



**In re Estate of the Late George Gedalla Churoo alias Gedara Chukuro
alias Churko Gendala (Deceased) (Miscellaneous Succession Cause
1AA of 2023) [2025] KEHC 9014 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS SUCCESSION CAUSE 1AA OF 2023**

FR OLEL, J

JUNE 26, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE GEDALLA CHUROO
ALIAS GEDARA CHUKURO ALIAS CHURKO GENDALA (DECEASED)**

BETWEEN

**KATO CHURKO 1ST PETITIONER
JANE CHURKO 2ND PETITIONER
ZAKARIA GUYO 3RD PETITIONER
GODE OTE 4TH PETITIONER
BALI CHANDBHAI 5TH PETITIONER**

AND

**CHRISTINE GENDALLA CHURKO 1ST RESPONDENT
HASINAKARCH GENDALLA 2ND RESPONDENT**

RULING

1. The application before this court for determination is the Notice of motion Application dated 12th November 2024 brought pursuant to Section 45, 47, 80(2) & 82(b) of the *law of succession Act*, Rule 73 of the *Probate and Succession Rules*, Section 80 of the *lands Registration Act* and all other enabling provisions of law. The Applicants seek for orders that;
 - a. Spent.
 - b. That the certificate of confirmation of grant, granted to Christine Gendalla Churko and Hasinkaech Gendalla be revoked.



- c. That all property in the estate of Churko Gedalla (Deceased) be returned.
 - d. That titles issued under the grant be revoked therewith.
 - e. That the Respondent/Administrator be granted fresh letters of admiration to the estate of the late George Gedalla Churko Alias Gedara Chukuro (Deceased).
 - f. That the Applicant's be granted leave to file succession in the estate of Churko Gedalla Alias Elijah Churko (Deceased) the Applicants father.
 - g. That the costs of this Application be provided for.
2. The application is supported by the grounds made on the face of the said application and the supporting affidavit/supplementary Affidavits of Kato Churko dated 12.11.2024 and 07.04.2025, respectively. On the other hand, the said application was opposed by the respondents through the 1st respondent replying affidavit dated 11.03.2025.

Pleadings

3. The Applicant did depone that the respondents were the wife and daughter of the late George Gendalla Churko Alias Churko Gedara Churko/Churko Gendala (deceased). They had secretly filed for succession of his estate and caused title Number Marsabit/mountain/37(hereinafter referred to as the suit property) to be wrongly included as part of the deceased estate, yet the said title deed belonged to Elijah Churko Gendala Alias Churko Gendala (Deceased) a different person, who had died earlier on 22nd May 1979.
4. The Applicant's further clarified that the said Elijah Churko Gendala, was the father to the late George Gendalla Churko and therefore the 1st respondents' father in law. To that extent, the respondents had misrepresented material facts/ made fraudulent and false statement before the court, which they had used to wrongly acquire the suit property, yet it did not belong to the estate of their husband/father. As a result, the children/ family of the late Elijah Churko Gendala had been wrongly disinherited and the Applicants thus urged this court to grant the orders sought.
5. In the supplementary affidavit filed, the Applicant's denied participating in the succession cause filed with respect to the estate of the late George Gedalla Churko and reiterated that as children of the late Elija Churko Gedala they had not allowed the respondents to inherit the suit property and wished that the same be reversed to their father's estate.
6. In response, the 1st respondent deponed that they were properly and conscientiously appointed as administrators of the estate of the late George Gedalla Churko who was their husband/ father respectively. The deceased did own the suit property having acquired it as the first registered owner on 15th August 2002 and therefore they had rightly included it as amongst the estate property.
7. The respondents further noted that, before the grant was confirmed in Meru Hcc Succession Cause No 227 of 2014, the 1st Applicant did file an objection to the said grant being issued to them, which objection was later on withdrawn by a consent (dated 7th December 2022) signed by all parties including the 1st respondent, who appended his thumb print thereon. The Applicants could therefore not be heard to turn around to seek to invalidate the said consent, which they had willingly signed.
8. Finally, the respondents emphasized that the deceased, George Gandella churko, did not hold the suit property in trust for his brothers/sisters and given that he was the sole proprietor thereof, they had every right to inherit the same. It was therefore not correct to allege that they had filed the deceased



succession in secret nor had the concealed any material fact before the trial court. The respondents thus urged the court to find that the application as filed had no merit and be pleased dismiss the same.

Determination

9. I have considered the Application, response filed and submissions filed by both parties and arrive at the following conclusion.
10. The confirmed grant to the estate of the late George Gedalla Churko Alias Gedara Churko/churko Gendala was issued in Meru High court Succession cause No 277 of 2014, and therefore all applications relating to the said estate must then be filed within the said cause. It is my finding therefore, that it un-procedural for the Applicant's to open this Miscellaneous cause to challenge the said grant. That is a procedural mistake which cannot be cured even through application of Article 159 of the constitution of Kenya 2010. See Raila Odinga and 5 Others v. IEBC and 3 Others; Petition No. 5 of 2013, [2013] eKLR, where the Supreme court held that;

“Indeed, this Court has had occasion to remind litigants that Article 159(2) (d) of the Constitution is not a panacea for all procedural shortfalls.”

11. Secondly the core issue raised by the applicants herein, that the suit parcel belonged to Elijah Churko Gendala (deceased) and not George Gedalla Churko (deceased) had been previously raised by the Applicants through their summons application dated 15th March 2015, filed in Meru Hcc Succession Cause No 277 of 2024 which Application was determined by the ruling of Hon Justice P.J Otieno dated 17th June 2022, where he dismissed the applicants claim. Without doubt this Application in all fours is res judicata and cannot be entertained. See; *Njangu vs Wambugu and another* Nairobi HCCC No.2340 of 1991 (unreported), *Njangu v Wambugu and another* Nairobi HCCC No.2340 of 1991 (unreported) & Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others (2017) eKLR
12. Finally, the late George Gadalla Churko was registered as the 1st registered owner of the suit parcel on 15th August 2002, long after his father had died in 1979. The suit title does not indicate that the suit parcel is to be held in trust for the family of Elijah Churko Gandala, nor is the said parcel registered under the name of Elijah Churko Gandala as alleged by the Applicants. They must stop regurgitating issues already properly determined by the court.

Disposition

13. The Application dated 12th November 2024 is thus bereft of merit and the same is dismissed with costs to the respondents.
14. It is so Ordered

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 26TH DAY OF JUNE, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 26TH DAY OF JUNE, 2025.

