



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Peter Onyango Kwoba (Deceased) (Succession Cause
71 of 2010) [2025] KEHC 15258 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 71 OF 2010
WM MUSYOKA, J
OCTOBER 23, 2025**

RULING

1. What is for determination is the summons, dated 5th February 2025. It seeks confirmation of a grant. The survivors of the deceased are identified as Gilbert Ogutu Wabwire and Peter Onyango Wabwire. The property proposed for distribution is Marachi/Bumala/624. The proposal is to share it equally between the 2.
2. There is a response, by Sabastian Magero Ogola, whose affidavit was sworn on 27th June 2025. He avers that he has a judgement, in *Busia CMCELC No. 41 of 2020*, in his favour, and he asserts that he holds a valid title, emanating from transmission from the instant succession cause. He avers that this cause had been dismissed, for indolence on the part of the administrators.
3. The application was canvassed orally, Gilbert Ogutu Bwire and Sabastian Magero Ogola testified.
4. Gilbert Ogutu Wabwire testified that Peter Onyango Kwoba was his cousin, for their fathers were brothers. He said that his cousin was an only child of his parents. He had married a wife, who did not bear him children, they separated and both are dead. He explained that he and his brother, Peter Onyango Wabwire, were the only surviving children of their parents, 3 others died.
5. He said that Sabastian Magero Ogola grabbed the title deed to the land, from his mother, Victorina Osuo Wawire, who had raised the deceased. He stated that there was no property in the name of the deceased, as the same was registered in his name up to 2010, when it reverted to the name of the Victorina Osuo Wawire, who died in 2023. It was transmitted to Victorina Osuo Wawire through succession. He talked of a case, between Victorina Osuo Wawire and Sabastian Magero Ogola, over Marachi/Bumala/624, where the court ruled that the land belonged to Gilbert Ogutu Wabwire and Peter Onyango Wabwire.
6. At cross-examination, he conceded that Marachi/Bumala/624 was divided equally between Victorina Osuo Wawire and Sabastian Magero Ogola, and title deeds were issued, but later revoked by the court, and reverted to the names of Gilbert Ogutu Wabwire and Peter Onyango Wabwire. He mentioned that he did not conduct an official search of the property, as he did not have a title deed. He said he did not understand how Victorina Osuo Wawire gave the land to Sabastian Magero Ogola.



7. Sabastian Magero Ogola stated that he was given the land by order of Onyancha J, and invited the court to consider the judgement in *Busia CMCELC No. 41 of 2020*. He asserted that Gilbert Ogutu had been sued by Victorina Osuo Wawire.
8. I have not seen a copy of a certificate of death in this matter, but it is said that the deceased died on 2nd November 2001. I see a letter from the Chief of Bumala Location, dated 19th March 2010. It is indicated that the deceased had no wife nor child. He had been raised by Victorina Osuo Wawire, and it was alleged that he had given his land to her, being Marachi/Bumala/624.
9. Representation to the estate was sought by Victorina Osuo Wawire. Her capacity was disclosed as an aunt, and she was listed as the only survivor of the deceased. A grant was made to Victorina Osuo Wawire, on 23rd June 2010. Victorina Osuo Wawire had her grant confirmed, on 8th February 2011, vide an application, dated 29th July 2010. The property was shared equally between Victorina Osuo Wawire and Sabastian Magero Ogola. A certificate of confirmation of grant, in those terms, was issued, dated 8th February 2011.
10. Gilbert Ogutu Wabwire and Peter Onyango Wabwire then moved for revocation of the grant made to Victorina Osuo Wawire. Their application was dated 6th June 2013. Their case was that Victorina Osuo Wawire, who was their biological mother, was illiterate, which raised doubts on her ability to go through the technical succession process, and it was suggested that there was fraud and deception. They further argued that the inclusion of Sabastian Magero Ogola, in the confirmation process, was an act of deceit, misrepresentation and fraud. They also raised issue with their exclusion from the process. They asserted priority over Victorina Osuo Wawire, being first cousins of the deceased, with respect to entitlement to the estate of the deceased.
11. The revocation application, dated 6th June 2013, was canvassed before Kiarie J, and a ruling was delivered, on 12th March 2020. The court, relied on section 39(1) of the *Law of Succession Act*, Cap. 160, Laws of Kenya, to find that Gilbert Ogutu Wabwire and Peter Onyango Wabwire were the closest blood relatives of the deceased, and, based on that, proceeded to revoke the grant, to appoint Gilbert Ogutu Wabwire and Peter Onyango Wabwire the joint administrators, and to direct them to seek confirmation of their grant. It was on that basis that they moved the court, in the summons herein, dated 5th February 2025.
12. Going by the ruling of 12th March 2020, the grant of 23rd June 2010 was nullified or revoked, and with it went all the transactions that were carried on the basis of it, including the confirmation process of 8th February 2011, and any sale of property to a third party. Also, going by that ruling, Gilbert Ogutu Wabwire and Peter Onyango Wabwire were established to have had prior right to inherit over their mother, Victorina Osuo Wawire, on account of section 39(1) of the *Law of Succession Act*. In view of that, I find that Gilbert Ogutu Wabwire and Peter Onyango Wabwire are entitled to the property of the estate.
13. I note that Sabastian Magero Ogola is relying on a judgement that he obtained in *Busia CMCELC No. 41 of 2020*, which declared him to be the owner of the estate asset, Marachi/Bumala/624, upon transmission. That judgement was delivered on 12th September 2022. The suit, in *Busia CMCELC No. 41 of 2020*, was initiated during the pendency of these succession proceedings, and must have been so initiated to defeat the instant succession cause. I say so because it was filed in 2020, the same year Kiarie J revoked the grant made to Victorina Osuo Wawire. The judgement of 2022 came after that revocation of the grant and the transactions that came with it.
14. Consequently, I do hereby allow the application, dated 5th February 2025, with no orders as to costs. The estate property, Marachi/Bumala/624, shall be distributed in the manner proposed. A certificate



of confirmation of grant shall issue accordingly. The administrators have 6 months to transmit the estate, in accordance with these orders. The matter shall be mentioned on 23rd April 2026, to confirm that transmission has been completed, so that this file can be closed. Sabastian Magero Ogola is granted leave, of 30 days, to move to the Court of Appeal, appropriately, should he be unhappy with these orders. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 23RD DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Gilbert Ogutu Wabwire and Peter Onyango Wabwire, the administrators, in person.

Advocates

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the protestor.

