

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
SUCCESSION APPEAL NO E009 OF 2023
IN THE MATTER OF THE ESTATE OF VALENT WAMALWA
MUTORO (DECEASED)

MOSES WEKESA WAMALWA.....1ST

APPELLANT

BENEDICT N. MUTORO.....2ND

APPELLANT

ALEX JUMA WAMALWA.....3RD

RESPONDENT

VERSUS

FRISTA NAMALWA WAMALWA.....1ST

RESPONDENT

CHRISANTUS JUMA WAMALWA.....2ND

RESPONDENT

CHRISPINUS ALBERT JUMA MUTORO.....3RD

RESPONDENT

*(Being an appeal from the Ruling by Hon. T.M Olando -
Principal Magistrate, Bungoma Succession Case No E93 of
2021 delivered at Bungoma Chief Magistrates Court on 9th
November 2023)*

JUDGMENT

- 1.** The respondents were appointed administrators of the deceased's estate. For context, the deceased had six wives and 36 children.
- 2.** The respondent had petitioned the lower court for the grant of letters of administration in respect of the deceased's

estate. The appellants then filed an application seeking to revoke the grant dated 29/3/2023. The appellants contend that the petitioners comprised only one house of the deceased, Frista Namalwa Wamalwa, and her two sons.

3. Despite the application to have the grant revoked, the respondents filed their application dated 18/4/2023 seeking confirmation of the grant.

4. By the notice of motion dated 9/10/2023, the appellants filed a subsequent application seeking an order from the subordinate court to have the matter stood over to await the outcome of Bungoma HCCA No 27 of 2022. It was averred that the matter was pending hearing at the High Court, involving the same parties and the same property, in this succession cause.

5. In his ruling, the trial magistrate held that the application to have the matter stood over lacked merit and dismissed it.

6. The trial magistrate considered the summons for confirmation of the grant and noted that, where the parties do not agree on the mode of distribution, the estate will be shared equally among all the beneficiaries, whether men or women. The court divided the deceased's property equally among the deceased's beneficiaries.

7. The appellants, dissatisfied with the court's ruling, have filed this appeal on the following grounds:

- 1. The trial principal magistrate erred in law and fact by ordering that the estate of the deceased be subdivided a fresh.*

2. *That the trial principal magistrate erred in law and in law and fact by ignoring the appellants a (sic) section that the estate had already been distributed and each individual has his own portion duly demarcated.*
3. *That the trial principal magistrate erred in law and fact when he did not consider the defendant's admission through Bungoma CMC No 74 of 2020 that the Estate had already been distributed and every beneficiary was satisfied with the same.*
4. *The trial principal magistrate erred in law and fact by ignoring the appellant's submission that the land had already been distributed by January 2004.*
- 8.** The appellant seeks that the ruling of the subordinate court be set aside and that they be awarded costs.
- 9.** The appellants, in their submissions, argue that the deceased, before his death, distributed the estate, with boundaries duly demarcated by the respondents, and seek a fresh distribution of the estate that would interfere with the already marked boundaries.
- 10.** The trial court directed that six administrators should be appointed; however, the respondents failed to do so and forged the appellant's name and signature, purporting that they had attended the meeting.
- 11.** In their submissions, the respondent argued that no evidence was presented regarding the forged signatures. They contend that the appellants belatedly filed a supplementary affidavit seeking to be appointed as administrators.

12. The deceased had 39 beneficiaries, and there was no evidence from the appellants that the deceased had distributed the land before his death. Therefore, the trial magistrate was correct in distributing the estate equally among the deceased's beneficiaries.

ANALYSIS AND DETERMINATION

13. I have carefully considered the submissions and the grounds of appeal. The appellants have challenged the manner in which the estate was distributed and contend that the trial magistrate failed to take into account that the deceased had distributed the estate before his death. On the other hand, the respondents support the manner in which the estate was distributed.

14. I, however, note that the appellants had filed a summons for revocation of the grant in the subordinate court, but the same was not canvassed. The current administrators comprise members of the 1st respondent's household, although the deceased had 6 wives. Therefore, I find that the trial court erred in failing to consider the summons for revocation of the grant before dispensing with the summons for confirmation of the grant.

15. I further observe that the net estate measured 22 hectares (approximately 54 acres), and that the trial magistrate ought to have examined whether the court had the requisite pecuniary jurisdiction to entertain the matter.

16. Consequently, I set aside the ruling of the subordinate court dated 9/11/2023 and direct that the summons for

revocation of the grant be heard and determined by an appropriate court having the requisite pecuniary jurisdiction.

**Dated, Signed and Delivered at BUNGOMA this 5th day
of December 2025**

**R.E. OUGO
JUDGE**

In the presence of:

Appellants in person - All Present

Respondent in person - All Present

Wilkister - C/A

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