

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. E005 OF 2025
(formerly Milimani HCSC No. 3529 of 2004)

IN THE MATTER OF THE ESTATE OF LUKE MAKOKHA OKUMU
(DECEASED)

RULING

1. This ruling is on confirmation of the grant herein.
2. The deceased died on 16th November 1998, according to the certificate of death dated 3rd September 1999. A letter from the Chief of Bukhayo Location, dated 15th October 2003, indicates that he was survived by 1 widow, Priscah Atieno Makokha; 5 sons, being Frankline Omondi Makokha, Silvanus Wandera, Conrad O. Makokha, Bernard Okello and Cephas Makokha; and 7 daughters, being Mildred Makokha, Silvia Makokha, Belinda Makokha, Scovia Makokha, Georgina Makokha, Victoria Makokha and Laura Makokha.
3. Representation was sought by Priscah Atieno Makokha, as widow, and Frankline Omondi Makokha and Conrad O. Makokha, as sons of the deceased. That petition was filed on 22nd November 2004. They have listed the survivors of the deceased as the 13 individuals listed in the Chief's letter. The deceased is expressed to have died possessed of 3 assets, being Bukhayo/Bugengi/186, Bukhayo/Bugengi/1014 and ½ share of Bukhayo/Mundika/270. A grant was made to the 3, on 9th February 2005, and a certificate was duly issued, bearing the same date.
4. I am called upon to determine a summons for confirmation, dated 23rd September 2025. It was filed by Makokha Omondi Frankline, who I suppose is the same person as Frankline Omondi Makokha, one of the administrators of the estate. He discloses that the deceased had 2 wives, being the late Brenda Makokha and Prisca Atieno Makokha.

He identifies 11 individuals as the survivors of the deceased, said to be Prisca Atieno Makokha, Makokha Omondi Frankline, Silvanus Wandera Makokha, Makokha Ojiambo Conrad, Sylvia Apiyo Makokha, Benard Okello Okumu Makokha, Cephass Otieno Makokha, Belinda A Makokha, Georgina Anyango Makokha, Victorine Anyango Makokha and Makokha Laura Achieng. Mildred Makokha and Scovia Makokha are described as deceased. It is not disclosed whether Mildred Makokha and Scovia Makokha were survived by children of their own. Bukhayo/Bugengi/186 and 1014, and ½ share of Bukhayo/Mundika/270 are listed as the assets of the estate.

5. It is proposed that Bukhayo/Bugengi/186 be devolved upon the house of the 2nd wife, Prisca Atieno Makokha, to be shared between Prisca Atieno Makokha, Makokha Ojiambo Conrad, Sylvia Apiyo Makokha, Benard Okello Okumu Makokha, Cephass Otieno Makokha, Belinda A Makokha, Georgina Anyango Makokha and Makokha Laura Achieng; Bukhayo/Bugengi/1014 be devolved upon house of the 1st wife, the late Brenda Makokha, to be shared between Makokha Omondi Frankline, Silvanus Wandera Makokha and Victorine Anyango; and the ½ share due to the deceased, in Bukhayo/Mundika 270, to be shared between the 2 houses, equally.
6. Consents, in support of the proposal by Makokha Omondi Frankline were filed, purportedly signed by Prisca Atieno Makokha, Makokha Ojiambo Conrad, Sylvia Apiyo Makokha, Benard Okello Okumu Makokha, Cephass Otieno Makokha, Belinda Makokha, Georgina Anyango Makokha, Victoria Anyango Makokha and Laura, all dated 28th October 2025.
7. A second confirmation application, dated 28th October 2025, was filed by Prisca Atieno Makokha and Conrad O Makokha, both of whom are administrators. They propose the distribution of Bukhayo/Bugengi/186 and 1014. Regarding Bukhayo/Mundika/270, they propose its appropriation, under Rule 41(3) of the Probate and Administration Rules, to allow for the determination of the share due to the estate, out of that property. In their affidavit, they agree with

the proposals of Makokha Omondi Frankline, with regard to Bukhayo/Bugengi/186 and 1014, but take the view, regarding Bukhayo/Mundika/270, that the same should not be regarded as estate property, prior to the determination of the share in it due to the estate.

8. There is an affidavit in opposition, sworn by George Okumu Kabiri, on 12th January 2026, after the oral hearing of the confirmation application. His protest relates to only 1 asset, Bukhayo/Mundika/270, on grounds that the deceased held the property, in co-ownership with Jackton Odanga, in trust for all the children of the late Mzee Okumu Ongendo Kabiri. He asserts that that registration was not intended to confer absolute ownership to the 2. He argues that the said property cannot be distributed in the estate of the deceased herein, before the trust is terminated.
9. Directions were taken, on 29th October 2025, for *viva voce* hearing, of both applications, where that dated 23rd September 2025 was to be treated as the main application, while that dated 29th October 2025 was to be treated as the protest.
10. The oral hearing happened on 24th November 2025. Conrad O. Makokha was the first witness. He stated that the deceased was a polygamist, with 2 wives, who had, between them, 12 children, whom he named. He stated that 2 of the children had since died. He identified Bukhayo/Bugengi/186 and 1014 as owned solely by the deceased, but added that Bukhayo/Mundika/270 was co-owned by the deceased and his brother, Jackton Odanga, in trust for 2 other siblings. He proposed that Bukhayo/Bugengi/1014 be devolved upon the children of the 1st house, and Bukhayo/Bugengi/186 to the 2nd house. Regarding Bukhayo/Mundika 270, he proposed that the share due to the estate herein be shared equally between the 2 houses.
11. Prisca Atieno Makokha followed. She was a widow of the deceased. She confirmed that the deceased had 2 wives, and that her co-wife had since died. She also confirmed that

Bukhayo/Bugengi/186 and 1014 were solely owned by the deceased, while Bukhayo/Mundika/270 was co-owned with his brother, Jackton Odanga, in trust for their siblings. She proposed that Bukhayo/Bugengi/186 and 1014 be shared as agreed, with the 1st house getting Bukhayo/Bugengi/1014 and the 2nd house Bukhayo/Bugengi/186. She proposed that the larger or extended family should be left to agree on the distribution of Bukhayo/Bugengi/270, before it could be subjected to confirmation herein. She disclosed that one of the deceased children of the deceased had their own children, that is to say Scovia Makokha, whose children she named as Clauro Oduor, Louisa Oduor, Kendia Oduor and Meshack Havi.

12. Frankline Omondi Makokha testified next. He said that he was the first-born child from the 1st house. He described Prisca Atieno Makokha as the 2nd wife. He identified the children from the first house as Mildred, Victorine, Onyango and himself. He said the 2nd house had 8 children, being Sophia, Conrad, Benard, Cephas, Belinda, Georgina, Laura and Scovia. He proposed that Bukhayo/Bugengi/1014 devolve upon the 1st house; while Bukhayo/Bugengi/186 ought to go to the 2nd house. On Bukhayo/Mundika/270, he said that the property was owned equally by the deceased and Jackton, his stepbrother. He proposed that the ½ share due to the deceased ought to go to the estate, to be shared equally between the 2 houses. He said he would have no objection to Bukhayo/Mundika/270 being shared between the deceased, Jackton and their siblings.

13. At the end of the oral hearing, I directed that written submissions be filed, and that has happened. I have read and considered the said submissions.

14. Section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, and Rule 40 of the Probate and Administration Rules require ascertainment of the beneficiaries, the assets of the estate and the shares of the beneficiaries in the assets.

15. Both sides of the immediate family of the deceased are in agreement on the survivors of the deceased, and the shares due to them. 2 of the daughters are identified as dead. It is ascertained that the daughter in the 1st house, Mildred, had no children; but the daughter from the 2nd house, Scovia, had 4 children. The estate of Mildred shall not be reckoned in distribution, but that of Scovia shall.
16. On the assets to be distributed, both sides have ascertained the 3 assets. 2 are registered in the sole name of the deceased. 1 is registered in the name of the deceased and another, as co-owners, equally.
17. Both sides agree on the distribution of 2 of the assets, Bukhayo/Bugengi/186 and 1014. The agreement is that Bukhayo/Bugengi/186 is to be devolved upon the 2nd house, to be shared between the 2nd wife and her children; while Bukhayo/Bugengi/1014 should devolve upon the surviving children in the 1st house, to be shared equally. There is no consensus on Bukhayo/Mundika/270. One section of the administrators feel that distribution of Bukhayo/Mundika/270 should await agreement with the siblings of the deceased, while the other feels it should be distributed in this ruling. A brother of the deceased, George Okumu Kabiri, takes the position that it is not quite estate property herein, as it is held in trust, in favour of individuals who are not members of the immediate family of the deceased herein.
18. As there is consensus, on the distribution of Bukhayo/Bugengi/186 and 1014, the same shall be distributed as agreed. Bukhayo/Bugengi/186 shall be devolved upon Prisca Atieno Makokha, to be held by her, during life interest, and thereafter to her children, equally. Her children, who shall take equally, upon termination of life interest, are Makokha Ojiambo Conrad, Belinda Auma Makokha, Georgine Anyango Makokha, Benard Okello Makokha and the estate of the late Scovia Makokha. Bukhayo/Bugengi/1014 shall devolve upon the 1st house, to be

shared equally between Franklin Omondi Makokha, Silvanus Wandera Makokha and Victorine Anyango.

19. Regarding Bukhayo/Mundika/270, the same shall be appropriated or set aside, under Rule 41(3) of the Probate and Administration Rules, to await agreement of the larger or extended family, on how it shall be distributed between the estate of the deceased and Jackton, and their siblings. The share due to the estate, from Bukhayo/Mundika/270, shall only be distributed upon the family reaching agreement on the issue, or upon a court determination, in a separate suit, to be filed to resolve the issue.

20. The final orders shall be:

- (a) That the grant herein, made on 9th February 2005, and issued out of the Nairobi registry, in Milimani HCSC No. 3529 of 2004, shall be re-issued out of the Busia registry, in Busia HCSC No. E005 of 2025;
- (b) That, subsequent upon the re-issuance, under (a) above, the said grant shall be confirmed, and Bukhayo/Bugengi/186 and 1014, shall be distributed in terms of paragraph 18 of this ruling;
- (c) That Bukhayo/Mundika/270 shall be appropriated, in terms of paragraph 19 of this ruling, to await distribution in future, upon agreement or court determination;
- (d) That a certificate of confirmation of grant shall issue, accordingly, in conformity with orders (a) and (b) above;
- (e) That the administrators have 6 months, to transmit the estate, in the terms of order (b) above;
- (f) That the matter shall be mentioned, on 24th September 2026, to confirm completion of administration and transmission, in terms of order (e) above, and to consider the status of Bukhayo/Mundika/270, in terms of order (c) above;

- (g) That each party shall bear their own costs; and
- (h) That whoever is aggrieved, by these orders, has leave, to file an appropriate appeal, at the Court of Appeal, within the relevant statutory time stipulations.

21. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA,
THIS 11TH DAY OF MARCH 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Obunde, instructed by Robson Harris Advocates LLP, for Conrad O. Makokha and Prisca Atieno Makokha.

Mr. Cheruiyot, instructed by Otieno Asewe & Company, Advocates for Franklin Omondi Makokha.

Mr. Aburili, instructed by Okeyo Ochiel & Company, Advocates for George Okumu Kabiri.