



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Lazaro Ikolong Ogema (Deceased) (Succession Cause
447 of 2011) [2023] KEHC 23358 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 447 OF 2011
WM MUSYOKA, J
OCTOBER 13, 2023**

RULING

1. When this matter came up for mention on 28th September 2023, Mr. Were, Advocate for the objectors, invited the court to close the file. He stated that orders had been made on 15th July 2014 expunging the only asset listed in the petition from the record, on grounds that it did not belong to the deceased, and, therefore, did not form part of his estate. He asserted that the objectors had no more business in the matter, and if there was no other asset in the estate, the court file should be closed.
2. Mr. Makokha, who is the Advocate on record for the administratrix, did not attend court, and no explanation was offered to counter the submissions by Mr. Were. Mr. Makokha was in court on 14th June 2023, when he pleaded for more time to consult the administratrix over the issue.
3. The property in contention is South Teso/Apokor/1215. According to a certificate of official search filed herein, dated 20th December 2011, the same was registered in the name of Etoro Ogema, on 9th August 1977. There is a letter on record, from the Chief of Kaujakito Location, dated 14th October 2011. It explains that the deceased was a brother of the registered proprietor, and that he and the registered proprietor both occupied South Teso/Apokor/1215. The proprietor died in 1974, leaving the deceased herein in occupation until his death in 2011. The Chief refers to a land disputes tribunal verdict which awarded a portion of South Teso/Apokor/1215 to the widow of the deceased.
4. The grant herein was made to a daughter of the deceased, on 23rd May 2012. She caused South Teso/Apokor/1215 to be distributed on 14th March 2013, between herself and 3 others, vide a summons for confirmation of grant dated 9th January 2013. A certificate of confirmation of grant was subsequently issued, in those terms, dated 15th March 2013.
5. The objectors herein, who ideally are applicants, then filed a summons for revocation of grant, on 11th July 2013, dated 9th July 2013. Their case was that South Teso/Apokor/1215 did not belong to the deceased herein, and, therefore, did not form part of his estate. They asserted that the deceased and their father, Etoro Ogema, were different individuals. They stated that the decision of the land disputes tribunal that the administratrix was relying on had been quashed by the High Court in Busia HCJR No. 8 of 2012. The application was resolved by consent of the parties, vide an order recorded



on 15th July 2014, before F. Tuiyott J. The confirmation orders of 15th March 2013 were set aside, the transmission of South Teso/Apokor/1215 in accordance with those confirmed orders was cancelled, the property was reverted to the name of Etaro Ogema, and South Teso/Apokor/1215 was removed from the schedule of assets in the succession cause herein.

6. A copy of a judgment in Busia ELC No. 43 of 2015, delivered on 27th June 2019, has been placed on record. The suit was between the widow of the deceased herein and a son of Etaro Ogema, over South Teso/Apokor/1215, where the court found that the deceased herein was not entitled to a customary trust in the said property, as none had been established or proved.
7. Since 15th July 2014, nothing concrete has taken place in this succession cause. It has been mentioned severally, in an effort to push the administratrix to have her grant confirmed. As there is no evidence that the estate herein has assets, it would appear that there is nothing to be distributed. There would be no point, therefore, of keeping this cause alive. I shall accede to the request by Mr. Were to formally have the file closed, and moved to the archives.
8. The final orders are that the grant made herein on 23rd May 2012, to Getruda Ilungat Ikolongi, is hereby revoked, for having become useless and inoperative, in terms of section 76(e) of the *Law of Succession Act*, cap 160, Laws of Kenya, for the estate herein has no assets to be administered. The Deputy Registrar shall cause the court file herein to be closed, and thereafter moved to the archives. There shall be liberty to reopen the file, should assets credited to the name of the deceased be traced. There shall be no order on costs. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13TH DAY OF OCTOBER 2023

WM MUSYOKA

JUDGE

