



In re Estate of Shadrack Onyalo Olang' (Deceased) (Succession Cause 353 of 2015) [2025] KEHC 3955 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 353 OF 2015
JK SERGON, J
MARCH 27, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE
SHADRACK ONYALO OLANG' (DECEASED)**

BETWEEN

CYPRINA CONSOLATA NYAORO ONYALO PETITIONER

AND

TERESIA OMOLO ONYALO & 2 ORS RESPONDENT

RULING

1. The application coming up for hearing is a chamber summons dated 15th January, 2025 seeking the following orders;
 - (i) That the Deputy Registrar of the High court of Kenya at Kericho be authorized to sign all the relevant Land Control Board forms and all necessary transfer (transmission) forms in place of the Respondents Teresa Amolo Onyalo, Jacob Joseph Onyalo and Charles Kennedy Opiyo for effective transfer and vesting of shares upon the beneficiaries in accordance with the Certificate of Confirmation of Grant issued and dated the 1st of August 2024.
 - (ii) That an order directing the Land Registrar, Kericho and the Land Registrar, Kisumu to dispense with the production of copies on national identity cards, KRA PIN certificates and passport size photographs of the Respondents Teresa Amolo Onyalo, Jacob Joseph Onyalo and Charles Kennedy Opiyos for purpose of executing transmission documents in relation to the Respondents.
 - (iii) That an order be and is hereby issued directing the Officers Commanding Station, Kericho Police Station, to provide security to the District Surveyors to survey and demarcate the shares of the beneficiaries in the land parcel Kericho Municipality 631/IV/31, as per the Certificate of Confirmation of Grant dated 1st of August 2024.



- (iv) That an order be and is hereby issued directing the Officers Commanding Station, Katito Police Station, to provide security to the District Surveyors to survey and demarcate the shares of the beneficiaries in the land parcel LR No North Nyakach/West Agoro/1347 and LR No North Nyakach/West Agoro/2255, as per the Certificate of Confirmation of Grant dated 1st of August 2024.
- (v) That an order be and is hereby issued directing the Officers Commanding Station, Pap Onditi Police Station, to provide security to the District Surveyors to survey and demarcate the shares of the beneficiaries in the land parcel LR No North Nyakach/Kabodho East/3090 and LR No North Nyakach/Kabodho East/3096 as per the Certificate of Confirmation of Grant dated 1st of August 2024.
- (vi) That cost of the application be borne by the Respondents.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Cyprina Consolata Nyaoro Onyalo the Applicant herein.
 3. She avers that the grant of letters of administration of the estate of the above Shadrack Onyalo Olang' (Deceased) was made to her and the three Respondents on the 20th day of April, 2017.
 4. She avers that the Honourable Court determined the distribution of the estate in its judgment dated the 1st of August 2024 and directed that a certificate of confirmation of Grant to issue as per the terms of the judgment of the Court and that in accordance with the said judgment of the Court a Certificate of Confirmation of Grant was issued by the Court and dated the 1st of August 2024.
 5. She avers that on the several occasions, she tried reaching out to the Respondents to cooperate and sign the Land Control Board application consent forms, transfer (transmission) forms and avail all the necessary forms for the effective transfer and vesting of shares of the estate properties upon the beneficiaries but they invariably declined.
 6. She avers she is aware that the Respondents filed a Notice of Appeal dated the 13th of August 2024 which her advocates advised her that the same is a nullity in law, hence it offers no justification at all for their refusal to sign all the necessary documents for effective transmission and vesting of shares upon the beneficiaries.
 7. She avers that she instructed her advocates to write to the Respondent's new advocates, the firm of Obondo Koko & Company Advocates to advise their Clients and to avail the necessary documents and that her advocates wrote a letter dated the 15th of October 2024 to the Respondent's advocates but the same elicited no positive response as the documents have not been availed to date despite it having been duly received and stamped.
 8. She avers that all along after the service of the said letter, she made several attempts to reach the Respondents but they rebuffed and frustrated her efforts to have them sign the necessary transfer forms and Land Control Board consent application forms.
 9. She avers that she is an elderly widow of the deceased currently aged 90 years and with age associated with frailty and illness and the pendency of this matter is aggravating her health issues and is therefore anxious that the succession matter herein needs to be completed and closed.
 10. She avers that she has been attending the Nyakach County Hospital and urgently needs finances for her medication as she needs treatment and needs to dispose of part of her shares to raise money for her medication.



11. She avers that considering the obstinacy and hostility displayed by the Respondents, they need orders of security to be provided by the Officers Commanding Stations where the estate properties are situated to ensure that District Surveyors survey the properties and demarcate the shares of the beneficiaries.
12. She avers that there is no justification at all for the Respondents to continue holding every beneficiary at a stalemate yet the Honourable Court already determined the matter and therefore distribution should be completed.
13. She avers that the Respondents are blatantly in breach and continue to flout their duties as the administrators under the provisions of section 83 (g), (h) and (i) by refusing to finalize the distribution of the estate. She further avers that as advised by her advocates that the law anticipates conduct of such individuals and provides a remedy in section 49 of the *Law of Succession Act* as read with rule 73 of the *Probate and Administration Rules*.
14. She therefore urged this court to reign in this inequitable and unacceptable conduct on the part of the Respondents by serving justice under the provisions of the law cited which serve to prevent abuse of the process and attempts to defeat justice.
15. The respondents filed a replying affidavit that was sworn by Franklin Obondo Koko an Advocate of the High Court of Kenya practicing in the name and style of M/S Obondo Koko & Co. Advocates having the conduct of the matter on behalf of the Objectors.
16. He avers that having read the Application dated 15/1/2025 together with the Supporting Affidavit by the Applicant and understood the contents therein hence competent to make and swear to the affidavit, he avers that it is not true that the objectors have refused to comply with the orders of this Court as alleged by the Applicants and neither have they threatened the applicants with any ill intended actions.
17. He avers that there is an Notice of Appeal filed herein and the appeal is waiting for the preparation and filing of the Record of Appeal.
18. He avers that the Honorable Court is functus officio at this juncture and cannot issue the orders sought and what the applicant is alleging are mere allegations that lack the backing of critical evidence of threats or otherwise.
19. He avers that it is true that the Advocate for the Applicant wrote a letter to them requesting for their clients co- operation, however they received the said letter with a rider informing them that they have preferred an appeal to the said matter and the outcome may change the trajectory of the matter which information they never responded to nor opposed thus they were under the impression that they had consented to their plea.
20. He avers it will be in the interest of justice that the parties are given an opportunity to harmoniously push the process of succession forward as sub-division of parcels require the input of all beneficiaries as to the location of each beneficiary's parcel.
21. He avers that no document on mutation nor transmission has been produced to show that the process has been commenced to enable the Objectors participate in the same.
22. He avers that the allegations made by the Petitioner/Applicant are not supported by any evidentiary value on the same to warrant the issuance of the orders by court.
23. He avers that this Court can only reign in once it is proven beyond doubt that the efforts of reaching the objectors have been futile and in vain and it has hence become impossible to conduct the next



process. He therefore contended that the application lacks merit and prayed that the same be dismissed with costs.

24. The matter came up for inter partes hearing and the advocate for the applicant stated that he would rely on the grounds on the application and the supporting affidavit whereas the advocate for the respondent stated that he would be relying on the averments in the replying affidavit.
25. I have considered the application and I find that the sole issue for determination is whether this court can grant the orders sought to facilitate the effective transfer and vesting of shares of the estate upon the beneficiaries in accordance with the Certificate of Confirmation of Grant issued and dated the 1st of August 2024. On one part, the applicant faulted the Respondents for being blatantly in breach and continuing to flout their duties as the administrators of the estate of the deceased under the provisions of section 83 (g), (h) and (i) by refusing to finalize the distribution of the estate. The applicant was adamant that the law anticipates conduct of such individuals and provides a remedy in section 49 of the Law of Succession Act as read with rule 73 of the Probate and Administration Rules. On the other part, the respondent contended that this court, having confirmed the grant in question, is functus officio and therefore cannot issue the orders sought and that they had preferred an appeal to the said matter and the outcome may change the trajectory of the matter.
26. The application is premised on section 49 of the Law of Succession Act and rule 73 of the Probate and Administration Rules, these two provisions give the High Court wide discretion to do what is necessary to ensure the ends of justice are met. In *Floris Piezzo & another v Giancarlo Falasconi* (2014) eKLR, the Court of Appeal had this to say: “We are in total agreement with this conclusion. We have no doubt at all that the Law of Succession Act gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.” This court has power to give orders that are necessary to meet the ends of justice in the matter, a notice of appeal notwithstanding, which this court noted that the Respondents have not exhibited a copy of the Memorandum of Appeal or any other pleading or document to enable this Court scrutinize the same and neither are there orders for stay of proceedings in the matter.
27. Consequently, the chamber summons dated 15th January, 2025 is hereby allowed in its totality with costs being in the cause.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 27TH DAY OF MARCH, 2025.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Kirui for Petitioner/Applicant

No appearance for Koko for the Respondent

