



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Esiketi Imagwa (Deceased) (Succession Cause  
203 of 2010) [2025] KEHC 8523 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8523 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 203 OF 2010  
WM MUSYOKA, J  
JUNE 17, 2025**

**RULING**

1. The deceased herein died on 20<sup>th</sup> August 1998. There is a letter from the Chief of Okuleu Location, dated 26<sup>th</sup> July 2010, addressed to the Land Registrar, Busia/Teso Land Office, introducing individuals who had allegedly bought the land belonging to the estate, being North Teso/Kocholia/731. They are listed as Phanice Okemo Julias, Dorika Amojong Okedi, James Okiru Onyanya, Geoffrey Okware, Absolom Eete, Victor Oyaa and Abeshaka Atii Etyanga. His son is identified as Eneriko Ojuma.
2. The estate land, North Teso/Kocholia/731, was registered in the name of the deceased, on 22<sup>nd</sup> January 1974, and measures 5.0 hectares, according to a certificate of official search, dated 22<sup>nd</sup> July 2010.
3. The petition herein was filed by a son of the deceased, Eneriko Esiketi Ojuma, on 29<sup>th</sup> July 2010, who described himself as the only son. In the affidavit in support, he listed himself and six individuals, described as purchasers, being the same persons listed in the letter of the Chief of 26<sup>th</sup> July 2010. Letters of administration intestate were made to Eneriko Esiketi Ojuma, on 1<sup>st</sup> December 2010, and a grant was duly issued, on even date.
4. The grant of letters of administration intestate, of 1<sup>st</sup> December 2010, was confirmed on 26<sup>th</sup> September 2011, on an application, dated 30<sup>th</sup> June 2011. The estate was distributed between the one son, Eneriko Esiketi Ojuma, and the six purchasers, listed in the petition and the Chief's letter. A certificate of confirmation of grant was duly issued, dated 11<sup>th</sup> October 2011.
5. Dorika Amojong Okedi, filed a summons for revocation of grant, dated 23<sup>rd</sup> June 2020. That application was placed before Kiarie J, on 7<sup>th</sup> July 2020, who fixed it for hearing on 13<sup>th</sup> October 2020. The record is silent about what happened on 13<sup>th</sup> October 2020. Dorika Amojong Okedi claimed to have had bought a portion of North Teso/Kocholia/731 from the deceased.
6. I see from the record, a notice of withdrawal of an application, dated 12<sup>th</sup> October 2020, vide a notice dated 9<sup>th</sup> October 2020, filed on 12<sup>th</sup> October 2020. It was filed by Ouma-Okutta & Advocates. It is not clear which application was being, withdrawn as I have been unable to trace that application. The notice of withdrawal could have been a mistake, given that it was dated 9<sup>th</sup> October 2020, and sought



to withdraw an application dated 12<sup>th</sup> October 2020, and the notice itself was filed in court on 12<sup>th</sup> October 2020. It could be that it was intended to withdraw the application dated 23<sup>rd</sup> June 2020. If that was the intention, then it must have failed spectacularly.

7. The matter remained at that until 23<sup>rd</sup> May 2023, when Moses Emong'ole appeared in court, and informed the court that Dorika Amojong Okedi was his mother, who was illiterate, and that he intended to move the matter forward. He expressed that he wished to file a response to a notice to show cause, and an application. Moses Emong'ole and Dorika Amojong Okedi then filed an affidavit, on 17<sup>th</sup> October 2023, sworn on an unknown date, to explain why they had not acted on their earlier application.
8. Moses Emong'ole then appeared before me on 19<sup>th</sup> October 2023. He informed me that the administrator, Eneriko Esiketi Ojuma, had died in 2015, and there was no administrator. He also indicated that his mother was elderly and unwell. I directed that another administrator be appointed, at a session to be held on 15<sup>th</sup> November 2023, where all family members were to attend.
9. On 15<sup>th</sup> November 2023, Moses Emong'ole appeared in court alone. He had an affidavit of service, which indicated that he had served notice of the mention on the rest of the family. As the other parties had not attended court, despite service, I appointed him, Moses Emong'ole, as the administrator, and a grant of letters of administration intestate, was duly issued to him, dated 21<sup>st</sup> November 2023.
10. Upon that appointment, Moses Emong'ole moved the court, by a Motion, dated 5<sup>th</sup> February 2024. He sought cancellation of sub-titles created from North Teso/Kocholia/731, and an order for a surveyor to visit the land, to survey the parcels the subject of the sub-titles. That followed the directions made on 14<sup>th</sup> December 2023, when he sought to have the previous distribution re-visited, whereupon an order was made, directing him to file a formal application. He came back to court on 30<sup>th</sup> January 2024, urging that there was need for titles to be cancelled first, and it was directed that he should file a formal application for cancellation of the titles.
11. Moses Emong'ole appeared in court on 28<sup>th</sup> February 2024, for the hearing of the Motion, dated 5<sup>th</sup> February 2024. He had an affidavit of service, which indicated that he had served. I was satisfied about that service. As that Motion, of 5<sup>th</sup> February 2024, was unopposed, I allowed it as prayed.
12. The orders of 28<sup>th</sup> February 2024, provoked the filing of an application, dated 21<sup>st</sup> March 2024. It sought revocation of grant made to Moses Emong'ole, on 21<sup>st</sup> November 2023, and the setting aside of the orders of 28<sup>th</sup> February 2024. It was alleged that there was misrepresentation, on the basis that Moses Emong'ole and his mother were not family members. It was urged that the estate had been fully administered, by the previous administrator, before he passed on. The application was by three sons of the late administrator, led by Johnstone Esiket Ojuma, and some of the buyers. It was pointed out that Dorika Amojong Okedi was one of the beneficiaries in the distribution of 2010, and her name was in the certificate of confirmation of grant. It was clarified that she had bought a portion of North Teso/Kocholia/731 from the deceased.
13. The application of 21<sup>st</sup> March 2024 was followed by another, dated 25<sup>th</sup> March 2024, essentially seeking stay of execution of the orders of 28<sup>th</sup> February 2024 and their setting aside, principally founded on the same facts and grounds as the application dated 21<sup>st</sup> March 2024.
14. Moses Emong'ole replied to the application. His affidavit was sworn on an unknown date in 2024, but it was in court filed on 17<sup>th</sup> April 2024. He averred that he was appointed administrator after his revocation application had been heard and determined. He asserted that he had served the applicants with the applications dated 21<sup>st</sup> March 2024 and 25<sup>th</sup> March 2024, but they did not respond. He



- claimed that the late administrator had misled the court and concealed his sisters, during the process of the grant being confirmed. He claimed that his mother received a share of the land smaller than she was entitled to. He asserted that he had come to court with clean hands.
15. On 9<sup>th</sup> April 2024, I granted orders, staying execution of the orders of 28<sup>th</sup> February 2024. On 2<sup>nd</sup> May 2024, I directed that the application, dated 21<sup>st</sup> March 2024, be canvassed by oral evidence, based on affidavits.
  16. The oral hearing commenced on 25<sup>th</sup> June 2024. Johnstone Eshikedi was the first on the stand. He was a son of the late administrator, Eneriko Esiketi Ojuma, and a grandson of the deceased. He explained that his father was the sole survivor of the deceased, and when he, his father, distributed the estate, he had taken care of the buyers, including Dorika Amojong. He explained that she had bought land from the deceased, and the late administrator had given her her share, and she had a title deed. He asserted that Moses Emong'ole was not a family member, and he was not entitled to be administrator of the estate. He averred that he was not served with notices by him. He said that the land was distributed.
  17. When cross-examined by Moses Emong'ole and Dorika Amojong, he said that Dorika Amojong had bought two acres of land from the late administrator. He said that she was listed in the succession process, and was given a title deed. He stated that if she felt the acreage did not conform with what she had bought, then she should have appealed. He said that his aunts, that is the sisters of the late administrator, and the daughters of the deceased were not listed in the petition.
  18. Luka Ijaa Esiketi testified next. He was a son of Johnstone Eshikedi, and a great grandson of the deceased. He said that succession was not done in the estate of Eneriko Esiketi Ojuma. Dan Ojuma followed. He was another grandson of the deceased. From his testimony, it was clear he did not appear to understand what the case was all about, for he was claiming that it was about the estate of Johnson Esiketi, and he was blaming his father for selling land that he had inherited.
  19. Moses Emong'ole testified last. He stated that his mother had bought land from a son of the deceased. He said that he was not related to the deceased. He said he was appointed administrator after he had cited the family members. He stated that his mother was given a smaller share than what she was entitled to. He said that his mother lived on the land she bought from the deceased. He said he had the titles cancelled as the daughters of the deceased were not included in the process.
  20. Moses Emong'ole moved into these proceedings to advance the case of his mother, Dorika Amojong. Dorika Amojong did not transact with the deceased, but with his son, the late administrator, Eneriko Esiketi Ojuma, after the deceased died, according to Moses Emong'ole. No sale agreement was exhibited, so I cannot tell when that sale happened. I cannot tell the acreage that was sold to her. The applicants say it was two acres, and that is what she got in the confirmation process of 2010. Moses Emong'ole says she was entitled to more. Yet, he does not disclose the acreage that she is entitled to, and has presented no documentation to support his allegation.
  21. As Dorika Amojong did not deal with the deceased, and bought the land after the deceased had died, and before succession happened, then she has no claim as such against the estate. The letter of the Chief, dated 26<sup>th</sup> July 2010, is clear evidence that she bought the land before the late administrator had been granted representation. It was a sale that was unlawful, for it contravened section 45 of the [Law of Succession Act](#), Cap 160, Laws of Kenya. It amounted to intermeddling with the estate, for, at the time the sale was transacted, North Teso/Kocholia/731 had not yet vested in the late administrator, by virtue of section 79 of the [Law of Succession Act](#), and he could not validly sell it, by virtue of section 82(ii) of the [Law of Succession Act](#).



22. Her claim could only be against the late administrator personally, but not as an administrator. She was not even entitled to have been included as a beneficiary. She was not one. She should have waited for the late administrator to have the property devolved to him, as a heir and son of the deceased, and then after the transmission of the estate to himself, he would have transferred the portion he had sold to her, to her, after his registration as an owner. She was lucky to get the property directly through succession. I see no basis why she and Moses Emong'ole are complaining.
23. It is argued that Moses Emong'ole got the grant revoked because the late administrator did not involve his sisters. There is nothing to show that Moses Emong'ole has authority to speak for those sisters. He has not filed any. He has not even disclosed their names. He is not related to them, and he, therefore, has no basis to speak for them. The grant made to the late administrator was not revoked for any wrongdoing on his part, but because he had died, and the grant had become useless and inoperative, making it a candidate for revocation, suo moto, by the court on its own motion, under section 76(e) of the *Law of Succession Act*.
24. The impression I get is that Moses Emong'ole is interfering with a process where he has absolutely no interest, for he is entitled to nothing from the estate. He claims to speak for his mother, yet his mother has no valid claim. His mother was catered for in the distribution of 2010, even when she was not entitled, as she was not a creditor of the estate. I agree with the applicants, Moses Emong'ole should not have been appointed administrator. There is nothing outstanding for administration. The estate was transmitted, and this cause should have been closed.
25. Luka Ijaa Esiketi and Dan Ojuma testified, but they did not know what they were talking about. This cause is not about the estate of their late grandfather, Eneriko Esiketi Ojuma, but that of their late great grandfather, Esiketi Imagwa. The estate of Eneriko Esiketi Ojuma cannot be distributed in these proceedings, in the estate of his father. A succession cause can relate only to one estate. No two estates should be administered through one succession cause. If they have issues with the estate of Eneriko Esiketi Ojuma, then they should initiate a succession cause to administer that estate. If one has already been initiated, then they should raise their issues there, and not here.
26. There is merit in the application, dated 21<sup>st</sup> March 2025, and make orders as follows:
  - a. That the grant made to Moses Emong'ole, on 15<sup>th</sup> November 2023, is hereby revoked;
  - b. That the orders made herein, on 28<sup>th</sup> February 2024, are hereby vacated;
  - c. That the distribution of 26<sup>th</sup> September 2011 is hereby upheld, and so is the transmission that was based on the certificate of confirmation of grant, dated 11<sup>th</sup> October 2011;
  - d. That I declare that the proceedings herein were concluded in 2011, after the grant was confirmed, and the estate was transmitted;
  - e. That I declare that the administration of the estate herein was completed and there is nothing more to be done herein;
  - f. That, consequently, this file shall be closed and moved to the archives;
  - g. That orders for survey works on the sub-titles created out of North Teso/Kocholia/731 should be sought from the Environment and Land Court or the enabled subordinate courts;
  - h. That the applicants, in the application, dated 21<sup>st</sup> March 2024, shall have costs of this application; and



- i. That any party aggrieved by these orders, has leave, of thirty days, to move the Court of Appeal, appropriately.

27. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**W.M. MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Moses Emong'ole and Dorika Amojong Okedi, respondents, in person.

Advocates

Mr. Kuloba, instructed by MAK & Partners, Advocates for the applicants.

