

5. A protest was raised, to the confirmation, by James Oucha Otwoma, vide an affidavit sworn on 6th October 2022. He claimed to have had bought 2½ acres of land from the deceased. In his statement, dated 26th June 2024, he stated that both the deceased and his co-proprietor had approached him, and offered to sell him a portion of Samia/Bujwanga/1143, 2½ acres, to him. That triggered Oduke for file a caution, claiming that the land had not been sold. He protested at being left out. He had a witness, Bonface Ojiambo Otuoma, who also filed a witness statement, saying the same thing. He filed documents to support his case, which included an application for consent and its approval, a letter for Chrispine Nyongesa Otuoma and handwritten notes from Bonface Ojiambo Otuoma, Edimondi Ochwele, Constatine Otuoma and the deceased acknowledging receipt of moneys.
6. Alex Oduor Odongo replied to that protest, saying that no valid sale of land agreement, between the protestor and the deceased, was produced. He had a witness file a statement, John Okochi Aduodi, dated 11th July 2024, pointing to sales by the deceased to Alex Oduor Odongo, William Oduke and Clement Okwara Songa. He denied any sale to James Oucha Otwoma. He attached documents in a language that I am not able to decipher, and for which no translation was provided. There was also a written statement by John Odembo Ochieng.
7. That application was canvassed *viva voce*. James Oucha Otwoma and Bonface Ojiambo Otuoma testified for the protestor. They said that the deceased sold 2½ acres of Samia/Bujwanga/1143 to James Oucha Otwoma, in 1986, which was not transferred, despite obtaining a document from the Land Control Board, because there was a caution.
8. Alex Oduor Odongo, John Odembo Ochieng and John Okochi Aduodi testified for Alex Oduor Odongo. It was stated that the deceased did not have a child, but he took in Alex Oduor Odongo as his son. Alex Oduor Odongo said he also bought land from the deceased and got consent of the Land Control Board. John Odembo Ochieng said that Alex Oduor Odongo was heir of the deceased, and caretaker of Oduke family. He said that in 1986 Oduke bought 5 acres from the deceased. Oduke died, but had a wife and children. A caution was lodged

against the title by Edward. John Okochi Aduodi said that Edward Ochwele had told him that Chrispinus had bought his land. He also said Clement Okwara had paid some money, leaving a balance. James Oucha Otwoma had agreed to pay the balance of the purchase price, which he did not do.

9. The court delivered the ruling of 30th August 2024 distributing the land, between Alex Oduor Odongo, Chrispine Nyongesa Otuoma, Margaret Nyandiwa Oduke and Clement Oruko Songa. It was found that the protestor, James Oucha Otwoma, had bought some land, whose acreage was unclear. There was also a sale to William Oduke.
10. Alex Oduor Odongo was aggrieved. He filed appeal, saying the wishes of the family were disregarded, and land was given to a purported buyer, without evidence.
11. Regarding the wishes of the family that the court is said should have considered, I note that the deceased died without a wife nor children. Alex Oduor Odongo, the appellant administrator, was not even his child. He only claimed to be one, by informal adoption. No evidence emerged, from the trial record, on who the immediate survivors or relatives of the deceased were. In the circumstances, it is difficult to understand who the family of the deceased was, whose instance would have been disregarded by the trial court.
12. Regarding the buyer, who was included in the distribution wrongly, I note that the alleged buyer is not mentioned in the memorandum of appeal. I suspect that the appellant is referring to the respondent herein. I have very closely perused the trial record, and I have not seen any documents pointing to a sale of land to the respondent by the deceased. However, the respondent was mentioned by one of the witnesses, presented by the appellant, that was DW3, John Okochi Aduodi, who said James Oucha Otwoma had agreed to pay some money to the deceased, which he did not pay. What the money was for, it was not disclosed, but the trial was on land that the respondent was alleging to have had bought from the deceased.
13. The trial court saw the witnesses who appeared before it, and heard them. It was best placed to make an assessment of who appeared to be truthful. It would appear that it was persuaded that

the respondent was truthful, hence it ruled in his favour. I shall not, in the circumstances, interfere.

14. I find no merit in the appeal herein, and I do hereby dismiss it. Each party shall bear its own costs. Any party, aggrieved by these orders, should challenge them, at the Court of Appeal, appropriately. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA ON THIS 9TH DAY OF FEBRUARY 2026.**

**WM MUSYOKA
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.
Mr. Alex Oduor Odongo, the appellant, in person.**

Advocates

Ms. Juma, instructed by Ouma-Okutta & Associates, advocates for the respondent.

Ms. Omolo, instructed by Lukale & Company, Advocates for the cross-appellant.