

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 162 OF 2008

IN THE MATTER OF THE ESTATE OF WESONGA MAMIRA (DECEASED)

RULING

1. The application, dated 14th January 2025, is for confirmation of the grant made on 27th November 2024. There is a protest to it by George Wandera Musumba.
2. The immediate survivors of the deceased have not been ascertained and listed, and there is no explanation of the relationship between the deceased and the persons whose names appear in the affidavit in support.
3. I am not persuaded that all the persons beneficially entitled to a share in the estate have been ascertained, hence there is no compliance with the proviso to section 71(2) of the Law of Succession Act, Cap 160, Laws of Kenya, and rule 40(4) of the Probate and Administration Rules.
4. The consent, on distribution, filed together with the application, and dated 2nd December 2024, is signed by 3 out of the 10 persons listed. That would mean that there was no consensus on the proposed distribution.
5. Rule 41(1) of the Probate and Administration Rules requires the court to hear, *viva voce*, all those claiming or listed as entitled to a share in the estate, in the absence of a consent signed by all, in Form 37, as prescribed by rule 40(8) of the Probate and Administration Rules.
6. Consequently, this is not a matter for disposal, vide the summary procedure of written submissions. This matter shall be mentioned on 26th November 2025, for directions on how the application, dated 14th January 2025, is to be disposed of.
7. This could be one of those cases where it may be necessary to have a surveyor visit the land, to ascertain its layout, and establish how it is occupied on the ground. I, therefore, order that the County Surveyor

does visit the estate lands, and file a report. Costs of the survey shall be charged on the estate.

8. It is so ordered.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, THIS 31ST DAY OF OCTOBER 2025.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Omar, instructed by R. Omar & Company, Advocates for Boniface Wanzala Simamira.

Mr. Shihemi, instructed by Maloba & Company, Advocates for George Wandera Musumba.