



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Okeya Omunyin Ebaale (Deceased) (Succession Cause  
236 of 2008) [2025] KEHC 10760 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10760 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 236 OF 2008**

**WM MUSYOKA, J**

**JULY 18, 2025**

**IN THE MATTER OF THE ESTATE OF OKEYA OMUNYIN EBAALE (DECEASED)**

**RULING**

1. The application, dated 3<sup>rd</sup> July 2024, is for confirmation of grant. It is at the instance of Paul Erneo Okeya. I shall refer to him as the applicant. He has identified the survivors of the deceased as himself, and Ludovico Omunyin Okeya. He has listed 14 individuals as purchasers. He proposes distribution of the estate between himself, Ludovico Omunyin Okeya and the 14 individuals. There are no annexures to his affidavit in support.
2. There is a protest by Bonface Juma Epuret. I shall refer to him as the 1<sup>st</sup> protestor. He said he bought 2.5 acres out of South Teso/Amukura/1079, from the deceased, and he moved in and took possession. The deceased died before he could transfer the property to him. He has attached a copy of a sale agreement, allegedly executed by himself and the deceased. He has also attached a copy of a survey report, dated 18<sup>th</sup> July 2023, where he is allocated 0.85 Hectare. He has also attached mutation forms, dating back to 1997, which had proposed distribution and sub-division of South Teso/Amukura/1079 into 5 portions, assigned numbers South Teso/Amukura/2665 to 2669. He would like to be included in the distribution. He avers that all the children of the deceased were listed as purchasers, which he says is not right.
3. There is another protest by Simon Emong'or. I shall refer to him as the 2<sup>nd</sup> protestor. He avers that the land was held for 3 individuals, being Okeya Omunyin, Domiano Enagai and Patroba Singa, but was registered in the name of Okeya Omunyin, to hold on behalf of the others. He avers that the 1<sup>st</sup> protestor bought 2.5 acres from the applicant, but since the land was registered in the name of the deceased, the agreement was done in the name of the deceased. The deceased had subdivided the land into 5 portions, before he died, being number South Teso/Amukura/2665 to 2669. He had obtained the relevant consents but died before transfer could be done. He distributed 7 portions, being numbers South Teso/Amukura/2665 to 2669, plus South Teso/Amukura/2076 and 2077. The 2<sup>nd</sup> protestor has attached copies of letters of consent to support his case.



4. There is an affidavit by the applicant, sworn on 4<sup>th</sup> July 2025, in which he avers that it was him, and not the deceased, who sold land to the 1<sup>st</sup> protestor.
5. The applicant testified first. He said the deceased had only 2 children, being himself and Ludovico Omunyin Okeya. He urged that the distribution should be based on his proposals. He said that his cousins, the sons of his father's brothers had been settled on the land, South Teso/Amukura/1079, after clashes in Mount Elgon in 1992. He named them as Simon Emong'or, Sabencia Asuhuku, Jacinta Monica Omuse, Etyang Singa and Charles Orupi Singa. He also named buyers as Jim Odeke, Daniel Odeke, Patrick Osala, Sammy Brown Nyamunga, Edward Ekisa Papai, Penina Kemuma Okari and Peter Machuki Ongaso, all of who he said were in occupation. He said that a surveyor visited the land, and identified the boundaries of all inside, and that he agreed with the surveyor. He testified that the deceased had distributed the land in 1974. He said he, the applicant, sold land to the 1<sup>st</sup> protestor, in 2007. He said the 1<sup>st</sup> protestor should wait for him to give him his share. He said the land consents and mutations for subdivision and transfer were fakes. He said that he was not aware of that subdivision.
6. The 1<sup>st</sup> protestor followed. He said that he bought land from the deceased on 2<sup>nd</sup> May 1993, and that they signed an agreement; and that the applicant and Ludovico Omunyin were present. He denied entering into any sale agreement with the applicant. He said that the deceased brought a surveyor to the land, obtained consent from the Land Control Board, and a mutation was generated, but the deceased died before transfer could be done. He supported the report by the surveyor, of 18<sup>th</sup> July 2023. He said that the deceased had planted boundaries. He said everyone had been given numbers, after the subdivision, which followed grant of consent by Land Control Board.
7. The 2<sup>nd</sup> protestor was next. He said his father was one of the 3 persons entitled to the land. He stated that the deceased shared the land in 1990, and that he, the 2<sup>nd</sup> protestor, got South Teso/Amukura/2076 out of it. He stated that the deceased retained the rest, being South Teso/Amukura/2075, which he subsequently subdivided into South Teso/Amukura/2665 to 2669. He said that the deceased died before the titles were issued. He said that the land should be distributed in the manner the deceased had distributed it. He said that the land was distributed in the name of the deceased, alone, as the 2 brothers of the deceased had died. He said the 1<sup>st</sup> protestor had bought land from the deceased.
8. Ludovico Omunyin was the last witness. He said everyone should get their share. He said that they got their numbers. He identified the applicant as his younger brother. He said the deceased had distributed the land before he died and had shown everyone their portions. He said that a surveyor visited the land and subdivided the land. Consents by the Land Control Board were granted, and each child got their number. He said his own number was South Teso/Amukura/2668. He said he wanted the land distributed as per how the deceased had done it. He said that the 1<sup>st</sup> protestor bought land from the deceased, as he, Ludovico Omunyin, was an eyewitness to that sale.
9. I have seen and read all the papers filed by the parties hereto, and I saw and heard all of them testify in open court. From what I have seen and heard, I am persuaded that the deceased had distributed the land during his lifetime. He brought a surveyor to the ground, to draw a sketch of the proposed subdivision and distribution, obtained the consent of the Land Control Board, and got mutation forms done. He died before he could do the final act, of transferring the subdivisions to the beneficiaries.
10. This is a case of what is called a lifetime distribution, or the making of gifts *inter vivos*. The law allows the court to recognize such *inter vivos* distributions, including where the deceased had done all what needed to be done, except that he died before completing the final act, the transfer. There is case law on this, in such decisions as *In re Estate of Gideon Manthi Nzioka (Deceased)* [2015] eKLR (Nyamweya,



J), *In re Estate of Nyachieo Osindi (Deceased)* [2019] eKLR (Ougo, J), *In re Estate of Monicab Wambui Nguthiru (Deceased)* [2020] eKLR (Ongeri, J), *In re Estate of Osoro Motori (Deceased)* [2020] eKLR (Ougo, J) and *In re Estate of Kiplangat Kiplanduk* [2020] eKLR (Omondi, J).

11. Consequently, I shall order that the property, South Teso/Amukura/1079, shall be distributed along the lines of the subdivision into South Teso/Amukura/2665, 2666, 2667, 2668 and 2669, and the prior subdivisions which resulted in South Teso/Amukura/2076 and 2077, all caused by the deceased, so that Charles Orupi shall take Teso/Amukura/2665 (2.55 hectares); Paul Okeya Teso/Amukura/2666 (1.59 hectares), Bonface Ojuma Epuret Teso/Amukura/2667 (1.0 hectares), Ludovico Omunyin Okeya Teso/Amukura/2668 (11.72 hectares), Paul Okeya Teso/Amukura/2669 (1.49 hectares), Simon Emong'or Teso/Amukura/2076 (3.91 hectares) and John Omuse Teso/Amukura/2077 (3.83 hectares). As mutations had already been done, the administrators shall cause the land registrar to have the said parcels transferred to the names of the individuals named above.
12. If any of the beneficiaries named above is dead, then those who are entitled to inherit from him shall move for succession to that beneficiary's estate, where distribution shall be done to those entitled. Where any of the beneficiaries had purported to sell any of the said portions to anyone, then the purported buyers shall look up to the said beneficiaries to cause the portion sold to them to be transferred to their names.
13. The grant herein is confirmed along those lines. A certificate of confirmation of grant shall issue accordingly. Thereafter the administrators shall present that certificate of confirmation of grant to the land registrar, with a certified copy of this ruling, for transmission. The administrators have 6 months to cause the estate to be fully distributed as per these orders. There shall be a mention on 10<sup>th</sup> December 2025 to confirm how far they will have gone with the exercise of transmission. Each party shall bear his own costs. In case any party is aggrieved by the orders that I have made in this ruling, I grant leave of 30 days for filing an appeal at the Court of Appeal.
14. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**W M MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Paul Erneo Okeya, the applicant, in person.

Mr. Simon, Emong'or Enagai, the 2<sup>nd</sup> protestor, in person.

Advocates

Mr. Tyson Otieno, instructed by Masiga Otieno & Associates, Advocates for Ludovico Omunyin Okeya.

Ms. Consilatah Masakhwe, instructed by Consilatah Masakhwe & Company, Advocates for Bonface Ojuma Epuret, the 1<sup>st</sup> protestor.

