



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Mukhwabi Ragama (Deceased) (Succession Cause 110 of 1997) [2025] KEHC 16737 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16737 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 110 OF 1997  
WM MUSYOKA, J  
NOVEMBER 17, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE MUKHWABI RAGAMA (DECEASED)**

**RULING**

1. The application, for determination, is dated 24<sup>th</sup> July 2025. It is at the instance of Morris Oduor Were. He seeks arrest of a ruling that I am scheduled to deliver, on an application for revocation of grant. He argues that the matter is not a High Court matter, but a Magistrate's Court matter, having been initiated as Busia SRMCSC No. 110 of 1997. Hence, the grant herein, having been issued by a Magistrate's Court, should be available for revocation by the Magistrate's Court, in view of the changes in the succession law in the years 2015/2016.
2. I see a reply to the application, vide an affidavit, sworn on an unknown date, by Everlyne Natocho Juma and Prof. Julia Ojiambo. They concede that the matter was initially filed at the Magistrate's Court, for the grant was issued there on 1<sup>st</sup> October 1997, but they argue that the grant was confirmed by the High Court, on 12<sup>th</sup> March 1998. They assert the jurisdiction of the High Court.
3. I have thoroughly perused the court file. I note that the succession cause was initiated in 1997, by a petition lodged at the Busia Senior Resident Magistrate's Court, on 19<sup>th</sup> September 1997. The succession cause was allocated file number Busia SRMCSC No. 110 of 1997. The grant was confirmed, on 12<sup>th</sup> March 1998, by Hon. SO Omwega, Resident Magistrate.
4. The only proceedings, in Busia SRMCSC No. 110 of 1997, were recorded on 1<sup>st</sup> October 1997, when the grant was made, and on 12<sup>th</sup> March 1998, when it was confirmed. Nothing else, as per the record, happened thereafter, at the Magistrate's Court.
5. I have seen no record of the matter, in Busia SRMCSC No. 110 of 1997, being transferred to the High Court, at Busia, so as to be registered as Busia HCSC No. 110 of 1997. The initial proceedings, after it became Busia HCSC No. 110 of 1997, were on 3<sup>rd</sup> October 2023, when the matter was placed before the Deputy Registrar, who fixed it for mention before me, on 25<sup>th</sup> October 2023, with respect to an application, dated 28<sup>th</sup> September 2023.



6. There is something which does not quite add up about this matter, which suggests fishy business. The matter was initiated at the Magistrate's Court in 1997, and proceedings were conducted there in 1997 and 1998. Somehow, the matter ended up at the High Court. There is nothing, in the record, indicating that orders were made, by the High Court, transferring the matter, from the Magistrate's Court, to itself, for hearing and disposal. Neither have I seen any minute, by the Magistrate's Court, indicating that the Magistrate's Court ever forwarded the file to the High Court, perhaps, on account of jurisdiction. There is nothing to explain how the matter transitioned from the Magistrate's Court to the High Court.
7. Secondly, I find it curious that the matter bears the same serial number in both courts: Busia SRMCSC No. 110 of 1997 and Busia HCSC No. 110 of 1997. That is a coincidence that would be too good to be true. It suggests some mischief. And this is why. The matter was at the Magistrate's Court, up to 1998, going by the hand-written notes in Busia SRMCSC No. 110 of 1997. The last action was on 12<sup>th</sup> March 1998, when the grant was confirmed by the Resident Magistrate. If there was any transfer, of the file from the Magistrate's Court, that could only have happened after 12<sup>th</sup> March 1998. If that was so, upon the file getting to the High Court, it could only have been allocated a court file number bearing the year 1998 and onwards, not 1997.
8. If the file was at the High Court, on 12<sup>th</sup> March 1998, when the grant was confirmed, according to Everlyne Natocho Juma and Prof. Julia Ojiambo, which is obviously not true, why is it that there are no handwritten notes of a Judge handling the matter, on 12<sup>th</sup> March 1998, and confirming the grant, for the handwritten notes, that I have seen, were by a Resident Magistrate, who, obviously, could not have been handling a matter at the High Court. And, why is it, if the file moved to the High Court in the late 1990s, that the first business in the file, at the High Court, was in 2023. Where did the notes, for the prior business, if at all, go to.
9. In the absence of an explanation, I would agree with Morris Oduor Were, that the grant, sought to be revoked, which is not even disclosed, in the application, dated 28<sup>th</sup> September 2023, is that issued on 1<sup>st</sup> October 1997, in Busia SRMCSC No. 110 of 1997. The *Law of Succession Act*, Cap 160, Laws of Kenya, was amended in 2016, through the Magistrate's Court Act, Cap 10, Laws of Kenya, to empower the Magistrate's Court to revoke grants that it has power to make. There should be no reason for the High Court to go behind the 2016 law, to look into the grant of 1997, made by the Magistrate's Court, with a view to revoke it. That is the jurisdiction of the Magistrate's Court. The High Court can only handle that issue on appeal, from an order of the Magistrate's Court, either revoking the grant of 1997, or declining to.
10. I do not think that there was any integrity in the manner Busia SRMCSC No. 110 of 1997 transitioned into Busia HCSC No. 110 of 1997. Such a transition would be an impossibility, in view of what I have discussed above.
11. What I shall do, before I declare the proceedings, that have been conducted so far, since the movement of the file to the High Court, from 3<sup>rd</sup> October 2023, a nullity, and to have the file herein, Busia HCSC No. 110 of 1997, returned to the Busia Chief Magistrate's Court, for any business that may be outstanding, is to direct the Deputy Registrar to conduct an inquiry into how this file left the Magistrate's Court, and found its way into the High Court, and file a report. The matter shall be mentioned, on 16<sup>th</sup> December 2025, to receive the report, and for further directions or orders. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT BUSIA, THIS 17<sup>TH</sup> DAY OF NOVEMBER 2025.**



**W MUSYOKA**

**JUDGE.**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Kipkoech, instructed by Oundo OM Advocates LLP, Advocates for Morris Oduor Were.

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for Everlyn Natocho Juma and Prof. Julia Ojiambo.

