



REPUBLIC OF KENYA



**In re Estate of Beneah Odiemo (Deceased) (Succession Cause
49 of 2003) [2024] KEHC 14837 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 49 OF 2003
WM MUSYOKA, J
NOVEMBER 28, 2024**

RULING

1. The application, that I am called upon to determine, is dated 22nd July 2024. It seeks cancellation of the subdivisions of Bukhayo/Mundika/600, to have the property reverted to the original registration, to facilitate distribution.
2. Although the said application appears, by its nature, to be ex parte, I did not determine it on the spot, when it was placed before me on 15th October 2024, for I required time to peruse the court file, so as to understand its background, as against the facts deposed in the affidavit sworn by the applicant, Moses Juma Ouma.
3. Bukhayo/Mundika/600 was originally registered in the name of the deceased. The initial grant herein was confirmed in 2008, sharing out the said property between Job Ouma Odiemo, Eric Onyango and Luke Odiemo. A certificate of confirmation of grant was subsequently issued, dated 4th November 2008, in those terms.
4. It transpired that an order had been made in Busia SRMCLC No. 26 of 2002, a suit between the deceased and Priscilla Kenga, ordering that she and her son, Moses, be given 3 acres, out of Bukhayo/Mundika/600, in addition to Bukhayo/Matayos/42. That order was not effected in the confirmation orders of 2008, leading to the revocation of the earlier grant, with the consequence that the orders made on its confirmation were vacated, by the ruling by Kiarie J, of 3rd June 2020. It was directed that fresh proposals on distribution be made, for consideration by the court, factoring the orders in Busia SRMCLC No. 26 of 2002.
5. There was compliance with the orders of 3rd June 2020, for fresh proposals were placed before the court, vide an application, dated 1st December 2020, and the said proposals were confirmed by Karanjah J, in a ruling delivered on 15th June 2022. A certificate of confirmation of grant was generated, dated 30th June 2022, where Bukhayo/Mundika/600 is to be devolved between Ester Aoko Odiemo and Moses Juma Ouma, at the ratio of 7½:3 acres.



6. The applicant says that Bukhayo/Mundika/600 was subdivided, in 2008, in transmission, based on the confirmation orders made that year, and new titles came out, being Bukhayo/Mundika/8990, 8991 and 8992, and the register for Bukhayo/Mundika/600 was closed. He has attached a green card for Bukhayo/Mundika/600, as proof.
7. However, upon perusing the file, I have noted that there are other parties to the matter, who have not been served with the application, much as the same appears to be ex parte. They have a right to be heard on the matter, so long as they have a stake in the estate.
8. In view of the above, I direct the applicant to serve the application, dated 22nd July 2024, upon Messrs. Okeyo Ochiel & Company and Messrs. Calistus & Company, who appear to be the Advocates on record for some of the other parties, and it shall also be served upon Esther Aoko Odiemo. The matter shall be mentioned thereafter on 17th December 2024 for compliance and further directions. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 28TH DAY OF NOVEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Moses Juma Ouma, the applicant, in person.

Advocates

Mr. Okeyo, instructed by Messrs. Okeyo Ochiel & Company, Advocates for the administrator.

Mr. Nyegenye, instructed by Messrs. Calistus & Company, Advocates for the objector.

