the honourable court subject to order 3 hereinabove, do order the hearing of the applicant's protest dated 12<sup>th</sup> February, 2020 be heard afresh through viva-voce evidence.
7. That the costs of this application be paid for by the Respondents

### **Grounds of Application**

3. On 28<sup>th</sup> day of June, 2024 the applicant filed the following grounds
  1. The applicant herein filed his protest to the court on the February, 2020 through his former advocates.
  2. The protestor/applicant also provided witnesses and witness statements to his then advocates in support of his claim.
  3. The protestor was intent of prosecuting his protest through viva voce evidence supported by his evidence and that of his witnesses.
  4. All along the protestor was under the impression that they would be called to court to testify until in the month of June, 2024 when he was notified of the honourable court's ruling and realized that the witness statements were not presented to court and was not factored herein.
  5. The 2<sup>nd</sup> administrator is at a very advanced age and cannot be able to proceed with the administration of the estate and there is an urgent need to substitute her.
  6. The 1<sup>st</sup> Administrator has proceeded to subdivide the land subject matter without our involvement and is at an advanced stage of having transfers done to the land in question without the 2<sup>nd</sup> administrator's involvement.
  7. It is mete and just for the honourable court to issue the orders.

### **Submissions Against the Orders**

4. The applicant cited the case of the *estate of Simoto Omwenje Isaka (deceased)* (2020) eKLR , the court reiterated it's holding in *Stephen Gathua Kimani v Nancy Wanjira Waruingi T/A providence auctioneers* [2016] EKLR and stated that:

One thing is clear in this application. The delay of one year has not been explained perhaps it's important to recall the last sentence of Order 45 Rule 1 (1) (b) which reach may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay." The logical question that follow is, was the present application made without unreasonable delay or is a delay of one year reasonable. The issue for determination is whether or not the applicant has unreasonable decree in filing the present application Under normal circumstances it should not take an applicant one year to file an application, in court it would require sufficient explanation to justify a delay of one year. To my mind this is a long period, and indeed an unreasonable delay, Such a long delay must be sufficiently explained."



## Replying Affidavit

5. On 2<sup>nd</sup> September, 2024 Sammy M. Mbusya 1<sup>st</sup> Administrator filed an Replying Affidavit and stated as follows:-
  1. That the applicant's application has not met the criteria set in law to warrant the court review its ruling made on 31/5/2023.
  2. That the applicant was well represented by his advocate during the entire proceeding of the applicants protest and even his counsel was present when the court delivered its ruling on 31/5/2023.
  3. That the applicant has neither annexed in his application anything to prove that there is discovery of new important matter on evidence which was not within his knowledge or could not be produced before the court delivered its judgement nor has the applicant proved an error apparent on face of record so as to convince the court to review its ruling.
  4. That the applicants counsel took directions that the matter was to proceed through written submissions and each party was granted sufficient time to file all necessary documents hence the applicant's allegation that the matter should be heard again through viva voce evidence is misadvised as at all times an advocate acts to the best interests of his/her client
6. The Court notes that on record there is Certificate of Confirmation of Grant following the impugned Ruling of 31/5/ 2023, where the Protest was dismissed as Charles Mutinda Mbusya failed to prove inter vivos gift of 10 acres Yatta /Mathingau /1449 by the deceased.
7. The property Yatta /Mathingau /1449 was to be shared between 2 houses of Naomi Mulundu (deceased) & Martha Kalondu. Nothing was stated of distribution of the other deceased's properties; Mwala/ Kyawango/247/ 257/251 & Yatta /Matungulu/144.

## Review of the Matter/Ruling

8. The instant Application seeks to review the Ruling, stop subdivision by 1<sup>st</sup> Administrator Sammy M Mbusya against Charles Mbusya who is advanced in age and has diminished memory.
9. The Applicant sought the Protest be reheard through viva voce evidence as the Protestor had filed Witness statements of his witnesses on 24/3/2021 (confirmed to be in the Court Record) and as per directions of Hon D.Kemei J on 11/2/2021.
10. The Court record confirms the matter was slated for hearing of Protest through viva voce evidence on 24/11/2021, 17/2/2022, 23/5/2022, 18/7/2022, 3/10/2022, 29/11/2022 when parties agreed by consent through Advocates on record to canvass the Protest through written submissions. Ruling was delivered on 31/5/2023.
11. The Respondent upon service of interim orders and application filed Replying Affidavit
12. And parties through Counsel claimed to have filed physical copies of written submissions in the Court file. At the time of writing Ruling, the Replying Affidavit and submissions are not on the Court record. I cannot access CTS Machakos High Court am on transfer to Nairobi Milimani High Court.
13. Doing the best; I can in the circumstances and taking into account this matter is of 2010 and must be concluded soonest and taking into account all parties' rights; I find and order as follows;
  1. The instant application of 28/6/2024 by Protestor/Applicant is compromised as follows;



- a. The 2<sup>nd</sup> Administrator Martha Kalondu Mbusya due to advanced age to be replaced by her son Charles Mbusya.
- b. That there will be maintenance of Status quo and/or temporary/interim injunction for 90 days from date of delivery of Ruling to with hold /stop the ongoing subdivision and allow parties beneficiaries/Administrators to address the issue of distribution of Yatta /Mathingau /1449.
- c. The record confirms that parties did not pursue interpartes hearing instead the matter was adjourned severally as shown by the record. Finally, parties through their respective advocate agreed to canvass the application by written submissions. Hence the Ruling.
- d. Parties, beneficiaries. Administrators Interested parties Advocates to pursue Court annexed mediation within 90 days to start if ALL parties agree and sign Agreement, the resultant Mediation settlement agreement presented to Court and adopted as Order of the Court shall replace the Ruling of 31/5/2023
- e. The Applicant may pursue revocation of grant application or Appeal the Court's ruling of 31/5/2023.
- f. This Court finds no legal basis for review of the findings, no new and important development or matter and the application for review is brought after almost 2 years since the Ruling of 31/5/2023.

**RULING DELIVERED SIGNED DATED IN OPEN IN MACHAKOS HIGH COURT VIRTUALLY/PHYSICALLY ON 28/2/2025.**

**M.W.MUIGAI**

**JUDGE**

In the presence of

Ms. Muia for the Applicant – Present online.

