



REPUBLIC OF KENYA



**In re Estate of Naaman Ekakoro Echakara (Deceased) (Succession Cause
23 of 2013) [2025] KEHC 1396 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1396 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 23 OF 2013

WM MUSYOKA, J

FEBRUARY 21, 2025

**IN THE MATTER OF THE ESTATE OF NAAMAN EKAKORO ECHAKARA
(DECEASED)**

RULING

1. On 22nd March 2024, I delivered a ruling herein, where I postponed determination of the summons for confirmation of grant, dated 21st March 2023, to pave way for more survivors of the deceased to come to court and testify, for it was apparent that only a section of the family had come forth and gave evidence, yet no consent, in Form 37, under Rule 40(8) of the Probate and Administration Rules, had been filed. Thereafter, the parties appeared before me and informed me that they had filed consents by some of the houses, and witness statements by the survivors who were yet to testify. I do not see any consents in the papers before me, but I have come across the witness statements. Those survivors testified on diverse dates.
2. Michael Emaroto Ekakor was the first to go. He produced the Safaricom Limited lease agreement and the certificate of title for North Teso/Kamuriai/595. He explained that the lease agreement commenced in 2014, although the deceased had died in 2006. He stated that he, Winston Etete Ekakoro and Reagan Echakara Ekakoro had been collecting the rent. He said that the money collected was used to pay school and college fees for their younger siblings, as directed by the deceased. He stated that there was no agreement on an estate account being opened with respect to North Teso/Kamuriai/595. He stated that Mary Revenia was not on North Teso/Kamuriai/595, but on a different parcel of land, and that the persons given North Teso/Kamuriai/595, were himself, Mary Omoit and Damari. He said that he was given the licence to build on North Teso/Kamuriai/595. He said that the deceased gave him the plot before he died, and he had also written a will, where he said so. He said only children of 3 widows were entitled to North Teso/Kamuriai/595 and income from the Safaricom Limited mast.
3. He said that the mast was put up in 2004, during the lifetime of the deceased, and the initial agreement was between Safaricom Limited and the deceased. He said that the deceased had urged him not to stop Safaricom Limited from taking a portion of North Teso/Kamuriai/595. He said the deceased had also directed that the money collected from the rent for the mast be used as school fees. He explained



that the Safaricom Limited agreement was transferred to their names in 2006, after the deceased died. He said that although the rent was meant for him alone, he incorporated the rest. He explained that the rent collected from the mast was utilised to pay school fees for the children of Jesca, who was the youngest widow of the deceased, the only widow who still had school going children. He said that he had put up a structure, on North Teso/Kamuriai/595, which was demolished to give way for the booster. He explained that North Teso/Kamuriai/595 had a bar and lodgings, a post office and rentals, which were distributed so that Damari got the bar and lodgings, Jesca the post office and rentals, and Mary Amongye the clearing and forwarding offices. He said that the 3 widows used to collect the rents directly from those establishments. He said that the booster on North Teso/Kamuriai/595 had been given to him alone, while Mary Revenia and Winston Etete were to share North Teso/Kamuriai/891.

4. Reagan Echakara Ekakoro followed. He was a son of the deceased, by Jesca. He explained that they had proposed distribution of the estate in accordance with the will. He stated that the deceased had distributed his assets amongst his wives and children, saying that North Teso/Kamuriai/595 was distributed between 3 wives, while Mary Revenia got North Teso/Kamuriai/891. He said that all the widows got income generating assets. Damaris got the portion of North Teso/Kamuriai/595 where the bar and lodgings stood, Mary Amongin got the clearing and forwarding offices, while Jesca got the post office premises.
5. He stated that North Teso/Kamuriai/891 ought to be shared equally between Winston and Mary Revenia, on grounds that a portion of North Teso/Kamuriai/891 had been given to Winston, by the deceased, in 1997, where he built a house, which was opened during the lifetime of the deceased. He said that the children and family had been called together by the deceased to communicate that decision. He added that the deceased was present when the house built by Winston was commissioned. He explained that Mary Revenia initially lived on North Teso/Kamuriai/891, in the 1980s, before she moved out to Kocholia, and started renting out her house on North Teso/Kamuriai/891.
6. He explained that North Teso/Kamuriai/595 was different from North Teso/Kamuriai/891. North Teso/Kamuriai/595 was to be divided between 3 widows, with a portion going to Michael. He said that Winston was to get a portion of North Teso/Kamuriai/891, just as Michael was to get a part of North Teso/Kamuriai/595, and both were to share with the widows. He said that the Safaricom Limited booster was not estate property as it had already been allocated to one of the sons by the deceased. He conceded that the land was still in the name of the deceased, and that was why a grant of representation had to be obtained. He said that the deceased had distributed his property, and there was no objection, until Mary Revenia came to court. He said that Michael got North Teso/Kamuriai/595, so that he could get money to pay school fees for the younger children of the deceased. He said that he was aware of a court order for opening a bank account, but he did not know which moneys were to go into that account. He asserted that the booster was on North Teso/Kamuriai/595, and not on North Teso/Kamuriai/891.
7. He explained that Michael was the main beneficiary on North Teso/Kamuriai/595. He said that the wives got income from the assets allocated to them. He said that after the deceased died, Michael incorporated them into the income for the mast. He represented the house of Jesca, while Michael represented the house of Damaris, and Winston represented the house of Mary Amongyin. He said that the income collected went into paying school fees for the younger children of the deceased. He conceded that all had since attained the age of majority. He said that income from the other assets was utilised by the wives for their own benefit. He explained that Michael was given the portion of North Teso/Kamuriai/595 where the mast was.
8. Austin Elphas Oporu Ekakoro testified next. He was a son of the deceased by Mary Omonyin. He said that he did not support the application by Mary Revenia, although there was a consent with a signature



purported to be his. He stated that distribution was being done according to how the deceased wanted the property distributed. He stated that the deceased had given 17A to Damaris, 17 B to Jesca and 17C to Mary Amonyin, out of North Teso/Kamuriai/595. He said that North Teso/Kamuriai/891 was shared out between Winston and Mary Revenia. He said North Teso/Kamuriai/595 was shared out between 3 widows, with a portion for Michael. He said that Winston had built a huge house on North Teso/Kamuriai/891, and the deceased could not have taken that plot away from him. He conceded that Winston was getting shares in North Teso/Kamuriai/595, North Teso/Kamuriai/891, North Teso/Kocholia/860, Kocholia plot and Kamuruai plot, and he could not explain why Winston was getting shares everywhere. He said that the only issue that Mary Revenia was raising was that Michael was getting a share in North Teso/Kamuriai/595.

9. Arthur Osikoli Ekakoro testified next. He was a son of the deceased by Mary Omonyin, and a brother of Austin. He said that Winston was a son of Mary Omonyin, while Michael was a son of Damaris. He stated that when Winston and Mary Revenia were allowed to construct on North Teso/Kamuriai/891, during the lifetime of the deceased, Mary Revenia did not object. He said that Michael was given a portion of North Teso/Kamuriai/595, which was adjacent to North Teso/Kamuriai/891. He said that a house belonging to Michael, built on North Teso/Kamuriai/595, was demolished to give way for the booster. He said that each of the wives had been given a farm, and that only the assets in urban centres were in contention. He explained the farms were in Kocholia, while the contentious plots were within Malaba town. He asserted that what was given to Mary Revenia was equivalent to what the 3 wives got in North Teso/Kamuriai/595. He said that the deceased did not give the sons ancestral land, but farms that he had bought. He said that Winston did not force himself on North Teso/Kamuriai/891, for it was given to him by the deceased.
10. Douglas Etori followed. He was a son of the deceased, by Jesca. He said that he was born in 1997, and that he was 6 years old when the deceased died. He said he established that North Teso/Kamuriai/891 had been given to Winston. Jemima Amusugut Ekakaro came next. She was a daughter of the deceased, by Mary Omonyin. She conceded to signing the consent to support the proposals by Mary Revenia. She said that she did not know the contents of what she was signing, saying that she had been told that she was to sign to signify that the cases had ended. She said that the papers that she signed had not been read to her, and that she was just told to sign them. She said that she was aware that the deceased had already distributed his land.
11. Esau Achiya Echakara followed. He was the eldest son of the deceased, by Damaris. He said that he was aware that the deceased had distributed his lands before he died, and that he had given to his wives different parcels of land. He explained that the deceased had built a house for Mary Revenia on North Teso/Kamuriai/891, then Winston was given a portion there, where he built a house. He stated that happened during the lifetime of the deceased. He said that Winston put up a permanent house there, with instructions from the deceased, and that he did not force himself into North Teso/Kamuriai/891. He stated that Mary Revenia had been given another plot, apart from North Teso/Kamuriai/891, which was fully constructed, but she sold it before she came to court. He said North Teso/Kamuriai/595 was given to 4 individuals, being Michael, Damaris, Jesca and Mary Omonyin. He said that Michael had begun to build on North Teso/Kamuriai/595, but the booster came, and his structures were demolished. He said that Michael's share of that plot was distinct from that of her mother. He said that he was the one who was to be given that portion, but since Michael had more children, the deceased decided to give it to him and requested the witness to give it up. He asserted that Mary Revenia was not entitled to North Teso/Kamuriai/595, for she had been given another plot at Malaba, which was developed, but she sold it. He said that North Teso/Kamuriai/891 was slightly bigger than North Teso/Kamuriai/595, and that was why Winston was given a portion of North Teso/Kamuriai/891.



12. On the booster, his testimony was that after the deceased died, it was agreed that the booster be given to Jesca, as she had children in school, and after they were done with education, the same was to revert to Michael. He said that the deceased had treated the booster as stable income, which could be utilised to cater for the educational needs of his minor children. He said that he had heard of a court order, for the income from the booster to be deposited there, but he said that he was not aware whether that was done.
13. Benson Erode Ekakoro was the last to testify. He was a son of the deceased, by Damaris. He asserted that the booster was on North Teso/Kamuriai/595, which was adjacent to North Teso/Kamuriai/891, but separated by a boundary.
14. I will determine this matter based on the evidence filed and recorded prior to the ruling of 22nd March 2024, and that filed and recorded thereafter.
15. In my ruling of 22nd March 2024, I determined that the deceased died in 2006, long after the *Law of Succession Act*, Cap 160, Laws of Kenya, had come into force in 1981. That means that his estate falls for distribution in accordance with the provisions of the *Law of Succession Act*. He died intestate, according to the petition lodged herein, and the grant of letters of administration intestate issued. A document described as a will was brought forth, but it was agreed that it did not meet the test in section 11 of the *Law of Succession Act*, as it was signed only by the deceased, whose signature was not attested by 2 witnesses as required by the law. Having died intestate, his estate should be distributed in accordance with Part V of the *Law of Succession Act*, which regulates distribution upon intestacy. As he died a polygamist, the estate should be distributed in accordance with section 40 of the *Law of Succession Act*, which regulates distribution of the estate of an intestate polygamist.
16. Section 40 of the *Law of Succession Act* states:
 - “ 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.”
17. According to section 40 of the *Law of Succession Act*, the property of the intestate polygamist is initially shared out amongst the houses, depending on the number of children in each house. After that the property is shared in each house, in accordance with sections 35 to 38, depending on the configuration of each house. See Kuria and another vs. Kuria [2004] KLR (Musinga, J), Rono vs. Rono & another [2005] 1 EA 363, [2005] eKLR (Omolo, O’Kubasu & Waki, JJA), In re Estate of Katama Nyaki (Deceased) [2019] eKLR (Muchemi, J) and Munyole vs. Munyole [2022] KECA 373 (KLR) (M’Inoti, Kiage & M Ngugi, JJA). Section 35 caters for a house comprised of a surviving spouse and children; section 36 covers the house of a surviving spouse who has no children; while section 38 is for the house that has children only, that is with no surviving spouse. It is not clear whether any or all the widows survived the deceased, but it would appear, from the various filings, that some of the wives are dead.



18. The most relevant provision herein would be section 35(1)(5), which states as follows:

- “ 35. Where intestate has left one surviving spouse and child or children
- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
 - (2) ...
 - (3) ...
 - (4) ...
 - (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children..”

19. What I am called upon to determine is a summons for confirmation of grant. The law that governs or regulates confirmation of grants is section 71 of the *Law of Succession Act*. Section 71, as read with section 55, enables confirmation of grant to facilitate the distribution of the capital assets of the estate. See *Shital Bimal Shah and others vs. Akiba Bank Limited and four others* [2005] KLR [2005] eKLR (Emukule, J), *Anna Mutindi vs. Bernard Wambua Muia* [2016] eKLR (Nyamweya, J), *In re Estate of Paul M’Maria (Deceased)* [2017] eKLR (Gikonyo, J) and *In re Estate of Zephania Aroni Onyoni (Deceased)* [2021] eKLR (Ougo, J). Confirmation of the grant entails 2 principal things. See *In re Estate of David Livingstone Loka Injene (Deceased)* [2019] eKLR (Musyoka, J) and *In re Estate of Chesimbili Sindani (Deceased)* [2021] eKLR (Musyoka, J). One, it is about confirmation of the administrators. There is no issue here with respect to confirmation of administrators. Two, the confirmation application is about the court approving the proposals placed before it on the distribution of the estate. The principal dispute herein is on the proposals on distribution.

20. Before the court considers the proposals, it must be satisfied, in accordance with the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules, that the administrator has ascertained the persons beneficially entitled to a share in the estate and has ascertained the shares due to each of the beneficiaries ascertained. These provisions are in mandatory terms, and the courts have interpreted them to mean that the court ought not to proceed to confirm a grant before it is satisfied of the matters set out in those provisions. It was said, in *In the Matter of the Estate of Ephrahim Brian Kawai (Deceased) Kakamega HCSC No. 249 of 1992 (Waweru J)* (unreported), that it would be illegal to confirm a grant before being satisfied of the matters the subject of the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules.



See also *In re Estate of Robert Mungai Gichinji (Deceased)* [2016] eKLR (Musyoka J) and *In re Estate of Benjamin Ng'ono Mbatia (Deceased)* [2019] eKLR (Musyoka J).

21. The proviso to section 71(2) and Rule 40(4) provides as follows:

“71(2) ... Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.”

40(4). Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.”
22. Before I can consider the confirmation application on its merits, I will have to consider whether the parties hereto have complied with the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules, for where there is no satisfaction, I should not proceed to confirm the grant. What I should be satisfied with is whether the parties ascertained all the persons beneficially entitled to a share in the estate, and have allocated the persons so ascertained their respective shares. The shares to be allocated are in the assets of the estate, and that would mean that I will need to be satisfied that the parties have properly ascertained the extent of the estate that they are proposing for distribution.
23. The deceased was married to 6 wives, all of whom had children. There is no dispute on who survived the deceased. However, there is a gap. The estate of a polygamist is distributed in accordance with section 40 of the *Law of Succession Act*, which I have set out above. What matters, for the estate of a polygamist, is the number of widows and children. Distribution is according to the houses, where each house is represented by a widow, and her children, if any. The share to which each house will be entitled depends on the number of children in the house. See *Kuria and another vs. Kuria* [2004] KLR (Musyoka, J), *Rono vs. Rono & another* [2005] 1 EA 363, [2005] eKLR (Omolo, O’Kubasu & Waki, JJA), *In re Estate of Katama Nyaki (Deceased)* [2019] eKLR (Muchemi, J) and *Munyole vs. Munyole* [2022] KECA 373 (KLR) (M’Inoti, Kiage & M’Ngugi, JJA). The estate of a polygamist is not shared out equally, between the houses, but according to the number of children in each house. That would mean that anyone approaching the court, for distribution of the estate of a polygamist, must disclose the number of wives of the deceased, and the number of children of each wife. The estate should be grouped according to the wives and their children, to enable the court properly apply section 40 of the *Law of Succession Act*. Without those disclosures, it would be impossible to determine the number of shares due to each house.
24. In this case, the applicant has not grouped the children of the deceased according to their mothers or houses. The widows and children have all been lumped together. All I can discern is that 2 of the wives are dead, 3 widows are alive. The number of children is not disclosed. There is a long list of individuals, but it is not disclosed how those individuals related to the deceased, whether they were children or grandchildren, and whether they were alive or dead. The affidavits in the protest do not help either, for neither of them groups the survivors into wives and the children of each wife. One would have no idea how many children each wife had. In the absence of that, it will be very difficult for me to divide the estate “among the houses according to the number of children in each house,” as is required of me by section 40(1) of the *Law of Succession Act*.
25. I have looked at the affidavit sworn in support of the petition; it does not help either. It identifies only 1 surviving widow, and describes the others as deceased, and has a long list of individuals, whose



- relationship with the deceased is not disclosed, and they are not grouped according to the wives or houses of the deceased. The Chief's letter, dated 14th January 2013, is of no use too. It only discloses the names of the wives, 2 identified as dead, and 3 as alive. It does not disclose the names of the children of the deceased, leave alone grouping them according to their mothers. There is also a form, on the beneficiaries of the estate, filed herein on 23rd January 2013. Again, it is not useful. Whereas it identifies the wives of the deceased, both dead and alive, it does not identify the children. There is a long list of individuals, whose relationship with the deceased is not disclosed, and who are not grouped according to their mothers or houses.
26. It bears emphasis, that distribution based on Part V of the *Law of Succession Act*, on intestacy, is according to the relationship between the deceased and those who survive him. Entitlement to a share in the estate of an intestate depends on how the survivor is related to the deceased, whether as a spouse, child, parent, sibling or other relative. See *Chelang'a vs. Juma* [2002] 1 KLR 339 [2002] eKLR (Etyang, J), *In re Estate of CCBH (Deceased)* [2017] eKLR [2018] 1 EA 114 (Thande, J), *In re Estate of Tsimango Akafwale (Deceased)* [2021] eKLR (Musyoka, J) and *In re Estate of Salim Juma Hakeem Kitendo (Deceased)* [2022] eKLR (Onyiego, J). Surviving spouses and surviving children of the deceased are in the first band, and take priority over other surviving relatives of the deceased. Where there is a surviving spouse and or a surviving child, no other surviving relative of the deceased person can benefit, except through invoking section 26 of the *Law of Succession Act*. See *In re Estate of Aggrey Makanga Wamira (Deceased)* [2000] eKLR (Waki, J) and *In re Estate of Joshua Orwa Ojode (Deceased)* [2014] eKLR (Musyoka J).
 27. Sections 35, 36, 37 and 38 of the *Law of Succession Act* provide for the entitlement of surviving spouses and children. Where there is no surviving spouse or children, then the surviving parents of the deceased are next in entitlement, under section 39(1)(a)(b) of the *Law of Succession Act*. See *In Re: The Estate of Beatrice Amalemba* [2004] eKLR (Koome J). Where there are no surviving spouses, children or parents, then the surviving siblings of the deceased follow, under section 39(1)(c) of the *Law of Succession Act*. See *In re Estate of Paul Mwongera M'Impwi (Deceased)* [2019] eKLR (Mabeya, J). Where there are no surviving siblings, then other surviving relatives follow, under section 39(1)(d)(e) of the *Law of Succession Act*. See *In Re the Estate of Wamuhu Murimi (Deceased)* [2005] eKLR (Koome, J) and *In re Estate Opondo Ombewa (Deceased)* [2019] eKLR (Cherere, J). Where the deceased died a polygamist, section 40 of the *Law of Succession Act* would apply, and all these and other provisions, that is to say sections 35, 36, 37 and 38 are relevant according to section 40(2) of the *Law of Succession Act*.
 28. In view of what I have stated above, it would be critical that the relationship between the deceased and the persons alleged to be his survivors is disclosed, for the entitlement of the alleged survivors will depend on their relationship with the deceased. Indeed, whether they are survivors in the first place will depend on the categories survivors listed in sections 36 to 39 of the *Law of Succession Act*. How would the court be expected to know whether they qualify to be survivors of the deceased unless their relationship with the deceased is disclosed. The relationship between the deceased and the alleged survivors is at the heart of intestate succession, and where relationships are not disclosed there would be A huge deficiency, for the court cannot tell whether the individuals seeking to get a share in the estate qualify.
 29. The rules of procedure require the disclosure of the relationship, and the omission to do so would mean non-compliance. Section 51 of the *Law of Succession Act* provides for applications or petitions for grant of representation. Section 51(2)(g) provides for what ought to be disclosed in cases of intestacy, and it is "the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased." How would the court know or establish that they are either surviving spouses or children or parents or siblings of the deceased, except



- that their relationship with the deceased is disclosed. Rule 7(1)(e) of the Probate and Administration Rules is along similar lines.
30. The confirmation process, according to the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules, requires that the court should not confirm a grant until the identities of the beneficiaries and their beneficial interests have been ascertained. See In the Matter of the Estate of Ephraim Brian Kawai (Deceased) Kakamega HCSC No. 249 of 1992 (Waweru J) (unreported). The identities are about their relationship with the deceased, while the beneficial entitlements would be pegged on that relationship. Rule 40(3) of the Probate and Administration Rules requires disclosures, in the application for confirmation of grant, in intestacy, of surviving children, parents, step-parents, grand-parents, grand-children whom he had taken into his family as his own, brothers, sisters, half-brothers and half-sisters. That would presuppose not just disclosure of names, but also of the relationship between the deceased and the persons listed. It is not enough to just throw in names of individuals, without disclosing who those individuals were to the deceased. See In re Estate of Wepukhulu Wanambisi Maundende (Deceased) [2020] eKLR (Musyoka, J).
 31. The proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules talks also of ascertaining shares to those entitled. For distribution of the estate of a polygamist, under section 40 of the *Law of Succession Act*, sharing depends on the number of children in each house, and a court cannot properly ascertain the entitlement of each house unless the number of children in each house is disclosed.
 32. In addition, the ascertainment of shares, that the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the Probate and Administration Rules talk about, also refer to the property. The shares to be determined are of the property or assets of the estate. Before working out the share of each house in the assets or property, it must be ascertained the assets or property that makes up the estate and is available for distribution.
 33. The next consideration should be of the assets that make up the estate of the deceased herein, and thereafter which of the said assets are free and available for distribution.
 34. I will start by establishing whether the administrators have ascertained the assets that make up the estate of the deceased. In the petition, filed herein on 23rd January 2013, the assets listed as what the deceased had died possessed of are North Teso/Kamuriai/595, North Teso/Kamuriai/599, North Teso/Kamuriai/891, Plot at Jairosi Market, KDX 814, KVE 461, KAE 093V, shares in Barclays Bank Limited, shares in East African Breweries Limited, shares in ICDC Investment Company Limited and Safaricom booster.
 35. The assets presented, by the applicant, in the confirmation application, dated 23rd September 2016, as belonging to the deceased, and available for distribution, are North Teso/Kamuriai/335, North Teso/Kamuriai/579, North Teso/Kamuriai/595, North Teso/Kamuriai/891, North Teso/Kocholia/854, North Teso/Kocholia/860, Plot at Jairosi Market, 2 Plots at Kocholia Market, Plot No. 595 17A. Plot No. 595 17B, Plot No. 595 17C, Plot No. 7, KDX 814, KUE 461, KAE 093V, shares in Barclays Bank Limited, shares in East African Breweries Limited, shares in ICDC Investment Company Limited and shares in Safaricom Prosper. The same assets are listed in the confirmation application, dated 20th April 2021, filed by the same applicant on 6th May 2021. The applicant yet filed another summons for confirmation of grant, dated 21st March 2023, and listed the same assets.
 36. The protest, by Jesca Anyango Ekakoro, in her affidavit sworn on 29th January 2019, agrees with the list provided by the applicant, except that she excludes Plot No. 595 17A. Plot No. 595 17B, Plot No. 595 17C and North Teso/Kamuriai/579, and includes North Teso/Kamuriai/2869. In her protest of



- 2nd March 2022, the protestor says that North Teso/Kamuriai/579 no longer exists, as its register had been closed, following its subdivision, and that out of the 4 subtitles created out of it only North Teso/Kamuriai/2869 was in the name of the deceased. She further avers that North Teso/Kocholia/854 is not registered in the name of the deceased. She made the same arguments in her subsequent protest affidavit, sworn on 4th April 2023.
37. All the assets, that the applicant and the protestor have referred to, should all be subject to registration of some sort, and where no such registration exists, there ought to be some form of documentation to support their existence. I shall next consider the documentation filed herein, to determine which of the assets mentioned are registered in the name of the deceased.
38. I see a certificate of official search for North Teso/Kamuriai/599, dated 8th January 2013, which shows that that property was registered in favour of Jackson Etyanga on 16th June 1975. I see also certificates of official searches for North Teso/Kamuriai/891, dated 8th January 2012 and 29th November 2023, which indicate it to be registered in favour of Naaman Ekakoro Chakara, as from 31st July 1980. There are also official search certificates for North Teso/Kamuriai/595, dated 8th January 2013 and 30th November 2023, which indicate that property to be registered in favour of Naamani Ekakoro, since 16th June 1975. The latter certificate indicates that the title has an encumbrance, registered on 28th April 2014, by way of a lease to Postal Corporation of Kenya. There is also a copy of a land certificate, dated 23rd September 1975, in respect of North Teso/Kamuriai/595, showing Naamani Ekakoro as proprietor.
39. According to the protestor, one of the plots at Kocholia Market, measuring 100 feet by 100 feet, was registered as North Teso/Kocholia/4223, in favour of Francis Papat Orite, and she has attached a certificate of official search for that property, dated 18th April 2018. According to Arthur Osikoli Ekakoro, in his affidavit, sworn on 13th April 2021, North Teso/Kamuriai/579 was subdivided into North Teso/Kamuriai/2869, 2870, 2871 and 2872. He has attached title deeds for the subtitles, all dated 1st April 2003, indicating Naaman Ekakoro as proprietor of North Teso/Kamuriai/2869, Jesca Anyango Ekakoro as proprietor of North Teso/Kamuriai/2870, Arthur Osikoli Ekakoro as proprietor of North Teso/Kamuriai/2871 and Haron Omoita Ekakor as proprietor of North Teso/Kamuriai/2872. I see a certificate of official search for North Teso/Kamuriai/579, dated 18th August 2015, which indicates that that property had been registered in favour of Naamani Ekakor on 16th June 1975, and its register was closed on 2nd April 2003, after it was subdivided into North Teso/Kamuriai/2869, 2870, 2871 and 2872.
40. It is alleged, by Gamaliel Etete, in his affidavit of 13th April 2021, that the applicant had been given a parcel of land, known as North Teso/Kamuriai/3059, by the deceased, which she later sold. He has attached a green card for that property. The register for it was opened on 3rd November 2003, when it was registered in favour of Dodofiko Epuret, Clement Omoit, Raphael Epuret and Ipala Epurette. It was subsequently transferred to Mary Revenia Ekakoro, on 26th August 2016, and later to David Thuo Gitubia on 19th February 2019. The protestor has attached a motor vehicle copy of records, dated 17th December 2016, for motor vehicle registration mark and number KAE 093V, which does not carry particulars of the owner or owners of the said motor vehicle.
41. Of all the assets listed by the applicant and the protestor, as belonging to the deceased, only the following are supported by relevant documentation: North Teso/Kamuriai/579, North Teso/Kamuriai/595, North Teso/Kamuriai/599 and North Teso/Kamuriai/891. Of the 4, North Teso/Kamuriai/599, never belonged to the deceased, and it never was part of his estate, as it was first registered in the name of Jackson Etyanga in 1975. It remained so registered as at the date of the death of the deceased in 2006. North Teso/Kamuriai/579 originally belonged to the deceased, having been registered in his name in 1975, but it ceased to exist in 2003 when it was subdivided into 4 portions,



- and its register was closed. Of the 4 sub-titles, created out of it, only 1, North Teso/Kamuriai/2869, was registered in the name of the deceased, in 2003, and remained so registered until his demise in 2006.
42. The conclusion to draw then would be that only 3 assets have been ascertained as belonging to the deceased, as at the date of his death, being North Teso/Kamuriai/595, North Teso/Kamuriai/891 and North Teso/Kamuriai/2869. Only these 3 are available for distribution in his estate. The rest are not available or free for distribution, as it has not been established that they form part of the estate, for no documents evidencing existence and ownership have been availed. A court ought not order distribution of assets which have not been proved to belong to the deceased. See *In re Estates of Gitere Kahura & another (Both Deceased)* [2018] eKLR (Musyoka, J). A court should not act blindly, but with certainty.
43. The applicant and Yusuf Ong'uramong have contested the subdivision of North Teso/Kamuriai/579 and the creation of subtitles, which were subsequently registered in the names of various individuals in 2003, during the lifetime of the deceased. The applicant argues that that was done secretly. The subdivision of registered land, to create subtitles, and to subsequently register them in names of individuals, and to close the mother register, thereafter, are matters regulated by land legislation, and not the *Law of Succession Act*. Any contest to that process cannot be mounted in succession proceedings, but in proceedings properly brought under the relevant land legislation, before the court or courts vested with jurisdiction under that legislation. See *In re the Estate of the late Albert Murera Ngarumi (Deceased)* [2017] eKLR (Limo, J) and *Isaac Gathungu Wanjohi vs. Simon Moloma Nkaru & another* [2019] eKLR (Nyakundi, J). I would have no jurisdiction to determine that North Teso/Kamuriai/579 was not properly subdivided and its register closed. The applicant should have mounted that challenge elsewhere. As it is, based on the documents lodged here, North Teso/Kamuriai/579 is not estate property, neither are the subtitles created out of it, except for North Teso/Kamuriai/2869, the only subtitle from it registered in favour of the deceased.
44. There was the issue of the Safaricom Limited booster or mast. It was listed as an asset in the estate. I do not think that that booster is an asset of the estate. It would belong to the person or entity that affixed it onto the estate land. The structure is affixed to 1 of the parcels of land belonging to the estate, apparently based on a lease agreement that has been placed on record. That lease represents rights of economic value. It has proprietary properties or rights capable of being owned and transferred, and those rights or properties are owned by the estate of the deceased. The lease agreement is the property of the estate, on account of the income derived from it. See *Makwata & another vs. Republic* [2024] KECA 1209 (KLR) (Okwengu, Mativo & J. Ngugi, JJA). It is that income, not the mast itself, which should be available for distribution. As the structure is affixed to the ground, that income would, upon distribution of the lands, accrue to whoever is allocated the ground on which that mast stands. However, the income accrued so far, that is from the date of the contract up to the date of the orders on distribution, belongs to the estate, and it ought to be accounted for and distributed amongst all the survivors of the deceased.
45. It is not clear the grounds or land upon which the mast stands, for that is a contested area. The applicant asserts that it stands on North Teso/Kamuriai/891, and she is supported in that regard by the protestor. However, no evidence was adduced to demonstrate that the said mast stands on North Teso/Kamuriai/891. It is trite that he who alleges is expected to prove what they allege. The applicant alleges that the mast stands on North Teso/Kamuriai/891, and it behoved her to establish that fact by appropriate evidence. I have not seen such evidence from what she filed in court. The latest certificate of official search, for North Teso/Kamuriai/891, dated 29th November 2023, was filed by her, contemporaneously with her written submissions, dated 7th December 2023. There is no reference to a booster or mast in that certificate, to indicate that the booster or mast stands on that piece of land.



- One way of establishing whether the booster stood on North Teso/Kamuriai/891, as alleged by the applicant and the protestor, or on North Teso/Kamuriai/595, as alleged by the rest, would have been to get a surveyor present a report in court, on the structures affixed to both parcels of land.
46. Most of the survivors hold the view that that mast or booster stands on North Teso/Kamuriai/595. The certificate of official search, for North Teso/Kamuriai/595, dated 30th November 2023, was, curiously, filed by the applicant, together with her written submissions, dated 7th December 2023, and that certificate has an entry, which shows that on 28th April 2014 a lease in favour of the Postal Corporation of Kenya was registered. There is a copy of an agreement, leasing North Teso/Kamuriai/595 to Safaricom Limited, where the proprietor is identified as Naaman Ekakoro Chakara. It leases the property to Safaricom Limited, for the purpose of erecting or installing some apparatus, in consideration for rents payable, in the manner indicated in the agreement, which lease was to commence on 6th October 2014. The agreement related to North Teso/Kamuriai/595, and, I believe, the lessor erected a mast or booster on what it considered to be North Teso/Kamuriai/595. I shall presume, based on that, that the Safaricom Limited or Postal Corporation of Kenya booster or mast, stands on North Teso/Kamuriai/595.
47. There was an issue on who was entitled to receive the income from that booster. The agreement with Safaricom Limited was entered into by Winston E. Ekakoro, Reagan E. Ekakoro and Michael E. Ekakoro, who are described as the landlords. In the body of the agreement, it was acknowledged that Naaman Ekakoro Chakara was the registered proprietor of North Teso/Kamuriai/595, based on the certificate of title attached. It was also acknowledged that the landlords had obtained a special limited grant of letters of administration, attached to the agreement. I have seen a copy of that special limited grant of letters of administration. It was issued by a magistrates' court at Webuye, on 8th December 2006, and it was limited to receiving of money by Winston E. Ekakoro, Reagan E. Ekakaoro and Michael E. Ekakoro from Safaricom Limited.
48. The issue of the moneys received from Safaricom Limited has been a matter of contention in these proceedings. Indeed, there was some litigation, founded on it, leading to an order by Kiarie J, on 25th February 2020. I have seen a copy of that order, which was formally extracted on 9th September 2021. It ordered the opening of an account at Kenya Commercial Bank, Malaba, within 15 days, for receipt of rental income from Safaricom Limited, and tenants of the estate. The account was to be opened by Mary Revenia Ekakoro, Yusuf Ekakoro, Winstone Etete Ekakoro and Michael Emoloto Ekakoro. None of the parties led evidence on whether the said order was complied with, by way of that account being opened, and the rental income from tenants and Safaricom Limited being deposited in there. What I gathered from the oral evidence was that the said account was never opened, and the rental income was never deposited.
49. Let me stay with the Safaricom Limited booster, and the rent collected from the lease of North Teso/Kamuriai/595. To enable Safaricom Limited install that apparatus, Winston E. Ekakoro, Reagan E. Ekakoro and Michael E. Ekakoro had to obtain a grant of representation, to the estate of the deceased herein, to enable them to represent the deceased or his estate, for the purpose of entering into that lease agreement. The making of the special grant to them constituted them administrators of the estate, they represented the estate, and whatever income accrued from the lease of North Teso/Kamuriai/595 to Safaricom Limited, was received by them as administrators of the estate and representatives of the deceased, and they received that income on behalf of the other survivors of the deceased and beneficiaries of the estate. Their appointment, as special administrators, constituted them fiduciaries about the income collected or received, in respect of which they incurred an obligation to account to the estate of the deceased and the survivors of the deceased for the income or moneys so received. See *In re Estate of M'Mbwiria M'Mairanyi* [2019] eKLR (Mabeya, J), *In re Estate of Des Raj Gandhi*



- (Deceased) [2021] eKLR (Achode, J) and In re Estate of Daudi Owino Olak (Deceased) [2022] eKLR (Thande, J).
50. The grant of representation made to Winston E. Ekakoro, Reagan E. Ekakoro and Michael E. Ekakoro was special and limited. Special and limited as it did not confer full authority to the administrators to administer the estate, in terms of collecting assets, preserving them, paying debts and liabilities, spending the money on administration of the estate and ultimately distributing it. Their grant was limited. On the face of their grant, it is written that their grant was “Limited To The Purpose Only Of Receiving Money By Petitioners From Safaricom Limited.” The only powers granted to them, by that instrument, was that of receiving the money from Safaricom Limited. There was no power to spend the money or to distribute it. All the money collected from 6th October 2014 to date, for the lease runs up to 5th October 2029, should have been held safely by Winston E. Ekakoro, Reagan E. Ekakoro and Michael E. Ekakoro to await distribution of the estate at confirmation. That money must be accounted for and turned over to the estate, for distribution purposes. If, for whatever reason, there was need to spent part of that money, then an order ought to have been obtained, to expand power to the special and limited administrators to spend that money for that or those purposes.
51. The initiation of Webuye SRMCSC No. 86 of 2006 and the instant cause, Busia HCSC No. 23 of 2013, would mean that 2 succession causes were initiated with respect to the estate of the same individual. The cause in Webuye SRMCSC No. 86 of 2006 gave rise to a special limited grant, limited only to receipt of rental income from Safaricom Limited, with respect to North Teso/Kamuriai/595; while the cause in Busia HCSC No. 23 of 2013 gave rise to a full grant, enabling the grantee or grantees the full authority of an administrator, to collect assets, preserve them, settle debts and liabilities, spend estate funds and distribute the assets among those beneficially entitled.
52. The courts have repeatedly held that it would be unacceptable that 1 estate be subjected to administration based on 2 or more separate grants of administration or representation. See Newton Gikaru Gathiomi & another vs. Attorney General/Public Trustee [2015] eKLR (Odunga, J), In re Estate of David Chege Jasan (Deceased) [2019] eKLR (Muchelule, J) and Jeremiah Mukangu Gioche vs. Samuel Kanyoro Ikua & 3 others [2020] eKLR (Kimondo, J). There can only be 1 administration for a single intestate estate, and, therefore, only 1 grant of representation ought to be made in respect of the 1 intestate estate. In short, the property of the estate should be vested in only 1 administrator in 1 cause, but not to several administrators appointed under separate grants, made and issued in different succession causes. See also In re Estate of Henry Clement Wariithi [2017] eKLR (F. Amin, J) In re Estate of Kanyeki Kimatu (Deceased) [2020] eKLR (Sitati, J) and In re Estate of Sandra Gathoni Kanyotu (Deceased) [2022] eKLR (Onyiego, J).
53. The question then should be, what should have become of the special limited grant, made in Webuye SRMCSC No. 86 of 2006, upon the making of the full grant in Busia HCSC No. 23 of 2013? The making of the full grant, in Busia HCSC No. 23 of 2013, superseded the special limited grant, in Webuye SRMCSC No. 86 of 2006. The grantees, in Webuye SRMCSC No. 86 of 2006, should have accounted for the income that they had received up to the time the full administrator or administrators were appointed, and handed over the moneys so far received, and the management and administration of North Teso/Kamuriai/595, to the full administrator or administrators appointed in Busia HCSC No. 23 of 2013. The order, of Kiarie J, of 25th February 2020, was made against that background, and the special limited administrators, appointed in Webuye SRMCSC No. 86 of 2006, should have complied and wound up their administration. That order remains valid, crying out for obedience.
54. So much for that. Should I proceed to distribute the assets of the estate that have been ascertained as existing and available for distribution? I believe I should. It transpired, from the material on record, that the deceased had distributed the bulk of his estate during his lifetime, for I was told that the farmland



had been distributed, and everyone appeared to be contented with that. No evidence was led on those inter vivos transfers, but as the parties appear to be contented with that, I shall not be-labour it. I was informed that the assets in contention were largely the town plots. It should follow that what remains for distribution are the commercial plots within Malaba township, and the parties are largely in agreement on how they should be shared out. In the circumstances, there may be no need to apply section 40 of the [Law of Succession Act](#) to the distribution of the said assets, except for the income from the mast, once the moneys collected are made available.

55. On the town plots, it would appear the deceased had done some distribution, for the parties were very clear on who was given what, and under what circumstances, particularly with respect to North Teso/Kamuriai/595 and North Teso/Kamuriai/891.
56. North Teso/Kamuriai/595 had been gifted to 3 wives, the late Damary Amadede Ekakoro, Jesca Anyango Ekakoro and the late Mary Amung'ini Ekakoro. I was told that each had been allocated shops and offices, from which they were to collect rent from the tenants. There was a rider, that Michael E. Ekakoro had also been allocated a portion on this plot, by the deceased, where the Safaricom Limited mast stands. That would mean that North Teso/Kamuriai/595 should be shared between the 4 persons, considering the position of the structures from which they have been collecting rents.
57. I was informed that North Teso/Kamuriai/891 had been gifted to the applicant, Mary Revenia Ekakoro. There was also evidence that Winstone Etete had put up a structure on the parcel of land. It is contested whether he did so with the express authority of the deceased, or he forced himself into the land. After hearing the testimonies given by all who testified, I am persuaded that the deceased had authorised Winstone Etete to develop a portion of that parcel of land, where I am told he put up a permanent house, whose official opening was graced by the deceased and the applicant. It would be unjust to deny him a portion of North Teso/Kamuriai/891 in the circumstances. That should mean that North Teso/Kamuriai/891 should be shared between the 2 of them, with each taking the portion where their structures stand.
58. Not much was said about how North Teso/Kamuriai/2869 should be distributed. The only person to testify on a parcel of land related to it is Yusuf Ong'uramong. He said that North Teso/Kamuriai/579, from which North Teso/Kamuriai/2869 derived, was meant for his mother. His view was that North Teso/Kamuriai/579 should have been divided into 4 parts and shared out amongst 4 widows. Well, North Teso/Kamuriai/579 no longer exists, and it is not available for distribution. We should be talking about North Teso/Kamuriai/2869, which is the only portion of it that is registered in the name of the deceased. The protestor, Jesca Anyango, proposes that it be devolved to Stephen Achia Echakara. She has advanced no reasons for that. The other 2 assets were shared out amongst the widows and wives of the deceased, largely. The mother of Yusuf Ong'uramong, Janefefa Mukade Ekakoro, does not appear to have benefitted, and there could be credence to his claim that the same was meant for his mother.
59. Although I am proceeding to make orders on distribution of the estate herein, I still feel, very strongly, that a lot has not been disclosed in these proceedings. I cannot tell how many children the deceased had with each of his wives. I cannot tell whether all these children are aware of these proceedings, and, if aware, whether they have authorised the administrators to go ahead with the matter in the manner that they have. I am also not aware of the other lands that the deceased allegedly distributed inter vivos amongst the wives and the children, and I cannot tell whether all the children benefitted from that alleged distribution. The said property should have been brought into the hotchpotch, during the confirmation proceedings, as required by section 42 of the [Law of Succession Act](#). See William M'Arimi Mutuambae vs. Rosemary Karamuta for Estate of George Gatimi [2017] eKLR (Gikonyo, J), In re Estate of Thuku Soroko Gikunju (Deceased) [2017] eKLR (T Matheka, J) and In re Estate of Waweru Mwaniki Gatuha (Deceased) [2020] eKLR (Wendoh, J).



60. There is a sense in which these proceedings are driven and dominated by the surviving widows and the more senior sons of the deceased, to the possible disadvantage of the daughters and younger sons of the deceased. It could just be a feeling. I am distributing the estate herein, principally, to move the cause forward, seeing that the deceased died in 2006, and the cause has been pending since 2013. I keep faith that, in the end, all the children of the deceased will have benefitted from the property that he acquired and accumulated during his lifetime.
61. The orders that I can make for now shall be as follows:
- a. That I do hereby confirm Mary Revenia Ekakoro, Winston E. Ekakoro and Jesca A. Ekakoro as administrators of the estate herein;
 - b. That North Teso/Kamuriai/595 shall devolve upon the estate of the late Damary Amadede Ekakoro, Jesca Anyango Ekakoro, the estate of the late Mary Amung'ini Ekakoro and Michael E. Ekakoro, with the actual sharing on the ground being dependent on how the shops and offices were shared out to them by the deceased;
 - c. That North Teso/Kamuriai/891 shall devolve upon Mary Revenia Ekakoro and Winston E. Ekakoro, in equal shares, with the actual sharing on the ground considering the developments made by them;
 - d. That North Teso/Kamuriai/2869 shall devolve upon Janefefa Mukade Ekakoro, absolutely;
 - e. That a certificate of confirmation of grant shall issue accordingly, and the administrators shall have 6 months, from the date hereof, to transmit the estate, as required of them by section 83(f)(g) of the *Law of Succession Act*;
 - f. That shares devolved to the estate of any spouse or wife of the deceased who is dead shall be distributed in succession proceedings initiated in his or her name;
 - g. That the Deputy Registrar shall call for the file, in Webuye SRMCSC No. 86 of 2006, for consolidation with the instant cause, or revocation of the grant made in Webuye SRMCSC No. 86 of 2006;
 - h. That Winston E. Ekakoro, Reagan E. Ekakoro and Michael E. Ekakoro shall file an account, within the next 60 days, of all the moneys received by them, from Safaricom Limited, on account of the lease agreement, on North Teso/Kamuriai/595;
 - i. That the matter shall be mentioned, before me, after 60 days, on a date to be fixed by the Deputy Registrar, for compliance on the accounts;
 - j. That at the same mention date, the subject of (i) above, Mary Revenia Ekakoro, Yusuf Ekakoro, Winstone Etete Ekakoro and Michael Emoloto Ekakoro shall show cause why the order, made by Kiarie J, on 25th February 2020, has not been complied with to date;
 - k. That each party shall bear its own costs; and
 - l. That any party aggrieved, by the orders made above, has leave of 30 days, to challenge them, at the Court of Appeal.

DELIVERED VIA EMAIL, DATED, AND SIGNED IN OPEN CHAMBERS, AT BUSIA, THIS 21ST DAY OF FEBRUARY 2025.

W MUSYOKA
JUDGE



Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Juma, instructed by JV Juma & Company, Advocates for Mary Revenia Ekakoro.

Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for Jesca Anyango Ekakoro.

