



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Agnes Masbay Ongoma Otieno (Deceased) (Succession Cause 175 of 2014) [2025] KEHC 2587 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 175 OF 2014
WM MUSYOKA, J
MARCH 14, 2025**

RULING

1. On 1st December 2023, I delivered a ruling herein, where I confirmed the grant and appointed an additional administratrix.
2. The parties have come back to court, with an application for amendment of the grant and certificate of confirmation of grant. The administratrix, that I appointed by my ruling of 1st December 2023, has turned down that appointment, for reasons that she has given. The other argument is that some of the assets cannot be distributed as per the confirmation orders, for a variety of reasons, given in the application.
3. Attached, to that application, is a consent, duly signed by 13 of the beneficiaries. 2 did not sign, being Fredrick Mukasa Okhongo and Charles Omondi Lwanga. Fredrick Mukasa Okhongo has filed grounds of opposition, objecting that the application is not properly founded.
4. Most of the beneficiaries agree, going by the consent that I have mentioned above. The 2 who did not sign are in the minority. Usually the majority have their way, and the minority their say, but the application must be determined judiciously, nevertheless. 1 in the minority has had his say, through his grounds of opposition. The other has not filed any papers, and I have nothing on record to establish that he had been served with the application, for I have not come across an affidavit of service of the application on him. He has a right to be heard before any orders are made to alter the distribution earlier ordered by the court.
5. I shall refrain from making any determinations on the proposed distribution, until I get to hear from Charles Omondi Lwanga, through a filing by him, or evidence, from the administrators, that they served the application on him. Parties have 14 days to comply. I shall mention the matter on 8th April 2025.
6. It is Giannaenerica Kwena Otieno who has declined appointment as co-administratrix. Administration cannot be imposed. Consequently, I shall allow that component of the application. I hereby revoke



her appointment as such, and the grant on record, if it has been issued, shall be amended to reflect that, and if it has not, then a grant shall be issued without her name.

It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS AT BUSIA ON THIS 14TH DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gabriel Fwaya, Advocate for the applicant.

Mr. Opiyo, instructed by Aming'a Opiyo Masese & Company, Advocates for the 1st protestor.

Mr. Masafu, instructed by Wekesa & Simiyu, Advocates for the 2nd protestor.

