



REPUBLIC OF KENYA



**In re Estate of Beniah Kingsley Nyabul (Deceased) (Succession Cause  
534 of 2017) [2025] KEHC 8990 (KLR) (Family) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8990 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 534 OF 2017**

**HK CHEMITEI, J**

**JUNE 26, 2025**

**IN THE MATTER OF THE ESTATE OF THE  
LATE BENIAH KINGSLEY NYABUL (DECEASED)**

**BETWEEN**

**SUSAN AGAK ..... 1<sup>ST</sup> APPLICANT**  
**FLORENCE MWANAIKI JAOKO ..... 2<sup>ND</sup> APPLICANT**  
**LYDIA NYABUL ..... 3<sup>RD</sup> APPLICANT**  
**CLEMENT NYABUL ..... 4<sup>TH</sup> APPLICANT**  
**HUMPHREY ODERO ..... 5<sup>TH</sup> APPLICANT**  
**DIANA ODERO ..... 6<sup>TH</sup> APPLICANT**

**AND**

**NAMADA & CO ADVOCATES ..... 1<sup>ST</sup> RESPONDENT**  
**MESHACK AUMA ..... 2<sup>ND</sup> RESPONDENT**  
**EMMA KWAMBOKA OINO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In their application dated 9<sup>th</sup> August 2023 the Applicants are seeking the following orders:-
  - (a) That the court grants leave to the firm of Okwach & Co Advocates to come on record.
  - (b) That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be directed to release title number LR 209/8477(IR 29259) Nairobi.



- (c) That the firm of Namada & Co Advocates be directed to produce the accounts on the single property of the estate.
  - (d) That notice be issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to show cause why they should not be held in contempt of the orders of the court dated 20<sup>th</sup> July 2020.
  - (e) That leave be granted to commit the Namada Simoni of Namada & Co Advocates, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to six months jail or payment of a fine for contempt of the courts orders.
  - (f) The court be pleased to issue such further orders as may be expedient.
  - (g) Costs to the Applicant.
2. The application is based on the grounds thereof and the sworn affidavit of Susan Agak of even date.
  3. The substance of the application is that on 28<sup>th</sup> January 2018 the court granted her orders confirming that she holds the only estate property namely LR No. 209/8477 together with Elizabeth Akinyi Nyabul in trust for the other beneficiaries.
  4. That the Applicants attempted to dispose the said property but the court on 20<sup>th</sup> July 2020 found that the sale was illegal since the grant had not been confirmed and it directed that the title be registered in the names of the two administrators.
  5. She went on to state that they found out on 11<sup>th</sup> July 2023 that the 1<sup>st</sup> Respondent were holding the title documents as they were acting for the estate.
  6. The deponent attached a letter from the said firm confirming the same and that they could not release the title documents because of the professional undertaking they had given and the only remaining thing was completing the transmission exercise to the purchaser.
  7. She denied on behalf of the other beneficiaries that they were aware of the transaction and that since the Respondent was in contempt of the orders of the court it should be punished.
  8. In response the 1<sup>st</sup> respondent filed a preliminary objection dated 23<sup>rd</sup> October 2023 in which it argued that it had not been properly enjoined in the suit and that the advocate was not part of the estate and since there was no cause of action against him the orders cannot be issued.
  9. On the other hand, the 2<sup>nd</sup> Respondent vide his replying affidavit sworn on 26<sup>th</sup> September 2023 opposed the application vehemently. He argued that the Applicant filed the application without the authority of her co administrator and that all the Applicants had signed consent to the sale transactions.
  10. He said that the entire sale was accepted by all the beneficiaries who were well aware and conscious that the grant had not been confirmed and since they needed the cash for medical attention it was then necessary to dispose the said property.
  11. Elizabeth Akinyi Nyabul the co administrator has supported the Respondent's line of argument. She stated that indeed the sale was overboard and that all the beneficiaries did sign the consent with full knowledge that the grant had not been confirmed. She accused the applicant of dragging the rest of the beneficiaries in this application who were keen to ensure that the transaction is completed so that they could be paid the balance of the purchase transaction.
  12. She deponed that as a result of the sale transaction the 2<sup>nd</sup> respondent had renovated the property and that it was not possible to value the same currently for the said reason.



13. She deponed that the Applicant was basing her argument on some legal technicality while knowing that all the family members had consented to the sale without the grant being confirmed.
14. The applicant on 19<sup>th</sup> January 2024 filed a further affidavit in opposition to the replying affidavits and the preliminary objection. She argued that regardless of the averments in their various affidavits they admit that the sale transaction had taken place despite the fact that the grant had not been confirmed. Consequently, the application ought to be allowed.
15. The parties were directed to file written submissions which they complied. The court has perused the same extensively together with the cited authorities and for want of time shall not reproduce the same.
16. I have read the preliminary objection on record in particular and I agree with the 1<sup>st</sup> respondent that he has not been properly joined as a party in the suit. The law firm simply acted for the parties to the extent it did. Namada Simoni the counsel on record acted as an advocate and not a party. If there was need to have him as a party for whatever reasons then a proper application ought to be made.
17. At the same time if he is holding out any instructions contrary to what he is expected to do then the best way is to bring him on board as a party so that he can answer appropriately to the allegations. Of course, at that juncture he may or may not plead professional immunity/confidentiality.
18. I think to ask the court to punish him for now is not efficacious in the circumstances.
19. The other prayer to permit the firm of Okwach & company to come on record is not largely contested.
20. On the main elephant in the room, namely, the only estate suit property I think Muchelule J (as he then was) succinctly explained the position of the same namely LR No. 209/8477(IR 29259). He found that the sale was premature and therefore null and void.
21. I note that the Applicant has mentioned the date of the ruling as 20<sup>th</sup> July 2020 which was the date of the issuance of the order by the Deputy Registrar. The proper date however ought to be 28<sup>th</sup> January 2020. That ruling was not challenge by way of appeal and or review. It therefore remains so.
22. Effectively therefore this court's hands are tied. I cannot go against the directives therein concerning how the property ought to be transmitted.
23. Although I might sympathies with the Respondents especially the 2<sup>nd</sup> and 3<sup>rd</sup> and by extension the co administrator and other beneficiaries the court found the sale before the grant being confirmed null and void. Unfortunately, that is the law.
24. The recourse therefore is to have it transmitted in the manner directed by Muchelule J and should the parties enter into any other private arrangements so be it as long as they comply with the court's directives.
25. The Respondents as well as the co administrator have argued that the Applicant was part of those who signed the consent to dispose the property before the grant was confirmed. At the same time, they deponed that the 2<sup>nd</sup> Respondent has done extensive works on the property among other reasons.
26. Respectfully I think these issues can be discussed in another forum and not in this court. The mandate this court has is to simply concern itself with who are the beneficiaries of the estate and the deceased properties and thereafter their respective entitlement and transmission.
27. For the above reasons I think the only logical way out is for the transmission processes to be completed as per the orders of this court dated 28<sup>th</sup> January 2020. Anything short of this becomes contemptuous which I do not wish to venture for now.



28. In the premises the application is allowed as follows;

- (a) The firm of Okwach & co advocates are allowed to come on record for the Applicant.
- (b) The Respondents or any other party holding on to legal instruments for land parcel number 209/8477(IR 29259) whether advocates or parties herein do within the next 14 days release the same to the Deputy Registrar of this court for onward transmission to the administrators of the estate and or their respective advocates.
- (c) This matter be mentioned before the Deputy Registrar within 14 days from the date herein to ensure compliance with the above order as well as those dated 28<sup>th</sup> January 2020.
- (d) Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

**H K CHEMITEI**

**\*JUDGE**

