



REPUBLIC OF KENYA



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In re Estates of Petro Dula Awuor & 2 others (Deceased Persons) (Succession Cause 449 of 2014) [2023] KEHC 27516 (KLR) (13 July 2023) (Judgment)

Neutral citation: [2023] KEHC 27516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 449 OF 2014**

RPV WENDOH, J

JULY 13, 2023

**IN THE MATTER OF THE ESTATES OF PETRO DULA AWUOR, JOANES
OGUTU DULA & BENARD JAOKO DULA (DECEASED PERSONS)**

BETWEEN

JOSEPH ONDURU DULA APPLICANT

AND

ROSANAEL AOKO OGUTU RESPONDENT

AND

JOSHUA NJUWE NGITO INTERESTED PARTY

JONATHAN OGADA AMIANI INTERESTED PARTY

JOHN LUGILI AMIANI INTERESTED PARTY

KARILUS AGALO OGINGA INTERESTED PARTY

ISMAEL CHRISTOPHER MACHACHI INTERESTED PARTY

THOMAS NANDWA MUSERA INTERESTED PARTY

EDMOND OTIENO OWITO INTERESTED PARTY

SAMWEL AZIRIKAM ASUZA INTERESTED PARTY

MOSES OKINYI K'OJUOK INTERESTED PARTY

EDWIN OKELLO AWOUR INTERESTED PARTY

EDNAH ABIKA INTERESTED PARTY

LINET ACHIENG RAMOGI INTERESTED PARTY

GORDON OBIERO OGUTU INTERESTED PARTY

MICHAEL OWINO OJUOK INTERESTED PARTY



JUDGMENT

1. This cause relates to the estates of Petro Dula Awour (Deceased) who died intestate on 6/4/1967, Joanes Ogutu Dula who died intestate on 20/8/1998 and Benard Jaoko Dula who died intestate on 20/6/2004 (Deceased persons). This judgement is in respect to the summons for confirmation of grant dated 7/10/2015 filed by the applicant Joseph Onduru Dula and the protest proceedings dated 23/3/2017 filed by Aoko Ogutu, the respondent. In addition, a total of eight (8) interested parties filed their respective affidavits of protest.
2. The estate of the deceased persons comprises of Land Parcel No. Kanyamkago/Kawere I/701 (suit land) measuring approximately 13 Ha. which is registered in the names of all the deceased persons.
3. The objection proceedings proceeded by way of viva voce evidence. On the appearance of the parties in the cause, the court directed on 20/2/2019 as follows: -
 - a. The protestors/interested parties shall be deemed as the plaintiffs. For clarity the plaintiffs shall appear as follows:-
 - i) Joshua Njuwe Ngito - 1st Protestor
 - ii) Jonathan Ogada Amiani - 2nd Protestor
 - iii) John Lugili Amiani - 3rd Protestor
 - iv) Karilus Agalo Oginga - 4th Protestor
 - v) Ismael Christopher Malarhi - 5th Protestor
 - vi) Thomas Nadwa Musera - 6th Protestor
 - vii) Edmond Ogeno Owiti - 7th Protestor
 - viii) Samwel Azirikam Asuza - 8th Protestor
 - b) The 2nd petitioner/administratrix Rosanael Aoko Ogutu shall be deemed as the 9th plaintiff and the 1st plaintiff/Administrator Joseph Onduru Dula shall be deemed as the defendant.
4. Further, on 12/4/2018, Joseph Onduru Dula told the court that he had no interest in the suit land since he was already given his portion by his late father; that the suit land can be surveyed since each person lives on a distinct parcel of land but he only wants to be an administrator as the eldest in the family. The court proceeded to issue further directions as follows:-
 - a) Rosanael Aoko Ogutu and the rest of the family members (except JOSEPH ONDURU DULA) shall organize and carry out a Survey exercise and ascertain the sizes of the portion of the land parcel Kanyamkago / Kawere II/701 occupied by the beneficiaries at their own costs and accordingly file the Survey Report in Court;
 - b) The Survey Report shall be filed in Court within 75 days from today;
 - c) Once the Survey Report is filed in court as in (b) above, this Court will address the issue of the administration of the estate given that there are two grants in force and also give further directions on the way forward;



- d) Rosanael Aoko Ogutu is hereby stepped down as a witness to pave way to the possible amicable resolution of this matter.
5. Subsequently, the survey was done and the Surveyor's report dated 9/7/2018 was filed in court on 10/7/2018. Each party also filed affidavits in response to the report.
6. On 20/2/2019, after listening to the testimony of Jonathan Ogada Amiani the 2nd plaintiff, the court observed that there were some family members of the deceased persons who were not taking part in the proceedings. The court ordered their joinder and they were deemed to be interested parties and the witnesses of Rosanael Aoko Ogutu as follows:-
- a. Moses Okinyi K'Ojuok - 9th Interested Party.
 - b. Edwin Okello Awour - 10th Interested Party.
 - c. Ednan Abika - 11th Interested Party.
 - d. Linet Achieng Ramogi - 12th Interested Party.
 - e. Gordon Obiero Ogutu - 13th Interested Party.
 - f. Michael Owino Ojuok - 14th Interested Party.
7. Rosanael Aoko Ogutu testified as PW1. She stated that this succession cause relates 3 deceased people, namely Petro Dula Awuor who was her father - in - law, Joanes Ogutu Dula who was her husband and Bernard Jaoko Dula was her brother - in - law. She further stated that she filed a witness statement dated 29/5/2017 which she adopted. In her written statement, PW1 stated that she is the surviving and eldest widow of the late Joanes Ogutu Dula who was also known as Gito Dula; that the suit land was jointly registered with her husband's late brother Akeyo Dula also known as Benard Jaoko Dula and their late father Dula Owour. It was stated that after the demise of all the proprietors, all the family members agreed that she files succession proceedings to enable her to distribute the estate to all the beneficiaries; that she commenced Migori PMCC Succession No. 67 of 2009 which was later transferred to Migori High Court as Succession Cause No. 120 of 2015. The family members realized her brother in law Joseph Onduru Dula who is not a beneficiary of the estate, filed a separate succession cause being Migori High Court Succession Cause 449 of 2014 with the intention of depriving or disinheriting other beneficiaries. In relation to the surveyor's report, PW1 stated that she had no objection to the report. She prayed that the distribution be done in accordance with the report.
8. On cross - examination by Mr. Kisera Counsel for the 2nd interested party, she testified that she was the eldest widow of Joanes Ogutu Dula; that he was also called Gito Dula and the suit land is a family land for the old Dula; that Petro Dula Awour had a last-born son called Gabriel Ojuok Dula; that Gabriel was entitled to the suit land as a beneficiary. PW1 further stated that Gabriel sold part of his land to Jonathan Amiani before he died on which he lives to date; that the parcel sold to Jonathan belonged to Gabriel and not any other beneficiary; that Jonathan's portion was noted by the Surveyor but it is not reflected on the report. It was stated that Jonathan did not produce his agreement and that is why his share was not reflected in the report although it is known to be 0.5 Ha. PW1 stated that Jonathan had entered into a Sale Agreement with Gabriel before Gabriel died and that is why he is living there. She stated that she has no problem with Jonathan.
9. On further cross - examination by Mr. Abisai Counsel for the 2nd, 3rd, 5th and 7th interested parties, she stated that she knows John Lugili Amiani as he lives on the suit land; that she is not aware of the size of land he occupies but he has put up a home with two houses; that he has lived on that portion for over 30 years and he farms on the land; that the portion he occupies has clear boundaries. She stated



- that she was present during the Survey exercise and the interest of John was noted by the Surveyor but the portion was not measured as John did not have his agreement for sale; that the boundaries are clear and there are sisal plants. She stated that Gabriel has a share of the estate of Petro Dula as he is a son and hence a beneficiary.
- 10 She further testified that she knows Ismael Christopher Machachi the 5th interested party/ plaintiff and he also occupies the suit plot; that he bought his portion from Joseph Ramogi Dula; that she does not know the size of the portion occupied by Christopher, however it is marked as “H” in the Surveyor’s report. She stated that she had no objection to Christopher getting his share of 0.72 Ha.
 11. PW1 also stated that she knows Edmond Otieno Owiti and he also lives on Plot 701 which he bought from Joanes Ogutu Dula who was her husband. She stated that she had no problem with him and he should get his portion of 0.16Ha.
 12. On cross - examination by Moses Okinyi K’Ojuok, she stated that she had no problem with Edmond Otieno Owiti and Ismael Christopher Machachi; that the person who sold the land to Christopher was Joseph Onduru Dula; that the portion occupied by Ismael Christopher belonged to Benard Jaoko (the 2nd deceased herein.); that he bought the land after the death of Bernard. Bernard did not sell a portion of his land to Ismael. PW1 further stated that she had no problem with Jonathan Amiani and the portion which he occupied; that Jonathan lives on a plain portion and not on a hill; that he was initially on a hill but Gabriel moved him downwards to a small portion. She stated that she was not aware of any agreement for sale in favour of Jonathan Ogada Amiani; that Jonathan’s portion has defined boundaries and no one has attempted to evict Jonathan at any time.
 13. PW1 testified that Edmond Owiti now lives on a different parcel of land which he also bought and he has 3 portions; that he bought a piece from Petro Dula, another one from her husband and another one from Joseph Ramogi Dula and from Joseph Onduru Dula; that he now lives on the portion he bought from Joseph Dula; that she has no problem with Edmond Owiti; that she has a problem with the portion Edmond Owiti bought from her husband since there is a balance of Kshs. 40/= (Forty Shillings only). PW1 clarified that Joseph Ramogi Dula is dead and is different from Joseph Onduru Dula. PW1 stated that she is illiterate.
 14. On cross - examination by Edwin Okello, PW1 stated that she remembered that Jonathan Ogada Amiani wanted to bury a dead body on the hill but the family refused Jonathan to bury the dead on the hill as he has relocated to the lower portion.
 15. On cross - examination by Linet Achieng Ramogi, she stated that Jonathan Amiani bought the portion from herself but that is different from the one he bought earlier.
 16. Jonathan Ogada Amiani is PW2. He testified that he is a farmer and lives in Kanyamkago/Kawere II B; that he lives on the suit land which he bought a portion of 0.5 Ha from Gabriel Ojuok who was a son to Petro Dula and a brother to Joanes and Benard; that the portion he bought from Gabriel is comprised of several portions. The first piece was on the hill and it was ½ acre; that he planted trees on his portion and they are there to date; that he bought another ¼ acre portion from Gabriel and that is where he is today. Those were the 2 portions he bought from Gabriel.
 17. PW2 stated that he also bought a ½ acre portion which is on the hill from Linet Achieng Ramogi a wife of Joseph Ramogi Dula. PW2 stated that he attached the copies of the agreements which were translated by Mr. Sam Onyango, advocate; that the agreement is dated 29/03/2005 and it is between himself and Gabriel (2nd P. Exhibit “1a”). The transaction in 2nd P. Exhibit 1b. PW2 stated that there is another agreement dated 11/06/2001 for the land on the hill. (2nd P. Exh 2). PW2 produced photographs (2nd P. Exh 3a, 3b, and 3c) which he stated are his household and the trees which are on



- the hilly part. He stated that he has lived on the hilly land for 18 years and on the lower part for 14 years now. He stated that the agreements were signed by the said Gabriel Ojuok himself.
18. PW2 stated that he was aware that the Surveyor's report indicated that he was one of the disputed buyers; that Moses Okinyi Ojuok and Edwin Okello are opposed to him owing the plot but he is not aware why they have issues with him; that he even paid the Surveyor's fees but the two restrained the Surveyor from visiting the portion that he owns which is a total area of 0.5Ha; that Moses Okinyi and Edwin Okello have not challenged his stay on the land at any time.
 19. On further examination by Mr. Abisai, PW2 testified that he had not attempted to amicably settle the matter with Moses and Edwin; that they ordered their people to get pangas and restrain him when the Surveyor visited the land; that he has only one home and he has lived there all along; that Moses and Edwin have not threatened him in any way save on that occasion.
 20. On cross examination by Moses Okinyi, PW2 testified that he bought a portion of the suit land but it was not surveyed; that he agreed with Gabriel that he buys $\frac{1}{2}$ acre on the hill and $\frac{1}{4}$ acre on the lower side of the land which was also not surveyed. He further stated that he bought $\frac{1}{2}$ acre land from Linet Achieng Ramogi but it was not surveyed; that he has stayed on the suit portion of land for 18 years; that there are sale agreements but the family had not asked him to produce the agreements. He stated that the total area bought measures 0.5 Ha; that the Surveyors did not measure his portion on the land but relied on the size given to him.
 21. On cross examination by Edwin Okello, PW2 testified that he was one of the persons who restrained the Surveyor from measuring the portion that he occupies even after he paid the fees; that he did not marry a daughter to Karilus Agalo Oginga; that he paid the Surveyor's fees for the Surveyor's second visit. PW2 stated that it is Edwin Okello and Moses Okinyi who have a problem with the land; that the first visit of the Surveyor was on 25/06/2018 but he was not involved.
 22. PW2 stated that the suit land is for Petro Dula and he bought the suit land from one of the sons of Petro Dula; that Gabriel had his separate portion of the land but he was yet to obtain a different number; that Joseph Ramogi Dula was one of the children of the sons of Petro; that however he bought land from Linet Achieng who by then was married.
 23. On cross - examination by Linet Achieng, PW2 denied that he refused to give the agreements over his portion; that family meetings are normally held in the night and he cannot attend for security reasons and he has never been invited; that Linet was truthful to the extent that she sold $\frac{1}{4}$ acre to him.
 24. On cross - examination by Gordon Otieno Ogutu, he reiterated that he was not asked to produce the agreement by the family.
 25. On cross - examination by Michael Owino K'Ojuok, he stated that Michael was the son to Gabriel and he also carried a panga and threatened him when the Surveyor visited his home; that Michael told him that he wanted the plot on the hill and restrained the Surveyor from accessing his portion.
 26. On cross examination by Rosanael Aoko, PW2 stated that no one has evicted him from his land since the time the Surveyor visited his land; that it is Moses and Edwin who asked others to; that the Surveyor did not measure his portion.
 27. PW2 was re-examined by Mr. Kisera Advocate. He testified that the report acknowledged his share of 0.5 Ha but it is not indicated; that his share is defined. On further re-examination by Mr. Abisai, PW2 stated that the portions he bought were not surveyed but there were sisal planted as boundaries; that the boundaries were placed by the owners of the portions; that the plot was defined and the size is 0.5 Ha.



28. Samwel Azirikam Asuza is PW8. He adopted his statement in the replying affidavit sworn on 11/7/2019 in response to the Surveyor's report. He deposed that the affidavit sworn by Edwin Okello Awour is strange to this matter and he ought to have asked for permission before filing it; that Edwin did not act in good faith to allege that the family members and the purchasers met and deliberated on his attached schedule which is composed of his own wishes; that vide an agreement dated 10/2/1986, he purchased from Benard Jaoko Dula a portion of the suit land measuring 4 acres for a consideration of Kshs. 10,000/=; that he later purchased another 0.27 Ha from Joseph Ramogi; that he is currently occupying 3 acres instead of 4 ½ acres which he purchased; that during the lifetime of Benard Jaoko Dula, he never complained in relation to the amount owed. PW8 asked this court to dismiss the distribution schedule filed by Edwin Okello and confirm his rightful parcel which includes the disputed portion G.
29. On cross examination by Moses Okinyi, he testified that he bought 4 acres from Benard Jaoko for a consideration of Kshs. 10,000/= and he has an agreement; that he paid Kshs. 9,000/= and the balance in September 1986 to Benard; that there is no acknowledgement of the balance.
30. On cross examination by Edwin Okello, he testified that he had no problem with Bernard Jaoko during his lifetime and he lived in harmony with him; that he also bought some land in 1991 and the price was Kshs. 7,000/= paid in two instalments; that he also paid Bernard Jaoko in full.
31. On cross examination by Joseph Onduru Dula, he testified that he refused the reduction of his portion as proposed by the family; that he paid the balance of Kshs. 1,000/= to Benard Jaoko; that he decided to end squabbles and offer the Kshs. 1,000/= but the family did not agree on the recipient. PW8 stated that it is Joseph who is the problem.
32. The court asked Moses Okinyi if the family had a problem with Karilus Agalo Oginga. Moses stated that the family had no problem with him save for the fact that he did not pay the Surveyor's fees. Karilus confirmed that he had not paid the fees but stated that he would pay. The court record indicates that the said Karilus Agalo Oginga is now deceased.
33. John Lugili Amiani is PW3. He testified that he bought a portion of the suit land from Gabriel Ojuok Dula; a son of Petro Dula; that he bought 1 ½ acres at a consideration of Kshs. 6,000/= in 1991. He further stated that he entered into an agreement before the Chief, John Okeyo (3rd P. Exhibit 1); that Joanes Dula and Joseph Onduru demarcated the land and put boundaries; that he fully developed the plot and he has his homestead and no one has ever attempted to evict him. He testified that he had no problem with any of the family members; that the Surveyor did not measure the area he occupies despite paying the Surveyor's fees; that his entitlement only 0.6 Ha as indicated in the Surveyor's report.
34. On cross -examination by Moses Okinyi, he testified that he bought land from Gabriel, he lives on that land and he has established a homestead; that there is a boundary put by Joanes and Joseph Onduru; that he was not asked to produce the sale agreement by the Surveyor when he visited the land.
35. On cross examination by Gordon Otieno, he stated that he did not take the agreement since no one asked for it.
36. On cross examination by Michael Owino, he testified that he bought the land from Gabriel; that Gabriel was Michael Owino's father.
37. On re - examination by Mr. Abisai Counsel, he testified that he had not been asked by the family to avail his agreement; that he would have done so immediately if asked to do so; that the Surveyor left the land before giving him time to avail his agreement.



38. Edmond Otieno Owiti is PW7. He testified that he bought 3 portions of the suit land from Gabriel Ojuok Dula in 1985; that he signed an agreement dated 3/8/1985 for 3 acres; that the consideration was 6,700/= which was paid at once; that his father also bought $\frac{3}{4}$ acres from Joannes Ogutu Dula a son of Petro Dula and the purchase price was Kshs. 2,600/=; that there was an agreement dated 11/10/1986 which was in Dholuo language but it was translated (& P. Exh.2). He further stated that the 3rd portion was bought from Joseph Ramogi Dula a son of Petro Dula; that there is an agreement dated 15/11/1987 (7. P. Exh.3) and the purchase price was Kshs. 8,000/= for 2 $\frac{1}{2}$ acres portion. PW7 testified that the 3 plots are not 6 $\frac{1}{4}$ Acres but 2.16 Ha and there are boundaries thereon; that there has been no problem prior to the death of those he bought the land from; that in the Surveyor's report, he occupies the land described as P, J & F.
39. On cross examination by Rosanael Aoko, he stated that the agreements have no balances for payment; that the Chiefs were involved in the sales and they witnessed the agreements; that both of them were not present during the sale and the portions are J, P and F.
40. On cross - examination by Moses Okinyi, he stated that he was born in 1976 and by the time his father bought the land from Gabriel he was about 6 years; that the agreements are current and Joanes Dula was the husband to Rosanael Aoko.
41. On cross examination by Edwin Okello, he testified that his father bought the land from Gabriel and he also bought land from Joanes Ogutu and another portion was from Joseph Ramogi; that the agreements are there and there has been no dispute since then; that the agreement by Joanes indicates in Dholuo language that the balance had been paid.
42. On cross - examination by Linet Achieng, he stated that his father bought 2 acres from Gabriel; that he had no problem with the owners of all the 3 plots when they were alive; that he only goes by the agreements and he is not out to cause any problems to anyone; that there are boundaries on the plot and the area is clearly disclosed in the Surveyor Report.
43. On cross examination by Gordon Otieno, he testified that he has been co-operative with their family and he even paid Kshs. 7,000/= as Survey Fees; that he is entitled to what his father bought and the agreements have witnesses therein; that he is not aware if Joseph Ramogi married his younger sister.
44. On cross examination by Joseph Onduru, he testified that he was very young when the agreements were entered into.
45. On re-examination by Mr. Abisai Advocate, he stated that all the consideration were paid; that no one has ever demanded Kshs. 400/= from Joanes' family; that at one time Rosanael asked him about the money and he told her to refer to the agreement dated 11/10/1986. He testified that the agreement is clear that all the money was paid and the acknowledgment was duly signed; that there is no money which is owed and Joanes signed the same way all throughout and no suggestion was made that the agreements were forged. Further, he stated that Gabriel's Election's ID No. 6085414 is the same number appearing on the agreements; that he has been staying on the land since it was bought; that he has developed the land; that no valuer came to ascertain the land the family took away against the Kshs. 400/=. PW7 reiterated that no balance was forthcoming.
46. On 28/11/2019, parties agreed that Ruth Ateka the wife of Ismael Christopher Machachi testifies on behalf of her husband as PW5. She testified that she is the wife of the 5th Interested Party; that her husband wrote a statement dated 10/12/2018 which she adopted as part of her evidence; that her husband bought 2 $\frac{1}{2}$ acres in 2004 from Benard Akello; that Joseph Onduru Akello was the one who sold on behalf of the deceased; that Benard had sold the land to someone who paid part of the



- consideration; that the initial buyer could not proceed on and that is why Joseph Onduru looked for her husband to buy that portion. She further stated that they paid Kshs. 100,000/= as Joseph undertook to refund what the initial buyer had paid to Benard Akello; that there was an agreement and it is the one dated 15/6/2004 (5. Pexh.1); that they have lived there to date and they even bought an extra one acre and the total area now became 3 ¼ acres; that they paid Kshs. 45,000/- for that 1 extra acre; that the extra 1 acre bordered the 2 ½ acres; that the extra acre was bought in 2006 but no title deeds have been issued to her.
47. She further stated that they paid Kshs. 11,700/= as the Survey fees; that the family is now refusing that they bought 3 ½ Acres but only 1 ½ acres; that prior to that, there has been no problem at all and neither had they been sued; that they have developed the 3 ½ acres, planted trees and sugar cane thereon; that Joseph Onduru has not opposed their purchase but the other family members. PW5 prayed for the title deed for the 3 ½ acres which they bought.
 48. On cross examination by Moses Okinyi Ojuok, PW5 stated that they live on Petro Dula's land which they had bought from Joseph Dula; that Bernard sold his land to someone else and they bought after that purchaser failed to complete the sale; that they bought two pieces of land on 2 different dates; that the first portion was about 2 ½ acres and the second portion was 1.0 acres.
 49. On cross examination by Edwin Okello, she stated that Joseph Dula sold the land to her; that she learnt that Benard had sold a portion of a certain parcel of land to other buyers; that Joseph Dula was part of the family of Petro Dula; that their agreement was clear on the parties; that Joseph was in - charge of the family and he was the administrator. She further stated that Joseph was right in what he did and they are innocent purchasers and there was no fraud or mistake on their part.
 50. On cross examination by Gordon Otieno, she stated that the first payment was Kshs. 50,000/= and out of this Kshs. 30,000/= was refunded to the first purchaser and the balance was taken by Joseph Dula; that the agreements are clear on the parties involved.
 51. On re-examination by Mr. Singei Advocate, she testified that she is aware of the agreement and parties are clearly stated therein.
 52. David Otieno Oyello testified as the joint witness of the 2nd, 3rd, 5th and 7th plaintiffs. He testified that he bought land from Linet Achieng Ramogi in the year 2017; and he is yet to receive a title deed he planted sugar cane thereon; that he was not present when the Surveyor visited the land but his portion was surveyed and it is marked with Letter "K".
 53. On cross examination by Moses Okinyi he stated that he has his own portion. On cross examination by Edwin Okello he stated that he bought 1 acre and needs a title deed for that.
 54. Moses Okinyi Ojuok the 9th interested party is PW9. He relied on his affidavit dated 13/6/2019. In his affidavit, he deposed that he was appointed the Secretary by the family members of the Estate of the Late Petro Dula Awour; that after deliberations by the family members, they agreed that the respective portions be registered in the names of the administrators and the respective buyers as per the schedule; that the court issued a grant in respect of the estate as per the documents in support of the distribution. PW9 further stated that he relied and supports the Surveyor's report.
 55. On cross examination by Mr. Oywer Advocate for the 2nd interested party, he testified that Gabriel Ojuok was his cousin; that their fathers were brothers; that Gabriel Ojuok was to get 1.93 Ha of the land and he is aware that some buyers purchased land from Gabriel Ojuok Dula. The buyers who bought land from Gabriel Ojuok were Erick Otieno Otuoma and Edmond Otieno Owiti; that he is aware that some other people are staying on the land and they include Jonathan Amiani; that Jonathan



- has been staying there for a long time and he has established a homestead on the land; that Jonathan bought a portion of the land from Gabriel Ojuok.
56. On cross examination by Mr. Singei Advocate, He testified that Jonathan Amiani bought the land and he has been staying thereon for a long time; that John Lugili Amiani is the elder brother to Jonathan Amiani and they both purchased different portions of the suit land; that he has never attempted to evict them before; that they bought land from the family members but he has not seen their sale agreements; that Jonathan and John have a right to the portions they are occupying.
57. He further testified that he is not aware if they have filed any agreement in court and he was not present during the time when the agreements were entered into; that the dispute is that they have not produced their agreements to that family; that he is not aware of the size of the portions the two are occupying; that Gabriel Ojuok Dula is deceased and he cannot know who was present during the execution of sale agreements; that Michael Owino Ojuok is a beneficiary as well as Samuel Ochieng.
58. PW9 stated that in the sale agreement for Jonathan Amiani dated 29/03/2005, the seller was Gabriel Ojuok Dula and the buyer is Jonathan O. Amiani; that Joseph Onduru Dula is part of the agreement; that the agreement is duly signed by the parties but he could not see the size of the portion sold. Further, he stated that the portion for Jonathan is now under position “B” on the report; that Michael Owino Ojuok has a total size of 1.93 Ha but John occupies a different portion; that Jonathan has never extended boundaries over time; that there has been no boundary dispute between Jonathan and his family member.
59. PW9 testified on the sale agreement dated 11/06/2001 between Gabriel Ojuok Dula and Jonathan; that no family member was a witness since it is 0.2 Ha. The portion for John Lugili is also under portion “B” since he bought from Gabriel Ojuok. It was further testified that John and Jonathan bought land from Gabriel Ojuok but they are not sure of the sizes; that they are entitled to the portion they occupy; that what the two occupy must be what they bought from Gabriel Ojuok; that if the two do not have papers/agreement they should sit down with the family and agree on the way forward.
60. PW9 testified that he knows Ismael Christopher Machachi; that he never bought land from any of the 3 deceased persons; that he is occupying part of the suit land; that he bought 2 portions of land but one portion is disputed; that the other one has no issue at all. Bernard Jaoko sold land to someone but Bernard died before the sale was completed. Bernard sold to Tirus Elamenda Malea.
61. On the sale agreement between Joseph Onduru Dula and Gabriel Ojuok Dula (as Vendor) and Christopher Machachi (as Purchaser) dated 15/09/2007 it was testified that the Joseph Onduru Dula is not the Administrator in this case and Tirus Elamenda Malea was a witness in the sale; that the portion was not Gabriel Ojuok’s, it belonged to Bernard Jaoko Dula; that it is part of the portion marked “D” in the sub-division schedule; that the portion of 0.7 Ha is not disputed and what is in dispute is the portion of 0.72 Ha; that the portion “H” on the map is not disputed; that the portion of 0.72 Ha is now under portion “D” in this distribution schedule; that it is held by George Ochieng Jaoko (Minor) a son to Bernard Jaoko; that Joseph Dula and George Dula did not have the right to sell land to Ismael (that is portion “D”) as the land belonged to Bernard Jaoko and he was by then dead. It was stated that the sale between Bernard and Tirus was not completed.
62. It was stated that the purchase price was Kshs. 100,000/= but only Kshs. 30,000/= was paid; that the land had been demarcated and all the sons knew of their portions; that when Gabriel and Joseph sold the portion to Ismail, Bernard had died long ago and they had no right to do so. The land has never been occupied. It is vacant until today; that Joseph did not have the authority to sell the portion of Bernard. By then the land was not sub-divided. It remains so to date. Ismail was to ascertain the ownership of the portion he was buying.



63. Further, PW9 testified that he knows Edmond Owiti and it is his father who bought the land and that is not in dispute; that the dispute is on the acreage of the portion; that Mathew Odingo Owiti and Otieno Owiti Edward are brothers; that Mathew is not staying on the land; that the portion marked "N" had an issue; that there was a balance of Kshs. 400/= to be paid. It was stated that Portion "P" was also disputed and it was never sold; that the mother of Edward was only allowed to farm on the portion "P". they were only allowed to plant vegetables; that he was an adult then and was present during those transactions; that Kshs. 400/= has been owing since 1986.
64. It was stated that there are 2 agreements, one is between Joanes Ogutu Dula and Joel Owiti (Father to Edward Owiti) dated 11/10/1986. It is in Dholuo language but it was translated into English and filed on 15/10/2019. The 2nd agreement was dated 15/11/1987 between Joseph Ramogi Dula and Joel Owiti. It is in Kiswahili language.
65. It was stated that the agreement dated 11/10/1986 was for $\frac{3}{4}$ acres and the area is captured as portion "J" in the sub-division map; that the 2nd agreement dated 15/11/1987 was for $2\frac{1}{2}$ acres and the portion is captured in portion "J" the land marked as P, J, and N is 2.16 Hectares; that it is only portion P and N which is disputed and the total area in dispute is 0.16 Ha; that the Kshs. 400/= balance is in respect of the portion sold by Joanes; that P was not sold to Joel Owiti but this is what belonged to Joseph Ramogi Dula and not Joseph Onduru Dula. That was the portion the mother of Edwin Owiti was given to farm (Portion P). There was no sale.
66. On the agreement dated 15/11/1987, it was stated that the family members are disputing the sale of the portion P; that Portion J is large and covers the area in the two agreements; that the agreements did not have measurements by the Surveyor. PW9 denied knowing the sale agreement dated 13/10/1991 between Gabriel Ojuok and John Lugili Amiani; that John refused to produce the agreement but he had no dispute to the agreement the way it is.
67. On cross examination by Samuel Arizikam, PW9 testified that he was not present when he bought the land; that he was relying on the sale agreement and the balance was Kshs. 1,000/=.
68. Gordon Otieno Ogutu is PW3. He testified that Rosanael is his stepmother. He adopted his witness dated 29/5/2017. In his statement, he testified that after the case was filed, they sat down as a family and after deliberations, they found that Joseph Onduru Dula had been earlier allocated his share of other land parcels which are in his name and therefore he is a busy body in these proceedings; that the family also agreed that Rosanael Aoko Ogutu should administer the estate. PW3 reiterated this position in his viva voce evidence.
69. On cross examination by Joseph Onduru, he testified that when the family sat, he was in the meeting and they chose Rosanael and Ogutu; that when he died, he was also in the meeting when they chose Rosanael only; that they are not able to steal Dula's land and they are doing what the family agreed; that he is the son of Dula and he had been given his land; that he has his title and cannot come back to subdivide the land.
70. On cross examination by Rosanael, he testified that Joseph Onduru is a brother to his father Joanes Ogutu; that Rosanael was the wife to Joanes.
71. Michael Owino Ojuok is PW4. He testified that he is the brother to Gordon; that when they wanted to do succession, a meeting was called and Rosanael was chosen as the administrator and subdivided the land to them; that Joseph Onduru was not chosen to administer the deceased's land; that Joseph had been given his land and he had his own title; that they never gave him that land.



72. On cross examination by the petitioner, he confirmed that he is the son of Dula. On cross examination by Rosanael he testified that Petro Dula was his grandfather and Benard Dula was his father; that Joanes Dula is his uncle, Gordon was his cousin and Rosanael is an aunt.
73. Linet Atieno Ramogi is PW5. She testified that Rosanael is her co - wife; that her husband and Rosanael's husband are brothers; that her husband is Joseph Ramogi while Rosanael's husband is Joanes Ogutu. She stated that the family agreed with the buyers.
74. The court directed that the parties file written submissions. The 2nd, 3rd, 5th and 7th interested parties filed joint submissions. The 2nd interested party submitted that he purchased approximately ½ acre and subsequently ¼ acre from Gabriel Ojuok Dula; that the total acreage in the estate of the suit land is 0.75 Acres which translated to 0.304 Ha and the beneficiaries acknowledged his entitlement.
75. The 3rd interested party submitted that he bought approximately 1 ½ acres for a consideration of Kshs. 6,000/= in the year 1991 from Gabriel Ojuok and he took immediate possession and he has extensively developed the area and set his home thereon. He prayed for an interest of 0.61 Ha in the estate.
76. It was submitted that the 5th interested party passed on during the hearing of this case but his wife testified on his behalf; that in her evidence she stated that her husband bought approximately 2.5 acres from Joseph Onduru Dula on 15/9/2004 for a consideration of Kshs. 100,000/=. She further testified that in the year 2006, her deceased husband purchased 1 acre from Akeyo Dula alia Benard Jaoko Dula for a consideration of Kshs. 45,000/=. The interest of the 5th interested party in the estate is 1.422 Ha.
77. The 7th interested party submitted that his father one Joel Owiti bought part of the suit estate from 3 beneficiaries; that in the year 1985 he brought approximately 3 acres from Gabriel Ojuok for Kshs. 6,500/=; that in the year 1987, he purchased land measuring ¾ acres from Joanes Ogutu alias Gito Dula for Kshs. 2,600/= and in the year 1987 he purchased 2 ½ acres from Joseph Ramogi Dula for a sum of Kshs. 8,000/=. It was submitted that he took possession of the 2.5 Ha and settled thereon and that is his interest in the land.
78. The 2nd, 3rd, 5th and 7th interested parties submitted that the validity of the sale agreements is not questioned and their interest in the suit estate has been acknowledged; that if this court doubts the validity, then it can set aside the various portions of the suit land for determination by the Environment and Land Court. To rebut this position, they referred to the court to the case of Alice Mumbua Mutua (Deceased) (2017) eKLR and the provisions in Rule 41 (3) of the Probate & Administration Rules and Section 80 of the *Law of Succession Act*. The interested parties asked this court to distribute the estate as their interest has been unequivocally acknowledged.
79. The 1st interested party filed submissions dated 31/10/2022. He submitted that he bought 1 ½ acres of land from Joanes Ogutu Dula; that the land was demarcated and borders the portion sold to Jonathan Ogada Amiani; that he took possession of the suit portion where he planted trees and he cultivated the same. The 1st interested party stated that he has established his interest and the suit portion should be allocated to him.
80. The 8th interested party filed his written submissions dated 21/10/2022. He submitted that he acquired 4 ½ acres in 1986 from Joseph Ramogi Dula and Benard Jaoko Dula and took immediate possession and has been in occupation for a period of 36 years; that he has been occupying 3 acres instead of the 4 ½ acres which he is legally entitled to; that the affidavit in support of the mode of distribution was filed by a stranger and he had no locus standi; that even if he is not entitled to the 4 ½ acres as alleged by some beneficiaries, then he is entitled by virtue of adverse possession. The 8th interested party urged the court to award him the 4 ½ acres of the suit land before issuance of the certificate of grant.



81. The respondent filed her written submissions on 18/7/2022. The respondent gave a history of this cause. She submitted that she was not opposed to the Surveyor's report and that Jonathan Amiani, John Lugili Amiani, Ismael Christopher Machachi and Edmond Otieno Owiti all acquired a portion of the suit land. However, she had a problem with Edmond Otieno who never finished payment of Kshs. 400/=.
82. The respondent further submitted that DW1 testified that he purchased two separate portions of land but the Surveyor did not survey his two portions where he has planted his trees for 14 years and where he has lived for 18 years respectively. She submitted that Moses Okinyi and Edwin Okello are opposed to; that during cross examination by Moses Okinyi, DW1 testified that he bought ½ acre on the hill and ¼ acre on the lower side which was not surveyed; that he bought again ½ acre but all these were not supported by production of sale agreement and hence the family of the deceased is not sure of the size he bought.
83. It was submitted that DW3 testified and confirmed that his sale agreement was done in the year 1991 but the truth is that it was done in 1981 then rubber stamped; that there is no signature of the chief who executed the agreement; that it is also curious that the sale agreement relied on by DW3 (John Lugili Amiani), DW4 (Edmond Otieno Owiti) and the 15th interested party (Karilus Agalo Oginga) were all drafted by one person, stamped and dated in the year 1991 without the chief's signature; that the same was signed and witnessed before Chief John Okeyo before he became a chief and that amounts to forgery.
84. The respondent submitted that DW3 (John Lugili Amiani) has never cooperated with other beneficiaries together with the applicant; that the other beneficiaries stand to suffer a great loss in the event that the applicant, who has no interest in the estate is retained as a co-administrator. The respondent asked the court to allow the objection as prayed.
85. I have carefully considered the application for confirmation of grant dated 7/10/2015, the objector's protest dated 23/3/2017, viva voce evidence, the documents produced in evidence and the parties' respective written submissions. The main issues for determination are: -
- i. Who are the beneficiaries of the estate of the deceased.
 - ii. Who will be the administrators of the deceased persons' estate.
 - iii. Whether the interested parties have proved their claims in the estate of the deceased persons.
 - iv. The distribution of the estate of the deceased persons.
86. The undisputed testimony by Rosanael Ogutu PW1 is that Joanes Ogutu Dula alias Gito Dula, Benard Jaoko Dula alias Akeyo Dula and Petro Dula Owour alias Dula Owour (deceased persons) were jointly registered as the owners of Kanyamkago/Kawere II/701 (the suit land). PW1 testified that she was the eldest widow of Joanes Ogutu Dula, the sister and daughter in law to Benard Jaoko Dula and Petro Dula Owour respectively.
87. Rosanael Ogutu did not tell this court whether her deceased husband had other wives who are still alive and/or if they were survived by other children. Gordon Otieno Ogutu and Michael Owino testified that they are the step sons to Rosanael Ogutu. Linet Ramogi testified that she was a wife to Joseph Ramogi (deceased). From the schedule of distribution filed by Michael Ojuok Dula, the following information can be deciphered on the beneficiaries of the estate of the deceased as follows: -
- A. Joanes Ogutu Dula (Deceased) was survived by the following: -
 - Rosanael Aoko Ogutu - wife.



Gordon Otieno Ogutu - son.

Aloyce Juma Ogutu - son.

- B. Benard Okinyi (Deceased) was survived by the following:-
GOJ (Minor).
- C. Daniel Okinyi Dula (Deceased) was survived by the following: -
Teresia Ochieng Ogodia.
KOO (Minor).
- D. Joseph Ramogi Dula (Deceased) was survived by the following: -
Linet Achieng Ramogi - wife.
- E. Gabriel Ojuok Dula (Deceased) was survived by the following: -
Michael Owino Ojuok - son.
88. There is no indication whether Benard Okinyi and Gabriel Ojuok Dula were survived by a wife and/or whether Linet Achieng Ramogi has children. Since there are no objections from any survivors, the beneficiaries of the estates of the deceased are as outlined above.
89. On the person to be appointed as the administrator of the estate of the deceased persons, there is consensus that Rosanael Ogutu Dula becomes the sole administrator of the estate of the deceased persons. The court will uphold the decision of the family members.
90. The following persons registered their interest in the estate of the deceased alleging to be buyers.
1. Jonathan Ogada Amiani
 2. John Lugili Amiani
 3. Ismael Christopher Machachi
 4. Edmond Otieno Owiti
 5. Samuel Azirikan Asuza
 6. Joshua Njuwe Ngito
 7. Karilus Agalo Oginga
 8. Thomas Nandwa Musera
91. There is a Surveyor's Report on record dated 9/7/2019 which shows the demarcations on the suit land and where each person occupies their portion on the suit land.
92. Section 3 of the *Law of Succession Act* defines free property as "the property of which a deceased person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death." Therefore, property which forms party of the estate of the deceased is that which is available for distribution after settling all the liabilities. In the case of Mpatinga Ole Kamuye vs. Meliyo Tipango & 2 Others (2017) eKLR, the Learned Judge observed that:-

"This Court's view before distribution of the estate of the deceased under Section 71 of the *Law of Succession Act* Cap 160; the Court must satisfy itself that the beneficiaries of the



estate are the legitimate beneficiaries of the estate; that there are assets that comprise of the deceased's estate and are available for distribution after settling all liabilities and having the net estate for distribution.”

93. The general consensus is that there were buyers who purchased portions of land of the suit estate. The Surveyor's sketch of the subdivision plan of the suit land confirms the occupation of each buyer. This court shall proceed to analyze the interest of each buyer.
94. Joshua Ngwe Ngito, the 1st interested party, did not testify but he filed his written submissions. He claimed 1½ acres portion from the suit land. In his written submissions, he filed as Daniel Okinyi Njuwe. This court cannot know whether he is one and the same person or he is claiming on behalf of another person. The 1st interested party's name does not appear on any of the portions of land in the Surveyor's report nor did he produce a sale agreement showing the parcel of land sold to him by Joseph Ramogi as alleged. It is also interesting that his name does not appear in the proposed schedule of distribution. This court finds no merit in the 1st interested party's claim of 1 ½ acres.
95. Jonathan Ogada Amiani, the 2nd interested party stated that his interest is a portion measuring 0.5 Ha; that he bought the portion from Gabriel Ojuok. The first piece was on the hill ½ acre and the second piece ¼ acre on a plain. In support of this, he produced two sale agreements dated 29/3/2005 and 11/6/2001. The agreement dated 29/3/2005 does not indicate the acreage of the portion which he was purchasing but the agreement dated 11/6/2001 indicated that the acreage is 0.2 Ha. Both agreements were between the 2nd interested party and Gabriel Ojuok. The survey reports shows that his portion was not captured.
96. During cross examination, Moses Okinyi testified that he is aware his cousin Gabriel Ojuok sold a portion of his land to some buyers; that the portion for the 2nd interested party is under portion “B.” Looking at the Survey map, portion B is under the name of Michael Owino Ojuok who is the son of Gabriel Ojuok (Deceased). Moses Okinyi acknowledged that the 2nd interested party is entitled to his portion and there has never been a dispute between him and the family members. Therefore, the 2nd interested party has rightly established his interest in the suit land and he is entitled to the ¼ acre on the hill and ½ acre on the suit land.
97. John Lugili Amiani the 3rd interested party claims an interest of 1 ½ acres which he purchased from Gabriel Ojuok. To support this position, he produced a sale agreement dated 13/10/1991. The agreement indicates that the interest being sold was 1.5 acres (0.6Ha) for a consideration of Kshs. 6,000/= . Moses Okinyi testified that he had no knowledge of the agreement between the 3rd interested party and Gabriel Ojuok but he had no problem with the 3rd interested party. The 3rd interested party has therefore proved his entitlement as a purchaser for the 0.6Ha.
98. Karilus Agalo Oginga the 4th interested party claims 2 acres of the suit land which he purchased from Gabriel Ojuok for a consideration of 10,000/=. To support this, he produced an agreement dated 5/3/1990. In the proceedings of 15/6/2019, the court asked Moses Okinyi whether they have a problem with Karilus. His response was that they have no problem save that he is yet to pay the Survey fees. Karilus, who was present in court, admitted to the same and stated that he would pay it. This is also reflected in the minutes of the family meeting annexed to the affidavit of Manasseh Okinyi Ojuok dated 13/6/2019. His interest has been acknowledged but he did not produce the land agreement and failed to pay the survey fees.
99. Further, the court record shows that he is now deceased. There has been no substitution of the deceased and there is no clear indication who his successors are. This court is of the view that Karilus Agalo Oginga (Deceased) proved his interest of 2 acres in the estate of the deceased. However, in view of the



fact that he is deceased and there is no indication of the successors in his estate, his portion of 2 acres shall remain preserved until his beneficiaries take the appropriate letters of administration and carry out succession proceedings before the transfer is effected.

100. Ismael Christopher Machachi is the 5th interested party. His interest in the suit land is a portion of 3.5 acres. His wife Ruth Ateka testified on his behalf. It was stated that he bought 2.5 acres from Joseph Onduru Dula and Gabriel Ojuok for a consideration of Kshs. 100,000/=. It was also stated that on 14/5/2006 he purchased 1 acre from Julius Okungu Okumbe for a consideration of Kshs. 45,000/=. In the Surveyor's map, it is indicated that his portion is "H." However there is a dispute of his occupation in 0.72 Ha. In relation to the 0.72 Ha, Rosanael Aoko testified that she has no problem with Ismael getting his portion of 0.72 Ha. It was submitted that the 5th interested party passed on during the pendency of this succession cause. There is no indication who is his administrator in his estate. Since the Surveyor's report indicates that the 5th interested party occupies a defined portion, the court will proceed to distribute the 3.5 acres portion interest in the estate of the deceased.
101. Thomas Nandwa Musera is the 6th interested party. He did not testify nor did he file any witness statement. His name and portion is not indicated in the Surveyor's map. In the minutes of the family meeting, his name is captured as one of the buyers who had no complaints but he had no survey fees. The court cannot determine with precision the entitlement of the 6th interested party since it was not disclosed to this court.
102. Edmond Otieno Owiti is the 7th interested party. His interest in the suit land on behalf of his deceased father is three portions of the suit land J, P & N. In support of the claim, he produced sale agreements dated 3/8/1985, 11/10/1986 and 15/11/1987. He also stated that the consideration for each portion was paid in full. However, Rosanael took issue with Edmond Otieno Owiti alleging that he refused to clear the outstanding balance of Kshs. 400/=.
103. Edmond Owiti is claiming the interest in the estate of the deceased as a son to Joel Owiti his father, who purchased the three portions (J, P & N) of the suit land. In the Surveyor's map, all three portions have been distinctly marked. The dispute is on the portions "P & N." There is a sale agreement dated 15/11/1987 in Kiswahili. This sale agreement is for portion P. The vendor was Joseph Ramogi, the deceased husband to Linet Ramogi. The portion of land that was sold was 2 ½ acres for a consideration of Kshs. 8,000/=. The sale agreement was witnessed by 7 people including the then area chief. Even though the Surveyor's report shows that this portion has a dispute, Linet Ramogi testified that the family sat down and agreed with all the buyers.
104. On portion "N", there is a sale agreement dated 11/10/1986. The sale agreement is in Luo language. The total acreage sold was ¾ acre. Edmond told the court that it was translated but the court was not able to trace the translated copy of it. The agreement stated that the purchase price was Kshs. 2,600/=. A payment of Kshs. 2,200/= was made leaving a balance of Kshs. 400/=. The only dispute regarding portion "N" is the balance of Kshs. 400/=. There is no claim that the 7th interested party's father was not entitled to the said portion. If there is a dispute on the completion of the purchase price, the complainants can seek to enforce their claims before another court. Besides, PW1 has not produced further evidence on why she believes that there was a balance of Kshs. 400/= of the purchase price. On portion J, the sale agreement is not legible and therefore it is difficult to tell the total acreage sold. The sale agreement however states that it was between Joel Owiti and Gabriel Dula. On cross examination by Linet Achieng, Edmond testified that his father purchased 2 acres from Gabriel.
105. It is this court's considered view that Edmond Owiti's deceased father is legally entitled to portions "J", "P" & "N" which is a total interest of 2.16Ha. In view of the fact that Edmond has not taken out letters of administration to the estate of his father, it therefore follows that the portions cannot be transferred



- to him. He ought to administer the estate of his deceased father and include any other beneficiaries before the transfer is completed.
106. Samwel Azirikam Asuza is the 8th interested party. His interest in the suit land is a portion of 4 ½ acres. He claimed that he is in occupation of 3 acres instead of 4 ½ acres which he is legally entitled to. His portion in the Surveyor's maps is indicated as portions "G" and "E". The 8th interested party produced an agreement dated 10/2/1986 which shows that he purchased 4 acres from Benard Jaoko for a consideration of Kshs. 10,000/= . Moses Okinyi seemed to have a problem with the 8th interested party and alleged that the 8th interested party did not finish a balance of Kshs. 1,000/= of the purchase price. The 8th interested party stated that he was willing to pay the 1,000/= but the family members could not agree on the recipient. Even if there is an indication that there is a dispute on 1.16Ha of the 8th interested party's portion, there is no argument that has been put forth stating that the 8th interested party obtained that portion fraudulently. Samwel Azirikam Asuza is therefore entitled to 4 ½ acres and/or his portion as surveyed.
 107. From the distribution schedule dated 13/6/2019, there are other buyers namely Beatrice Lugae Okoyo (portion "F"), David Otieno Oyieko (portion "K") and Erick Otieno Otuoma (portion "M") whose occupation was not challenged by the beneficiaries of the estate of the deceased persons.
 108. The distribution schedule has also apportioned what each of the beneficiaries of the estate of the deceased is entitled to and there is no dispute on the same. This court notes that the beneficiary listed in the estate of Benard Jaoko Dula is a minor. There is no proposal on who should hold the portion in trust for the minor. The court will take liberty and appoint Rosanael Aoko Ogutu, the respondent and the grandmother of the minor to hold his portion in trust until he attains the age of 21 years.
 109. As I come to the end of this judgement, I wish to apologize to the parties for the delay in delivering this judgement whose hearing was substantially done by my brother Mrima J and this court heard the other parties. I took time to acquaint myself with the file as the parties will appreciate I did not hear all the parties involved in the cause. This court would like to appreciate the parties for exercising patient.
 110. Having considered the testimonies, the evidence on record and the schedule of distribution, the estate of the deceased persons is hereby distributed as follows: -
 1. The summons for confirmation of grant dated 7/10/2015 are hereby disallowed and therefore dismissed.
 2. The objection proceedings dated 23/3/2017 are merited and hereby allowed.
 3. The whole estate of the deceased persons that is Kanyamkago/Kawere I/701 shall be first registered in the name of Rosanael Aoko Ogutu in the first instance before being transferred to the 1st - 8th interested parties as buyers for the purposes of payment of the stamp duty, if any.
 4. The Grant in the Estate of Petro Dula Awour, Joanes Ogutu Dula and Benard Jaoko Dula (Deceased Persons) is hereby confirmed in the name of Rosanael Aoko Ogutu.
 5. The land of the estate of the deceased persons is hereby distributed as follows: -
 - i. Joanes Ogutu Dula (Deceased) - 3.94 Ha.
 - a. Gordon Otieno Ogutu
 - b. Aloyce Juma Ogutu
 - ii. Benard Jaoko Dula - 3.96Ha



- a. George Ochieng Jaoko (Minor) to be held in trust by Rosanael Aoko Ogutu.
 - iii. Daniel Okinyi Dula - 0.29 Ha.
 - a. Teresia Ochieng Ogodia - To hold in trust for Kennedy Odhiambo Okinyi (Minor)
 - iv. Joseph Ramogi Dula - 1.06Ha
 - a. Linet Achieng Ramogi
 - b. Gabriel Owino Ojuok
 - c. Michael Owino Ojuok
 - v. Jonathan Ogada Amiani - 0.5 Ha under portion "B"
 - vi. John Lugili Amiani - 0.6 Ha under portion "B"
 - vii. Karilus Agalo Oginga - 0.8 Ha. The beneficiaries to take out letters of administration of the estate of the deceased.
 - viii. Ismael Christopher Machachi - 1.41 Ha (Portion H). The beneficiaries to take out letters of administration of the estate of the deceased.
 - ix. Edmond Otieno Owiti - 2.5 Ha (Portions J, P & N). The beneficiaries to take out letters of administration of the estate of the deceased.
 - x. Samwel Arizikam Asuza - 1.82 Ha (Portions G & E).
6. For avoidance of doubt, the 1st and 6th Interested Parties whose interest was noted with no particular acreage, should they have established boundaries, the same should not be moved.
 7. If there is doubt on the particular acreage a party is entitled to, the Surveyor's Report indicating the marked boundaries should take precedence.
 8. There shall be no orders to costs.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 13TH DAY OF JULY, 2023

R. WENDOH

JUDGE

Judgment delivered in the presence of

Joseph Onduru Dula Applicant in person.

Rosanael Aoko Ogutu Respondent in person.

No appearance for the 1st Interested Party.

No appearance for the 2nd, 3rd, 5th and 7th Interested Parties.

No appearance for the 4th Interested Party.

No appearance for the 6th Interested Party.

No appearance for the 8th Interested Party.

No appearance for the 9th Interested Party.



No appearance for the 10th Interested Party.

No appearance for the 11th Interested Party.

No appearance for the 12th Interested Party.

No appearance for the 13th Interested Party.

No appearance for the 14th Interested Party.

Emma and Phelix Court Assistant.

