

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. E070 OF 2024

IN THE MATTER OF THE ESTATE OF THE LATE HENRY PONDI SANYA
(DECEASED)

MOSES SONGA PONDI.....1ST
OBJECTOR/APPLICANT

HARON TAWAI PONDI..... 2ND
OBJECTOR/APPLICANT

SOLOMON SANYA PONDI..... 3RD
OBJECTOR/APPLICANT

SAMWEL KASEMBELI PONDI.....4TH
OBJECTOR/APPLICANT

VERSUS

CALEB WERUNGA.....
PETITIONER/RESPONDENT/ADMINISTRATOR

Coram: Before Justice R. Nyakundi

M/s R.M. Wafula & Co Advocates

RULING

1. What is pending before this court for determination are summons for revocation of Grant brought pursuant to section 35, 37 and 76 of the Law of Succession Act and Rules 37 and 44 of the Probate and Administration Rules where the Applicants are seeking the following orders: -
 - a) Spent
 - b) That the grant of letters of administration issued to Caleb Werunga, the petitioner/respondent/administrator herein, and confirmed on 26th May, 2025, be revoked on the grounds of fraud, material non-disclosure, and procedural impropriety

- c) That pending the hearing and determination of this application an order of temporary injunction be and is hereby issued prohibiting any dealings with all properties forming part of the estate of the deceased herein.
 - d) That upon revocation of the said grant of letters of administration, a fresh grant be issued to Moses Songa Pondi, the 1st objector/applicant herein, and Esta Muronje Pondi, the deceased's widow as joint administrators of the estate.
 - e) That the costs of this summons be in the cause.
2. The Application is made on the following grounds on the face of it among others: -
- a. That the proceedings which led to the respondent/administrator obtaining grant of letters of administration were based on fraud, material non-disclosure and concealment of material facts
 - b. That the petitioner/respondent/administrator, upon being issued with such grant, proceeded to distribute the estate of the deceased herein unilaterally and contrary to what was agreed upon by all beneficiaries in a family meeting which was held after the deceased's death.
 - c. That the petitioner/respondent/administrator has filed this cause in bad faith and the grant issued herein therefore ought to be revoked.
 - d. That objectors/applicants and other beneficiaries are apprehensive that if the grant is not revoked, the estate of the deceased herein will be distributed as the petitioner/respondent/administrator herein has proposed and yet the same is contrary to the wishes of other beneficiaries.
 - e. That that it is fair and in the interest of justice that this application be allowed and the orders sought be granted
3. The Application is supported by the annexed affidavit dated 8th July 2025 sworn by MOSES SONGA PONDII who avers as follows;

1. *That I am a male adult of sound mind and the 1st objector/Applicant herein hence am competent to make and swear this affidavit.*
2. *That I swear this affidavit on my own behalf and on behalf of my co-objectors who have given me authority to plead and swear affidavits on their behalf.*
3. *That the deceased herein died intestate on 10th August, 2021 and is survived by his widow and eight (8) children as listed in the chief's letter dated 26/02/2024 and also as listed in Form P&A 5 of this cause (the same forms part of the Court record).*
4. *That my co-objectors and I are some of the beneficiaries of the estate of the deceased herein.*
5. *That among the sons of the deceased I am the 1st born. I am a retired teacher.*
6. *That the petitioner/respondent/administrator herein is the deceased's 3rd son.*
7. *That on the 3rd day after the deceased's burial, a family meeting was held, that is, on 24th August, 2021. In the Abaluhya language and culture we call it "olufuu"*
8. *That the meeting involved the deceased's nuclear family members as well as extended family members and senior members of the deceased's clan. Some neighbors were also present. The purpose of the meeting was to establish the deceased's assets and liabilities.*
9. *That the said meeting was chaired by Mr. Thomas Kasaya and the secretary was Mr. Moses Katan Kuta. They are both paternal cousins to my late father and culturally, they are considered my fathers.*
10. *That upon establishing the assets and liabilities of the deceased during the 1st meeting on 24th August, 2021, a second meeting was held 40 days after the burial, the same is culturally called "lukalukha" popularly known in Kiswahili as "makumbusho". This was on 2nd October, 2021.*

11. *That all the members present in the 1st meeting were also present during the 2nd meeting. In the said meeting the sharing and distribution of the deceased's assets/properties among the beneficiaries was mutually agreed upon.*
12. *That the petitioner/respondent/administrator herein and all other beneficiaries were present and participated during the said meetings. They all mutually agreed that the assets/properties of the deceased be shared out or distributed as shown in the minutes of the 2nd meeting held on 2 d October, 2021. The deceased's movable properties were distributed as listed thereon and even some of the individuals mentioned actually left the meeting with the items they had been given.*
13. *That despite the said mutual family agreement the petitioner/respondent/administrator herein proceeded to distribute the estate unilaterally and contrary to the said family agreement resulting in unfair distribution of the deceased's estate.*
14. *That as mutually agreed among the family members I was entitled to a total of 28.2 acres while the petitioner/respondent/administrator herein was entitled to a total of 25.2 acres.*
15. *That instead of giving me 28.2 acres as agreed the petitioner/respondent/administrator unilaterally caused me to be given only 24.2 acres in total which is lesser than what I was originally entitled to buy 4.0 acres. That goes against my legitimate expectation.*
16. *That aside from me, the 2nd objector herein was initially entitled to 24.5 acres as mutually agreed by all family members but is now to be given only 24.2 acres in total which is lesser than what he was originally entitled to buy 0.3 acres. That goes against his legitimate expectation.*

17. *THAT similarly, the 3rd objector herein was initially entitled to 31 acres as mutually agreed by all family members but is now to be given only 24.2 acres in total which is lesser than what he was originally entitled to buy 6.8 acres. That goes against his legitimate expectation.*
18. *That finally, 4th objector herein was initially entitled to 24.5 acres as mutually agreed by all family members but is now to be given only 24.2 acres in total which is lesser than what he was originally entitled by 0.3 acres. That goes against his legitimate expectation.*
19. *That according to the initial mutual family agreement, the 4th objector/applicant was to be given 24.5 acres and the said agreement involved a provision for the settlement of our mother who was to make use of 9 acres out of the 24.5 acres while the 4th objector himself utilizes the remaining 15.5 acres. The petitioner/respondent/administrator has unilateral violated the above mentioned agreement therefore disorganizing the deceased's family.*
20. *That aside from petitioner/respondent/administrator's interference with the amount of said acreage to be given to the objectors/applicants herein, the petitioner/respondent/administrator has also purported to distribute that parcel of land known as KAKAMEGA/SURUNGAI/117 equally between the 1st and 3rd objectors in proportions of 3.4 acres each therefore totaling 6.8 acres. However, the actual acreage of the said parcel is 6.2 acres.*
21. *That the petitioner/respondent/administrator based his mode of distribution on a family meeting purportedly held on 4/04/2025. We, the co-objectors herein, were never invited to the said meeting and neither were we ever told where the purported meeting was held. In addition, we are surprised that a meeting was held on the distribution of our late father's estate close to four years after his*

- demise and yet, as explained above, we had already done that as a family in 2021.*
- 22. That the persons listed as Nos. 7 and 8 on the purported minutes of 4/04/2025 are not members of our family and neither are they beneficiaries of the deceased's estate. In fact, they are complete strangers to us.*
 - 23. That the 2nd objector is listed as among the attendees of the said purported meeting of 4/04/2025 and yet he never attended it. In fact he is unaware that such a meeting has ever been held.*
 - 24. That our mother is purported to have appended a signature on the minutes of the purported meeting of 4/04/2025 and yet we all know her to be illiterate and incapable of making any writings. She attests to documents by affixing her thumb prints thereon. My co-objectors and I strongly believe that what is shown as our mother purported signature is actually a forgery.*
 - 25. That she is also purported to have appended her signature on FORM 38 in this cause. That cannot be true.*
 - 26. That the actions of the petitioner/respondent/administrator in changing the mutually agreed upon mode of distribution during the culturally conveyed meeting three days after the passing of the deceased are in clear breach of the trust bestowed upon him by the beneficiaries, relatives, clan members and the same amount to fraud and concealment of material facts.*
 - 27. That there is a Ford tractor registration no. KTCB 475L which is in a working condition. The same has a trailer and an arrow and a disc plough, but the administrator deliberately left out the said asset while distributing the deceased's estate. Annexed hereto and marked as "MSP-4" is a copy of a search in respect to the said motor vehicle.*
 - 28. That in the petitioner/respondent/administrator's bundle of documents for the petition of letters of administration intestate*

which was filed to help him obtain a certificate of confirmation of grant, the petitioner/respondent/administrator has put in an affidavit of service sworn by one Mr. David Mose Ombati where he claims to have served a consent to making of grant to my co-objectors and I. The same is not true.

- 29. That during the citation we were served twice and we attended Court on both occasions. Similarly, had we been served as purported (we insist that we were never served), we also would have attended Court at the time of confirmation of grant.*
- 30. That the distribution of the deceased's estate was done unilaterally by the petitioner/respondent/administrator herein despite there being a family meeting which distributed the said estate effectively and agreeably to the mutual satisfaction of all the beneficiaries. Me and my co-objectors are therefore in objection of the said distribution and are also in opposition of Caleb Werunga, the petitioner/respondent/administrator herein, being the sole administrator to our late father's estate since he is conniving and untrustworthy.*
- 31. That my co-objectors and I have been advised by our advocate on record which advise we verily believe to be true, that the grant of letters of administration in respect of the estate of our deceased father was obtained fraudulently by non-disclosure of material facts and generally without the involvement of the deceased's beneficiaries with the aim of reducing the shares which they had been given in the family meetings held on 24th August, 2021 and 2nd October, 2021.*
- 32. That it is therefore proper that the grant of letters of administration intestate issued in favour of the petitioner/respondent/administrator be revoked and all consequent transactions, if any, and a fresh grant of representation be made in favour of the objectors/applicants herein.*

33. *That I swear this affidavit in support of our application now before this Honorable Court.*

Decision

4. This application seeks to prayers one on grant of temporary injunction pending the hearing of the second application and revocation. The first instance a temporary/interlocutory injunction is a court order made in the early stages of a lawsuit or petition which prohibits the parties from doing an act in order to preserve the status quo until a pending ruling or outcome. The purpose of a temporary/interlocutory injunction is to keep the parties, while the suit is pending, as much as possible in the respective positions they occupied when the suit began and to preserve the court's ability to render a meaningful decision after a trial on the merits.
5. The Court of Appeal in **Esso Kenya Limited v Mark Makwata Okiya, civil appeal number 69 of 1991 (Gachuhi, Masime and Kwach, JJA on 10th July 1992) (CAK)[1992] KLR 50**

The principles underlining the granting or refusal of injunction are well settled in several decisions of the court. Where an injunction is granted, it will preserve or maintain the status quo of the subject matter pending the determination of the main issue before the court. The merits or demerits of granting injunction orders deserve greater consideration. The court should avoid granting orders which have not been asked for in the application before it or determine issues in the suit before the actual hearing. In cases where an award of damages could be adequate compensation, an injunction should not be granted. On an application for an injunction in aid of a plaintiff's alleged right, the court will usually wish to consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right to be finally established. This depends upon a variety of circumstances, and it is

impossible to lay down any general rule on the subject by which the court ought in all cases to be regulated, but in no case will the court grant an interlocutory injunction as of course. See Halsbury's Laws of England.

6. From the application dated 8th July 2025 they are cross cutting issues touching on the certificate of confirmation of grant which was confirmed on 26th May 2025. In terms of Order 40 Rule 1 of the CPR as read with Rule 73 (1) in this succession cause the final decree is in the form of certificate of confirmation of grant which in our case was issued on 26th May 2025 as proven by the record and affidavits filed in support of the summons of revocation. Here there is a property in dispute which forms the subject matter of the entire inheritance estate.
7. A right to obtain an interlocutory injunction as known in law is not a cause of action. It is depended upon there being a pre-existing suit, claim, relief, or a cause of action against the defendant or respondent arising out of some infringement or violation of some legal or equitable rights capable of being enforced by court of law. The basis of this injunction is that Caleb Werunga as an administrator of the intestate estate of the deceased is guilty of fraud, material non-disclosure and procedural impropriety which needs to be canvased on the merits at the summons of revocation of grant.
8. It seems to me in matters of this kind there might be temporary prejudice to the legitimate expectations by the other beneficiaries who are not objectors to reap the benefits of the impugned certificate of confirmation of grant but it is for good order that a temporary injunction be issued pending the hearing of the summons of revocation of grant on the 19th September 2025.
9. For those reasons the following orders shall abide that the parties can take advantage of the vacation to exploit the provisions of Article 159(2) (c) of the constitution on alternative dispute resolution mechanism to

narrow down the grievances raised by the objectors who apparently have been provided for in the confirmed grant dated 26th May 2025. That in the event the conflict is not resolved, compelling evidence be filed not to revoke the grant but to subject it to the review jurisdiction under section 80 of the CPA and Order 45 Rule 1 of the Civil Procedure Rules. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 7TH
AUGUST 2025**

.....

**R. NYAKUNDI
JUDGE**

wafritchie@yahoo.com