

children, were not sought. She accused the petitioner of intermeddling with the estate, by getting tenants to pay rent to her, with respect to Samia/Bukhulungu-Odiado/756. She alleged that the petitioner had obtained letters of administration intestate, in respect of the same estate, in Busia MCSC No. 113 of 2024. She also averred that a suit by the petitioner, in Busia MCELC No. E013 of 2022, claiming entitlement to Samia/Bukhulungu-Odiado/756, was dismissed.

5. Attached to that application was a judgment in Busia MCELC No. E013 of 2022, where that suit was dismissed; a letter from the Chief; and a grant made in Busia MCSC No. E113 of 2024, to Ruth Atieno Odote.
6. A grant was made in Port Victoria MCSC No. E009 of 2024 to Wilmina Odima Wanyama, dated 8th May 2024. The said grant was confirmed on 14th June 2024, and Samia/Bukhulungu-Odiado/756, was devolved wholly upon Wilmina Odima Wanyama. The application for confirmation was dated 24th May 2024, and, in it, Wilmina Odima Wanyama had deponed that Samia/Bukhulungu-Odiado/756, was held in trust for her and the siblings of the deceased, by the deceased.
7. The application, dated 18th October 2024, was resolved on 31st July 2025. The grant was revoked, and the title, Samia/Bukhulungu-Odiado/756, was cancelled and restored to the estate of the deceased. It was ruled that the grant was not regularly obtained, as Ruth Atieno Odote was the widow of the deceased, and her consent, which was mandatory, under Rule 26 of the Probate and Administration Rules, had not been obtained.
8. The appeal arises from the ruling of 31st July 2025. The grounds are that Rule 26 of the Probate and Administration Rules was misapplied, for Ruth Atieno Odote was aware of the proceedings, for a citation had been issued in Busia MC Succession Misc No. E182 of 2023, but she had not sought representation, among others.
9. On 16th December 2025, directions were taken, for disposal of the appeal, by way of written submissions. Both sides have filed written submissions, which I have read, and noted the arguments made.
10. The only issue for determination is whether the trial court was right in revoking the grant.

11. The appeal herein is by Wilmina Odima Wanyama. There is no dispute that the cause, at the trial court, related to the estate of Sebi Alacha Wanyama, who was the son of Wilmina Odima Wanyama and the husband of Ruth Atieno Odote. In terms of right or entitlement to administration, Ruth Atieno Odote had a superior right, to that of Wilmina Odima Wanyama. A widow has prior right or entitlement to administration of the estate of her late husband, according to section 66 of the Law of Succession act, Cap 160, Laws of Kenya, followed by the children of the deceased, and the mother of the deceased would come in third. Consequently, Wilmina Odima Wanyama would not be justified to obtain a grant of representation over the estate of her son, in priority to his son's widow.
12. Secondly, at the point of seeking representation, Rule 26 of the Probate and Administration Rules requires that a petitioner, who has a lesser entitlement to administration, like the appellant herein, ought to obtain the consent of the person with a superior entitlement, such as the respondent. Such consent was not filed. Where the consent cannot be obtained, or is withheld, the person petitioning is required, by Rule 26, to file an affidavit, to explain the inability to obtain the consent. No such affidavit was filed. Even if the argument was that the respondent was aware of the proceedings, in view of the citation served upon her, there was still an obligation to file an affidavit, to tell the court so. In any event, the citation was in another cause, Busia MC Succession Misc No. E182 of 2023, and not in Port Victoria MCSC No. E009 of 2024, and the trial court had no means of knowing of its existence, unless it was brought to its attention by the petitioner, through the affidavit, required under Rule 26.
13. Thirdly, Wilmina Odima Wanyama was claiming a share in the estate on the basis of a trust, arguing that the deceased held the estate property in trust for her, Wilmina Odima Wanyama, and her other children. Wilmina Odima Wanyama had sued, Ruth Atieno Odote and her children, in Busia MC ELC No. E013 of 2022. Her claim was that she was the legal and legitimate owner of Samia/Bukhulungu-Odiado/756. That claim was dismissed, on the basis that Samia/Bukhulungu-Odiado/756 was registered in the name of the husband of Ruth Atieno Odote. That being the case, the appellant could not have a right to inherit the land over Ruth Atieno Odote. Her claim to the land would only be granted at the

Environment and Land Court, or the empowered subordinate courts. The decision, in Busia MC ELC No. E013 of 2022, was by an empowered subordinate court.

14. I am not persuaded, that there is merit in the appeal herein. I, accordingly, dismiss it, with costs. The trial court records, in Port Victoria MCSC No. E009 of 2024, shall be returned to the trial court, with directions that that succession cause be closed. The administration of the estate of the deceased herein, the late Sebi Alacha Wanyama, shall proceed through Busia MCSC No. E113 of 2024. Orders accordingly.

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

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the appellant.

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the respondent.