

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 56 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPHAT
IMWANA OKOKI (DECEASED)

RULING

1. On 22nd March 2024, I delivered a ruling on an application, dated 7th July 2023, which was for confirmation of grant. That ruling did not dispose of the confirmation application, as I raised, in it, 7 questions, which required clarification, and I postponed determination of that application, vide section 71(2)(d) of the Law of Succession Act, Cap 160, Laws of Kenya, pending filing of affidavits on the clarifications.
2. The issues begging for clarification were set out in paragraph 14 of the said ruling, and they were:
 - (a) Why he is proposing distribution of only 1 asset, instead of the 3 listed in his petition;
 - (b) If the other 2 assets are still in the name of the deceased, or in the name of the administrator as administrator, then the administrator should propose them for distribution;
 - (c) Why he has not provided for Remigius Ebu Imwana;
 - (d) Whether the deceased had daughters, and why have they not been disclosed, and provided for;
 - (e) Why he has not honoured the judgement in Busia ELC No. 13 of 2015 (OS);
 - (f) Who is Patrick Barasa, what is his interest in South Teso/Asinge/1019, and why is it that Patrick Barasa has not been involved in these proceedings;
 - (g) What are the claims by St. Anne Ekipor Primary School, Joel Chokore Stephen, David Omusungu

Ekodoi and Oporu Ebu Elalai, and whether their claims have been settled; among others.

3. Some of the parties filed various affidavits thereafter.
4. Lawrence Barasa Imwana filed one on 29th May 2024, in response to those questions. He explained that the deceased, during his lifetime owned 3 assets, being South Teso/Asinge/709, 764 and 1019. He subsequently gave South Teso/Asinge/709 to his son Remigius Ebu Imwana who took possession, and established a home there. He also gave a portion of South Teso/Asinge/1019 to Lawrence Barasa Imwana, and sold a portion to Saferio Daniel Elalai, whose son: Oporu Ebu Elalai, took possession of the devised portion. That left the deceased with South Teso/Asinge/764, where his homestead stood and where the entire family lived, and had shares.
5. He further explained that as at the time of his death, South Teso/Asinge/709 and 764, were still in his name, while South Teso/Asinge/1019 had been transferred to the name of Lawrence Barasa Imwana, in 1972. He explained that he had not made provision for Remigius Ebu Imwana, in his confirmation application, by error, as Remigius Ebu Imwana had been given South Teso/Asinge/709, by the deceased, and it was only that that parcel of land was never transferred to Remigius Ebu Imwana during the lifetime of the deceased. He stated that Remigius Ebu Imwana would be included as a beneficiary, and South Teso/Asinge/709 devolved to him.
6. He disclosed that the deceased had 4 daughters, being Margaret Tata Otwani, Regina Ekilenya Okopiro, Nowelina Imojong and Magdalene Akisa Imwana. He stated that the 4 were aware of the proceedings, and they were not entitled to a share in the estate, after all they were aging and settled. He

stated that he had filed a consent, duly executed by them, repudiating their claim to the estate.

7. On the matter of the judgement in Busia ELC No. 13 of 2015 (OS), in favour of Saferio Daniel Elalai, he acknowledged that judgement, but explained that there was a difficulty with implementing it. Moreover, he argued that the implementation of that judgement was not the business of the probate court, since the land did not form part of the estate of the deceased.
8. Regarding Patrick Barasa, he explained that he was his son and a grandson of the deceased, who was not entitled to participate in the succession proceedings, but he had registered cautions against South Teso/Asinge/1019, to save it from interference, by undisclosed persons. He explained that St. Anne Ekipor Primary School was entitled to 4 acres in South Teso/Asinge/764; Joel Chokore Stephen was entitled to 6 acres out of South Teso/Asinge/764 and Oporu Ebu Elalai was entitled to a portion of South Teso/Asinge/1019 pursuant to the court order in Busia ELC No. 13 of 2015 (OS), but he had no claim to South Teso/Asinge/764.
9. On the distribution of South Teso/Asinge 764, he stated that portion of it had been given to him and Remigius Ebu Imwana, by the deceased, despite he and Remigius Ebu Imwana also being given South Teso/Asinge/709 and 1019. He stated that Remigius Ebu Imwana had been given 7 acres out of South Teso/Asinge/764, out of which he sold 4 acres to St. Anne's Ekipor Primary School and retained 3 acres, which he was still using.
10. On the claim by Vincent Ochabo Omukaga, he noted that Vincent Ochabo Omukaga had filed Busia CMC ELC No. 165 of 2019, which was dismissed. He then filed a summons

for revocation of grant herein, on 2013, which he had not prosecuted.

11. He proposed distribution in the following terms: South Teso/Asinge/709 to Remigius Ebu Imwana; and South Teso/Asinge/764 to St. Annes Ekipor Primary School, 4 acres, Joel Chokore Stephen, 8 acres, David Omusungu Ekodoi, 6 acres, and 34 acres to Lawrence Imwana Okoki.
12. I trust that the clarifications sought in my ruling of 22nd March 2024 have been adequately given. I am to understand that the deceased died possessed of the 3 assets listed in the petition, being South Teso/Asinge/709, 764 and 1019. Since then, South Teso/Asinge/1019 was subjected to litigation in Busia ELC No. 15 of 2015 (OS), and a decree was passed, awarding a portion of South Teso/Asinge/1019, to Oporu Ebu Elalai. I understand that the decree, passed on 13th October 2020, is yet to be implemented or executed.
13. I have seen the certificate of official search for South Teso/Asinge/1019, dated 17th January 2018. It contradicts the averment that South Teso/Asinge/1019 was registered in the name of Lawrence Barasa Imwana in 1972, for, as at 17th January 2018, it was still registered in the name of the deceased. It is still an estate asset. By virtue of the decree, in Busia ELC No. 13 of 2025 (OS), $\frac{1}{2}$ of it still belongs to the estate, while the other $\frac{1}{2}$ belongs to Saferio Daniel Elalai. That $\frac{1}{2}$ share due to the estate is still available for distribution in these proceedings.
14. The matter was disposed of by way of *viva voce* evidence.
15. Violet Lamu was the first to testify. She was the Land Registrar, responsible for Busia County. She brought the register for South Teso/Asinge/1019. She said that it was originally registered in the name of Josephat Imwana Okoki,

and it measured 17.5 hectares. An attempt to subdivide it into 2, in 1991, was rejected, and it remained in the name of Josephat Imwana Okoki, the deceased herein.

16. Lawrence Barasa Imwana followed. He was a son of the deceased. He stated that he, David Musungu, Joel Chokore and St. Anne Ekipor Primary School occupied the land. He stated that Vincent Ochabo Omukaga had filed a case against him, over the land, being Busia CM ELC No. 165 of 2019, claiming South Teso/Asinge/764, and that that case was dismissed. He stated that Miltone, Peter and Mollyfield also claimed the land, although they did not occupy it. He said Remigius Ebu Imwana was a son of the deceased, who was entitled to 7 acres out of South Teso/Asinge/709, and who lived on the land. The land had been given to him by the deceased, but he sold it to St. Anne's Ekipor Primary School. He said Patrick Barasa was his son, who wanted him to give him South Teso/Asinge/1019, which the deceased had given him, Lawrence Barasa Imwana. He said that the deceased had 5 daughters, being Margaret Tata Otvani, Regina Ekilenya Okopiro, Nowelina Imojong, Susan Amete Mukadi and Magdalene Akisa Imwana. He stated that he had sat with the 5 daughters, and pledged to give them land, after the cases end. He said they did not come to court to testify, as they did not have fare.

17. During cross-examination, he stated that he and Saferio Daniel Elalai had Busia ELC No. 13 of 2015 (OS), which was over South Teso/Asinge/1019. It was held, by the court, in that case, that Saferio Daniel Elalai was entitled to 1/2 of South Teso/Asinge/1019, on 13th October 2020. He said he had challenged that decision on appeal. He said that South Teso/Asinge/1019 was occupied by a son of Saferio Daniel Elalai, known as Francis Ebu. He said Vincent Ochabo Omukaga was claiming a portion of South Teso/Asinge/764. He said that he resided on South Teso/Asinge/764. He identified the other occupants as David Omusungu Ekodoi,

Joel Chokore; and his children, said to be Henry Barasa, Patrick Barasa, Godfrey Barasa and Crispus Barasa. He identified David Omusungu Ekodoi and Joel Chokore as purchasers.

18. He said that there were 10 claimants, among them being Milton Omuse, Peter Omukaga, Mollyfield Kaunya and Vincent Ochabo. He said he did not know Justo Barasa Okoki, Omukaga Opili and Okoki Osubera. He said Milton Okoki was his uncle. He said he did not know Samuel Opili Ochabo, nor Osoma Opili, Charles Kaunya Kapolon, Timotheo Kapolon Kaunya, Atworo Okapolon and Karakacha Okoki. He said Vincent Ochabo had his own land, at Ngelechom. He described him as a stranger, who was not related to the family. He said the case by Vincent Ochabo, in Busia CMC ELC No. 165 of 2019, was dismissed.
19. David Omusungu Ekodoi testified next. He said that he lived on South Teso/Asinge/764, where he occupied 6 acres, which had been bought by his father, who died in 2008. He said the land was bought in 1981, when he was a child, but he did not produce a sale agreement. He said he was 12 years old, when the land was bought, and that he was raised on the land. He said that the land was bought from Lawrence Barasa Imwana, a son of the deceased.
20. Remigius Ebu Imwana testified next. He was also a son of the deceased. He explained that South Teso/Asinge/1019 belonged to the estate, as it was still in the name of the deceased. He asserted that it was Lawrence Barasa Imwana, who could explain why the land was not given to Saferio Daniel Elalai, despite the court awarding a portion of it to him. He also stated that South Teso/Asinge/764 also belonged to the deceased, having been given to the deceased by his own father, who was his grandfather, Esuberi Okoki. He said that he, Remigius Ebu Imwana, was given 7 acres of the land, in 2008, after his father had died in 1997. He said it

was Lawrence Barasa Imwana, who gave him the land verbally. He then sold 4 acres to St. Anne Ekipor Primary School. He described Vincent Ochabo as a clansman. He said South Teso/Asinge/764 was occupied by Joel Chokore, David Omusungu Ekodoi, Lawrence Barasa Imwana and St. Anne Ekipor Primary School. He said South Teso/Asinge/764 was 53 acres, out of which 34 acres were given to Lawrence Barasa Imwana, which he was holding in trust for other beneficiaries, including daughters.

21. Saferio Daniel Elalai testified next. He said his son was in occupation of South Teso/Asinge/1019. He said he had bought the land from the deceased.

22. Vincent Ochabo Omukaga followed. He said South Teso/Asinge/764 was registered in the name of the deceased, in 1985, when he was 23 or 24 years old. He stated that the register did not show the deceased as a trustee, but there was a trust, arising from their grandfather. He stated that he had filed Busia ELC No. 165 of 2019, with Justo Obarasa Okoki, over South Teso/Asinge/764. The case was dismissed, as they did not have enough documents. He said that he did not appeal. He stated that he had no claim over South Teso/Asinge/1019.

23. At the close of the cases by the sides who had filed papers, I directed that the daughters be presented, so that they could state their respective positions. Margaret Tata Otwani, Regina Ekilenya Okopiro, Susan Amete Mukadi and Magdalene Akisa Imwana were availed on 7th April 2025. Margaret Tata Otwani, Regina Ekilenya Okopiro, Susan Amete Mukadi and Magdalene Akisa Imwana all stated that they wanted to get their share of their father's estate. Nowelina Imojong was not in court, and the matter was mentioned, on 24th April 2025 and 21st May 2025, for her to attend court, but, in the end, she did not come to court.

24. At the end of it, I directed the parties to file and exchange written submissions. The only submissions I see on record are by Omusungu Epoloyo. I have read them and noted the arguments made in them.
25. The matter is for confirmation of the grant and distribution of the estate, under section 71 of the Law of Succession Act, Cap 160, Laws of Kenya. There are 2 aspects to confirmation, relating to the position of the administrators and distribution.
26. On the administrators, the court is expected to confirm the administrators, simultaneously with confirming the distribution. The parameters are whether the administrators had been properly appointed; whether, on appointment, they had administered the estate in accordance with the law; and, should they be confirmed, whether they would administer the estate in accordance with the law.
27. The proposed distribution is contested by several individuals. Saferio Daniel Elalai and Vincent Ochabo Omukaga filed affidavits in protest. Saferio Daniel Elalai had filed a suit against the administrator, over an asset of the estate, and he succeeded in that quest. Vincent Ochabo Omukaga had also filed a suit against the administrator, which he lost. There was a claim that, other than the 2 sons disclosed in the petition, there were creditors who had not been acknowledged. Those acknowledged were St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai. That suggested that there was non-disclosure or concealment of certain individuals; which is a fertile ground for revocation of a grant, by virtue of section 76 of the Law of Succession Act, and it is a pointer that there were problems with the process of appointing the administrator.

28. It also emerged that the deceased had 5 daughters. Indeed, he had more daughters than sons. The sons were a minority. The 2 sons were disclosed, but the existence of the 5 daughters was concealed from the court. The non-disclosure, of the 5 daughters, was another fertile ground, upon which the grant could be revoked, under section 76 of the Law of Succession Act, and a basis for concluding that the administrator was not properly appointed.
29. Did the administrator properly administer the estate, upon being improperly appointed? Administration is about ascertaining the persons beneficially entitled to a share in the estate, be they survivors of the deceased or creditors, according to the proviso to section 71(2) of the Law of Succession Act and rule 40(4) of the Probate and Administration Rules.
30. From the material on record, the administrator continued to conceal the existence of the daughters, and to generally treat them as persons who were not entitled to a share in the estate, yet the Law of Succession Act does not discriminate against daughters, and accords them the same rights as sons, by dint of section 38 thereof. Daughters should not be at the mercy of the sons. It should not be up to the sons to extend charity or generosity to the daughters, by allocating to them whatever share they, the sons, fancy.
31. The law commands equal distribution, in sections 35(5) and 38 of the Law of Succession Act, as read with Article 27 of the Constitution, and that is what the daughters should get. See *Wanjiru & 4 others vs. Kimani & 3 others* (Civil Appeal 36 of 2014) [2021] KECA 362 (KLR) (W Karanja, HA Omondi & Laibuta, JJA). The fact that the administrator does not cater for the 5 daughters, in his proposals on distribution, would mean that he has not properly ascertained the beneficiaries, and their beneficial interests in the estate, contrary to the proviso to section 71(2) of the

Law of Succession Act and rule 40(4) of the Probate and Administration Rules, and he has failed in the discharge of his duties, as administrator.

32. The deceased had sold land to Saferio Daniel Elalai. Yet, the administrator did not acknowledge Saferio Daniel Elalai, in the petition, and in the distribution proposals at confirmation. After being concealed, in the petition, Saferio Daniel Elalai, sued, and got a favourable judgement. That judgement was rendered in 2020, and to date, December 2025, that judgement is yet to be implemented. Saferio Daniel Elalai has not enjoyed the fruits of his judgement. It was the role of the administrator to cause implementation of that judgement. He has done nothing so far. He claims that he has appealed against that judgement, but he has not attached any appeal papers.

33. The administrator claims South Teso/Asinge/1019 is not part of the estate, yet that property is still registered in the name of the deceased, and he listed it in the schedule of the assets of the estate, in the petition. One would wonder, at what stage it ceased to be an asset in the estate. It is still an asset of the estate, with one portion being a liability, due to Saferio Daniel Elalai. Liabilities and assets, collectively, constitute the estate, and there is a duty, on administrators, to settle liabilities. The portion, sold to Saferio Daniel Elalai, constitutes Saferio Daniel Elalai a liability, and imposes a duty on the administrator to settle that liability. The administrator herein clearly does not understand his role, and he is clearly unwilling to discharge his duties as such.

34. The issue of Vincent Ochabo Omukaga is more straightforward. He claimed that South Teso/Asinge/764 was ancestral land, registered in the name of the deceased, in trust for other relatives. However, Vincent Ochabo Omukaga sued over that land, but lost the suit. I doubt that

he can agitate a claim here, at the probate court, having lost the battle at the right court, the land court.

35. The probate court is not a land court, in the sense that it has no jurisdiction to determine questions relating to title to land. The proper place, for that, is at the Environment and Land Court, or the enabled Magistrate Court, by virtue of Articles 162(2) and 165(5) of the Constitution, section 9(a) of the Magistrates' Courts Act, Cap 10, Laws of Kenya, and sections 2 and 150 of the Land Act, Cap 280, Laws of Kenya. The suit, that he had filed, in Busia CMC ELC No. 165 of 2019, was at the appropriate forum, for the purpose of determination of those issues. He lost in that court or forum, but did not appeal. That issue cannot now be re-litigated in the probate court, at confirmation of grant, or at revocation of grant. It is water under the bridge, for it is *res judicata*.

36. The material, that has emerged from the confirmation proceedings, is that the administrator, Lawrence Barasa Imwana, was appointed in proceedings that were defective, and that were heavily tainted with fraud, non-disclosure and concealment of matter from the court. He was not properly appointed. Secondly, the same material points to the administrator not having properly discharged his duties appropriately, or in accordance with the law. He does not merit, in the circumstances, confirmation as an administrator.

37. Let me now revert to the issue of distribution. The proviso to section 71(2) of the Law of Succession Act and Rule 40(4) of the Probate and Administration Rules require that the court should not confirm a grant until it is satisfied that the administrator has ascertained all the persons beneficially entitled to a share in the estate, and has ascertained their respective shares. The issue of ascertaining shares obliquely introduces the matter of the ascertainment of the assets that ought to be the basis for the sharing.

38. As seen above, the administrator did not disclose his 5 sisters. He did not ascertain them, and he did not allocate to them shares in their father's estate. Secondly, he did not ascertain his brother, Remigius Ebu Imwana, neither did he allocate any share to him. He equally did not acknowledge the decree-holder, with respect to Busia HCC No. 15 of 2015 (OS), over South Teso/Asinge/1019, Saferio Daniel Elalai. He also did not acknowledge the individuals and the entities that he listed as liabilities, in the petition, being St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai. Some of these individuals, who had been concealed, filed protests. The names of the rest came up in the filings, the ruling of 22nd March 2024, and the testimonies at the oral hearing.
39. It emerged that the deceased had 7 children, being 2 sons and 5 daughters. He died in 1997, after the Law of Succession Act had come into force, in 1981. His estate has to be distributed strictly in terms of Part V of the Law of Succession Act. Section 38 provides for equal distribution of the estate, amongst the children, regardless of their gender and marital status. Section 38 should be read together with Article 27 of the Constitution, which states the equality principle, and bars discrimination founded on gender and marital status. See *Wanjiru & 4 others vs. Kimani & 3 others* (Civil Appeal 36 of 2014) [2021] KECA 362 (KLR) (W Karanja, HA Omondi & Laibuta, JJA).
40. The only time, a person entitled to a share in the estate of an intestate, is excluded from the distribution, is where such beneficiary or survivor has renounced their share or interest. None of the survivors of the deceased, that is the other son and the 5 daughters, has renounced their interest. They should have been ascertained and allocated their rightful entitlement, in accordance with section 38 of the Law of Succession Act.

41. Saferio Daniel Elalai has a decree issued by a competent court of law. It is alleged that there is an appeal. There is no proof of existence of such an appeal. The decree was passed in 2020. No satisfactory reason has been rendered, by the administrator, who should have implemented that decree, to explain why the decree has not been satisfied to date, that is December 2025, 5 years after it was passed. South Teso/Asinge/1019 is still registered in the name of the deceased. Liabilities of an estate are settled through or by the administrator of the estate, and there is no reason why the portion of South Teso/Asinge/1019, decreed to David Omusungu Ekodoi, by the court, in Busia ELC No. 15 of 2015 (OS), cannot be devolved to him, in these proceedings.
42. Vincent Ochabo Omukaga did not establish his claim, in Busia CMC ELC No. 165 of 2019, which was the proper forum for him to ventilate those claims. He should not be reckoned as a liability and beneficiary of the estate, in these proceedings, in the circumstances.
43. St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai were listed in the petition as liabilities. The 4 are said to occupy South Teso/Asinge/764. Whereas St. Anne Ekipor Primary School was said to have occupied the land upon buying a portion from Remigius Ebu Imwana, the circumstances under which Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai came to be in possession were not explained. St. Anne Ekipor Primary School was said to occupy 4 acres, yet the acreage occupied by Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai was not disclosed.
44. I shall presume that Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai all acquired the portions, that they occupy, from the children of the

deceased. These 4 acquired their interests after the deceased had died, through the sons. The grant had not been confirmed, hence the transactions were, from a legal perspective, null and void, by dint of section 82(ii) of the Law of Succession Act, which declares that immovable assets of the estate are not to be sold before the grant is confirmed. Secondly, sales of estate land, conducted contrary to section 82(ii) of the Law of Succession Act, also amounted to intermeddling with the estate, which is a criminal offence, under section 45 of the Law of Succession Act, for which those involved could be, upon conviction, fined, or jailed, or both. That is to say St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Opuru Ebu Elalai intermeddled with the estate of a dead person, and engaged in criminality.

45. The 4 are not beneficiaries of the estate, nor liabilities of the estate, but liabilities of those who sold the land to them. They should look up to those who sold the land to them. Upon confirmation of the grant, and transmission of the estate, they should pursue those who sold the land to them, for what is due to them from those sales.

46. Milton Omuse Okoki, Peter Omukaga and Mollyfield Kaunya filed a summons for revocation of grant in 2013. That application was partially heard, on 15th February 2016, when Tuiyot J took evidence from Milton Omuse Okoki. At the end of it, Tuiyot J advised the 3 that their claim was in the nature of a trust, and that they could consider moving the Environment and Land Court, appropriately. Milton Omuse Okoki indicated that they would take that option. The cause was stayed, for 90 days, to enable the 3 move the Environment and Land Court. It would appear that the Environment and Land Court was not moved, within the 90 days, and the said revocation application was re-listed for hearing, on 23rd November 2021, 9th February 2022, 24th March 2022, 7th June 2022 and 29th November 2022.

47. Eventually, the administrator filed the summons, dated 7th July 2023, for confirmation of the grant. There is an affidavit, sworn on 23rd October 2023, which attests to service of the confirmation application, on Milton Omuse Okoki, Peter Omukaga and Mollyfield Kaunya. They never filed papers, in reply to the confirmation application, and did not participate in the confirmation proceedings, and they never sought to pursue their revocation application thereafter. It shall be presumed that they abandoned the said revocation application.
48. After reviewing all the material above, it would be my conclusion that the persons ascertained to be the beneficiaries of the estate herein, are the 7 children of the deceased, and Saferio Daniel Elalai. The assets available for distribution are South Teso/Asinge 709, 764 and 1019.
49. On distribution, the administrator asserts that only South Teso/Asinge/709 and 764 are available for distribution, for South Teso/Asinge/1019 had been distributed by the court. I have discussed that issue above. The position, taken by the administrator, on South Teso/Asinge/1019, cannot be correct, for the court only gave Saferio Daniel Elalai $\frac{1}{2}$ of that property, the other half remains with the estate. Since the share due to Saferio Daniel Elalai has not been transferred to him yet, it can still be devolved to him in these proceedings, as a way of implementing the order in Busia ELC No. 150 of 2015 (OS).
50. The administrator also alleges that South Teso/Asinge/709 and 764 had been distributed by the deceased *inter vivos*, to him and Remigius Ebu Imwana. Remigius Ebu Imwana does not appear to agree with that. He says that it was the administrator who gave him South Teso/Asinge/709, and a portion of South Teso/Asinge/764, in 2008, after the deceased had died in 1997. That was not

lawful, for distribution of land can only be by an order of the court in confirmation proceedings. No evidence was led on the alleged *inter vivos* distribution, alluded to by the administrator, and it is my finding that there was no *inter vivos* distribution, hence I shall have to distribute the estate strictly in accordance with Part V of the Law of Succession Act.

51. No confirmation proceedings had been conducted in 2008. Indeed, this succession cause did not commence until 2013. The administrator only became an administrator on 24th October 2013. The property did not vest in him in 2008, by virtue of Section 79 of the Law of Succession Act. He had no legal authority to give land to anyone, and he had no land to give. Whatever was done in 2008, could only be in the realm of intermeddling, going by the provisions of section 45 of the Law of Succession Act.

52. So, how is the property to be distributed?

53. The rights of creditors precede those of survivors, for debts and liabilities ought to be settled first, before the assets are distributed amongst the survivors. That is the purport of section 83 of the Law of Succession Act. The survivors are, in other words, entitled to the surplus, or the net intestate estate, after settlement of debts, liabilities and administration expenses. See generally, sections 35 and 38 of the Law of Succession Act.

54. The only proven liability, or creditor, of the estate is Saferio Daniel Elalai. He that holds the decree in Busia ELC No. 15 of 2015 (OS). He was awarded, by the court, in that case, $\frac{1}{2}$ of South Teso/Asinge/1019. That shall be devolved to him first. The remainder, that is to say the other $\frac{1}{2}$ of South Teso/Asinge/1019, shall be shared equally amongst the 7 children of the deceased.

55. As there are no other liabilities, and equally as none touch on South Teso/Asinge/709 and 764, the 2 assets shall be devolved upon the 7 children of the deceased, in accordance with section 38 of the Law of Succession Act, to be shared equally.
56. I have already stated above, that St. Anne Ekipor Primary School and Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai, shall look up to whoever sold the land they occupy, as between the administrator, that is Lawrence Barasa Imwana, and Remigius Ebu Imwana, after transmission has been done. Lawrence Barasa Imwana and Remigius Ebu Imwana shall cause the 4 to get the portions that shall ultimately devolve upon them. I shall, perhaps, only make an exception for St. Anne Ekipor Primary School, to protect the best interests of the minor learners in that school, in accordance with Article 53(2) of the Constitution.
57. The final orders are:
- a) **That I hereby revoke the grant made to Lawrence Barasa Imwana, and I hereby appoint Remigius Ebu Imwana, Saferio Daniel Elalai and Margaret Tata Otwani administrators of the estate herein;**
 - b) **That a grant of letters of administration intestate shall be issued to the 3;**
 - c) **That the grant made in (a) above is hereby confirmed;**
 - d) **That the estate shall be distributed as follows:**
 - (i) **to Saferio Daniel Elalai, ½ share of South Teso/Asinge/1019, in line with the judgement and decree in Busia ELC No. 15 of 2015 (OS); and**
 - (ii) **to Lawrence Barasa Imwana, Remigius Ebu Imwana, Margaret Tata Otwani, Regina Ekilenya Okopiro, Susan Amete Mukadi, Nowelina Imojong and**

**Magdalene Akisa Imwana, South
Teso/Asinge/709, South
Teso/Asinge/764 and ½ share of South
Teso/Asinge/1019, equally.**

- e) That a certificate of confirmation of grant shall issue, accordingly;**
- f) That the administrators, appointed under (a) above, have 6 months to transmit the estate, in accordance with the distribution ordered under (d), above;**
- g) That the matter shall be mentioned after 6 months, to confirm transmission and completion of administration, so that the court file herein can thereafter be closed;**
- h) That the mention shall happen on 23rd June 2026;**
- i) That each party shall bear their own costs; and**
- j) That any party aggrieved, by the orders made herein, has leave of 30 days, to move the Court of Appeal, appropriately.**

58. It is so ordered.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 19TH DAY OF DECEMBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Bw'Oigara, instructed by Bw'Oigara Getange & Company,
Advocates for Lawrence Barasa Imwana.**

**Mr. Were, instructed by Mr. Gabriel Fwaya, Advocate for
Saferio Daniel Elalai.**

**Mr. Kundu, instructed by Situma & Company, Advocates for
Vincent Ochabo Omukaga.**