



REPUBLIC OF KENYA



In re Estate of Agnes Masbay Ongoma Otieno (Deceased) (Succession Cause 175 of 2014) [2025] KEHC 7161 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 175 OF 2014
WM MUSYOKA, J
MAY 29, 2025**

RULING

1. The administrators have come back to court, seeking amendment of the distribution that the court ordered, in its ruling of 1st December 2023. The vehicle for the said amendments is the summons dated 18th November 2024. The said summons had the support of ten, out of twelve, beneficiaries. The ten executed a consent attached to the application, while two did not sign, being Fredrick Mukasa Okhongo and Charles Omondi Lwanga.
2. Fredrick Mukasa Okhongo filed grounds of opposition, dated 19th December 2024. His arguments are that the summons was in abuse of court process, as it did not fall within the scope of Section 74 of the *Law of Succession Act*, Cap 160, Laws of Kenya, the applicants should have filed an appeal instead of summons for rectification/amendment, and allowing the application would prejudice the beneficiaries.
3. On 21st January 2025, I was addressed by Mr. Fwaya and Mr. Opiyo, Advocates for the two administrators, the movers of the application. I also heard from Ms. Nthenya for some of the beneficiaries. Some of the beneficiaries who support the proposals also addressed me, in support, being Sebastian Ogoma, Georgina Beatrice Njago and Caroline Makokha. Mr. Mukasa Okhongo supported the orders in the ruling. He said he was not party to the proposals, as only the house of Agnes Otieno sat and agreed on them. He explained that the distribution proposed was unequal. He said Charles Omondi had a position similar to his.
4. I declined, in a ruling I delivered on 14th March 2025, to make final orders before hearing from Charles Omondi Lwanga. He got his day in court on 8th April 2025. He said he had not been consulted as he was away at work at Isiolo. He said he did not know the physical location of the assets allocated to him, and for some there were restrictions, which have yet to be lifted. He also argued that he had not been updated on the status of the Kenya National Highway Authority, KenHA, compensation. He expressed concurrence with the ruling of 1st December 2023.
5. There must be an end to litigation. It is not always possible to get full concurrence to distribution of assets, particularly where the estate is vast, and the beneficiaries many. It is important for parties to



make concessions and compromises in order to get resolutions, and closure. Back and forth will cause this matter to drag on forever.

6. I am persuaded that the administrators are acting in good faith, and for the benefit of all in the proposals that they have made. Some of the issues raised by Charles Omondi Lwanga are administrative. Removal of restrictions should be done by the administrators. The estate is yet to be distributed, and the distribution of the KenHA compensation is not overdue. For the portions that he has not visited, that does not require court intervention. He can arrange with the administrators to be taken round to the parcels of land that have been allocated to him. The principal issue raised by Fredrick Mukasa is that some persons are benefitting overly more than others. That was not demonstrated.
7. I will allow the distribution that I had ordered on 1st December 2023 to be amended, in the manner proposed in the application, dated 18th November 2024. Let the certificate of confirmation of grant, dated 19th December 2023, be amended, accordingly.
8. I believe the above should settle the matter once and for all. Should anyone be aggrieved please move to the Court of Appeal. The High Court has done all that should be done in the matter. I hereby grant leave, for that purpose, of 30 days from the date of delivery of this ruling. In the meantime, the matter shall be mentioned on 25th November 2025, for the administrators to confirm that the estate has been transmitted, and the administration completed, so that this file can be closed.
9. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 29TH DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Messrs. Patrick Mukasa Okhongo and Charles Lwanga Omondi, in person.

Advocates

Mr. Gabriel Fwaya, Advocate for Ms. Praxedes Otieno.

Mr. Owino Opiyo, instructed by Aming'a Opiyo Masese & Company, Advocates for Mr. Kenny Otieno.

Ms. Nthenya, instructed by Wekesa & Simiyu, Advocate for Ms. Gianaenerica Otieno.

