

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 147 OF 2007**

**IN THE MATTER OF THE ESTATE OF PETER OLUOCH ODERO**  
**(DECEASED)**

**RULING**

1. On 22<sup>nd</sup> October 2024, I delivered a ruling, on a summons for revocation, where I refrained from revoking the grant, and appointed, the applicant, Daniel Ogola Nyanya, a co-administrator of the estate with Agnes Akinyi Oketch. I directed the 2 to apply for confirmation of their grant. The grant, previously made to Agnes Akinyi Oketch, was amended, to include Daniel Ogola Nyanya, as a co-administrator, and a certificate to that effect was issued, dated 3<sup>rd</sup> December 2024.
  
2. Subsequently, Daniel Ogola Nyanya filed a summons for confirmation of that amended grant, dated 24<sup>th</sup> March 2025. He listed 4 individuals as the survivors of the deceased, without disclosing the relationship between them and the deceased. The said individuals were Rose Aluoch Malukwa, Agnes Akinyi Okech, Daniel Ogola Nyanya and Peter Omina Weyama. He disclosed that the deceased died possessed of Marachi/Bujumba/1367, which he proposed that the same be distributed between the 4 individuals, so that Rose Aluoch Malukwa gets 0.05 hectare, Agnes Akinyi Okech 0.1 hectare, Daniel Ogola Nyanya 0.05 hectare and Peter Omina Weyama 0.2 hectare. No rationale was given for that proposed mode of sharing. Only Daniel Ogola Nyanya and Peter Omina Weyama executed a consent, in support of the said proposal. I shall, henceforth, refer to Daniel Ogola Nyanya as the applicant.

3. Agnes Akinyi Okech, the co-administratrix, swore an affidavit of protest, on 4<sup>th</sup> June 2025. She asserts that she is entitled to inherit the estate of the deceased herein, to the exclusion of the applicant and Peter Omina Weyama. She identifies Peter Omina Weyama as a purchaser. She states that Rose Aluoch Mulokwa purchased a portion of the land from the deceased, during his lifetime. She asserts that Peter Omina Weyama did not buy land from the deceased, and, therefore, he has no basis for participating in these succession proceedings. She mentions that a Julius Akoth Oyanga had filed succession proceedings relating to Marach/Bujumba/114, in which he shared a bigger portion to the applicant herein. I shall refer to Agnes Akinyi Okech as the 1<sup>st</sup> protestor.
4. The 1<sup>st</sup> protestor has attached a copy of the greencard for Marach/Bujumba/114, which was the subject of succession proceedings in Busia MCSC No. 21 of 1989, which led to the subdivision of that property into Marach/Bujumba/1335 and 1336. She has also attached a mutation form for Marach/Bujumba/114, showing its subdivision into Marach/Bujumba/1335 and 1336; a mutation form for Marach/Bujumba/1335, showing its subdivision into Marach/Bujumba/1349, 1350, 1351, 1352, 1353 and 1354; and a mutation form for Marach/Bujumba/1336, showing its subdivision into Marach/Bujumba/1564 and 1565. There is also a vague or blurred mutation form, for a property, whose details I cannot gauge from the face of it, allegedly subdividing it into Marach/Bujumba/1367 and 1368.
5. Another protest affidavit, sworn on 23<sup>rd</sup> May 2025, was lodged by Rose Aluoch Malukwa. She avers that she had purchased a portion of Marach/Bujumba/1367, from the deceased, measuring 0.087 hectare. She took possession during the lifetime of the deceased, who died before he had transferred her interest to her. She complains that the applicant was proposing to devolve to her a reduced share,

from 0.087 hectare to 0.037 hectare. She asserts that she should get her full share, of 0.087 hectare. I shall refer to Rose Aluoch Malukwa hereafter as the 2<sup>nd</sup> protestor.

6. Directions were taken, on 5<sup>th</sup> June 2025, for the disposal of the confirmation application, dated 24<sup>th</sup> March 2025, by way of *viva voce* evidence. The oral hearing happened on 28<sup>th</sup> October 2025, 25<sup>th</sup> November 2025 and 18<sup>th</sup> December 2025.
7. The applicant was the first on the witness stand. He identified the 2<sup>nd</sup> protestor as a buyer. He gave a convoluted relationship of the deceased and the 1<sup>st</sup> protestor. In one breath, he said that she was a daughter of the deceased, and in the other that her father was a stepbrother of the deceased. He identified Peter Omina as a buyer. He described himself as a nephew of the deceased, as his father was a biological brother of the deceased. He asserted that the court had ruled on that relationship, on 22<sup>nd</sup> October 2024, when it stated that he, the applicant, was the closest relative of the deceased. He asserted that Marach/Bujumba/1367 belonged to the deceased. He asserted further that he was the one entitled to it, but the protestors were challenging him, and he had decided to allocate shares to them.
8. At cross-examination, by the 1<sup>st</sup> protestor, he stated that his mother was not buried on Marach/Bujumba/1367, and that that property did not belong to Domitila Angoya Odera and Peter Oluoch. He stated that it was a subdivision from Marach/Bujumba/114, which was owned by Joseph Angoya Odera. He stated that he was unaware that the mother of the 1<sup>st</sup> protestor had done succession to Marach/Bujumba/1367. He stated that the father of the 1<sup>st</sup> protestor had been given another parcel of land, apart from Marach/Bujumba/1367. He conceded that the mother of the 1<sup>st</sup> protestor lived with the deceased on Marach/Bujumba/1367. He explained that the father of the

1<sup>st</sup> protestor had 2 wives, who did not co-exist peacefully, hence one of them, the mother of the 1<sup>st</sup> protestor, was moved to Marach/Bujumba/1367, to live with the deceased, who was not married. He said both the deceased and the mother of the 1<sup>st</sup> protestor were buried on Marach/Bujumba/1367, but that the father of the 1<sup>st</sup> protestor was buried on his own land, whose details were not disclosed. He asserted that there was no arrangement that the mother of the 1<sup>st</sup> protestor was to take care of the deceased. He explained that the deceased died first, leaving the mother of the 1<sup>st</sup> protestor on the land.

9. When he was cross-examined by the 2<sup>nd</sup> protestor, he stated that the 2<sup>nd</sup> protestor entered Marach/Bujumba/1367 while the deceased was still alive, and while the deceased was being taken care of by the mother of the 1<sup>st</sup> protestor. He conceded that the 2<sup>nd</sup> protestor built on the land, and also put up a house on the land for the deceased. He stated that he was aware that the deceased had given her land, and asserted that he would give her a share of the land, for he recognised her as a person with beneficial interest, as a buyer. He stated that he did not recognise the 1<sup>st</sup> protestor, as her family had land elsewhere. He said that he was not present when the mother of the 1<sup>st</sup> protestor was buried. He said that she died after he had bought land elsewhere, at Segga. He conceded that the mother of the 1<sup>st</sup> protestor lived on the land, next to the 2<sup>nd</sup> protestor.

10. At re-examination, he stated that Marach/Bujumba/1367 was registered in the name of the deceased, after the court, in ELC No. 7 of 2020, ordered the said reversion. He said that there was a dispute between him and the 1<sup>st</sup> protestor, not on ownership, but on inheritance. He stated that the father of the 1<sup>st</sup> protestor was called Joseph Angoya Odero, who used to visit his wife, the mother of the 1<sup>st</sup> protestor, on Marach/Bujumba/1367. He conceded that no other person, including himself, lived on

Marach/Bujumba/1367, except for the deceased, the mother of the 1<sup>st</sup> protestor and the 3<sup>rd</sup> protester. He said that he sold land to Peter Omina. He said that he was aware that the mother of the 1<sup>st</sup> protestor had done succession on Marach/Bujumba/1367, but he could not tell whether that was in separate proceedings.

11. The 2<sup>nd</sup> protester testified next. She stated that she bought land from the deceased, measuring 0.087 hectare. She said that it comprised of 2 plots. The deceased died after the sales, but before transferring the purchased portions to her. She asked to be given her share.
12. The 1<sup>st</sup> protester testified next. She explained that her biological father was the proprietor of Marach/Bujumba/114.
13. During cross-examination, by the applicant, she stated that she had made an application in Busia MCSC No. 21 of 1989, which had been initiated by Akoth Oyanga. She stated that she was not aware of the status of the said cause, nor its final outcome, if it had been litigated to its final conclusion. She said that Julius Akoth was registered the proprietor of Marach/Bujumba/114, on 2<sup>nd</sup> October 1990, and asserted that he had inherited that property illegally. She stated that she was the one who had initiated the instant cause. she obtained a greencard for Marach/Bujumba/114, which indicated a subdivision of that property into Marach/Bujumba/1335 and 1336, but she did not know who had benefited from those subdivisions. There were a series of subdivisions, but in the end Marach/Bujumba/1367 was registered in the name of the deceased. She stated that Julius Akoth was the father of the applicant, and the applicant should be getting the share due to his father. She stated that she had cases with the applicant and others, over the land, and she succeeded in all of them. She identified the cases as No. 745 of 1999 and No. 7 of

2020. All of them on Marach/Bujumba/1367. She asserted that it was her mother who was entitled to Marach/Bujumba/1367.

14. She explained that the deceased was not married, and did not have children. He had siblings, who had families of their own. She identified her father as a stepbrother of the deceased, for they shared a father, but had different mothers. She stated that her mother was buried on Marach/Bujumba/1367, where she utilised 1 acre. She asserted that Marach/Bujumba/1367 measured, in total, 1 acre, and that she utilised the entire piece of land. She identified the 2<sup>nd</sup> protestor as a buyer of a portion of Marach/Bujumba/1367, from the deceased, which she had occupied and utilised. She asserted that the applicant never occupied nor utilised Marach/Bujumba/1367. She asserted further that he had been given land elsewhere, measuring 4 acres, which he sold to Peter Omina, and he was trying to encroach on Marach/Bujumba/1367, to accommodate Peter Omina there. She stated that they destroyed her mother's houses, eventually causing her to die of frustration. She asserted that she was the one utilising Marach/Bujumba/1367, together with the 2<sup>nd</sup> protestor.
15. During re-examination, she stated that, as at 1985, when the deceased was still alive, her late mother was utilising the land, with the 2<sup>nd</sup> protestor, and the deceased never chased them away. She asserted that she and her mother used to provide for the deceased. She claimed that she litigated over Marach/Bujumba/1367 up to appeal, and that she succeeded at the High Court. She stated that the applicant had sold a portion of Marach/Bujumba/1367 to Peter Omina, but the court ordered that that property be reverted to the deceased. She said that her mother died in 2011, and was buried on Marach/Bujumba/1367. She asserted that the 1-acre Marach/Bujumba/1367 be divided between her and the 2<sup>nd</sup> protestor.

16. At the end of the oral hearings, both sides filed written submissions, where they have extensively analysed the facts presented in evidence.
17. The parties have not done justice to this matter at all. There are far too many loose ends that were left untied. Marach/Bujumba/1367 appears to be a subdivision from Marach/Bujumba/114, yet a coherent picture was not painted, to set out a background as to how Marach/Bujumba/114 moved to Marach/Bujumba/1367. Was it through sale? If it was, who were the buyers and sellers? Where are the documents of sale or the sale agreements? Was it through succession? If it was through succession, then who was the original proprietor of Marach/Bujumba/114, and how was he related to the parties hereto? Which succession proceedings transmitted Marach/Bujumba/1367 from Marach/Bujumba/114? Who was the administrator of the estate of the proprietor of Marach/Bujumba/114? When was the grant, in respect of Marach/Bujumba/114 confirmed? Who benefited from the confirmation orders in respect of Marach/Bujumba/114? Where is the certificate of confirmation of grant, relating to the distribution and transmission of Marach/Bujumba/114?
18. The journey, from Marach/Bujumba/114 to Marach/Bujumba/1367, should have been outlined or traced, supported by the appropriate documentation. Registered land cannot be conveyed, from a dead proprietor to those who survive that person, otherwise except through succession proceedings. So, which succession proceedings moved Marach/Bujumba/114 to Marach/Bujumba/1367? Where is the documentation or paperwork to support that movement?
19. It would appear that Marach/Bujumba/114 was subject to succession in Busia MCSC No. 21 of 1989. None of

the parties have placed on record the proceedings in that cause, which culminated in the creation of Marach/Bujumba/1367. It would be critical to know who benefited from Marach/Bujumba/114, as therein lies the answer to who would be entitled to Marach/Bujumba/1367. It would appear that Busia MCSC No. 21 of 1989 is still unresolved, and that cause is still active. The 1<sup>st</sup> protester claims to have filed a summons for revocation of grant in that cause, which has the potential of upsetting the distribution of Marach/Bujumba/114, and ultimately the devolution of Marach/Bujumba/1367. I do not think justice would be done, in distributing Marach/Bujumba/1367, when issues around how its parent or grandparent, Marach/Bujumba/114, are still unresolved. The proceedings, in Busia MCSC No. 21 of 1989, over Marach/Bujumba/114, ought to be litigated to their logical conclusion, before an attempt is made, to have succession proceedings over Marach/Bujumba/1367 concluded.

20. There was mention that the late mother of the 1<sup>st</sup> protestor had filed succession proceedings over Marach/Bujumba/1367, ostensibly over the estate of the deceased herein. That came from the mouth of the applicant. Yet, no material has been placed on record to demonstrate existence of parallel succession proceedings over the estate of the same individual. Filing parallel proceedings over the estate of the same person amounts to abuse of the court process, for it portends conflicting orders being made over the assets of the same estate. That should be avoided, and an allegation, relating to such a circumstance, should be taken seriously. The parties should have come out clearly, on whether there exist parallel proceedings over the same estate.

21. It would appear that the parties had also litigated over Marach/Bujumba/1367 in other courts. There was mention of various suits. There was Busia CMCCC No. 745 of 1996.

There was also Busia ELCCA No. No. 7 of 2020, which challenged the decision in Busia CMCCC No. 745 of 1996. These turned on Marach/Bujumba/1367. Those proceedings would have a bearing on how the instant cause, on Marach/Bujumba/1367, is resolved or determined. The court should have a wholesome picture on everything that has touched on Marach/Bujumba/1367. The pleadings, in those suits, and the determinations of the court, ought to have been placed on record herein. The parties ought not to treat the court to rumours, about suits that were allegedly filed over Marach/Bujumba/1367, and allegedly over how they were resolved. If such suits ever existed, then there must have been some paperwork or documentation on them. That paperwork should have been filed herein, so that I can make sense of what transpired. I should not proceed to make determinations on land that has been subject to litigation in other courts, without sight of the pleadings and decisions in those other suits. The default, in having sight of that paperwork or documentation, has the potential of disposing or exposing this court to making conflicting decisions, with those by the other courts in those other suits.

22. The court is not a member of the family of the parties hereto. It does not live within the same community with the parties hereto. It has no knowledge of, and cannot be expected to access information relating to, the issues at hand, unless the parties place the relevant material before it. It is unfortunate, that the parties hereto have handled this matter as if what they are litigating about is information in the public domain, or matters of public notoriety, or as if it should be the duty of the court to dig out the information for itself. The case belongs to the parties, and it should be up to them to present the entire case to the court, if they expect the court to understand the dispute between them, and to resolve the same with finality.

23. As it is, there are gaps in the matter herein, which require to be filled, before the court can proceed to distribute the property. Those gaps have to be filled by the parties. It would be a leap into the darkness, if the court decides the matter, before those gaps have been filled.
24. I have the option of dismissing the application, dated 24<sup>th</sup> March 2025, on account of those gaps. However, section 71(2)(d) of the Law of Succession Act, Cap 160, Laws of Kenya, allows or enables me to postpone the application for confirmation of grant, and to require the parties to take certain steps to bring the matter into full compliance or utility. I shall postpone determination of this application, as that is what appears just to me, to obviate the pain of the parties having to file another confirmation application, so that I can afford them time to revisit the matter, with a view to sealing the gaps that I have discussed above. That can be done by the filing of further affidavits, by the parties, to provide meat to the skeletal averments made in their previous filings.
25. In addition, so that the court is facilitated to have a clearer picture of the matters in dispute, to enable it determine the matter effectively and completely, I shall direct the Deputy Registrar to call for the original records in Busia CMCCC No. 745 of 1996, Busia CMSC No. 21 of 1989 and Busia ELCCA No. No. 7 of 2020. The provision of those records shall not, in anyway, obviate the need for the parties to file the affidavits that I have alluded to in the foregoing paragraphs, for they shall still be require to narrate the backgrounds to those proceedings.
26. The application, for conformation of grant, dated 24<sup>th</sup> March 2025, is hereby, accordingly, postponed. The parties, together with the Deputy Registrar, have 60 days, to do the needful. Consideration, of the orders to be made, for the final disposal of the application, shall only be upon full

compliance by the parties. This is critical, for determination of a summons for confirmation of grant is what fully disposes of the succession proceedings, leading to the passing of a decree, on the final distribution and transmission of the estate. The same ought to not be done on half-baked information or material. The matter shall be mentioned, on 19<sup>th</sup> May 2026, for compliance, and further directions.

27. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS,  
AT BUSIA, THIS 9<sup>TH</sup> DAY OF MARCH 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Were, instructed by Fwaya Masakhwe Were & Company,  
Advocates for the applicant.**

**Mr. Wanyama, instructed by Wanyama & Company,  
Advocates for the 1<sup>st</sup> protestor.**

**Mr. Otieno, instructed by Masiga Otieno & Associates,  
Advocates for the 2<sup>nd</sup> protestor.**