



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Delewa Osigwar (Deceased) (Succession Cause
175 of 1994) [2025] KEHC 7153 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 175 OF 1994**

WM MUSYOKA, J

MAY 29, 2025

IN THE MATTER OF THE ESTATE OF DELEWA OSIGWAR (DECEASED)

RULING

1. The application, dated 17th February 2025, is for stay of these proceedings and the orders made on 24th May 2023, pending hearing and determination of ELC No. E004 of 2025 (OS). The applicants aver that they bought land from the deceased in 1987, from some of his children, and took possession. Then the administrators obtained representation to the estate, in 1994, then in 1995 they got a grant which they used to transfer the land to them.
2. They aver that the family of the deceased, while knowing that they had bought land from the deceased and some of the beneficiaries, went back to court to have the grant revoked and the land taken away from them, and then to seek a fresh distribution which totally excluded the buyers. They aver that the order for cancellation of their titles and the reversion of the land to the name of the deceased shall prejudice them. They assert that the family sold off their land, and are now intent on pursuing that which belongs to the buyers.
3. They attach title deeds to show that they had had the land registered in their names, and sale agreements demonstrating how they had acquired the land from the deceased and some of his children.
4. There is a reply by one of the administrators, Joseph Osigwar Delewa, vide an affidavit, sworn on 19th March 2025. It is averred that the estate has been distributed vide the orders of 28th November 2024, and there was nothing outstanding. It is asserted that the applicants are neither children of the deceased nor persons who had purchased land from the deceased. The administrator also raises issue about ELC No. E004 of 2025, saying that the applicants have not proved that such a suit is in existence. He goes on to aver that that suit is on adverse possession and use of land, and its outcome would have no bearing on these probate proceedings.
5. There were various sale transactions carried out with respect to the land the subject of these proceedings. Some appear to have been with the deceased, and some with his children. There could be a case for the applicants to have the orders that they seek, particularly if they have filed a suit at the Environment and Land Court, which would be the proper court to address the issues that arise.



6. I was tempted to deny the orders on account of lack of proof that the suit, ELC No. E004 of 2025 (OS), exists, as no papers have been exhibited. However, the administrator concedes that such a suit exists, and discloses that it turns on adverse possession and use of land. Whatever the case, the applicants have a land case, touching on the land the subject of these succession proceedings. Let status quo herein be preserved pending conclusion of that matter.
7. I am told that the estate herein has been distributed as per the recent orders on distribution. I have not seen evidence of that. The papers, exhibited by the administrator, do not demonstrate that, for they are on cancellation of the titles previously issued, some of which were issued to the applicants or their ancestors.
8. I am persuaded that there is a case for grant of the orders sought in prayer 2 of the application, dated 17th February 2025. I do hereby, accordingly, grant the said application, dated 17th February 2025, in terms of prayer 2 thereof. This cause shall be mentioned on 22nd October 2025, to assess progress in ELC No. E004 of 2025 (OS), before further or other orders are made in this succession cause. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED, AT BUSIA, THIS 29TH DAY OF MAY 2025.

W. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Messrs. John Kimani Mbugua, Peter Otworu Nyakundi, Joseph Wanyonyi and Alfred Bennet Enyaat, the applicants, in person.

Advocates

Mr. Maxwell Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the administrators.

