

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 102 OF 2008**

**IN THE MATTER OF THE ESTATE OF OTOGO ORIAMA (DECEASED)**

**RULING**

1. On 14<sup>th</sup> March 2025, I delivered a ruling herein, where I postponed determination of 2 applications for revocation of grant, on the basis that there was no clarity on the assets that comprised the estate, for it was not clear whether South Teso/Chakol/287 and South Teso/Amukura/287 referred to the same asset.
2. A land registration officer, Mr. Collins Liyai Aliela, was presented. He testified that the correct record was that the property was known as South Teso/Amukura/287, measuring about 17 hectares. It was registered in the name of the deceased in 1972. It was then transferred to the name of Leonard Otoo Otiti, as administrator, in the instant cause, in 2010. In 2015, it was transmitted to Petronilla Ikalangole, Elizabeth Barasa, Leonard Otiti Otogo, Antony Apaa, Pascal Oriema, Donald Oriama, Joseph Imai, Antony Omoding, Robert Ochakara, Tobias Makoko and Edwin Munyekenye. The title was closed thereafter, after the transmission, giving rise to new numbers, being South Teso/Amukura/5204 to 5506.
3. The deceased herein had died on 18<sup>th</sup> December 1982. A letter, dated 24<sup>th</sup> June 2008, from the Chief, of Kotur Location, indicated that he died a polygamist, having married 2 wives, both of whom had children. The first wife was said to be Petronilla Ikalungare, and her children were Conselata Amusuguti, Leonard Otiti, Anthony Apaa, Joseph Imai, Catherine Abukala, Christine Ikašiloni, Tobias Makoko and Celestine Akasagala. The second wife was said to be Elizabeth Barasa, and her children were Pascal Oriama, Donald Okado, Anthony Omoding, Robert Ochakara, Electicia Elumata, Everlyne Mukade, Redempta Ajuma and Edwin Munyekenye.

4. Representation to the estate was sought by Leonard Otogo Otit and Donald Okado Oriama, in their capacities as sons of the deceased. They listed all the individuals in the Chief's letter as the survivors of the deceased, and South Teso/Amukura/287 as the property the deceased died possessed of.
5. The grant was confirmed, on an application, dated 4<sup>th</sup> November 2010. Distribution was proposed, amongst the purported 2 widows and the purported 10 sons of the deceased, being Petronilla Ikalungare and Elizabeth Barasa, and Leonard Otit, Anthony Apaa, Joseph Imai, Tobias Makoko, Pascal Oriama, Donald Okado, Anthony Omoding, Robert Ochakara and Edwin Munyekenye. The widows were allocated 1.5 acres each, while the sons got 4.5 acres each, except for Edwin Munyekenye, who was given 3.5 acres. The 7 alleged daughters, that is to say Conselata Amusugutu, Catherine Abukala, Christine Akasiloni, Celestine Akasangala, Electicia Elumata, Everlyne Mukade and Redempta Ajuma, were left out of the distribution. The confirmation happened on 30<sup>th</sup> November 2010, and a certificate of confirmation of grant issued, in those terms.
6. The 2 revocation applications, that I talked about, in my ruling of 14<sup>th</sup> March 2025, were by Mericiliana Nekesa Otogo and Agnes Abukala Opoma. The affidavit in support was by Mericiliana Nekesa Otogo. She averred that the deceased had only 3 children, being herself, the late Francis Obukoli and Agnes Abukala Opoma. She asserted that the persons, to whom the estate was distributed, were actually grandsons of the deceased, and, therefore, her nephews, being children of the late Petro Oriama Otogo. She states that the Chief's letter was misleading. She asserts that the court was lied to. She claims that she and her sister had been given land, by the deceased, yet that was not considered at distribution. She claims that she and her sister were disinherited. Agnes Abukala Otogo swore an affidavit, which was a replica of that by her sister.
7. I have not seen a response to these 2 revocation applications, despite the same having been served. It would appear that the same are unopposed, and the facts deposed in the affidavits, supporting them,

uncontroverted. I shall take it that the facts expressed in them are true and correct.

8. The deceased herein died in 1982, after the Law of Succession Act, Cap 160, Laws of Kenya, had come into force. His estate is, therefore, for distribution in accordance with Part V of the said Act, given that he died intestate. In the scheme of distribution, under Part V, those with prior entitlement to inherit are the surviving spouses and children of the deceased.
9. It is disclosed, by the applicants, that the deceased had only 3 children, the late Francis Obukoli, Mericiliana Nekesa Otego and Agnes Abukala Opoma. The persons who inherited the estate herein were said to be the widows and sons of 1 of the sons of the deceased herein. It is not clear whether that son was the late the late Francis Obukoli, or the late Petro Oriama Otego. It is something that will require clarification. Whatever the case, Mericiliana Nekesa Otego and Agnes Abukala Opoma have entitlement, under Part V, to a share in the estate of the deceased herein, who is their late father, and, under section 66 of the Act, to administration of the estate. Indeed, they have priority to administration, over Leonard Otego Oti and Donald Okado Oriama. Under the Probate and Administration Rules, their consents ought to have been obtained by Leonard Otego Oti and Donald Okado Oriama, which does not appear to have had happened.
10. It would appear that they are married. That does not disentitle them to a share in the estate of their late father. The coming into force, of the Law of Succession Act, in 1981, did away, by virtue of section 2(1)(2), with the application of customary law, for residents of Busia County, which would have discriminated against daughters, whether married or not. The Law of Succession Act makes no discrimination at all, between sons and daughters. It treats them all equally, as children of the deceased. See sections 35(5) and 38.
11. That equality principle is reinforced by Article 27 of the Constitution, which bars discrimination of women, on the basis of

their gender and marital status. Any act, which contravenes or is inconsistent with a provision of the Constitution, including Article 27, is rendered invalid by Article 2(4) of the Constitution. See *Wanjiru & 4 others vs. Kimani & 3 others* [2021] KECA 362 (KLR) (W Karanja, HA Omondi & Laibuta, JJA).

12. The proceedings conducted herein were on a very slippery path, for they were in total contravention of the Constitution and the Law of Succession Act. Mericiliana Nekesa Otogo and Agnes Abukala Opoma were discriminated against, because they were women and were married. That act of discrimination contravened Article 27 of the Constitution, and the entire proceedings became invalid, on account of Article 2(4) of the Constitution. They were also founded on a lie, that the persons in the proceedings were, in fact widows and children of the deceased, when, in reality, they were daughters-in-law and grandchildren of the deceased. Such blatant lies are frowned upon by section 76 of the Law of Succession Act, and a grant, founded on them, cannot stand.
13. I need not go on. The proceedings, conducted herein, up to the confirmation of the grant, were a nullity, including the whole process of obtaining the grant herein. The said grant is a nullity, and so is its confirmation.
14. Consequently, the orders that I make herein, to dispose of the said applications, dated 1<sup>st</sup> July 2021 and 15<sup>th</sup> June 2024, are:
  - a) **That I hereby revoke the grant that was made herein on 3<sup>rd</sup> February 2009, to Leonard Otogo Otiti and Donald Okado Oriama;**
  - b) **That I also set aside the confirmation orders that were made herein, on 30<sup>th</sup> November 2010, confirming that grant, and I order cancellation of the certificate of confirmation of grant that was issued, based on those confirmation orders, also dated 30<sup>th</sup> November 2010;**
  - c) **That I also nullify and invalidate any and all transactions conducted on the strength of the certificate of confirmation of grant, dated 30<sup>th</sup> November 2010,**

including the transmission of South Teso/Amukura/287;

- d) That I hereby direct the Busia Land Registration Officer to cancel the titles created out of South Teso/Amukura/287, being South Teso/Amukura/5204 to 5506, and to restore the property to South Teso/Amukura/287 in the name of the deceased herein; and
- e) That the matter shall be mentioned, on 17<sup>th</sup> February 2026, for appointment of new administrators, who shall, within 90 days of their appointment, move for confirmation of their grant, to distribute South Teso/Amukura/287 afresh

15. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT  
BUSIA, THIS 22<sup>ND</sup> DAY OF DECEMBER 2025.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Makokha, instructed by JP Makokha & Company, Advocates for Mericiliana Nekesa Otego and Agnes Abukala Opoma.**