

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ELC LC NO E008 OF 2024

FRANCISCA NABWIRE WABWIRE
(suing as the legal representative of
MARISIANA NABWIRE
PLAINTIFF/RESPONDENT

= VERSUS =

JOSEPH AMOLO AYIENGA **1ST**
DEFENDANT/RESPONDENT

JOSEPH CHEGE NGAHU
BENSON MIANO RUORO
(suing as official representatives of
REMEMBER NHU-KENYA **2ND**
DEFENDANT

THE CENTRE CHAIRMAN
REMEMBER NHU-KENYA BUSIA BRANCH **3RD**
DEFENDANT

JOSEPH MANYASA OKUMU .. **INTERESTED**
PARTY/APPLICANT

R U L I N G

1. **FRANCISCA NABWIRE WABWIRE** (the Plaintiff and suing as the legal representative of the Estate of **MARISIANA NABWIRE** - hereinafter the deceased) moved to this Court and impleaded **JOSEPH AMOLO AYIENGA, THE DIRECTOR REMEMBER NHU-KENYA,** and the **CENTRE CHAIRMAN**

REMEMBER NHU - KENYA BUSIA BRANCH (the 1st, 2nd and 3rd Defendants respectively) over the ownership of the land parcels **NO BUKHAYO/MUNDIKA/9904** and **9905** which she claimed had been fraudulently hived off from the original land parcel **NO BUKHAYO/MUNDIKA/672** which was the property of the deceased. The finer details of the suit are not necessary for purposes of this ruling. All I can add is that the Defendants denied the allegations levelled against them.

2. What is important is that by Notices of Motion dated 24th January 2025 and 14th February 2025, **JOSEPH MANYASA OKUMU** (the Interested Party) and the Plaintiff filed separate applications. By her Motion dated 14th February 2025, the Plaintiff sought an order for provision of security by the Officer Commanding Busia Police Station to execute an earlier order dated 23rd January 2025. On his part, the Intended Interested Party, also describing himself as the grandson of the deceased and the legal Administrator of her Estate, sought an order to be enjoined in these proceedings, as an Interested Party, an order of injunction restraining the Defendants from dealing with the suit land and also an order vacating previous orders issued by this Court on 23rd January 2025.
3. In the course of determining the two Motions, it became obvious that both the Plaintiff and the Intended Interested Party were describing themselves as legal Administrator to

the Estate of the deceased. The Plaintiff having obtained Grant of letters of Administration in respect of the deceased on 19th April 2024 vide **BUSIA CHIEF MAGISTRATE COURT SUCCESSION CAUSE NO E044 of 2024** and the Interested Party having obtained his Limited Grant of Letters of Administration in respect of the deceased vide **BUSIA CHIEF MAGISTRATE'S COURT P&A CAUSE NO E003 of 2025**.

4. Those two Motions resulted in a conundrum because both the Plaintiff and the Interested Party have hinged their claim on the suit land by virtue of being the legal Administrators to the Estate of the deceased through different processes. It therefore meant that there was uncertainty as to who between the Plaintiff and the Interested Party was the correct legal Representative of the deceased's Estate. Faced with that dilemma, I addressed myself as follows in paragraph 9 of my ruling delivered on 7th April 2025 in respect to the Interested Party's Motion seeking to be enjoined in these proceedings:

“What is clear from the above is that both the Plaintiff as well as JOSEPH MANYASA OKUMU who seeks to be enjoined in these proceedings as an Interested Party claim to be the legal representatives of the Estate of the deceased MARISIANA NABWIRE WABWIRE. They were appointed through two different succession causes. The Plaintiff was appointed on 19th April

2024 vide BUSIA CHIEF MAGISTRATE'S COURT SUCCESSION CAUSE NO E044 of 2024 while the proposed Interested Party was appointed on 21st January 2025 vide BUSIA CHIEF MAGISTRATE'S COURT SUCCESSION CAUSE NO E003 of 2025. There can be no two Grants of Letters of Administration issued in different cases in respect of the Estate of the same deceased person. That in itself is evidence to suggest that there must have been misrepresentation in either one or both of the applications leading to the issuance of the Grants of Letters of Administration being relied upon by the Plaintiff and the Interested Party. And since their respective locus in this case is anchored on their being the Legal Representative of the Estate of the deceased, the view that I take of this matter is that it must be stayed in order to enable both the Plaintiff and the Interested Party address the issue of which of the two Grants is valid. Those are issues to be addressed in the Succession Court and not in this Court. This Court will therefore not make any findings on the Notices of Motions filed by the Plaintiff and the Interested Party for now."

Having made that finding, I made the following disposal order in paragraph 2 of my ruling with respect to the two Motions:

(2) “The Plaintiff’s Notice of Motion dated 14th February 2025 as well as the Interested Party’s Notice of Motion dated 24th January 2025 are both held in abeyance to await confirmation as to who of the two is the proper Legal Representative of the Estate of the deceased **MARISIANA NABWIRE WABWIRE.”**

I then listed the matter for mention on 1st October 2025 for further directions once the issue of the proper legal Representative has been confirmed. Come that day, none of the parties attended Court and there was nothing filed herein to suggest that the issue of legal Representation of the Estate of the deceased had been resolved. The result is that as between the Plaintiff and the Interested Party, either one of the two or none of them is the lawful legal Representative to the Estate of the deceased.

5. Meanwhile, by a Notice of Motion dated 5th May 2025, the 2nd Defendant through it’s representatives **JOSEPH CHEGE NGAHU** and **BENSON MIANO RUORO** has now approached this Court seeking the main prayer that this Court issue an order directing the Officer Commanding Station **OCS** Busia Police Station to provide adequate security to the 2nd

Defendant and its agents to facilitate access and use of the land parcel **NO BUKHAYO/MUNDIKA/9904** pending the hearing and determination of this suit. The Motion is premised under the provisions of **Sections 1A, 1B, 3 and 3A** of the **Civil Procedure Act** and **Article 159 (2) (d)** of the **Constitution**, the grounds set out therein and supported by the affidavit of **JOSEPH CHEGE NGAHU**. Again, and for reasons which will soon be clear, I need not delve into the full details of the Motion. Suffice it to state that the 2nd Defendant's case is that it purchased the land parcel **NO BUKHAYO/MUNDIKA/9904** by a sale agreement dated 5th August 2021. However, the 1st Defendant has denied the 2nd Defendant access to the property to which they need to relocate and accommodate vulnerable children.

6. The Motion is opposed and the 1st Defendant has deposed in his replying affidavit dated 7th July 2025 that, inter alia, that he is the registered proprietor of the land parcel **NO BUKHAYO/MUNDIKA/9905** which the 2nd Defendant illegally invaded and put up a structure. That the 2nd Defendant was ill intentions to settle children on the said land in spite of clear advice from the children's office not to do so as that would jeopardize the welfare of the children and their best interest. That similar prayers by the 2nd Defendant were rejected in **BUSIA ELC CASE NO E087** of **2023**.

7. The Plaintiff and the 3rd Defendant have not participated in this Motion. And as for the Interested Party, his Motion dated 24th January 2025 seeking inter alia, an order to be enjoined in these proceedings is yet to be allowed for the reasons given above and in my previous ruling delivered on 7th April 2025.
8. Submissions have been filed on the Motion both by **MR TETI** instructed by the firm of **TETI & COMPANY ADVOCATES** for the 2nd and 3rd Defendants and by **MR OKUTTA** instructed by the firm of **OUMA OKUTTA & ASSOCIATES ADVOCATES** for the 1st Defendant.
9. I have considered the Motion, the rival affidavits and the submissions by counsel.
10. The predicament in which the parties herein find themselves is that in view of the fact that both the Plaintiff's and the Interested Party's locus standi in these proceedings is in doubt, it is not even clear if there is a proper suit before this Court. And if the Plaintiff's suit is doubtful, that means that there may be no suit which the 1st, 2nd and 3rd Defendants can defend nor make any counter-claim against. Further, there may be no suit in which the Interested Party can be enjoined. That will all depend on the decision which the Succession Court will make with regard to which of the two Grants of Letters of Administration issued to the Plaintiff and the Interested Party is genuine. If the Grant of Letters of Administration issued to the Plaintiff is declared to be valid,

then life will be breathed into her suit together with the respective defences of the Defendants and their counter-claims where applicable. And that will mean that the Interested Party would have no locus to be enjoined in these proceedings, at least not as an Administrator to the deceased's Estate. Should the Grant issued to the Interested Party be up-held, then the Plaintiff's suit will inevitably collapse. In the circumstances, the only option left to this Court is to give the same directions which I issued vide my ruling dated 7th April 2025.

11. Ultimately therefore and having considered the Notice of Motion dated 5th May 2025 by the 2nd and 3rd Defendants, I issue the following orders:

1) The Notice of Motion dated 5th May 2025 is hereby stayed and held in abeyance to await confirmation as to who is the proper legal Representative of the Estate of the deceased in view of the two Grants issued in BUSIA CHIEF MAGISTRATE'S COURT SUCCESSION CAUSE NO E044 of 2024 and BUSIA CHIEF MAGISTRATE'S COURT SUCCESSION CAUSE NO E003 of 2025.

2) Mention on 17th February 2026 so that the Plaintiff and Interested Parties provide the necessary orders with respect to the two conflicting Grants.

BOAZ N. OLAO

JUDGE

11TH DECEMBER 2025

**Ruling dated, signed and delivered on this 11th day of
December 2025 by way of electronic mail.**

BOAZ N. OLAO

JUDGE

11TH DECEMBER 2025

ORIGINAL