



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Robert Lago Awuonda (Deceased) (Succession Cause
168 of 1997) [2025] KEHC 9751 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 9751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 168 OF 1997
MS SHARIFF, J
APRIL 9, 2025**

IN THE MATTER OF THE ESTATE OF ROBERT LAGO AWUONDA (DECEASED)

IN THE MATTER OF

**AMOS ONYANGO LAGO 1ST ADMINISTRATOR
SAMSON AUMA LAGO 2ND ADMINISTRATOR
PAMELA AKINYI LAGO 3RD ADMINISTRATOR**

RULING

1. Vide Amended Summons for Revocation or Annulment of Grant dated 11th June 2021, and filed on 16th June 2021, this Court under the stewardship of the erudite Justice Kamau vide a Judgement delivered on 28th November 2022, found that indeed the Grant of Letters of Administration issued on 26th June 1997 to the Petitioner herein as irregular and thus defective in substance as provided under Section 76 (a) of the *Law of Succession Act*. The Court concluded that the Objector herein had proved there was merit in revoking and/or annulling the Grant of Letters of Administration that was issued to the Petitioner herein as stipulated in Section 76 of the *Law of Succession Act*. Furthermore, the Court proceeded to revoke but amend the Grant issued on 26th June 1997 to reflect the Objector herein, the Petitioner and one Pamela Akinyi Nyago as the Administrators of the estate of the deceased. Finally, the Court ordered the cancellation of any title to land parcels numbers Suna East/Wasweta I/4364, Suna East/Wasweta I/4366, Kisumu/Kochieng/225, Kisumu/Kochieng/254 and Kisumu/Kochieng/396 if they stood in the names of third parties and/or the Petitioner, and that the Registrar of Lands be directed to proceed accordingly and ensure that they are revert to the ownership of the deceased herein.
2. On 25th January 2022, the erudite Judge recommended that the parties to this matter to proceed to mediation with the aim of settling the case out of Court. The Court proceeded to fix the matter for mention for purposes of appointing a Mediator.



3. On 27th February 2023, the matter was mentioned before Hon. G. C. Serem MDR wherein it was established that the parties reached a partial settlement agreement and the same was adopted as the Judgement of the Court.
4. In the partial mediation agreement, the parties consented that the deceased was survived by the following children: Pamela Akinyi Lago, Amos Onyango Lago, Gilbert Oluoch Lago, Samson Auma Lago, Willis Otieno Lago, Judith Achieng Lago, Hellen Nyonga Lago, Reuben Lago, Alice Adhiambo Lago, and Roseline Awuor Lago.
5. The above captured beneficiaries to the deceased estate agreed to have the following properties of the deceased distributed as follows:
 - a. Kisumu/Kochieng/254-Amos Onyango Lago.
 - b. Kisumu/Kochieng/634-Amos Onyango Lago.
 - c. Kisumu/Kochieng/4047- Amos Onyango Lago & Willis Otieno Lago. To be shared equally.
 - d. Kisumu/Kochieng/4049-Gilbert Oluoch Lago.
 - e. Kisumu/Kochieng/242-Gilbert Oluoch Lago & Willis Otieno Lago. To be shared equally.
 - f. Kisumu/Kochieng/396-Reuben Oyamo Lago.
 - g. Kisumu/Kochieng/762-Rueben Oyamo Lago.
6. The Beneficiaries to the estate of the deceased failed to reach a consensus with regard to the following properties:
 - a. Kisumu/Kochieng/737
 - b. Kisumu/Kochieng/752
 - c. Kisumu/Kochieng/3644
 - d. Kisumu/Kochieng/3383
 - e. Kisumu/Kochieng/3645
 - f. Kisumu/Kochieng/225
 - g. Kisumu/Kochieng/4364
 - h. Kisumu/Kochieng/4366
7. The mediation agreement bore the signatures of: Amos Onyango Lago, Judith Achieng Lago, Hellen Nyonga Lago, Reuben Oyamo Lago, Alice Adhiambo Lago, Roseline Awour Lago, Pamela Akinyi Lago, Samson Auma Lago and Willis Otieno Lago. This means that the same that binds all parties is one that is signed by all parties and in this instant case, they agreed with the terms as indicated.
8. On 27th September 2023, the parties recorded a consent confirming the distribution as captured under the mediation agreement and the Court directed parties to file witness statements and written submissions and their respective proposed mode of distribution for purposed of dealing with the left 8 contentious properties.



2nd & 3rd Administrator

9. They proposed that the 8 properties of the estate of the deceased which they failed to reach a consensus on be distributed as follows:
- a. Kisumu/Kochieng/737 (3.1 Ha)
Gilbert Oluoch Lago-2 acres
Samson Auma Lago-2 acres
Willis Otieno Lago-1 acre
Pamela Akinyi Lago-4.75 acres
Judith Achieng Lago-4.75 acres
Hellen Nyonga Lago-4.75 acres
Alice Adhiambo Lago-4.75 acres
Roseline Awuor Lago-4.75 acres
 - b. Kisumu/Kochieng/752 (0.40 Ha)
Willis Otieno Lago
 - c. Kisumu/Kochieng/3644 (0.8 Ha)
Pamela Akinyi Lago-0.16 Ha
Judith Achieng Lago-0.16 Ha
Hellen Nyonga Lago-0.16 Ha
Alice Adhiambo Lago-0.16 Ha
Roseline Awour Lago-0.16 Ha
 - d. Kisumu/Kochieng/3383 (0.11 Ha)
Willis Otieno Lago
 - e. Kisumu/Kochieng/3645 (0.6 Ha)
Gilbert Oluoch Lago-0.2 Ha
Willis Otieno Lago-0.2 Ha
Samson Auma Lago-0.2 Ha
 - f. Kisumu/Kochieng/225 (1.0 Ha)
Samson Auma Lago
 - g. LR No Suna East/Wasweta I/4364 (1.28 Ha)
Amos Onyango Lago-0.128 Ha
Pamela Akinyi Lago-0.128 Ha
Gilbert Oluoch Lago-0.128 Ha
Willis Otieno Lago-0.128 Ha



Judith Achieng Lago-0.128 Ha
Hellen Nyonga Lago-0.128 Ha
Rueben Oyamo Lago-0.128 Ha
Alice Adhiambo Lago-0.128 Ha
Roseline Awour Lago-0.128 Ha
Samson Auma Lago-0.128 Ha

h. LR No Suna East/Wasweta I/4366 (2.35 Ha)

Amos Onyango Lago-0.235 Ha
Pamela Akinyi Lago-0.235 Ha
Gilbert Oluoch Lago-0.235 Ha
Willis Otieno Lago-0.235 Ha
Judith Achieng Lago-0.235 Ha
Hellen Nyonga Lago-0.235 Ha
Rueben Oyamo Lago-0.235 Ha
Alice Adhiambo Lago-0.235 Ha
Roseline Awour Lago-0.235 Ha
Samson Auma Lago-0.235 Ha

10. Only 8 of the beneficiaries to the estate of the deceased consented to the 2nd and 3rd, Samson Auma Lago, Willis Otieno Lago, Judith Achieng Lago, Hellen Nyonga Lago, Reuben Lago, Alice Adhiambo Lago, and Roseline Awuor Lago.
11. Subsequently, the 2nd Administrator herein filed a witness statement wherein he stated that he was making the statements on behalf of seven of his siblings. He told the Court that as the last son of the deceased herein he ought to occupy and take ownership of the whole parcel where the deceased's home was as per Luo traditions. He told the Court that the deceased's home is located at Kisumu/Kochieng/225 approximately 0.5 Ha but the whole parcel is approximately 1.0 Ha. According to him, his brother Gilbert Lago is stubbornly occupying 0.2 Ha.
12. He told the Court that it would be unfair for him to get less of his late father's estate because he has no family and for Gilbert to claim the whole share in Kisumu/Kochieng/3383.

Gilbert Oluoch Lago

13. He proposed the remaining undistributed 8 properties forming part of the estate of the deceased be distributed as follows:
 1. Gilbert Oluoch Lago-2 acres
Kisumu/
Kochieng/737
Samson Auma Lago-2 acres
(3.1 Willis Otieno Lago-1 acre
Ha) Pamela Akinyi Lago-4.75 acres
Judith Achieng Lago-4.75 acres



Hellen Nyonga Lago-4.75 acres
Alice Adhiambo Lago-4.75 acres
Roseline Awuor Lago-4.75 acres

2. Willis Otieno Lago

Kisumu/
3. Pamela Akinyi Lago-0.16 Ha
Kochieng/752
Kisumu/
(0.40) Judith Achieng Lago-0.16 Ha
Kochieng/3644
Ha)
(0.8 Hellen Nyonga Lago-0.16 Ha
Ha) Alice Adhiambo Lago-0.16 Ha
Roseline Awour Lago-0.16 Ha

4. Willis Otieno Lago

Kisumu/
5. Gilbert Oluoch Lago-0.2 Ha
Kochieng/3383
Kisumu/
(0.11) Willis Otieno Lago-0.2 Ha
Kochieng/3645
Ha)
(0.6 Samson Auma Lago-0.2 Ha
Ha) Samson Auma Lago- 2 acres
Kisumu/
6. Gilbert Oluoch Lago-½acre
Kochieng/225
(1.0 LRA) Amos Onyango Lago-0.128 Ha
No) Pamela Akinyi Lago-0.128 Ha
Suna Gilbert Oluoch Lago-0.128 Ha
East/ Willis Otieno Lago-0.128 Ha
Wasweta
I/4364
(1.28 Judith Achieng Lago-0.128 Ha
Ha) Hellen Nyonga Lago-0.128 Ha
Rueben Oyamo Lago-0.128 Ha
Alice Adhiambo Lago-0.128 Ha
Roseline Awour Lago-0.128 Ha
Samson Auma Lago-0.128 Ha

8. LRA) Amos Onyango Lago-0.235 Ha

No Pamela Akinyi Lago-0.235 Ha
Suna Gilbert Oluoch Lago-0.235 Ha
East/ Willis Otieno Lago-0.235 Ha
Wasweta
I/4366
(2.35 Judith Achieng Lago-0.235 Ha
Ha) Hellen Nyonga Lago-0.235 Ha
Rueben Oyamo Lago-0.235 Ha
Alice Adhiambo Lago-0.235 Ha



Roseline Awour Lago-0.235 Ha

Samson Auma Lago-0.235 Ha

14. In his filed statement, Gilbert Oluoch Lago told the Court that he agrees with the mode of distribution as proposed by the other beneficiaries but beseeched the Court to bear in mind that LR No Suna East/Wasweta I/4366 and LR No Suna East/Wasweta I/4364 were long sold by the 1st Administrator and that from the recorded consent he only got 1 acre with the 2nd and 3rd Administrators mode of distribution giving him only 2 ½ acres making it a total of only 3 ½ acres, which he viewed as unfair compared to what his siblings are getting.
15. He proposed that since the 2nd Administrator has no family and the other beneficiaries reside abroad he ought to be given ½ acre in Kisumu/ Kochieng/225 and the whole of Kisumu/Kochieng/3383 for only his use and possession.
16. The 1st Administrator failed to comply with the Court directives issued on 24th June 2024, wherein parties were directed to file their respective proposed mode of distribution, witness statements and written submissions. Only the 2nd and 3rd Administrators and beneficiary, Gilbert Oluoch Lago, complied.

Analysis and Determination

17. Upon consideration of the respective proposed modes of distribution, written submissions, submissions and testimonies of the witnesses, the following issues emerge for determination;
 - a. Which mode of distribution should be upheld?

Grants are confirmed under Section 71 of the *Law of Succession Act*, which states as follows:

“Confirmation of Grants

71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or



- (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
- (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

18. In confirmation applications, there are two principal factors for the Court to consider namely; appointment of administrators and distribution of the estate. The principal purpose of confirmation in this instant matter is the distribution of the eight (8) assets left behind by a deceased which the beneficiaries of the deceased failed to reach a consensus on.
19. From the foregoing evidence of the parties, it is not in dispute that the beneficiaries to the estate of the deceased herein recorded a partial consent with regards to some assets belonging to the estate of the deceased and the invoke the jurisdiction of this Court to effect the full distribution of the pending assets and confirm the Grant of Letters of Administration.
20. This Court has inherent powers under Rule 73 of the *Probate and Administration Rules*. Rule 73 provides as follows;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
21. I think it is important to point out at this juncture that the parties are not in agreement and it is left to the Court to apply the laid down law and principles to arrive at what the Court would consider to be fair and just in the circumstances of the case. This inheritance is by descent. The claims of descent and all existing models and rules are set forth in the *Law of Succession Act* covering both real and personal property. The deceased, as evidenced by a certificate of death filed herein, died on 1st January 1997 intestate. It follows that under Section 2(1) of the *Law of Succession Act*, the law applicable is the *Law of Succession Act*. The deceased died intestate after the Act came into force on 1st July, 1981.
22. The law relating to the distribution of the estate of an intestate was stated by the Court of Appeal sitting in Meru in *Justus Thiora Kiugu & 4 others v Joyce Nkatha Kiugu & another*, [2015] eKLR Reinforcing the duty of the Court to promote alternative forms of dispute resolution under Article 159 (c) of the *Constitution* of Kenya, the Court held that if the parties agree on a mode of distribution of the estate of an intestate, then the Court must adopt that consent and make it an order of the Court. If the parties are unable to agree, then the Court has no discretion but to distribute the property as per the provisions of the *Law of Succession Act*, Cap 160 Laws of Kenya.
23. The *Law of Succession Act* does not allow any person to distribute asset of a deceased person other than through the process of succession. The deceased in this matter died post the commencement of the *Law of Succession Act* (Cap 160 Laws of Kenya). That is the applicable law in the distribution herein.



24. Beneficiaries can and do often agree on the mode of distribution of a deceased's estate. Where, however, there is disagreement on the mode of distribution, as is the case herein, the Court must step in and invoke the law.
25. The distribution shall factor any benefit the deceased had given to any beneficiary during his lifetime as envisaged under Section 42 of the [Law of Succession Act](#) which provides as follows:
- Where—
- a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
 - b. property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.
26. As noted above, in distributing the balance of the estate of the deceased, this Court shall place reliance in Section 38 and 42 of the [Law of Succession Act](#) as the appropriate applicable law. In any event, the 8 beneficiaries in the proposed schedule of distribution have agreed to adopt the 2nd and 3rd Administrators mode of distribution in exception of the two (2) beneficiaries.
27. According to the beneficiary Gilbert Oluoch Lago, the 2nd and 3rd Administrators mode of distribution only gives him 3 ½ acres while the others get more and to him the same is not fair. He further averred that he requires ½ an acre from Kisumu/Kochieng/225 and the whole parcel Kisumu/Kochieng/3383 as the 2nd Administrator has no family and that other beneficiaries reside and work abroad thus will not be utilizing their portions.
28. I find that the point of divergence between the 2nd and 3rd Administrators and Gilbert Oluoch Lago is narrowed to the fair inclusion of Gilbert Oluoch Lago in the distribution of the remaining assets, which on my scrutiny was very inclusive and fair on all parties.
29. To that end, it is my finding that the mode of distribution fronted by the 2nd and 3rd Administrators is the most suitable in the circumstances in view of the fact it is backed by a majority of the beneficiaries.
30. In view of the forgoing observations, the following orders are hereby made.
- i. The mode of distribution proposed by Gilbert Oluoch Lago on properties namely land parcel Kisumu/Kochieng/225 and Kisumu/Kochieng/3383 lacks merit and is dismissed.
 - ii. The mode of distribution proposed by the 2nd and 3rd Administrators herein on the eight (8) properties namely land parcel Nos. Kisumu/Kochieng/737; Kisumu/Kochieng/752; Kisumu/Kochieng/3644; Kisumu/Kochieng/3383; Kisumu/Kochieng/3645; Kisumu/Kochieng/225; Suna East/Wasweta I/4364; Suna East/Wasweta I/4366 is allowed as prayed.
 - iii. That Grant of Letters of Administration made on 28th November 2022 to Administrators herein is hereby confirmed and that the estate of the deceased shall be distributed as directed vide clause (ii) above.
 - iv. A Certificate of Confirmation of grant shall issue to the Administrators.
 - v. Each party to meet their own costs.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF APRIL 2025.

M.S.SHARIFF



JUDGE

In the presence of :

N/A for 1st Administrator

N/A for 2nd and 3rd Administrators

Diana/Juma Court Assistants

