

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 296 OF 2011

IN THE MATTER OF THE ESTATE OF JACOB NANDIEKI
LUKONYI (DECEASED)

RULING

1. The application, dated 25th January 2025, is for the purpose of having the County Surveyor visit the estate lands, Bukhayo/Lupida/1125 and Bukhayo/Buyofu/176, to map out how the same are occupied on the ground, and that other beneficiaries be at liberty to appoint private surveyors of their own, if need be, to work with the County Surveyor. There is also a prayer for provision of security, and for the costs for the survey and security services to be paid for by the administrators equally.
2. I do not know what purpose the survey works will serve, given that the court does not distribute assets based on how the land is occupied on the ground, but based on what the Law of Succession Act, Cap 160, Laws of Kenya, provides. See *In Re Arusei* [2003] KLR 76 (Nambuye, J) and *Leah Chepkemei Kipyego* [2007] eKLR (F. Ochieng, J).
3. Be that as it may. Nothing prohibits parties from carrying out such survey works, if they so desire, to mine evidence which they may use, for the purpose of the hearing of the pending confirmation application. So, I shall allow the application, dated 25th January 2025. The survey exercise would be undertaken on behalf of the estate, and, therefore, the cost of the survey and the security shall be met by the estate, for such an exercise would be part of administration, and administration expenses are borne by the estate.

4. The summons for confirmation of grant, dated 13th September 2024, is pending and its hearing should be prioritised. The deceased herein died in 2011, and this cause was initiated in 2012. It is a pity that distribution is yet to be done, to bring closure to the matter. I shall allocate a date for hearing, of the application, dated 13th September 2024, given that all the parties have filed their respective replies and responses to it. Let the parties prepare in earnest, for hearing of the application, dated 13th September 2024.
5. That hearing shall happen on 27th November 2025. No adjournment applications shall be entertained on that date. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 27TH DAY OF OCTOBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Wanyama, instructed by Wanyama & Company,
Advocates for the administrator.**

Mr. Fwaya, Advocate for the 1st protestor.

**Ms. Achala, instructed by Abalo & Company, Advocates for
the 2nd protestor.**