



REPUBLIC OF KENYA



**In re Estate of Opondo Olotsi (Deceased) (Succession Cause  
34 of 2009) [2025] KEHC 10353 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 34 OF 2009**

**WM MUSYOKA, J**

**JULY 15, 2025**

**IN THE MATTER OF THE ESTATE OF OPONDO OLOTSI (DECEASED)**

**RULING**

1. I delivered a ruling herein on 2<sup>nd</sup> February 2024, where I revoked a grant and appointed new administrators. I directed the new administrators to apply for confirmation of their grant.
2. The said new administrators, being Gideon Omondi Opondo, Rose Okinyo Opondo and Josephat Omondi Opondo, have come back to court, with a summons for confirmation of grant, dated 15<sup>th</sup> January 2025. They identify the survivors of the deceased as Gideon Omondi Opondo, Henry Ngesa Opondo, Rose Okinyo Opondo, Rose Agutu Apot and Margaret Okinda. They propose to have Marachi/Elukhari/1322 distributed in the following manner: Gideon Omondi Opondo, Henry Ngesa Opondo and Rose Okinyo Opondo to take 3.40 hectares, while Rose Agutu Apot and Margaret Okinda take 1.18 hectares. The proposed distribution is based on a survey report, dated 25<sup>th</sup> October 2024.
3. A protest was raised by Josephat Omondi Opondo, in an affidavit he swore, on 18<sup>th</sup> February 2025. He proposes that Josephat Omondi Opondo, Duncan Oluoch Odhiambo and Gideon Omondi Opondo share 1.18 hectares, while Hipolitus Odhiambo Opondo and Rose Okinyo Opondo share 3.40 hectares. He states that the estate of Hipolitus Odhiambo Opondo had been left out.
4. The application, dated 15<sup>th</sup> January 2025, was canvassed viva voce, in view of the protest, following directions taken on 19<sup>th</sup> February 2025. The oral hearing happened on 7<sup>th</sup> April 2025. Gideon Omondi Opondo, Josephat Omondi Opondo and Duncan Oluoch Odhiambo testified.
5. Gideon Omondi Opondo testified that the deceased had 2 wives, being Ajwang'i Opondo and Cicilia Akumu Opondo. The children of Ajwang'i Opondo were said to be Rosa Agutu, Ometa Odhiambo, Silvano Oduori and Agnes Onyango. He identified the children of Cicilia Akumu as James Otieno Opondo, Gideon Omondi Opondo, Henry Ngesa Opondo, Magdalene Auma, Akinyi Opondo, Anyango Opondo, Night Opondo and Ajwang Opondo. He testified that he was a son of the deceased from the 2<sup>nd</sup> wife, Cicilia Akumu. He stated that the deceased had settled his 2



- families in 2 separate parcels of land. The 1<sup>st</sup> house was settled on Marachi/Isikoma/14, while the 2<sup>nd</sup> house was settled on Marachi/Elukhari/1322. He asserted that those from the 1<sup>st</sup> house, like Gideon Omondi Opondo, Josephat Odhiambo Opondo should get their share from Marachi/Isikoma/14. He identified Margaret Okinda as a daughter in law of the deceased, being the wife of Silvanus Oduori, who was from the 1<sup>st</sup> house. He said that the deceased had indicated that the share for Silvanus Oduori should come from Marachi/Elukhari/1322. He stated that Josephat Omondi Opondo and Duncan Oluoch Odhiambo were on the land given to their father, being Josephat Omondi Opondo and Duncan Oluoch Odhiambo.
6. During cross-examination, he stated that the deceased had been survived by more than 5 persons listed in the application and that he had left 2 parcels of land, and not one. He said that Hipolitus Odhiambo Opondo had been given his land prior. He identified Hipolitus Odhiambo Opondo as a son of the deceased from the 1<sup>st</sup> house, who he had omitted in his application, as he had been given his own land. He craved leave for time to provide details of the land. He stated that Marachi/Elukhari/1322 was divided into 2 portions, measuring 3.4 hectares and 1.18 hectares. He testified that the 1<sup>st</sup> house was entitled to the 1.18 hectares, while the 2<sup>nd</sup> house was entitled to the 3.4 hectares. He described Josephat Omondi Opondo and Duncan Oluoch Odhiambo as children of Hipolitus Odhiambo Opondo, saying that they were from the 1<sup>st</sup> house. He also described Rosa Agutu as from the 1<sup>st</sup> house, and of being in possession of a portion of the 1.18 hectares, although, she did not occupy the same. He testified that Margaret Okinda was not in occupation of Marachi/Elukhari/1322. He stated that Hipolitus Odhiambo Opondo had already been given his share of the estate.
  7. At re-examination, he stated that the share for the 1<sup>st</sup> house in Marachi/Elukhari/1322 should go to Rose Agutu Apot and Margaret Okinda. He added that Josephat Omondi Opondo and Duncan Oluoch Odhiambo should get their share out of Marachi/Isikoma/14, where they reside.
  8. Josephat Omondi Opondo testified next. He was a grandson of the deceased. He stated that the land he occupied, at Isikoma, had been given to him by his father, Hipolitus Odhiambo Opondo. He added that he was born on that land, for his father already had it. He confirmed that Hipolitus Odhiambo Opondo was a child of the deceased who had 2 wives. He said that Silvanus had a wife, and that when he died, he was buried on Marachi/Elukhari/1322. He stated that anyone claiming under Silvanus should claim in Marachi/Elukhari/1322. He stated that the land he, Josephat Omondi Opondo, occupied was not estate land. He testified that Silvanus had gifted his share of Marachi/Elukhari/1322 to Duncan Oluoch Odhiambo. He stated that he was after the share due to his father. He stated that he and Duncan Oluoch Odhiambo were the ones, from the 1<sup>st</sup> house, entitled to the 1.18 hectares in Marachi/Elukhari/1322. He asserted that he did not know Margaret Okinda, and her alleged child. He confirmed that Rose Agutu was a child of the deceased.
  9. Duncan Oluoch Odhiambo was the last witness. He was a grandson of the deceased. He was a son of Hipolitus Odhiambo Opondo. He claimed a share in Marachi/Elukhari/1322. He also testified that Silvanus had given him his share of Marachi/Elukhari/1322. He identified Rose Agutu as a daughter of the deceased, who was entitled to a share in the estate.
  10. At the close of the oral hearing, the parties indicated that they would file written submissions. I only see written submissions from Mr. Ouma, the Advocate for the administrators.
  11. The proviso to section 71(2) of the *Law of Succession Act*, Cap 160, Laws of Kenya, requires that I be satisfied as to the identities and share of all the persons beneficially entitled, before I confirm the grant. I do not feel satisfied that all the persons beneficially entitled have been identified, and their shares ascertained.



12. Rule 40(8) of the Probate and Administration Rules envisages a consent in writing, in Form 37, of all the persons who are beneficially entitled to a share in the estate. I have not seen that consent form in the prescribed format, duly signed by all who support the application. The protests ought to be filed by those who do not consent.
13. I see that from the 1<sup>st</sup> house that there were 4 children; being Hipolitus Odhiambo Opondo, Silfano Oduor Opondo, Kelementina Anyango and Rose Agutu Apot. In these proceedings, only Hipolitus Odhiambo Opondo, Silfano Oduor Opondo and Rose Agutu Apot, or their representatives, have appeared and articulated their claim. Kelementina Anyango is said to be deceased. However, no one has said anything about whether she had children. I have not seen consents by her children, renouncing or waiving the share due to Kelementina Anyango.
14. From the 2<sup>nd</sup> house, there were 8 children, being James Otieno Opondo, Gideon Omondi Opondo, Henry Ngesa Opondo, Rose Okinyo Opondo, Jenifer Opondo, Auma Opondo, Judith Knight Opondo and Ajwang Opondo. Out of the 8, only 2 are active, being Gideon Omondi Opondo, Henry Ngesa Opondo and James Otieno Opondo, or their representatives. It is not clear what the fate of the rest is, that is Rose Okinyo Opondo, Jennifer Opondo, Auma Opondo, Judith Knight Opondo and Ajwang Opondo, or their representatives. I have not seen any consents signed by them, renouncing their share in the estate.
15. It was suggested that the deceased might have distributed part of his estate inter vivos, to Hipolitus Odhiambo Opondo or, that he might have had settled each house on its own land. It was suggested that Marachi/Isikoma/14 was the land that was either gifted inter vivos to some individuals, or the land that the deceased had set apart for his 1<sup>st</sup> house. The persons who advanced this argument did not provide any proof, but they craved leave to avail the same. That information would be critical, for section 42 of the *Law of Succession Act* requires that, at distribution, inter vivos gifts ought to be brought to the hotchpotch, for the sake of equity and fairness.
16. I shall, accordingly, not determine the application, dated 2<sup>nd</sup> February 2024, at this stage, before the issues that I have mentioned in paragraphs 13, 14 and 15, hereabove, are addressed.
17. The orders shall be:-
  - a. That I hereby postpone determination of the application herein, under section 71(2)(d) of the *Law of Succession Act*, for the reasons given above;
  - b. That the administrators shall cause the individuals mentioned in paragraphs 13 and 14, hereabove, to either attend Court, at the next session, to state their positions on the distribution of the estate, or execute consents under Rule 40(8) of the Probate and Administration Rules, or file affidavits renouncing or waiving or varying their entitlements to or from the estate;
  - c. That the administrators shall, by the next session, avail copies of the green card and certificate of official search for Marachi/Isikoma/14;
  - d. That the application, dated 2<sup>nd</sup> February 2024, shall only be determined upon full compliance with the directions above, and
  - e. That the matter shall be mentioned on 29<sup>th</sup> July 2025 for compliance.
18. It is so ordered.



**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 15<sup>TH</sup> DAY OF JULY 2025.**

**W.M. MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Moses Ouma, instructed by BM Ouma & Company, Advocates for the administrator.

Ms. L. Eroba, instructed by Eroba & Company, Advocates for the protestor.

