



**Emuruon v Oporu (Succession Appeal E008 of 2022)  
[2024] KEHC 12592 (KLR) (22 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12592 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION APPEAL E008 OF 2022  
WM MUSYOKA, J  
OCTOBER 22, 2024**

**BETWEEN**

**LAZARO OMUNYIN EMURUON ..... APPELLANT**

**AND**

**DAVID EMORU OPURU ..... RESPONDENT**

*(An appeal arising from orders made in the ruling of Hon. TA Madowo, Senior Resident Magistrate, SRM, in Busia CMCS No. 187 of 2020, of 8th November 2022)*

**JUDGMENT**

1. The appeal herein arises from a decision of the trial court, in Busia CMCS No. 187 of 2020, of 8<sup>th</sup> November 2021. The grounds of appeal revolve around the trial court erring in finding that the appellant and the respondent should co-administer South Teso/Osurette/771; the trial court erring in its evaluation of the evidence, hence coming to wrong conclusions; and the trial court failing to take into account consanguinity in determining who was entitled to inherit South Teso/Osurette/771.
2. The orders, made on 8<sup>th</sup> November 2021, which form the basis of the appeal, were made on an objection to the making of a grant, dated 3<sup>rd</sup> February 2021, and the response to it. The petition for representation in intestate had been made by the appellant, in his capacity as nephew of the deceased. The objection was brought by the respondent in his purported capacity as brother of the deceased. The letter from the local Chief identified the appellant as a nephew of the deceased, being a son of a full-brother of the deceased, while the respondent was a half-brother of the deceased. The court concluded that the 2 were equally entitled to representation.
3. The matter is fairly straightforward, whether the 2 were equally entitled, or whether 1 had priority over the other.



4. The letter from the Chief of Akoreet Location, dated 16<sup>th</sup> November 2020, introduces the family to the court. It is indicated that the deceased came from the family of Oporu Okuta. Oporu Okuta had 2 wives. The deceased was his son from the first wife, while the respondent was a son from the second wife. The appellant was a grandson from the first wife, being a child of 1 of the dead sons of the deceased from that first wife. All the sons in the first house were said to be dead, with 3 being survived by families, and the appellant belonged to 1 of those families. The deceased was said to have had died without a wife and children.
5. The deceased died in 1980, before the [Law of Succession Act](#), Cap 160, Laws of Kenya, came into force. Ideally, customary law should hold sway, but the parties do not appear to have pitched for it, and so the administration and distribution of the estate should be in accordance with the [Law of Succession Act](#).
6. Where a person dies intestate, as in this case, and he is not survived by a spouse and or children, the estate is distributed in accordance with section 39 of the [Law of Succession Act](#), in line with consanguinity. Priority is given to the parents of the deceased, and if they are both dead, then the next in line would be the siblings of the deceased. The siblings of the deceased are lumped together with any child or children of any of the late siblings of the deceased. Where the siblings and their children are all dead, then the next in line would be the half-siblings of the deceased and the children of any half-siblings who are dead.
7. The configuration in section 39 of the [Law of Succession Act](#) would favour the appellant over the respondent, for, as a child of a dead brother of the deceased, he has a prior right to inheritance over a half-brother of the deceased.
8. The right to administration of estates in intestacy is dealt with under section 66 of the [Law of Succession Act](#). That provision sets out a guide, a priority or preference list, which is based on Part V of the [Law of Succession Act](#). Section 39 is in Part V. Where the deceased is not survived by a spouse, children and parents, then the next in line, in terms of entitlement to administration of his intestate estate, should be his siblings and the children of his dead siblings. Such siblings and the children of the dead siblings of the deceased would have priority over any half-siblings of the deceased and children of any of his late half-siblings.
9. Again, the configuration in section 66, as read with section 39 of the [Law of Succession Act](#), would be that the appellant as a child of a dead brother of the deceased would have a prior right to administration in intestacy over a half-brother of the deceased. That is the law. The child of a dead brother of the deceased would have a prior right to inherit the estate, and to administer it, over the half-brother of the deceased. See [In re the Estate of Joseph Gichuki Riunge \(Deceased\)](#) [2016] eKLR (Musyoka, J) and [In re Estate of Gamaliel Otieno Onyiego \(Deceased\)](#) [2018] eKLR (JA Makau, J).
10. The trial court did not properly construe sections 39 and 66 of the [Law of Succession Act](#). The respondent, as half-brother of the deceased, had no right to inherit and administer the estate of the deceased herein, so long as the deceased was survived by children of his dead full-brothers.
11. I find merit in the appeal herein, for the reasons given. I shall, as I hereby do, allow it. The consequence shall be that the orders made on 8<sup>th</sup> November 2022, allowing the objection, in Busia CMCS No. 187 of 2020, are hereby set aside, and substituted with an order dismissing that objection. The dismissal of the objection would mean that the grant of letters of administration intestate, to the estate of the late Asangae Oporu, shall be made to the appellant herein, Lazaro Omunyin Emuruon. There shall be no order on costs.
12. The appeal herein is disposed of in those terms. Let the original trial court records be returned to the relevant registry. The instant file shall be closed. It is so ordered.



**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Mr. Lazaro Omunyin Emuruon, the appellant, in person.

Advocates

Mr. Okutta, instructed by Ouma Okutta & Associates, Advocates for the respondent.

