



REPUBLIC OF KENYA



**In re Estate of Olotsi (Deceased) (Succession Cause 34 of 2009)
[2026] KEHC 4698 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4698 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 34 OF 2009

WM MUSYOKA, J

APRIL 10, 2026

IN THE MATTER OF THE ESTATE OF OPONDO OLOTSI (DECEASED)

RULING

1. I delivered a ruling herein on 15th July 2025, where I postponed confirmation of grant, and gave directions to the administrators to take certain steps to bring the matter to compliance. The administrators were to file consents by beneficiaries, or otherwise avail them in court, and to file a green card and certificate of official search for one of the properties.
2. The only consent, that I see in the record, is by only one of the survivors, being Francis Olunga Opondo, the son of Kelementina Anyango, a deceased daughter of the deceased. His affidavit was sworn on 8th October 2025. He has renounced his entitlement to a share in Marachi/Elukhari/1322. He has supported the proposal on the side of the 1st house.
3. The consents of the other beneficiaries have not been filed, and there could be a possibility that they could be disinherited.
4. Regarding the documents for Marachi/Esikoma/14, I note that there has been compliance. A certificate of official search has been filed. That property is in the name of Ojari Ondeto, who was registered proprietor in 1967. I also see a green card and official search for Marachi/Elukhari/1322. That property is registered in the name of Duncan Oluoch Odhiambo, but the green card indicates that it was originally in the name of Opondo Alotsi. There is also a certificate of official search and green card for Marachi/Esikoma/410. That property is registered in the name of Opata Opondo, since 1967.
5. What is clear is that only Marachi/Elukhari/1322 is estate property. In the order of 15th July 2025, it was reverted to the estate. The other 2 assets do not belong to the estate, to the extent that they do not appear to have been registered, at anytime in the name of the deceased. The parties have not endeavoured to demonstrate the connection between their registered proprietors, Opata Opondo and Ojari Ondeto, and the deceased. Consequently, I shall hold that they are not estate assets, and I shall confine myself to distribution of Marachi/Elukhari/1322.



6. The deceased died a polygamist, in 1963, long before the [Law of Succession Act](#), Cap 160, Laws of Kenya, came into force. He had 2 wives. I have discussed the configuration of the family of the deceased in the earlier rulings. I need not revisit that. The substantive law, applicable to distribution of the estate of an African intestate, in 1963, was customary law, going by the provisions of section 2(2) of the [Law of Succession Act](#). Under custom the property would be distributed equally between the 2 houses. Distribution is happening in 2026, after the [Law of Succession Act](#) has come into operation. Under the [Law of Succession Act](#), distribution of the estate of an intestate follows section 40, and it takes into account the number of children in each house. There is also [the Constitution](#), promulgated in 2010, Article 27 thereof carries the principle of equality.
7. Equality, between the houses, espoused under customary law, does not take into account the number of children in each house, and that often-worked injustice. A house with 1 child would be treated equally with a house with 10 children, meaning that the household of 1 child would end up with a share nearly 10 times that of the house with 10 children. The principle, under section 40 of the [Law of Succession Act](#), would be more equitable, and more aligned to the principles of [the Constitution](#) on equality. I shall, therefore, for that reason, handle distribution of Marachi/Elukhari/1322 along the lines of section 40 of the [Law of Succession Act](#), despite the deceased herein having died before that Act had come into force.
8. The 1st house had 4 children, Hipolitus Odhiambo Opondo, Silfano Oduor Opondo, Kelementina Anyango and Rose Agutu Apot. The 2nd house had 8 children, being James Otieno Opondo, Gideon Omondi Opondo, Henry Ngesa Opondo, Rose Okinyo Opondo, Jenifer Opondo, Auma Opondo, Judith Knight Opondo and Ajwang Opondo. Of all those children only Kelementina Anyango, through her son, has renounced her share, and, thus, the share due to Kelementina Anyango shall be removed from the equation.
9. The 1st house, therefore, on account of the renunciation of the share due to Kelementina Anyango, comprises of 3 units, while the 2nd house comprises of 8, and they make a total of 11 units. Marachi/Elukhari/1322 shall, accordingly, be divided into 11 units, to be distributed at the ratio of 3:8, between the 2 houses. The 3 units, devolving to the 1st house, shall be shared equally between Hipolitus Odhiambo Opondo, Silfano Oduor Opondo and Rose Agutu Apot; while the 8 units, devolving to the 2nd house, shall be shared equally between James Otieno Opondo, Gideon Omondi Opondo, Henry Ngesa Opondo, Rose Okinyo Opondo, Jenifer Opondo, Auma Opondo, Judith Knight Opondo and Ajwang Opondo. That would be wholly in keeping with section 40 of the [Law of Succession Act](#).
10. To clear any doubts, I hereby recite the purport of section 40 of the [Law of Succession Act](#), it provides:
 - “ 40. Where intestate was polygamous
 - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
 - (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”



11. There were individuals and entities, who are not family members, claiming to have had acquired an interest in the land, Marachi/Elukhari/1322. There was no proof that they acquired the same from the deceased. Their entitlement lies with the share allocated to whoever sold the land to them. Such claimants shall have to pursue the persons who sold the land to them, after the estate has been transmitted, in order to get their share.
12. The orders shall be: -
 - a. That the grant herein, made on 29th May 2024, is hereby confirmed;
 - b. That Marachi/Elukhari/1322 shall be distributed in the manner set out in paragraph 9 of this ruling, hereabove;
 - c. That a certificate of confirmation of grant shall issue in those terms;
 - d. That where any of the children of the deceased are dead, the share devolved to them shall devolve upon their estate, to be distributed in a succession cause relating to his or her estate;
 - e. That the administrators herein have 6 months, from the date of this ruling, to transmit the estate, accordingly;
 - f. That the matter shall be mentioned, on 14th October 2026, to confirm that the transmission has happened, and the administration of the estate has been completed, and to consider closure of this file;
 - g. That each party shall bear their own costs; and
 - h. That I hereby grant leave, to whichever party, who shall be aggrieved, with these orders, to file an appropriate appeal, at the Court of Appeal.
13. It is so ordered.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI,
ON THIS 10TH DAY OF APRIL 2026.**

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

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

Ms. L. Eroba, instructed by Eroba & Company, Advocates for the protestor.

