



REPUBLIC OF KENYA



**In re Estate of Muliali (Deceased) (Succession Cause 153 of 2020)
[2026] KEHC 2365 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2365 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 153 OF 2020
REA OUGO, J
FEBRUARY 20, 2026**

IN THE MATTER OF THE ESTATE OF ADRIANO WELIKHE MULIALI (DECEASED)

BETWEEN

LUKAS WAMALWA WELIKHE PETITIONER

AND

EUNICE NASIMIYU MUMARAKI OBJECTOR

RULING

1. In an application dated 13.5.2025, Lucas Waamalwa Welikhe, the applicant, seeks the following orders;
 - i. Spent
 - ii. That an inhibition order to issue to LR NO. E. Sang'alo/4720,4721 and 4722 formerly E. Bukusu/E. Sang'alo/50
 - iii. The Bungoma County Surveyor be ordered to compute properly how LR. NO. E Bukusu/ e.Sangalo/50 to be shared in the reducing ratio after they discovered that LR. NO. E. Bukusu/ E. Sang'alo/50 on the ground is 4.47 acres and not of 5.4 acres on the time.
 - iv. That upon grant of prayer (iii) above a new report be filed in court by the Bungoma County Surveyor the correct acres each beneficiary was to be given after the missing margin is reduced.
 - v. That in alternative the Bungoma County surveyor be ordered to attend court and substantiate and or interpret the Report dated 20.1.2023.
 - vi. That the costs of the application.
2. The application is premised on the following grounds: -
 - i That LR NO. E. Bukusu/E. Sang'alo/50 on the title its reads 5.4 acres.



- ii. That as per the Report, it shows that the land on the ground is 4.47 acres.
 - iii. Initially the court had shared out the land as follows:-
 - a) Lucas Wamalwa Welikhe - 2 acres
 - b) Eunice Nasimiyu Mumaraki
 - c) Susan Nafula Welikhe 3.4 acres.
 - iv. The Certificate was rectified by this court in the absence of the 1st Petitioner and his advocates. So that Lucas Wamalwa Welikhe was to get 1.28 acres while Eunice & Susan were together jointly 3.19 acres.
 - v. The ration of the less margin affected the applicant negatively as no proper computation was done by the surveyor.
 - vi. On reduction the 1st Petitioner lost 0.72 acres out of 2 acres while the 2nd Petitioner and her daughter lost 0.72 acres out of 2 acres while the 2nd Petitioner and her daughter lost 0.21 acres out of 3.4 acres. How possible?
 - Vii. The 1st Petitioner was to lose 0.21 acres and not 0.72 acres.
 - Viii. The 2nd Petitioner and her daughter were to lose 0.72 acres and not 0.21 acres.
3. The application is supported by the applicant's supporting affidavit dated 13.5.2025, in which he avers as follows: On 29/5/2020, this court confirmed the grant through judgment that I get 2 acres, and the 2nd petitioner and her daughter to set a joint 3.4 acres. That the Bungoma County surveyor misled this court to the effect that LR. NO. E. Bukusu/E. Sangalo is less than 5.4 acres. That he was not present when the re-survey was done. To the best of his knowledge, L.R. NO. E. Bukusu/E. SANG'ALO/50 is 5.4 acres. That, basing on the foregoing, this court should rectify the grant issued on 22.3.2023. If indeed it is true that the suit land is less than 5.4 acres, then the ratio of reduction to each party is discriminatory and orchestrated by the Bungoma County Surveyor against him. That his acreages should not be 1.28 acres, as the same was wrongly calculated. That on the title, the land LR NO. E.Bukusu/E. Sanga'lo /50 is 5.4 acres, but the surveyor's report indicates that the land is 4.47 acres, meaning a margin of 0.53 acres was to be reduced. The surveyor misled this court into rectifying the certificate of confirmation incorrectly.
4. In his replying affidavit dated 26.5.2025, the Respondent averred as follows; The applicant herein filed a similar application, which was dealt with. The applicant has not annexed land searches to show ownership of the parcels of land in dispute. That the certificate of the confirmed grant was duly rectified by this court, as can be seen in the annexures to the above-attached replying affidavit. That the applicant herein prayed for orders for a provincial surveyor to revisit the land in dispute, which were granted. That this application is an outright abuse of the court's due process and the same should be dismissed with costs.

Analysis And Determination

5. I have considered the application dated 13.5.2025, the supporting and supplementary affidavits, and the Respondent's response. I have also perused the initial certificate of confirmation dated 24.9.2020, the amended certificate of confirmation dated 22.3.2023, and the Surveyor's report dated 20.1.2023. In that report, the Surveyor, Mr Matthew Nandi Khama, set out his findings as follows:

Findings



Parcel East Bukusu / East Sangalo/50 is plotted on East Bukusu/ East Sangalo map sheet number 2. The total of the acreage of shares to the beneficiaries is 5.4acres as per the Confirmation of grant. The ground acreage is less at 1.81.ha/4.47acres.

Details of the dimensions of the land is as indicated in the attached Diagram D. Lucas Wamalwa Welikhe currently occupies portions 'B' and 'C' totalling 0.52Ha/1.28acres.

Conclusion

Since the ground is smaller than the title acreage and since there are existing boundaries, we suggest that the distribution is revised as follows;

1. Lucas Wamalwa Welikhe-0.52Ha/1.28 acres
2. Eunice Nasimyu Mumaraki & Susan Nanjala Welekhe-1.29Ha/3.19acres.
6. Although the certificate of confirmation of grant indicates that the suit parcel of land is 5.4 acres, the Surveyor's report shows that the actual acreage of the grounds is 4.47 acres. Therefore, the total acreage stated in the certificate is erroneous.
7. In any succession matter, a land parcel belonging to the deceased can be distributed only in accordance with the physical acreage on the ground. The application, therefore, has merit, as it is evident that the applicant, though awarded 2 acres, has only 1.28 acres and has therefore been deprived of a portion measuring 0.72 acres. It is apparent that the applicant's acreage on the ground is less. To be fair to all parties, I issue an inhibition order on LR. NO. E. Sangalo/4720, 4721, and 4722, formerly Bukusu/E Sangalo/50, for a period of 90 days, pending the filing of a formal application by any of the administrators to rectify the certificate of grant to indicate the actual acreage on the ground to which the party is entitled. Each party to bear its own costs.
8. Lastly, the application is not res judicata, as the earlier application dated 21.3.2024 sought orders requiring the surveyor to visit the ground, which this court granted on 24.7.2024. Pursuant to those orders, the surveyor filed his report, and the applicant filed the current application. Each party to bear their own costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 20TH DAY OF FEBRUARY 2026.

R. E.OUGO

JUDGE

In the presence of;

Mr. R.Wamamlwa For the Applicant

Mr Lucas Wamalwa / Respondent

Wilkister - C/A

