



REPUBLIC OF KENYA



In re Estate of the Late Kapoloni Teba Namukoma (Deceased) (Succession Cause 61 of 2004) [2025] KEHC 16295 (KLR) (10 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 61 OF 2004
WM MUSYOKA, J
NOVEMBER 10, 2025
IN THE MATTER OF THE ESTATE OF THE LATE
KAPOLONI TEBA NAMUKOMA (DECEASED)**

RULING

1. The application was filed herein, by Jeremiah Mukhwana and Gilbert Nanyanga Wanambiro, seeking revocation of the grant made to Moris Teba Kapoloni, a son of the deceased herein. I delivered a ruling, herein, on 28th September 2023, where I required service of that revocation application, on one Antony Mulama Wanambiro, as confirmation of the grant had been done on 3rd October 2005, and the sole asset, Bukhayo/Bugengi/1719, was devolved upon the said Antony Mulama Wanambiro, yet he had not been served with the revocation application, whose determination would have affected his rights to Bukhayo/Bugengi/1719.
2. I delivered another ruling, on 2nd February 2024, after I was satisfied that Antony Mulama Wanambiro had been served, but did not file a response to the revocation application. I took the position that I needed not to revoke the grant, and that I should, instead, cancel the confirmation of the grant, to facilitate fresh distribution, for it appeared that Antony Mulama Wanambiro had taken advantage of Moris Teba Kapoloni, and had the whole of Bukhayo/Bugengi/1719 devolved upon himself. I directed the filing of a summons for confirmation of grant, in 45 days, which was to be served on Antony Mulama Wanambiro.
3. In compliance, with the directions of 2nd February 2024, the administrators filed a summons for confirmation of grant, dated 20th March 2024. The application is at the instance of Moris Teba Kapoloni. He names himself as the sole survivor of the deceased. Bukhayo/Bugengi/1719 is listed as the sole asset of the estate. The beneficiaries are ascertained as Jeremiah Mukhwana, Moris Kapoloni and Gilbert Nanyanga Wanambiro, who are identified as buyer, son and buyer, respectively. Bukhayo/Bugengi/1719 is proposed to be distributed, between the 3, as follows: Jeremiah Mukhwana – 0.85 hectares, Moris Teba Kapoloni – 0.65 hectares, and Gilbert Nanyanga Wanambiro – 0.10 hectares.
4. The application attracted various responses, from various individuals, taking various forms.



5. Antony Mulama Wanambiro filed a Motion, dated 15th May 2024, asking to be joined to the proceedings. He claims a stake in Bukhayo/Bugengi/1719, asserting that the property belonged to him, having bought it from Moris Teba Kapoloni, and having been transferred to his name in 2012. He asserts to be in occupation. He avers that the pleadings, on the revocation of the grant, were not served on him. He has attached a form, RL7, that he and Moris Teba Kapoloni, executed, on 8th March 2012, to facilitate transfer of the property to his name.
6. Jeremiah Mukhwana swore an affidavit, on 8th October 2024. He asserts that 2½ acres of Bukhayo/Bugengi/1719 were awarded to him by the court, in Busia CMCCC No. 207 of 1993, where the father of Moris Teba Kapoloni had sued his father, that is Jeremiah Mukhwana. He says that her family was in occupation of the land. He also says Gilbert Wanambiro occupies 2 plots on Bukhayo/Bugengi/1719, which he bought from the deceased. He further avers that he was aware that Antony Mulama Wanambiro was a fraudster, who caused the whole of Bukhayo/Bugengi/1719 to be registered in his name, then he took a loan from National Bank of Kenya, using the title as security, and he had refused to repay the loan, exposing him, Jeremiah Mukhwana, and his family to peril. A copy of a judgment, delivered in Busia SPMCCC No. 207 of 1993, between Namaswa Kasoli and Maurice Tebe, granting the said Namaswa Kasoli 2½ acres of Bukhayo/Bugengi/1719, to be excised and transferred to him, is attached
7. He testified that he had obtained orders in Busia CMCCC No. 112 of 2018, to stop disposal of the land. He asserts that Antony Mulama Wanambiro did not buy the land from Moris Teba Kapoloni, but stole it instead. He has attached a copy of the judgment, delivered in Busia CMCCC No. 112 of 2018, between himself, Jeremiah Mukhwana, and Gilbert Nanyanga Wanambiro, on one side, and Antony Mulama Wanambiro and National Bank of Kenya, on the other side, where orders were made, to restrain the attaching or sale of Bukhayo/Bugengi/1719, until Busia HCSC No. 62 of 2004, was concluded, and directing Antony Mualama Wanambiro to find other ways of repaying the loan.
8. Gilbert Nanyanga Wanambiro filed an affidavit of protest, sworn on 24th July 2024, complaining that he was not consulted, when the confirmation application was mooted. He asserts that the proposed distribution was incorrect, and did not reflect the share due to him. He states that he had bought 1 acre, which was to be excised from Bukhayo/Bugengi/1719, and that he had been in active occupation of the said 1 acre for 30 uninterrupted years. He asserts that his entitlement is 1 acre, and not 0.10 hectare.
9. The replies prompted a response, from Moris Teba Kapoloni, in 2 affidavits, both sworn on 18th October 2024. He affirms that the deceased sold 2 plots, to Gilbert Nanyanga Wanambiro, which he, Gilbert Nanyanga Wanambiro, occupied. He argues that he, Gilbert Nanyanga Wanambiro, was not entitled to 2 plots, unless he grabbed land forcefully or trespassed. He challenges him to produce a land sale agreement. Regarding Antony Mulama Wanambiro, he avers that he had only approached him to help him with the succession process, but not sell to him the land, or to have it devolved to him, but the latter misled him and had the whole land devolved to him. He avers that it was only later that he established that he had been conned. He avers that upon the discovery, of the fraud, Jeremiah Mukhwana and Gilbert Nanyanga Wanambiro sued Antony Mulama Wanambiro and National Bank of Kenya, in Busia CMCCC No. 112 of 2018, and judgment was obtained against him and the bank.
10. Antony Mulama Wanambiro also filed a rejoinder, in an affidavit sworn on 30th October 2024. He asserts that he did not steal the land, and Jeremiah Mukhwana ought to have taken action in 2012. He asserts that Moris Teba Kapoloni sold the land to him in 2012, and got it transferred to his name, the same year. He asserts that fraud cannot be asserted against him in 2024. He asserts that Moris Teba Kapoloni obtained the relevant Land Control Board consents, and that should be evidence of lack of fraud. He states that the papers, in Busia CMCCC No. 112 of 2018, were not served on him, and



he did not participate in that suit, for that reason, and he only got to know of its existence through the instant succession proceedings. He also states that he was not party to Busia SRMCCC No. 209 of 1993, and that he only learnt of it in these proceedings. He reiterates that Moris Teba Kapoloni approached him, in 2012, and told him he was selling the land, which was then under the succession process. He denies tricking him, or using force, coercion, duress, threat, intimidation or fraud.

11. I directed, on 25th July 2024, that the proceedings be conducted viva voce. Oral hearings were conducted, commencing from 16th December 2024.
12. Moris Teba Kapoloni was the first to take to the witness stand. He said that the deceased was his father. He proposed distribution of the land to Jeremiah Vincent and Gilbert Nanyanga. He said Jeremiah Vincent was a friend of the deceased, and that he sold 1½ acres to him. He asserted that Gilbert Nanyanga bought 2 acres from the deceased, and not 1 acre.
13. During cross-examination, by Mr. Mburu, he testified that he moved out of the land to rented premises, in 2005, after Antony Mulama Wanambiro asked him to move out, as the land had become his. He stated that he was present at confirmation, on 3rd October 2005, but added that he never told the court that the whole land should be devolved to Antony Mulama Wanambiro. He said he did not understand the proceedings. He said he was the only relative of the deceased alive. He conceded to selling land to Gilbert Nanyanga, which he said was 2 plots, and not 1 acre. He was paid in cash, and the sale was not reduced into writing. He said the entire parcel was perhaps 4 acres.
14. When cross-examined by Mr. Jaoko, for Antony Mulama Wanambiro, he stated that he was indeed in court on 3rd October 2005, as he had gone there for Antony Mulama Wanambiro had grabbed his land. When shown transfer documents, he stated that he did sign them, but he did not know how to read and write, and that he only did what he was told to do. He asserted that he did not tell Antony Mulama Wanambiro that he was selling his land. He claimed that he reported to the police, but the police did not issue him with any documents, for he was merely told to go home with Antony Mulama Wanambiro, and reach some settlement.
15. Antony Mulama Wanambiro followed. He asserted that the land was his, for he had bought it from Moris Teba Kapoloni. He asserted that it was transferred and registered in his name. He said he and Moris Teba Kapoloni attended court, before the Judge, on 3rd October 2005, and Moris Teba Kapoloni confirmed to the court that the land had been sold to him. He denied defrauding anyone. He asserted that Jeremiah Mukhwana was not a party to the matter.
16. When cross-examined by Mr. Mburu, he stated that the land was 4 acres. He confirmed that Gilbert Nanyanga Wanambiro was his biological father, who was in occupation of about 1 acre of the land, while he occupied another portion of the same land. He claimed that he and Gilbert Nanyanga Wanambiro had sat and agreed that the entire parcel be transferred to his name, after which he was to give his father his portion. He said he had been told Gilbert Nanyanga Wanambiro was entitled to 1 acre, and he had been in occupation for over 35 years. He averred that Moris Teba Kapoloni had never sued him for fraud over the land.
17. When cross-examined by Ms. Otullo, he stated that he was aware of the loan he had taken from National Bank of Kenya, but that he was unaware of the judgment in Busia CMCCC No. 112 of 2018. He said he was unaware that National Bank of Kenya wanted to sell the land, but conceded that he had defaulted on his loan with the bank.
18. Under cross-examination by Ms. Nabulindo, he stated that he had bought the entire land in 2012, although he had not produced a sale agreement. He said he had presented material on the Land Control Board consent. He said that, at the time he bought the land, it was occupied by Moris Teba Kapoloni



and Gilbert Nanyanga Wanambiro, and the mother of Moris Teba Kapoloni, and the father of Jeremiah Mukhwana was farming on it. He said he bought the entire parcel of land. He said that it was not for him to know about the fate of the other occupants. He said that after Moris Teba Kapoloni sold the land, he destroyed his own house, and that of his mother, and moved out, but the rest of the occupants remained. He stated that he had been away for some time, and he could not tell whether they were still in occupation. He said he moved into occupation, after he bought it, built houses, and then moved away to the Coast, and to Tanzania, in 2016, for work, and he has not been back since. He said he was not aware that his father had sued him. He said he took a loan in 2013, which he serviced for a while, before he began to experience problems, in 2016, and stopped servicing the loan.

19. Gilbert Nanyanga Wanambiro testified next. He said that the deceased sold the land to him in November 1981. He bought 6 acres. In 1992, the sons of the deceased, Moris Teba Kapoloni and Egesa, came to him, and they sold to him 1 acre. He asserted that he occupied the 1 acre, for over 30 years, during which no effort was made to move him out of the land. He said Moris Teba Kapoloni was in occupation, when he sold the 1 acre to him, but he left the land, after his wife died.
20. He identified Antony Mulama Wanambiro as his son. He explained that Moris Teba Kapoloni approached him, with an offer to sell the entire parcel of land to him, so that he could move to Tanga Kona, but he informed him that he did not have money. He referred him to Antony Mulama Wanambiro. He stated that it would appear that Moris Teba Kapoloni sold the land to Antony Mulama Wanambiro, and transferred it to him. After Moris Teba Kapoloni was paid by Antony Mulama Wanambiro, they went for succession. He asserted that, since buying his 1 acre from Moris Teba Kapoloni, he never brought surveyors on the ground for identification of his 2 plots. He said he wanted a surveyor to come and identify how much land he occupied on the ground. He said he was using 1 acre. He said he wanted to get his 1-acre share of the land sold to Antony Mulama Wanambiro.
21. When cross-examined by Ms. Nabulindo, he stated that the Government transferred the whole land to Antony Mulama Wanambiro, yet he, Gilbert Nanyanga Wanambiro, was in occupation. He stated that Antony Mulama Wanambiro proceeded to use the land to secure a loan from National Bank of Kenya. He stated that 4 individuals were in occupation, being himself, Antony Mulama Wanambiro, Jeremiah Mukhwana and a certain David, a brother of a certain Vincent. He said he occupied and farmed the land. He lived on $\frac{1}{2}$ and farmed the other $\frac{1}{2}$. He and Jeremiah Mukhwana sued Antony Mulama Wanambiro, but he did not come to court.
22. He said he had advised Antony Mulama Wanambiro to buy the land, and then give him his portion, but he did not do so, as he had gone to the bank and borrowed money. He said that he, Gilbert Nanyanga Wanambiro, bought land twice, from the deceased and from Moris Teba Kapoloni. The sales were not reduced into writing. He said when Antony Mulama Wanambiro bought the land, he, Jeremiah Mukhwana and David were in occupation. He said Antony Mulama Wanambiro paid for the land through him. He said that Moris Teba Kapoloni was not in occupation of the land. He said he did not know where Moris Teba Kapoloni lived.
23. At re-examination, he stated that none of the other parties objected to his being in occupation, and it that it appeared that the dispute was more on size than anything else. He said he did not oppose Antony Mulama Wanambiro getting title, as he had expected that his own would be hived off that. He said he was still waiting for his title for the 1 acre he bought from Moris Teba Kapoloni and his brother. He said he sued because he feared that the bank might sell the land.
24. On 19th March 2025, orders were made, for survey works to be done. It was reported, on 8th May 2025, that a survey report had been filed, on 11th June 2025, dated 27th May 2025, which was adopted as part of the record, by consent of the parties.



25. Directions were taken, on 11th June 2025, for filing of written submissions. The parties have complied, for I have seen and read their respective written submissions.
26. I feel like I am handling a land case, for the dispute herein, to me, does not, strictly speaking, turn on succession matters, for it is not about the survivors of the deceased or their entitlement to shares in the estate, but on who, amongst the various buyers, is entitled to a portion of the land.
27. It is a messy matter. It would appear that the deceased sold portions of the land, before he died. He was even sued, in Busia SRMCCC No. 207 of 1993, and an order was made, in favour of the buyer, to have 2½ acres excised to him. The deceased also sold more land to other individuals, before he died. After his death, his son, Moris Teba Kapoloni, sold more land, together with his brother, Egesa.
28. One would have expected, upon the death of the deceased, that Moris Teba Kapoloni would have conducted succession, and honoured the court order, in Busia SRMCCC No. 207 of 1993, and the other sales by the deceased, and devolved what was due to the buyers, at confirmation, after which he dealt with those to whom he sold land after the demise of the deceased. He did not do that. Instead, he appears to have devolved the entire piece of land to Antony Mulama Wanambiro. It is alleged, by Antony Mulama Wanambiro, and his father, Gilbert Nanyanga Wanambiro, that there was a sale, but no evidence was presented. Moris Teba Kapoloni denies any sale. Whatever the case, after the title moved to the name of Antony Mulama Wanambiro, he mortgaged the same. It is a messy situation, which does not paint Moris Teba Kapoloni and Antony Mulama Wanambiro in good colours.
29. On 2nd February 2024, I declined to revoke the grant, made to Moris Teba Kapoloni, and opted, instead, to set aside the confirmation orders of 3rd October 2005, and cancel the resultant certificate of confirmation of grant, issued based on those orders. The effect of the setting aside of those confirmation orders should have a profound effect on transfer of Bukhayo/Bugengi/1719 to the name of Antony Mulama Wanambiro.
30. As the confirmation orders were vacated, I should now deal with the distribution of Bukhayo/Bugengi/1719. It was transferred to the name of Antony Mulama Wanambiro. I cannot re-visit the distribution, and make fresh confirmation orders, while the property is still in the name of Antony Mulama Wanambiro. I am satisfied, from the material on record, that since the confirmation orders were set aside, and the certificate of confirmation of grant, upon which it was based, was cancelled, it follows that the transactions carried out, based on it, also became null. The consequence of that is that the transfer and registration of Antony Mulama Wanambiro, as proprietor of Bukhayo/Bugengi/1719, automatically became null. The entries, in the relevant land register, shall have to be cancelled.
31. Most of these sales happened over 30 years ago, save for that to Antony Mulama Wanambiro, which happened 13 years ago, at a time when the rest of the purchasers were in occupation. The sales do not appear to have been subject to any written agreements, and I cannot tell the acreages sold and bought. The sale to Jeremiah Mukhwana was subject to a court decree, and it is certain that his entitlement is 2½ acres.
32. A surveyor visited the land, and established the acreage occupied, by each of the parties hereto, and filed the report referred to here above. Jeremiah Mukhwana is said to occupy 0.7 hectares, Gilbert Nanyanga Wanambiro 0.47 hectares and Antony Mulama Wanambiro 0.57 hectares. I shall deem it that the above are their entitlements, based on what they bought from the deceased or from the administrator, Moris Teba Kapoloni. I shall order distribution based on that. There is a David Wafula and Richard Satati Soita, who appear to be paired with Jeremiah Mukhwana. They did not participate in these proceedings, and they shall look up to Jeremiah Mukhwana for their entitlement.
33. The final orders are as follows:



- a. that the registration of Antony Mulama Wanambiro, as proprietor of Bukhayo/Bugengi/1719, is hereby nullified, following the setting aside of the confirmation orders of 2nd February 2024 and cancellation of the certificate of confirmation of grant of even date, and the property shall be reverted to the name of the deceased herein;
- b. that Antony Mulama Wanambiro shall return the original title deed for Bukhayo/Bugengi/1719, to the relevant Land Registrar, together with a certified copy of this ruling and an order extracted from it, for the purpose of effect being given to the order made in (a) above;
- c. that Bukhayo/Bugengi/1719 shall be distributed as follows:
 - i. to Jeremiah Mukhwana – 0.76 hectares,
 - ii. to Antony Mulama Wanambiro – 0.57 hectares,
 - iii. To Gilbert Nanyanga Wanambiro – 0.47 hectares, and
 - iv. for road access – 0.10 hectares;
- d. that a certificate of confirmation of grant shall issue in those terms;
- e. that the administrator shall transmit the estate, in those terms, within the next six (6) months;
- f. that the matter shall be mentioned on 21st May 2026, for compliance;
- g. that the charge, in favour of the National Bank of Kenya, shall attach to the portion that shall ultimately be devolved upon Antony Mulama Wanambiro;
- h. that each party shall bear their own costs; and
- i. that any party aggrieved has 30 days to challenge these orders, on appeal, at the Court of Appeal.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 10TH DAY OF NOVEMBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the administrator, Moris Teba Kapoloni.

Mr. Jaoko, instructed by Nchoe Jaoko & Company, Advocates for Antony Mulama Wanambiro.

Mr. Mburu, instructed by Nyachae & Ashitiva, Advocates for National Bank of Kenya.

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for Jeremiah Mukhwana and Gilbert Nanyanga Wanambiro.

