



REPUBLIC OF KENYA



In re Estate of the Late David Andati Amwayi (Deceased) (Succession Cause 201 of 2011) [2025] KEHC 7111 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 201 OF 2011**

PJO OTIENO, J

MAY 29, 2025

BETWEEN

AGRIPINA KHASANDI ANDATI 1ST ADMINISTRATOR

LEXY ACHERWA LIVOYI ANDATI 2ND ADMINISTRATOR

AND

ANNETE KHAYIKA MBWABI ANDATI OBJECTOR

RULING

1. Even a casual perusal of this file invites in one the feeling that parties would have acted much better for the goal of bringing this matter to a logical closure.
2. The estate assets have never been in dispute. Even the question of who were the deceased's widows and children, as members of the two households came to the fore way back in the year 2011 when the objection, answer to petition and cross petition were filed. That was within two months of the petition for grant of letters of administration being lodged. That dispute came to be resolved on the 13.02.2015 when the two administrators were appointed.
3. What has stood on the way of the estate being wound up by distribution is the single question as to whether one, Abraham Ayiro Andati, a child admittedly born during the currency of cohabitation between his mother and the deceased, who was aged about four months at the death of the deceased, is a child of the deceased for purposes of inheritance.
4. By a ruling dated 29.5 2020, the court ordered that the judgement on distribution be put on hold until after a DNA test is conducted in respect of Abraham Ayiro Andati to ascertain he has any relationship with the deceased.
5. That is the only stumbling block on the way of conclusion of the cause. The applicant asserts without rebuttal that there is no male relative who can provide samples for the test. The court takes the view



that unless the test is conducted, the dispute will persist and the cause remain pending, while the best interest of the child and those of other beneficiaries remain uncertain. That is a scenario the court must avert, if not for anything else, for purposes of bringing this family dispute to an end.

6. While the court views the order of exhumation to be an extreme order that invokes emotions and even trauma, as expressed by the daughter and mother of the deceased, there is a bigger public good that litigation be brought to an end. The court in this instance appreciates the opposition by the administrators to be grounded on the customs and tradition, without providing the way forward to conclude the matter. In such a scenario, the court has weighed the customary law demands against the need to expeditiously conclude litigation, and considers the public good in bringing litigation to take precedence.
7. That need equally overrides the fact that the magistrates court at Milimani, Nairobi had issued orders to similar effect. While the court is aware that it is not regurgitating the issue for the second time, it equally appreciates that that order remains unexecuted for the reasons given by the applicant hence the stall in this matter.
8. The court finds that the grave needs to be opened for purposes of extracting samples for purposes of DNA testing.
9. This may however be avoided if parties were to be willing to focus more on interests rather than rights. The court records reveal that on the 21.3.2023, Mr Muniafu advocate told the court that his clients were willing to give a portion of the estate to Abraham Ayiro Andati, for the sake of concluding the cause. I read the same spirit to be conveyed in the AKB2 in the Replying Affidavit of the 1st administrator.
10. The court thus gives to the parties yet another chance to negotiate and/or mediate in good faith on what share the boy, Abraham Ayiro Andayi, gets out of the estate. That be done and concluded within 60 days from today. A settlement will wholly render the need for exhumation unnecessary
11. However, if parties will opt not to go the alternative dispute resolution route, or if attempts yield no consensus by the 29th June 2025, the grave will be opened within 30 days thereafter and samples be collected. The costs of such exhumation shall be shared equally. If one party shall be hesitant to pay its part of the costs, the party willing and ready shall pay and facilitate the exercise and be refunded by the other party. For avoidance of doubt, such refund shall be due within 30 days after the exercise of exhumation and on default such sum will be due for recovery as a judgment debt.
12. For further avoidance of any doubt, the grave will be opened for the sole purpose of extracting the samples only without removing the remains nor the need to take same to the mortuary.
13. Parties retain the liberty to move the court as soon as a development is realised so that the closure be achieved.
14. This matter will be mentioned in court on the 9th July 2025 to report on progress made and for further direction.

DATED AND SIGNED THIS 29TH DAY OF MAY, 2025.

PATRICK J O OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29TH DAY OF MAY, 2025.

S. MBUGI



JUDGE

In the presence of:

No appearance for the parties

C/A: Agong'a

