



REPUBLIC OF KENYA



**In re Estate of Bernard Peter Odipo (Deceased) (Succession Cause E008 of 2021) [2025] KEHC 15715 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15715 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE E008 OF 2021  
WM MUSYOKA, J  
NOVEMBER 4, 2025  
IN THE MATTER OF THE ESTATE OF BPO (DECEASED)**

**RULING**

1. On 22<sup>nd</sup> March 2024, I postponed determination of the summons for confirmation of grant, dated 21<sup>st</sup> February 2023, and set aside and appropriated some assets for the purpose of determination of certain issues, relating to them, in separate proceedings, under rule 41(3) of the Probate and Administration Rules. That application is what I am tasked with determining in this ruling.
2. The separate proceedings, in Busia HCMC No. E006 of 2023 (OS), ran their course, and a judgement was rendered, on the issues, on 28<sup>th</sup> November 2024, dismissing the claim. The outcome meant that the issues raised, on separation of the former matrimonial property, in these proceedings, by 1 of the widows, Fridah Eunice Opiyo, were determined, by way of the court ruling that such rights were not reckoned, as matrimonial property rights could only be declared, by the court, during the lifetime of both spouses, and not upon the demise of either spouse. See FEO vs. ACO (Sued as Co-Administratrix of the Estate of the Late BPO) [2024] KEHC 14889 (KLR) (Musyoka, J). The termination of the proceedings, in Busia HCMC No. E006 of 2023 (OS), has paved way for determination of the application, dated 21<sup>st</sup> February 2023.
3. Let me turn to the said application, dated 21<sup>st</sup> February 2023. That application is brought at the instance of Anne Christine Odongo. I shall refer to her, hereafter, where appropriate, as the applicant. She identifies the survivors of the deceased as 2 widows, Fridah Eunice Opiyo and Anne Christine Odongo; 5 daughters, being Judy Mary Odipo, Caroline Wanzala Odipo, Irene Delilah Odoyo Opiyo, Lavender Adoyo Opiyo and Terry Phoebe Okoyo, and 1 son, Oscar Mugar Odipo. The landed assets, proposed for dustbin, are LR No. 209/8336, Loresho, Nairobi; LR No. 36/62/111, Eastleigh, Nairobi; LR No. 209/6599, Jericho, Nairobi; LR No. 209/6599, Kayole, D2-114, Nairobi; LR No. 12596/86 Bilga Limited; Bukhayo/Ebusibwabo/1285, 1371 and 2000; Marachi/Elukhari/15 and 3844; Bukhayo/Malanga/124 and 714; Bukhayo/Bugengi/8105; Plot No. 5 Lugulu Market; and South Teso/Ang'oromo/4247. The businesses proposed for distribution are Travel Planners Limited Nairobi offices; Beer Pot House; and Rand Hotel, Uganda. The motor vehicles proposed for distribution are registration marks and numbers KAE



246K, KTY 373K and UAQ 920U. The moneys, proposed for distribution, are held in the following bank accounts: XXXXXXXXXXX, XXXXXXXXXXX, XXXXXXXXXXX3, XXXXXXXXXXX, XXXXXXXXXXX, XXXXXXXXXXX, XXXXXXXXXXX4 and XXXXXXXXXXX Kenya Commercial Bank; XXXXXXXXXXX Standard Chartered Bank; XXXXXXXXXXX2 Absa Bank; and undisclosed accounts with Stanbic Uganda, Diamond Trust Bank Uganda and Barclays Bank Uganda.

4. On distribution, the applicant has proposed sharing as between the 2 houses, of Fridah Eunice Opiyo and Anne Christine Odongo.
5. To Fridah Eunice Opiyo, and her 4 children, Judy Mary Odipo, Caroline Wanzala Odipo, Oscar Mugar Odipo and Irene Delilah Odoyo Opiyo, she has proposed devolution of the following landed assets: LR No. 209/8336; LR No. 36/62/111, Bukhayo/Ebusibwabo/1285, 1371 and 2000; Marachi/Elukhari/15, Bukhayo/Malanga/124 and Plot No. 5 Lugulu Market. She has also proposed that the Beer Pot House, Nairobi; Travel Planners Limited Nairobi offices; and the Rand Hotel, Uganda be devolved upon them. The motor vehicles allocated to the 1<sup>st</sup> house are KAE 246K and KTY 373K, as well as the moneys in the bank accounts in Uganda and 2 specified bank accounts at the Kenya Commercial Bank.
6. To Anne Christine Odongo, and her 2 children, Lavender Adoyo Opiyo and Terry Phoebe Okoyo, she has proposed allocation of the following lands: LR No. 209/6599 Nairobi; Kayole Nairobi D2-114 No. 209/6599; Bukhayo/Bugengi/8105; Marachi/Elukhari/3844; South Teso/Ang'oromo/4247 and 6441; and Bukhayo/Malanga/714. She has proposed Bilga Limited Nairobi 2596/87 to the 2<sup>nd</sup> house, together with motor vehicle UAQ 920U, plus moneys in 6 specified Kenya Commercial Bank accounts, and those in the Absa and Standard Chartered Bank accounts.
7. There is a consent, in Form 37, signed by the applicant, and her children Lavender Adoyo Opiyo and Terry Phoebe Okoyo.
8. Fridah Eunice Opiyo filed an affidavit of protest, sworn on 6<sup>th</sup> April 2023. I shall refer to her, in these proceedings, hereafter, where appropriate, as the 1<sup>st</sup> protestor. She argues that the application is premature, as the applicant had not sat with her, to agree on the distribution. She also protests that the assets were being proposed to be devolved to her jointly with her children, and suggesting that a devolution to her first, after which she would distribute the same to her children.
9. The 1<sup>st</sup> protestor has made her own proposals on distribution. She proposes devolution of a majority of the landed assets to her and all the motor vehicles, as well as the Rand Hotel in Uganda, the moneys in the bank accounts in Uganda, the moneys in 2 specific Kenya Commercial Bank accounts, and the moneys in the Absa Bank and Standard Chartered Bank accounts. She further proposes that the moneys in 4 specific Kenya Commercial Bank accounts be shared at the ratio of 7:3 between her and the applicant. She proposes that LR No. 209/6599/Jericho, Nairobi; Bukhayo/Bugengi/8105, Marachi/Elukhari/3844 and South Teso/Ang'oromo/4247 and 6441 be allocated to the applicant.
10. She explains that there was no business known as Beer Pot House, as that was a mere business name, which was no longer in use. She further explains that LR No. 209/6599/D2-114 was acquired by her and the deceased in 1984, even before the applicant was born. She further explains that Bukhayo/Malanga/714 was acquired through her joint efforts with the deceased.
11. There is an affidavit, by Oscar Mugar Odipo, a son of the deceased, by the 1<sup>st</sup> protestor, sworn on 17<sup>th</sup> October 2023. He supports the proposals by the 1<sup>st</sup> protestor, and in particular the proposal that the share due to the 1<sup>st</sup> house should be registered in her name first, to facilitate distribution later, to her children. He does not object to the applicant holding the share due to the 2<sup>nd</sup> house in trust, for the benefit of her children, Lavender Adoyo Opiyo and Terry Phoebe Okoyo. On Bilga Limited Plot



- No. 12596/87, he avers that the same could not be distributed, as it was held jointly by him and the deceased, and upon the demise of the deceased, he, Oscar Mugar Odipo, was entitled to it absolutely, on account of his survivorship. He asserts that all the assets, that the 1<sup>st</sup> protestor proposes should be devolved upon her, were acquired by her long before the applicant was married. He has attached a copy of a document showing the directors of an undisclosed company, and a bank statement on 11004805073, Kenya Commercial Bank, in the name of Lavender Adoyo Opiyo, and another bank statement on 111058882, Kenya Commercial Bank, in the name of Terry Phoebe Okoyo.
12. There is a replying affidavit by Irene Delilah Odoyo Opiyo, sworn on 3<sup>rd</sup> October 2023. She is a daughter of the deceased, by the 1<sup>st</sup> protestor. She opposes the proposals by the applicant, arguing that her side of the family was not consulted when the proposals were being conceived. She asserts that she was not aware when the cause was initiated. She points out that the children of her late brother, Julius Maria Odipo, identified as Sophia Agutu Marya and John Russel Marya, were also entitled to a share in the estate. She also expresses opposition to the assets being devolved absolutely to their mother, the 1<sup>st</sup> protestor, given that the children in the 1<sup>st</sup> house are now all adult. She proposes distribution of the assets to all the beneficiaries, including the children, for equality and fairness to prevail.
  13. The 1<sup>st</sup> protestor filed a supplementary affidavit, sworn on 28<sup>th</sup> December 2023. She avers that she married the deceased under customary law, in 1963, and later in church in 1973. They begat 7 children, named as Judy Mary Odipo, John Russell Odipo, Fredrick Argil Odipo, Julius Maria Odipo, Oscar Mugar Odipo, Caroline Wanzala Odipo and Irene Delilah Odoyo Opiyo, being 3 daughters and 4 sons. 3 of the sons are since dead, being John Russell Odipo, Fredrick Argil Odipo and Julius Maria Odipo. She has disclosed the assets that the deceased died possessed of, batched into 2, being those acquired prior to the marriage of the applicant, in 2002, and others acquired up to 2019. She avers that upon her marriage to the deceased, they lived together in Nairobi, where she ran various businesses, which included a shop at Ngara, dealing in footwear, viondo, dressmaking, hairstyling, and tailoring. She has detailed how various assets were acquired and developed. She asserts entitlement to 100% of all those assets acquired during the period of her marriage, to the deceased, especially during the period before he married the applicant in 2002.
  14. She has attached, to that affidavit, a certificate of death of the deceased; a certificate of the marriage ceremony of 1973; certificates of birth for Judy Mary Odipo, John Russell Odipo, Fredrick Argil Odipo, Julius Maria Odipo, Oscar Mugar Odipo, Caroline Wanzala Odipo and Irene Delilah Odoyo Opiyo; documents relating to LR No. 209/8336/180, Bukhayo/Ebusibwabo/1371, Bukhayo/Malanga/124, South Teso/Ang'oromo/6441, Bukhayo/Malanga/714, Bukhayo/Ebusibwabo/2000, Kayole Plot No. D2-114, Travel Planners Limited, Bilga Limited, and assorted others relating to the businesses on footwear, dressmaking and hairdressing.
  15. The applicant replied to that supplementary affidavit, by an affidavit, sworn on 12<sup>th</sup> January 2024. She avers that the 1<sup>st</sup> protestor had sworn previous affidavits, where she had identified the assets which made up the estate of the deceased, in which she did not claim them to be matrimonial property. She asserts that the 1<sup>st</sup> protestor had not obtained a decree declaring the said assets to be matrimonial property that ought to be transferred to her, or saying that they were not available for distribution. The affidavits, sworn previously by the 1<sup>st</sup> protestor, are attached to the affidavit by the applicant.
  16. Evans Leonard Wanga was allowed, on 24<sup>th</sup> April 2025, to come on board, as the 2<sup>nd</sup> protestor, on the basis of his application, dated 25<sup>th</sup> February 2025. He claims to have had bought Bukhayo/Malanga/714 and Plot No. 5 Lugulu Market, from the deceased, in the presence of the 1<sup>st</sup> protestor. The sales are said to have been done in 2019, and the deceased died before he could transfer the assets to his name. He has attached copies of the sale agreements, both dated 4<sup>th</sup> March 2019.



17. Mary Leila Kuchio swore an affidavit, on 25<sup>th</sup> February 2025, to support the protest by the 2<sup>nd</sup> protestor. She avers to have been a witness, when the sales happened, and gives details on how the payments were allegedly made.
18. In rejoinder to the protest by the 2<sup>nd</sup> protestor, the applicant swore an affidavit, on 23<sup>rd</sup> June 2025. She avers that the claim by the 2<sup>nd</sup> protestor was an attempt to defraud the estate, given that the 1<sup>st</sup> protestor had previously filed several affidavits, where she had listed the 2 assets, claimed by the 2<sup>nd</sup> protestor, as assets in the estate of the deceased. She asserts that the 2 assets had been earmarked for her by the deceased, and that her home was designated to be constructed on one of them. She raises issues around lack of a Land Control Board consent. She asserts that the alleged signatures of the deceased, on the sale agreements, were forged. She points out that one of the witnesses, to the sale agreements, was a cousin of one of the Advocates representing the 1<sup>st</sup> protestor, in these proceedings. She called for a cross-examination of the advocate involved in the alleged transactions.
19. The matter was disposed of orally. The oral hearings began on 21<sup>st</sup> June 2023.
20. The 1<sup>st</sup> protestor was the first to take the stand. She adopted her various affidavits, and offered explanations. On Beer Pot House, Nairobi, she explained that it was a business, being ran on rented premises. The business had since ceased. She said that the Kayole plot was bought in 1973, then again said it was bought in 1986. She stated that the plot was not developed. She stated that it ought to be given to her, since it was acquired before the applicant was married. on LR No. 12596/87, Bilga Limited, she stated that it was owned by the deceased, and he used to operate from that plot, which was used as a warehouse. She proposed that it should be given to her sons, Oscar Mugar Odipo and Julius Maria Odipo, as the applicant got married in 2002, while the business was in operation since the 1990s. She stated that Bukhayo/Malanga/714 was acquired by the deceased in 1972, and she proposed that it should devolve upon her. She explained that UAQ 920U was a vehicle in Uganda, used by Rand Hotel, but registered in the name of the deceased. She asserted that the Rand Hotel was a business registered in her name, and for that reason both the Rand Hotel and UAQ 920U ought to be devolved to her.
21. She prevaricated on the moneys in the Standard Chartered Bank account, saying, at first, that it should be given to the applicant, then later that it be released to her, the 1<sup>st</sup> protestor. She explained that the deceased used to hold money there for the education of the children, and that began before the applicant was married. She also prevaricated over the moneys in the Absa Bank account, saying, initially, that the same should devolve upon the applicant, but later stating it should be devolved upon her, the 1<sup>st</sup> protestor, as the account was opened long before the applicant was born. She stated that the Kenya Commercial Bank accounts were opened long before the applicant was married, and the moneys held in them ought to be shared between her and the applicant at the ratio of 7:3.
22. She said that all her children, Judy Mary Odipo, Oscar Mugar Odipo, Caroline Wanzala Odipo and Irene Delilah Odoyo Opiyo, were all adult. She explained that 3 of her children died, and 1 of them, Julius Maria Odipo, had children of his own, who she identified as John Russell Odipo and Sophia Agutu Marya. She stated that she lived with those grandchildren, John Russell Odipo and Sophia Agutu Marya. She said that all her children supported her proposals, save for Judy Mary Odipo, who was supporting the applicant. She said that the applicant was her own niece, being a child of her brother.
23. During cross-examination, she stated that the deceased died in April 2019. She clarified that only 1 of her dead children had children of his own. She identified that child as Julius Maria Odipo. She said that the other 2 dead children did not have children. She identified the applicant as a co-widow, who had 2 children with the deceased, who she named as Lavender Adoyo Opiyo and Terry Phoebe



- Okoyo. She explained that 2 of her children were studying abroad, in United Kingdom and United States of America, and accounts were opened, to hold funds for their education. She explained that similar accounts were opened for the children of the applicant, at Kenya Commercial Bank. She said that the accounts in the names of the children should remain with the children. She stated that Oscar Mugar Odipo signed on her proposal, but the rest of the children did not.
24. She stated that all the assets listed in the petition were registered in the name of the deceased. She said that she wanted the assets devolved to her, and then she would transfer them to the children. She asserted that the assets she acquired with the deceased should not devolve upon the applicant, as she had not contributed to acquire them. She said that only 3 assets were acquired after the applicant was married, and she named them as LR No. 36/62/111 Nairobi, LR No. 209/6599 (12596/87) and Bukhayo/Malanga/714, and that those were the only assets that the applicant ought to be entitled to. She explained that she used to collect rent from LR No. 36/162/111, during the lifetime of the deceased. She further explained that the deceased wanted to put up a home for the applicant, on Bukhayo/Malanga/714, but she objected, and so he built the home for her at Bukhayo/Bugengi/8105 instead.
25. On the property in Uganda, she explained that the deceased operated a hotel business there, with her, but after the deceased died, she went to Uganda, and closed both the business and the accounts relating to it. She said that she closed it as the business could not operate in the name of a dead person. She denied replacing the name of the deceased with her own. She explained that succession proceedings were ongoing, in Uganda, relating to the Uganda estate. She insisted that she was the one solely entitled to the Uganda assets. She said that she did not list the Uganda assets in her papers, and that the same should be handled in the proceedings in Uganda. She insisted that she would not bring the Uganda assets into the proceedings in Kenya. She said she had availed the registration book for UAQ 920U, which was registered in the name of the deceased. With regard to the Uganda assets, she said that the applicant should sit with her, so that they could agree on distribution, after all she was her niece.
26. In re-examination, she said that she used to collect rent on all the assets after their development. She said that the home of the applicant was on Bukhayo/Bugengi/8105, and it was put up for her by the deceased, and stated that she was not claiming a share in it. She said that the applicant operated the bank accounts relating to her own children. She said she was not operating the accounts in Uganda, for they had been closed, although they still had money. She said she would share the funds in them, with the applicant, as she was her niece. She asserted, though, that what was acquired before the applicant was married should devolve to her, the 1<sup>st</sup> protestor, absolutely and exclusively.
27. The applicant followed. She started by confirming that the children, mentioned by the 1<sup>st</sup> protestor, in her papers and testimony, were the children that the deceased had. She explained that the Ugandan bank accounts were at Stanbic Bank, Diamond Trust Bank and Barclays Bank. She said that she and the 1<sup>st</sup> protestor were unable to agree on them, and she did not foresee any agreement between them. She stated that the 1<sup>st</sup> protestor had refused to give details relating to the assets in Uganda. She said the 2 Kenya Commercial Bank accounts in the names of her 2 children should remain with them. She said that she did not access the rents after the deceased died. She explained that the car with Uganda registration numbers was acquired after her marriage to the deceased, and was used to ferry her and her children to school. She said that the 1<sup>st</sup> protestor only took over that vehicle after the deceased passed on. She also stated that the deceased used to deposit moneys into the various accounts, after he married her. She said if the 1<sup>st</sup> protestor insisted on taking all the assets acquired prior to her marriage, then she, the applicant, should get all the moneys deposited into the accounts after she was married, in 2002.



28. During cross-examination, the applicant explained that she was married in 2002, and the 1<sup>st</sup> protestor prior to that. She conceded that the 1<sup>st</sup> protestor and the deceased lived in Nairobi, and had property there. She stated that the Loresho property, LR No. 209/8336, should devolve upon the 1<sup>st</sup> protestor. She asserted that she was entitled to some of the assets acquired between 1963 and 2002, for the matter was in court for division of estate property, and not about the years in marriage. She conceded that she did not contribute to the acquisition of the assets in Nairobi.
29. She stated that although the 1<sup>st</sup> protestor had given her a share in the accounts, in her proposals, she did not agree with those proposals. She stated that the 1<sup>st</sup> protestor collected rent in Nairobi, and farmed on most of the upcountry lands. She stated that she, the applicant, was employed as a teacher, and it was the deceased who took her to college. She said that it was unfair for the 1<sup>st</sup> protestor to collect and keep all the rents, which were quite substantial. She stated that she did not know the amount of money held in the accounts, both in the Ugandan and Kenyan banks. She proposed that the 1<sup>st</sup> protestor and her children could take the money in the Ugandan banks, while she, the applicant, takes the money in the Kenyan accounts. She stated that she did not lay any claim to the Ugandan assets.
30. She stated that the Kayole property was acquired by the deceased before she was married, but the deceased had taken her to it, and told her that it was hers. She said a similar thing about the Bilga Limited property, adding that the deceased had said that she would have the 2, while the 1<sup>st</sup> protestor had the Loresho and Eastleigh assets. On Bukhayo/Malanga/714, she said that it was not for the 1<sup>st</sup> protestor, for she was not involved in its acquisition. She asserted that she, the applicant, was the one who protested to the idea of her home being put up on that property, for the same was a remote location, whereupon the deceased built for her a house on Bukhayo/Bugengi/8105. She said she had no issue with the Ang'oromo plots being given to her. She asserted that a wife, married after acquisition of assets, was entitled to a share in those assets, since they formed part of the estate of the deceased, and her entitlement would be in her capacity as a widow of the deceased.
31. At re-examination, she asserted that the matter in court was about the assets of the estate of the deceased, which were in the name of the deceased. She asserted that the 1<sup>st</sup> protestor was a housewife, and that she, the applicant, had not seen documents demonstrating that the 1<sup>st</sup> protestor had contributed to the acquisition of the assets. She stated that the 1<sup>st</sup> protestor closed the Ugandan accounts when they still had some moneys, and she should have the money in those accounts, as she, the 1<sup>st</sup> protestor, had already initiated succession proceedings on the Ugandan estate, without involving her. She said she, the applicant, should get the money in the Kenyan accounts. She concluded by stating that, if the 1<sup>st</sup> protestor did not agree, then the funds in the accounts, both in Kenya and Uganda, should be shared equally.
32. Oscar Mugar Odipo testified next. He stated that he stood by the contents of his affidavit. He confirmed that all the children of the deceased had been disclosed in the proceedings, and none had been left out. He stated that his mother, the 1<sup>st</sup> protestor, was a widow of the deceased, but contested the status of the applicant, stating that he did not agree with the ruling of the court, of 7<sup>th</sup> December 2022, which had pronounced her to be a widow. He explained that a company would be an asset in the estate of a dead shareholder, adding that Bilga Limited was a subsidiary of Travel Planners Limited, and the deceased was a director in both. He said that he, Oscar Mugar Odipo, was also a director in Bilga Limited, and that after the deceased died, he was left running the company. He stated that he was aware that the 1<sup>st</sup> protestor wanted Bilga Limited to go to her, as she was a director of Travel Planners Limited. He said that he had not attached evidence on the shareholding in both companies. He stated that what was due to the 1<sup>st</sup> house should go to the 1<sup>st</sup> protestor, who would then distribute the assets



- to her children. He said that all the children, of both the applicant and the 1<sup>st</sup> protestor, were entitled to shares in the estate.
33. the 2<sup>nd</sup> protestor was the last witness. He stated that he had bought 2 assets from the deceased, in 2019, and the 2, therefore, did not form part of the estate. He explained that farming was being done on Bukhayo/Malanga/714, and there was cattle on the land, and it was the deceased and the 1<sup>st</sup> protestor who were using the land. He stated that the cattle were taken away by the 1<sup>st</sup> protestor. He stated that he only knew the 1<sup>st</sup> protestor, as the wife of the deceased, and was unaware of the existence of the applicant. He said that he only dealt with the deceased, but the 1<sup>st</sup> protestor was a witness to the transactions. He said that he expected the 1<sup>st</sup> protestor to get him the titles after the deceased died. He said that he did not have the original sale agreements, as he lost them in a bus incident on 15<sup>th</sup> July 2019, after he was drugged. He made reports to the police in Nairobi.
  34. At the close of the oral hearings, the parties were to file written submissions. I have come across 2 sets of written submissions, filed by the applicant and the 2<sup>nd</sup> protestor, which I have read, and noted the arguments made in them.
  35. The deceased died in 2019, long after the *Law of Succession Act*, Cap 160, Laws of Kenya, had come into operation, in 1981. He died intestate, for no will has been brought forth. His estate shall, therefore, fall for distribution in accordance with Part V of the *Law of Succession Act*, specifically sections 32 to 42, which provide for intestate succession.
  36. He died a polygamist, and was survived by 2 widows, children and grandchildren. Some of his children died before distribution of his estate, but they had children of their own surviving them. The relevant provisions, of the *Law of Succession Act*, to be applied to the situation, in the circumstances, should be sections 35(1)(5), 38, 40, 41 and 42.
  37. For the avoidance of doubt, sections 35 (1)(5), 38, 40, 41 and 42 of the *Law of Succession Act* provide as follows:
 

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“ 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.”

“38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

“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.”

“41. Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

“42. Previous benefits to be brought into account

Where—

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

38. Section 35 provides for how the estate of an intestate, that is a person who died without having made a will, is to be handled, where the deceased is survived by a spouse and a child or children. The personal items of the deceased go to the surviving spouse absolutely, meaning that those are not for sharing with the children. After that the net intestate estate, that is the assets that remain after debts, liabilities and administration expenses have been settled, is dealt with as follows. The entire intestate estate would



devolve to the surviving spouse, whether a widow or widower, during his or her lifetime, to hold until termination of life interest, after which the property devolves to the children, who should share the same equally. That, in short, is what section 35(1)(5) says.

39. Life interest refers to the right or entitlement of the surviving spouse to use or utilise the assets of their now dead spouse, for the remainder or rest of their lives. The effect of it is that where the intestate is survived by a spouse and children, the assets are not shared absolutely, at first, between the surviving spouse and the children, for they are devolved first to the surviving spouse, to hold and utilise during the remainder of their lives, or during life interest, and that entails the surviving spouse having access to and the use of the property until they die. It is upon the demise of the surviving spouse that the property would be available for distribution amongst the children, equally, without going through a succession process. The point is, upon an intestacy occurring, where there is a surviving spouse and children, the children are not entitled to access the property immediately, for they have to wait for the termination of the life interest, enjoyed by the surviving spouse. Life interest enables the surviving spouse access to the property for their own benefit, maintenance and sustenance.
40. However, during life interest, the surviving spouse is not entitled to the property absolutely, for the property is not devolved to them absolutely, but to them during life interest or during their lifetime. It does not give them an absolute title to the property. It is for that reason that, under section 37 of the *Law of Succession Act*, a surviving spouse cannot freely dispose of the property, the subject of the life interest, without the consent of the adult children, or without the leave of court. They hold it subject to the interest of the children, who are the ultimate beneficiaries.
41. They hold the property in life interest, in trust for the children. Life interest is, in fact, a continuing trust, in favour of the children, or the ultimate beneficiaries, as envisaged in section 35(5) and 36 of the *Law of Succession Act*. Sections 58 and 81 of the *Law of Succession Act* are also of importance, with relation to continuing trusts. “Continuing” in the sense that it runs throughout the remainder of the life of the surviving spouse, unless the power of appointment is exercised over the property or part of it. Since the holders of the life interest are trustees, they relate in a fiduciary manner with the assets and the ultimate beneficiaries. They bear the ultimate duty of trusteeship, of accounting to the beneficiaries of their trusteeship.
42. Life interest, though, enables surviving spouses, under section 35(2) of the *Law of Succession Act*, to exercise some power, with respect to the property. It is called the power of appointment. They are given the liberty to distribute the assets, the subject of the life interest, amongst the children, the exercise of that power of appointment. The children, the ultimate beneficiaries, may, under section 35(3), apply to court to have an appointment made in their favour, for they do not have to wait until termination of life interest, for them to access a share of the property. Section 35(4) sets out what the court should consider, when faced with such an application.
43. Section 38 provides for how the children are to share the assets of the estate. Section 38 should be read together with section 35(5) of the *Law of Succession Act*. Both provide that the children share equally the estate of an intestate. Section 35(5) applies where there was a life interest, which has terminated; while section 38 applies where there is no surviving spouse. In both events, the children share the assets equally.
44. Section 40 addresses how the estate of a polygamist is to be shared out amongst the various houses of the deceased polygamist. Distribution is according to the houses, depending on the number of children in each house. The assets are divided into units, according to the number of children in each house, plus the surviving spouse in each house, if any. The units represent the total number of children in each house, plus the surviving spouse or widow, if any. After each house is allocated its units, it should



- proceed to share out the assets, according to sections 35 to 38 of the [Law of Succession Act](#), depending on the composition or configuration of each house. If a house has a surviving spouse, with children, then section 35 would apply. If it has a surviving spouse, but no children, section 36 would apply. If it comprises only of children, then section 38 would apply.
45. Section 41 deals with the interest of a child of the deceased, who either pre-deceases the deceased or dies during administration, but is survived by children of his or of her own. We are here talking about the grandchildren of the deceased, whose own parents have died. Such children are entitled to take the share that would have gone to their dead parent. The death of a child of the deceased does not extinguish the share due to that child, especially where that child had children of his or her own. However, where a child pre-deceases the deceased, and he or she had no child or children of their own, then the share that would have devolved upon him or her, were the deceased to pre-decease them, would be extinguished, and nothing would be available for devolution to their estate. Where the child dies after the death of the deceased, but before distribution of the estate of the deceased parent, then that child would be entitled to their share in the estate of their dead parent, to devolve to their estate, for distribution to whoever is entitled.
  46. There are 2 scenarios here. One, under section 41, where the children of the dead child would be entitled to step into the shoes of their dead parent, and take, from the estate of their dead grandparent, what their dead parent was entitled to, were he or she to be alive, without having to go through succession proceedings. Two, where the share due to the dead child of the deceased passes to the estate of the dead child, to be accessed by his or her survivors or successors, be they children or others, in succession proceedings in his or her estate.
  47. Section 42 deals with other benefits or gifts that the survivors might have received from the deceased directly or indirectly. This would include gifts made or transferred inter vivos or during the lifetime of the deceased, gifts made in contemplation of death, and benefits determined by the court as reasonable provision, under Part III of the [Law of Succession Act](#). Such previous benefits ought to be reckoned or considered, during distribution under section 71 of the [Law of Succession Act](#). It is referred to as bringing the said gifts or benefits into the hotchpotch. The idea is to achieve equity in distribution of the estate, so that some survivors and beneficiaries do not benefit overly from the estate, at the expense of the rest.
  48. The provisions that I have discussed above are the ones that shall guide me in distributing the estate herein.
  49. These are confirmation proceedings. Confirmation is provided for under section 71 of the [Law of Succession Act](#). There are 2 aspects to confirmation.
  50. The first is on administration, and it focuses on the administrators. It is an audit of the processes relating to the administrators, in terms of their appointment, discharge of their duties and their future prospects as administrators. The court, at confirmation, ought to consider whether the administrators were properly appointed, so that if they were not, depending on all the other parameters, their grant could be confirmed, but fresh administrators appointed, to replace them, through a fresh process. If they are found to have been properly appointed, they would be confirmed to proceed with the remainder of the administration.
  51. Where it is established that the administrators were properly appointed, the next consideration should be whether they, upon being properly appointed, went about the business of administration properly, and in accordance with the law. If they are found to have proceeded properly, and in accordance with the law, they would be confirmed. If not, they would be removed and replaced. If the finding is that they properly administered the estate, the next consideration should be whether they were still properly suited to continue to act as such, upon confirmation of their grant. The consideration at this stage



- would be whether they would be readily available to continue to discharge the duty of administration. Consideration would be to whether they have, perhaps, become too busy, to discharge the duties, or have relocated to another jurisdiction, and thus unavailable to administer the estate, or have become too old, or too ill to continue the task.
52. Regarding the confirmation of the administratrices, no issue has been raised, concerning them. The 2 were appointed by the court, after objection proceedings were conducted, founded on sections 68 and 70 of the [Law of Succession Act](#). Nothing has been raised about the conduct of either of them, during administration, which should obstruct their confirmation. Nothing has been placed before me, pointing to a possible inability of either of them to carry on the duties of administration, should they be confirmed in these proceedings.
53. The second aspect is about distribution. The court considers the proposals on distribution made. In the event of intestacy, it considers them against the applicable law on distribution. Part V of the [Law of Succession Act](#) would apply to intestate estates of persons dying after that Act came into operation. Customary law, or any other law that applied to intestacy, would apply to estates of persons who died prior to coming into force of that Act. Sometimes there may be no proposals at all. That should not be an excuse for the court not to order distribution. It may still go ahead to distribute the estate, guided by Part V. Where the deceased died testate, the court would distribute the estate in accordance with the proposals or directions made or given in the will of the testator.
54. The proviso to section 71(2) of the [Law of Succession Act](#) is a pointer to what the court considers, in intestacy, and it is whether the administrator had properly ascertained all the persons who are beneficially entitled to a share in the estate, or have a beneficial interest in the estate, as heirs, survivors, dependants, or creditors, and whether the shares of each such person have been ascertained. Again, that ascertainment is guided by Part V of the [Law of Succession Act](#), specifically sections 35, 36, 38 and 39 of the Act.
55. For the avoidance of doubt, the proviso, to section 71(2) of the [Law of Succession Act](#), provides:
- “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.”
56. That provision is complemented and supplemented by rule 40(4) of the Probate and Administration Rules, which states:
- “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.”
57. Let me get to the ascertainment referred to in the 2 provisions above. There are 3 aspects to them.
58. The first ascertainment is of the persons beneficially entitled to a share in the estate. Beneficiaries refer to the persons who are entitled to benefit from the estate. That is the persons with a beneficial interest of some form or other. They could be the survivors referred to in sections 35, 36, 38 and 39 of the Act, or the dependants that sections 26 and 29 refer to, or the creditors mentioned in section 66 of the Act.
59. The second ascertainment is of the assets. The shares that the beneficiaries are entitled to are in the assets of the estate, that is to say the assets available to be shared or distributed. It could be real or personal property, or tangible or intangible property, or moveable or immovable property. The property, that



should be of interest, at this stage, should be the free property of the deceased. That refers to property that the deceased would be otherwise free or at liberty to dispose of by will, that is by way of either sale, gift, or by will or testament. That would be property that is free of encumbrance of any sort. Property which as no lien, charge, prohibition, inhibition, or restriction attached to it would be considered to be free, for distribution purposes. It would include an asset whose ownership is not contested. Ascertainment makes it the business and obligation of administrators to establish and determine that the property is in fact free or available for distribution. Property, which is not free or available for distribution, if distributed at confirmation, nevertheless, would present difficulties to administrators at transmission.

60. The other aspect is that the free property ought to be property that is in the name of the deceased. Most assets are subject to registration, by the State or other agencies. Ascertainment should establish whether the assets, sought to be distributed, are actually registered in the name of the deceased, where the law requires such registration. Distribution, ideally, is about what the deceased legally owned. Beneficial ownership presents complications at transmission. Assets that the deceased had acquired beneficial interest in, by way of purchase, or otherwise, but died before they were transferred or registered in his name, would not be free property, available for distribution at confirmation. The titles, to such property, ought to be perfected, first, by way of transfer or registration, in the name of the deceased or the personal representatives, before they are presented for distribution at confirmation. The duty to cause that perfection lies with the administrators.
61. The third ascertainment is of the shares that have been allocated to each beneficiary. There should be clarity, as to the exact share allocated to each beneficiary. This is about distribution itself. The question should be: What has each beneficiary been given or allocated out of the estate? What are they taking home? Their exact entitlement should be guided by Part V of the *Law of Succession Act*, and in particular sections 35, 36, 38, 39, 41 and 42 of the Act.
62. Regarding the first ascertainment, it would appear that the parties are agreed on the survivors of the deceased, as a category of beneficiaries. There is agreement that the deceased was survived by 2 spouses, each with children. It is also clear that the first surviving widow had 7 children, 3 passed on and 4 survived. Out of the 3 dead children, 1 had children of his own, 2 in number, who are grandchildren of the deceased. The second surviving spouse had 2 children, both surviving, and 1 of them, it would appear, is still of minority age. The total number of the survivors of the deceased have been ascertained to be 2 widows, 6 children, and 2 grandchildren, whose own parent, a child of the deceased, was dead. So far as ascertainment of survivors, as a category of beneficiaries is concerned, it would appear that there is compliance with the proviso to section 71(2) of the Act and rule 40(4) of the Rules.
63. The 2<sup>nd</sup> protestor has presented himself as a beneficiary of the estate, not as a survivor, but as a creditor. He alleges that he bought 2 assets of the estate, shortly before the deceased demised, which were not transferred to his name. The 2 administratrices, in their respective filings, did not ascertain the said 2<sup>nd</sup> protestor, as a creditor or beneficiary, neither did they mention him as one, when they testified orally in court.
64. The question, then, that I have to answer, is whether there was a failure of ascertainment of the 2<sup>nd</sup> protestor as a beneficiary of the estate. I do not think that there was such failure.
65. Firstly, the issue of this alleged beneficiary was raised, for the first time, after the closure of the oral hearings, and after conclusion of the separate proceedings, in Busia HCCM No. E006 of 2023 (OS), on the possibility of separating some assets, including the 2 he claims, where the 1<sup>st</sup> protestor failed in that quest. The confirmation proceedings had to be re-opened, to hear him. Secondly, although the 1<sup>st</sup> protestor was said to have been a witness to those sales, alleged by the 2<sup>nd</sup> protestor, she neither listed



- him as a creditor of the estate, in her filings in court, nor disclosed him as such in her oral testimony in court. Thirdly, the original sale agreements, relating to these 2 sales, were conveniently unavailable, allegedly as they were lost in some incident.
66. Fourthly, the transactions happened suspiciously close to the date of the death of the deceased, so that the deceased had no time to transfer the said properties to the 2<sup>nd</sup> protestor. Fifthly, there were all manner of small anomalies in the 2 sale agreements presented in court. Sixthly, and finally, one of the alleged witnesses, to the alleged sale transactions, was, suspiciously, a cousin of one of the Advocates for the 1<sup>st</sup> protestor.
67. In view, of the foregoing, I am not persuaded that there were genuine sale transactions between the deceased and the 2<sup>nd</sup> protestor, to warrant his being ascertained as a creditor or beneficiary of the estate of the deceased person herein.
68. Regarding the second ascertainment, of the assets available for distribution, there are things that have emerged. One, there is a general consensus on a large number of the assets, that are said to be in the name of the deceased. Two, the applicant, Anne Christine Odongo, has not presented documentary proof, in her application, to ascertain the existence of some of these assets, and their availability for the purposes of distribution. It is the 1<sup>st</sup> protestor, Fridah Eunice Opiyo, who has provided some documents, in her filings, with respect to LR No. 209/8336/180; Bukhayo/Ebusibwabo/1371; Bukhayo/Malanga/124; South Teso/Ang'oromo/6441; Bukhayo/Malanga/714 and Bukhayo/Ebusibwabo/2000, in the form of certificates of official searches, which indicate that these assets are registered in the name of the deceased. I have, though, seen certificates of official searches relating to Bukhayo/Ebusibwabo/1285; South Teso/Ang'oromo/6441; South Teso/Ang'oromo/4247; Bukhayo/Ebusibwabo/1371; Bukhayo/Malanga/714; Bukhayo/Ebusibwabo/2000; Bukhayo/Bugengi/8105 and Marachi/Elukhari/3844, that were filed simultaneously with the petition. Oscar Mugar Odipo has exhibited documents, to his filings, to show existence of 2 bank accounts at Kenya Commercial Bank, being 1104805073 and 1110588887. These are not in the name of the deceased, but of Terry Phoebe Okoyo and Lavender Adoyo Opiyo. I have also seen material on the existence of Plot 5 Lugulu Market.
69. From the material availed, LR No. 209/8336/180; Bukhayo/Ebusibwabo/1371; Bukhayo/Malanga/124; South Teso/Ang'oromo/6441; Bukhayo/Malanga/714; Bukhayo/Ebusibwabo/2000; Bukhayo/Ebusibwabo/1285; South Teso/Ang'oromo/4247; Bukhayo/Bugengi/8105; Marachi/Elukhari/3844; and Plot 5 Lugulu Market have been established to exist, and to be registered in the name of the deceased. The rest of the assets, listed or mentioned in the filings of the parties, or mentioned in their testimonies, whether as landed assets, moneys in bank accounts, motor vehicles, companies and businesses, have not been demonstrated to be in existence, and to be registered in the name of the deceased, as at the time distribution is being proposed, so as to be considered as part of the estate of the deceased, available for distribution, in these proceedings.
70. Three, the 1<sup>st</sup> protestor raised, in her oral testimony, the issue that all the assets acquired by the deceased during her marriage to him, prior to the marriage of the applicant, in 2002, should be considered to be matrimonial property, to whose acquisition she contributed, and should be considered as unavailable for distribution, as that property did not form part of the estate of the deceased herein, to which the applicant should get a share. The 1<sup>st</sup> protestor followed that up with an application, in Busia HCCM No. E006 of 2023 (OS), for separation of that property from the estate. I concluded, in a judgement that I delivered on 28<sup>th</sup> November 2024, reported as FEO vs. ACO (Sued as Co-Administratrix of the Estate of the Late BPO) [2024] KEHC 14889 (KLR) (Musyoka, J), that the said property could not be matrimonial property, as declarations relating to matrimonial property could only be made in the



lifetime of both spouses, as that was not done during the lifetime of the deceased herein, it could not be done after his demise.

71. Four, the 2<sup>nd</sup> protestor, has come up claiming Bukhayo/Malanga/714 and Plot 5 Lugulu Market, on the basis of purchasing them from the deceased. I have addressed this above, and expressed doubts on the authenticity of the alleged sales, for reasons given.
72. Regarding the third ascertainment, of the certainty of the shares allocated to the individuals ascertained as beneficially entitled to a share in the estate, I note that the applicant has endeavoured to allocate the assets to all, except to the grandchildren of the deceased, by his late son, from the 1<sup>st</sup> house, Julius Maria Odipo. Similarly, I see an effort by the 1<sup>st</sup> protestor, to do the same, although she has also left out the children of the late Julius Maria Odipo.
73. So, how should the assets, that have been ascertained to form part of the estate, set out hereabove, at paragraph 69, is to be shared out?
74. Ideally, as the deceased died a polygamist, section 40 of the *Law of Succession Act* should apply. So that, the assets are shared amongst the 2 houses, taking into account the number of children in each house, adding the surviving spouse to the number of children. Distribution would then follow the ratio worked out from that. The 1<sup>st</sup> house comprises of 1 surviving spouse and 4 surviving children. There are 2 surviving grandchildren, from 1 of the 3 dead children of the deceased. The 1 surviving spouse makes 1 unit, the 4 surviving children make 4 units, and the 2 surviving grandchildren, being children of 1 of the dead children, make 1 unit. That house, therefore, comprises of 6 units. The 2<sup>nd</sup> house has 1 surviving spouse, and 2 surviving children. That make up, in aggregate, 3 units. The entire family makes up of a total of 9 units. The ratio generated should be 6:3, or 2:1. The assets should be divided into 9 or 3 units, to be shared in the ratio of 6:3 or 2:1, between the 2 houses. See Kuria & another vs. Kuria [2004] KEHC 725 (KLR) (Musinga, J) and Mary Rono vs. Jane Rono & another [2005] KECA 326 (KLR) (Omolo, O’Kubasu & Waki, JJA).
75. It emerged that the deceased had settled his 2 houses, by establishing homes for them. He settled the 1<sup>st</sup> protestor on LR No. 209/8336/180 Loresho, Nairobi; and the applicant on Bukhayo/Bugengi/8105. As these 2 landed assets are where the deceased established homes for his 2 wives, the 2 properties are, accordingly, allocated to them, subject to life interest. The rest of the assets shall devolve upon the 2 houses at the ratio of 2:1, to be held by the widows, during life interest, and, thereafter, to the children in equal shares.
76. I have indicated, above, that the administratrices have not placed before me material to establish which of the bank accounts listed were in the name of the deceased. Only 2 of the bank accounts were established, through Oscar Mugar Odipo. However, it transpired that they were not in the name of the deceased, but of Terry Phoebe Okoyo and Lavender Adoyo Opiyo. I am reluctant to distribute the moneys, in the rest of the bank accounts, as I have no proof that those accounts belonged to the deceased.
77. There was talk of an estate in Uganda, and that succession proceedings had been initiated there. Other than bare statements, in filings and oral testimonies, to that effect, no tangible evidence was submitted. There is no evidence of the existence of those Ugandan assets, nor of the succession cause allegedly filed in Uganda, with respect to them. Consequently, I shall not tax my mind over them.
78. There was reference to businesses and companies, around Rand Hotel, Bilga Limited and Travel Planners Limited. The issue was not properly articulated. The offices of some of these companies, and the land on which they operate from, were listed as assets. A limited liability company is a separate legal entity from its shareholders. See Salomon vs. A. Salomon & Co Limited (1896) UKHL 1, (1897) AC



32 (Lords Halsbury LC, Herschell & Macnaghten). Property, registered in the name of the company, belongs to the company, and not the shareholders who own the company, or the directors who run it. What is available for distribution is the shares in the company, and not the assets owned by the company. See *Romana Chepkemboi Yego & another vs. Jane Njuguna & another* [2017] eKLR [2017] KEHC 3849 (KLR) and s.. If the beneficiaries wish to share the assets of the company, they would have to dissolve or liquidate the company first. However, such dissolution or liquidation, or winding up, can only be achieved in separate proceedings, not in succession or probate proceedings, but in proceedings founded on companies' legislation, such as the *Companies Act*, Cap 486, Laws of Kenya. See *In re Estates of Gitere Kahura & another (Both Deceased)* [2018] eKLR (Musyoka, J).

79. There seems to be some confusion on directors and shareholders. Shareholders own the company; through the shares they hold in it. Directors are the individuals who run the company, but they need not be shareholders of the company. A probate court, for purposes of distribution of an estate, would be more interested in who the shareholders of the company are, and the number of shares they hold, for it is the share held by a dead shareholder that the court distributes. See *s.Patrick Kibathi Kigwe and 2 others v Charles Kigwe Gathecha* [2015] eKLR ). There should be little relevance, in probate proceedings, on who the directors of the company are or were.
80. The final orders shall be as follows:
- a. That I hereby declare that Fridah Eunice Opiyo, Anne Christine Odongo, Judy Mary Odipo, Caroline Wanzala Odipo, Oscar Mugar Odipo, Irene Delilah Odoyo Opiyo, Lavender Adoyo Opiyo and Terry Phoebe Okoyo, and the 2 children of the late Julius Maria Odipo, that is Sophia Agutu Marya and John Russell Marya, are the survivors of the deceased herein, and, therefore, the beneficiaries of his estate;
  - b. That I declare that the assets ascertained as forming part of the estate of the deceased, and available for distribution are LR No. 209/8336/180, Bukhayo/Ebusibwabo/1371, Bukhayo/Malanga/124, South Teso/Ang'oromo/6441, Bukhayo/Malanga/714, Bukhayo/Ebusibwabo/2000, Bukhayo/Ebusibwabo/1285; South Teso/Ang'oromo/4247, Bukhayo/Bugengi/8105; Marachi/Elukhari/3844; and Plot 5 Lugulu Market;
  - c. That LR No. 209/8336/180 shall devolve upon Fridah Eunice Opiyo, during life interest, and thereafter to her children, the late Julius Maria Odipo, Judy Mary Odipo, Caroline Wanzala Odipo, Oscar Mugar Odipo and Irene Delilah Odoyo Opiyo, equally;
  - d. That Bukhayo/Bugengi/8105 shall devolve upon Anne Christine Odongo, during life interest, and thereafter to her children, Lavender Adoyo Opiyo and Terry Phoebe Okoyo, equally;
  - e. That Bukhayo/Ebusibwabo/1371, Bukhayo/Malanga/124, South Teso/Ang'oromo/6441, Bukhayo/Malanga/714, Bukhayo/Ebusibwabo/2000, Bukhayo/Ebusibwabo/1285, South Teso/Ang'oromo/4247, Marachi/Elukhari/3844 and Plot 5 Lugulu Market shall devolve to the 2 houses at the ratio of 2:1, to be held by the surviving widows, in each house, during life interest, and thereafter to the children, in each house, equally;
  - f. That a certificate of confirmation of grant shall issue to the administratrices, accordingly;
  - g. That the administratrices have 6 months, from the date of this ruling, to transmit the estate herein, in terms of the certificate of confirmation of grant, to be issued in terms of (f), above;
  - h. That the matter shall be mentioned on 19<sup>th</sup> May 2026, to confirm completion of transmission and administration, and to consider closure of the court file herein;



- i. That the administrators shall be at liberty to apply for distribution of the rest of the assets, as soon as they establish proof of their existence;
- j. That each party shall bear its own costs; and
- k. That any party, aggrieved by these orders, has leave of 30 days, to challenge the same, by way of an appropriate appeal, at the Court of Appeal.

81. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT BUSIA, THIS 4<sup>TH</sup> DAY OF NOVEMBER 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gabriel Fwaya, Advocate for the applicant.

Mr. Kuchio and Mr. Shihemi, instructed by Kuchio Tindi & Company and Maloba & Company, Advocates for the 1<sup>st</sup> protestor.

Mr. Sala, instructed by Sala & Mudany, Advocates for Irene Delilah Odoyo Opiyo.

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for the 2<sup>nd</sup> protestor.

