



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Wandera Magonda (Deceased) (Succession Cause
237 of 2010) [2025] KEHC 11689 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 237 OF 2010**

WM MUSYOKA, J

JULY 31, 2025

IN THE MATTER OF THE ESTATE OF JOHN WANDERA MAGONDA (DECEASED)

RULING

1. On November 2023, I delivered a ruling herein, where I postponed confirmation of the grant herein, based on the application dated 30th July 2022, for lack of documentation. I required the administratrices, in paragraph 16, of that ruling, to obtain all the relevant documentation relating to the 11 assets, listed in paragraph 38 of the judgement of the Court of Appeal, in Kisumu CACA No. 99 of 2015. I gave them leave to file further affidavits, to place those documents on record.
2. After 10th November 2023, an of affidavit and written submissions have been filed. The affidavit was sworn by Matilda Onyango Wandera, on 30th April 2024. It avers that the deceased was known by various names, which included John Wandera, John Wandera Magonda, John Emin Wandera and John Magonda, and that the official name, as per his national identification card, was John Wandera Magonda. That was, no doubt, in response to the observations made in paragraph 12 of my ruling of 10th November 2023.
3. The other filings are written submissions, by both administratrices, dated 10th April 2025 and 12th May 2025, founded on the oral hearing, that I conducted herein on 20th March 2025. Written submissions are not evidence. They are of no evidential value. They should only be filed to place legal arguments before the court. These 2 sets of written submissions filed herein make no legal arguments, and, therefore, with respect, they are of little utility. One of them even carries annexures. Written submissions are not affidavits. No documents, of evidential value, should be annexed to them. The only documents that could be annexed to written submissions should be decisions of the superior courts, supporting the arguments made in the written submissions. It is abuse of process, to attach evidence to written submissions.
4. The documents, wrongly attached to the written submissions, ought to have been attached to an affidavit filed before the oral hearing on 20th March 2025, for they ought to have been validated in those proceedings. They were, no doubt, purported to be the documentation referred to in paragraph 16 of my ruling of 10th November 2023. These documents, annexed to the written submissions, are not



relevant. They are not documents of title. They date back to the 1970s, the 1980s and the 1990s. They do not update the records required on the ownership of the property, that I am asked to distribute, as at the date of the death of the deceased, on 10th July 2011, and as at the time that I am considering distribution in 2025. The proper documentation, for distribution purposes, should be a certificate of official search, to show that the property is in the name of the deceased, and it has no encumbrances.

5. The Court of Appeal, in its judgement of 30th March 2017, in Kisumu CACA No. 99 of 2015, did not distribute the said assets for lack of proper documentation. It referred the matter to the High Court, for confirmation, in the expectation that the parties would obtain the relevant documentation and place it before the Judge. That was not done by 10th November 2023, when I delivered the ruling bearing that date. It has not been done to date. My orders of 10th November 2023 have not complied with. There is nothing new, in terms of up-to-date documentation, filed herein after 10th November 2023. I have no material upon which I can determine the application, dated 30th July 2022, and I hereby dismiss the same.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Mukoya, instructed by RV Mukoya & Company, Advocates for Cecilia Madondo Wandera.

Mr. Juma, instructed by JV Juma & Company, Advocates for Matilda Onyango Wandera.

