



REPUBLIC OF KENYA



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In re Estate of the Late Aluasa Lugaho (Deceased) (Succession Cause 21 of 2022) [2025] KEHC 15334 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 21 OF 2022**

JN KAMAU, J

OCTOBER 28, 2025

IN THE MATTER OF THE ESTATE OF THE LATE ALUMASA LUGAHO (DECEASED)

BETWEEN

ANTONY MANGANGA CHAGALA PETITIONER

AND

JENIFFER ASENA OBJECTOR

RULING

Introduction

1. In his Summons for Confirmation of Grant dated 16th May 2024 and filed on 17th May 2024, the Petitioner herein sought orders that the Grant of Probate for Letters of Administration intestate (for with will annexed) (sic) made to him in this matter on 3rd March 2024 be confirmed.
2. The same was supported by an Affidavit that he swore on 16th May 2024. He listed the children that survived the deceased and the mode of distribution for the surviving beneficiaries.
3. On 16th August 2024, the Objector herein filed an Affidavit of Protest dated 12th August 2024 opposing the said Summons for Confirmation of Grant. She rejected the proposed mode of distribution as outlined in Paragraph 7 of the Petitioner's Affidavit in support of the Summons for Confirmation of Grant on the ground that the Petitioner had distributed the deceased's estate without taking into account the parcels where each beneficiary resided or had settled.
4. She pointed out that the estate of the deceased being L.P North Maragoli/Chavakali/101 and LP North Maragoli/Bukulunya/627 were occupied by all beneficiaries and that in the event the grant was confirmed as proposed by the Petitioner, then she would be rendered homeless as she had established her home on land parcel North Maragoli/Chavakali/101.



5. It was her contention that the mode of distribution was only meant to frustrate her and other beneficiaries. She added that the Petitioner had also included names of some people to benefit from the deceased's estate without consulting all beneficiaries. She proposed a different mode of distribution and urged the court to adopt the same and disregard the Petitioner's proposal which she argued will cause injustice to her and other beneficiaries.
6. The Petitioner's Written Submissions were dated 20th January 2025 and filed on 24th January 2025 while those of the Objector were dated and filed on 2nd December 2024. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

7. The Petitioner submitted that the mode of distribution he had proposed was due to the fact that the deceased had settled all his sons with clearly boundaries marked on the ground particularly as regards North Maragoli/Bukulunya/627 which measured 1.0Ha. He further submitted that the deceased had settled in his late son Jason Tsisaga (deceased) who was survived by his wife Gladys Kagai Ngogoto, North Maragoli/Chavakali/101 measuring 0.5acres.
8. He pointed out that the Objector had settled and occupied a portion of land on LR North Maragoli/Bukulunya/627 measuring 0.3Ha and not on LR North Maragoli/Chavakali/101 as she had claimed. He further asserted that the alleged acreage that she had proposed in respect of LR North Maragoli/Chavakali/101 would not tally with its registered acreage.
9. He was categorical that all beneficiaries were in agreement with his proposed mode of distribution and that the survivors of the two (2) daughters of the deceased, Wycliffe Achanga and John Munesi being sons to the late Ada Malesi and Francis Mwalichi Oronze, Violet Kageha, Emmy Nkonyere and Judith Kenyani being children of the late Bilkan Vwamula Oronze had sworn affidavits on 16th May 2024 stating that they were not interested in the estate of their grandfather.
10. He was emphatic that the Objector had confirmed in her affidavit and submissions that she had established her home on Land Parcel North Maragoli/Bukulunya/627.
11. On her part, the Objector submitted that she was the wife to the son of the deceased, Stephen Alumasa (deceased). She asserted that the estate of the deceased was subject to the provisions of Section 38 of the *Law of Succession Act* and that since there was no will before the court to guide on distribution of the estate, it was fair that the court be guided by law and distribute the estate as per her mode of distribution which was as per Section 38 of the *Law of Succession Act*.
12. She was emphatic that she had established her home on LP North Maragoli/Chavakali/101 where her late husband was also buried. She argued that if the Petitioner's proposed mode of distribution was adopted by this court, she would be forced to vacate and establish a new home on LP North Maragoli/Bukulunya/627 leaving the remains of her husband on the portion of LP North Maragoli/Chavakali/101 where she had been in occupation since she was married.
13. She proposed that the two (2) parcels that formed the estate herein be distributed equally between the beneficiaries with her being allocated the portion where her home had been established.
14. Right from the outset, this court noted that it could not decipher which portion of land the Objector's home was actually situated from the parties' affidavit evidence and their written submissions. Whereas the Objector claimed that her home was on L.R. North Maragoli/Chavakali/101, the Petitioner argued that her home was on L.R. North Maragoli/Bukulunya/627.



15. Although this court also noted the parties' different proposed modes of distribution, it found it prudent to seek the expertise of a surveyor so as to establish where the Objector's house and/or home was situated as such a report would assist it in determining the cause herein in a just and fair manner.
16. In the premises, the Ruling on the mode of distribution of the deceased's estate will be held in abeyance to await a survey of the two (2) parcels of land, being L.R. North Maragoli/Chavakali/101 and L.R. North Maragoli/Bukulunya/627 that formed the estate of the deceased.

Disposition

17. For the foregoing reasons, the upshot of this decision was that the parties herein be and are hereby directed to commission a survey of the suit land by the Sub-County Surveyor, Vihiga and a Report be filed in this court within sixty (60) days from the date of this Ruling.
18. It is hereby directed that this matter will be mentioned on 2nd February 2026 to confirm compliance and/or for further orders and/or directions.
19. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

