



REPUBLIC OF KENYA



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**Mamboleo v Ocheli & another (Family Appeal E004 of 2024)  
[2026] KEHC 3017 (KLR) (9 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
FAMILY APPEAL E004 OF 2024  
WM MUSYOKA, J  
MARCH 9, 2026**

**BETWEEN**

**ALPHONCE OMUSUNGU MAMBOLEO ..... APPELLANT**

**AND**

**OKWARE EKUDELI OCHELI ..... 1<sup>ST</sup> RESPONDENT**

**ANGELINA MUTOSI OTIE ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the ruling and orders, of Hon. RN Ng'ang'a, Senior Resident Magistrate, SRM, of 12th September 2022, in Busia CMCS No. 217 of 2020)*

**JUDGMENT**

1. The appeal herein arises from a decision of the trial court, in Busia MCSCs Nos. 216 and 217 of 2020, of 12<sup>th</sup> September 2022. The grounds of appeal revolve around the trial court overlooking the oral testimonies of the appellant and his witnesses, and relying on the unsworn evidence of the respondents; the trial court erring in finding that the testimonies of the Chief and the clan elders were unchallenged; the trial court erring in giving primacy to the return of the appellant to her mother's land; the trial court getting it wrong in holding that the appellant would benefit twice; and the trial court failing to find that the appellant, being a son of the deceased, was entitled to equal share with the respondents.
2. The deceased person, in Busia MCSCs Nos. 216 and 217 of 2020, Ocheli Opii, had died on 18<sup>th</sup> April 1976, according to the certificate of death on record, serial number 0854123, of 12<sup>th</sup> June 2020. The letter from the Chief of Asinge Location, dated 30<sup>th</sup> June 2020, introduced the family to the court. The said letter merely listed persons it called beneficiaries, without indicating how they related to the deceased. The persons said to be beneficiaries were Okware Ekudeli Ocheli, Ajelina Amtosi Otiengi (Fidelis Omusuru, Amos Opii, Musa Ocheli and Peter Ocheli), Alfonsi Omusungu Mamboleo and Ekisa Ocheli Barasa. Alfonsi Omusungu Mamboleo is the appellant in these proceedings, and I shall



refer to him in this judgment as such. Okware Ekudeli Ocheli is named as the 1<sup>st</sup> respondent, and Ajelina Amtosi Otiengi the 2<sup>nd</sup> respondent, respectively, and I shall refer to them as such.

3. Representation to the intestate estate of the deceased was sought by the respondents, vide a petition, that they filed in Busia MCSCs Nos. 216 and 217 of 2020, on 13<sup>th</sup> October 2020. They listed the survivors of the deceased as Okware Ekudeli Ocheli, Anjelina Amtosi Otiengi, Alfonse Omusugu Mamboleo and Ekisa Ocheli Barasa, whose relationship with the deceased was not disclosed. Letters of administration intestate were made to the respondents on 24<sup>th</sup> July 2020, and a grant in those terms was duly issued to them, dated 1<sup>st</sup> October 2020.
4. The said grant was confirmed on the basis of affidavits, but without a summons for confirmation of grant. Proceedings were conducted, where oral evidence was taken. There was an affidavit of protest dated 13<sup>th</sup> October 2020, a joint affidavit of proposed distribution sworn by the respondents, another affidavit of protest dated 18<sup>th</sup> August 2021, a further affidavit dated 23<sup>rd</sup> November 2021, and an affidavit on proposed distribution dated 24<sup>th</sup> November 2021.
5. The protest affidavit of 13<sup>th</sup> October 2020 was by the appellant. He was not responding to a summons for confirmation of grant, because one was yet to be filed. He averred that the respondents had decided to share South Teso/Asinge/671 between the 2 of them. He averred that a surveyor had not visited the land, and the beneficiaries had not agreed on distribution.
6. The respondents reacted to that affidavit, by their own, sworn by the 1<sup>st</sup> respondent, on an undisclosed date, but filed in court on 23<sup>rd</sup> November 2020. He averred that a surveyor had visited the land, and no beneficiary had protested, and the family had agreed the land be distributed equally between the 2 respondents. He averred that the appellant was to get his share from the 2<sup>nd</sup> respondent. He explained that the appellant was a beneficiary of South Teso/Asinge/586, which was registered in the name of Obarasa Omusugu, who was his biological father.
7. Willimina Akol Ikawa swore an affidavit on 4<sup>th</sup> December 2020. She averred that the family had met on 30<sup>th</sup> November 2020, in the presence of clan elders, who advised on Teso culture, about the entitlement of a child inherited together with his mother, that he would be entitled to inherit from his biological father. She explained that the deceased, the subject of those proceedings, Ocheli Opii, had 1 wife, and he inherited another 2. His wife was Ikasilon, who had 5 children, being 2 sons and 3 daughters, namely, Okwara Ocheli, Oraa Ocheli, Amogo Ocheli, Ipalet Ocheli and Amukaga Ocheli. The inherited wives were Albina and Ann. The children of Albina were 2 sons and 2 daughters, being the late Didibino Otiengino, Malaya Ocheli and Alfunsu Musungu and Topister Atyang. The late Didibino Otiengino was survived by 4 wives. The children of Ann were Atyang and Ekisa. The Chief explained that the appellant was a child of an inherited wife, and he was equally entitled, under Teso culture, to the estate of the man who inherited his mother, alongside the biological children of the deceased. The minutes were taken, and signed by those present, and were attached to that affidavit.
8. Another affidavit of protest was sworn on 18<sup>th</sup> August 2021, by Benard Egesa Opii, Oguti Martin and Hildad Ekisa. They identified the survivors of the deceased as Okware Ekudeli Ocheli, Anjelina Amtosi Otiengi, Alfonse Omusugu Mamboleo, Benard Egesa Opii, Ogutu Martin and Hildad Ekisa. They essentially averred that the family had not agreed on distribution, and were requesting assistance by the clan to guide on distribution.
9. The 3 filed a further affidavit, on 23<sup>rd</sup> November 2021. They identified themselves as grandchildren of the deceased. They explained that during land adjudication Ocheli Opili registered himself and his son Otiengno Ocheli, but to hold in trust for other family members, including themselves. They averred that Ocheli Opili and Otiengno Ocheli were only entitled to ½ share. They aver that Anjelina Mutosi



Otieng was the widow of the late Otiengno Ocheli, and that she was not entitled to any ½ share and that she should be removed from the distribution. They proposed distribution, so that Okware Ekudeli Ochiel got 1.06 hectares, Alfonse Omusugu Mamboleo 1.06 hectares, Benard Egesa Opii 1.06 hectare, Oguti Martin 1.06 hectares and Hildad Ekisa 1.06 hectares, out of the share due to Ocheli Opili. They asserted that the clan had failed to resolve the dispute.

10. The appellant filed a proposed mode of distribution, on 25<sup>th</sup> November 2021, bearing the date of 24<sup>th</sup> November 2021. He described himself as a son of the deceased, and the other survivors of the deceased as Anjeline Amtosi Otiengi and Ekisa Ochiel Barasa. He proposed that the land, South Teso/Asinge/671, be shared equally, which each of them getting 6½ acres.
11. The respondents filed their own mode of distribution. They averred that their grandfather was Okaroni Emarasi, the father of Ochiel Opii. They asserted that their grandfather was not the grandfather of Benard Egesa Opii, Oguti Martin and Hildad Ekisa, for they only belonged to the same clan. They explained that South Teso/Asinge/671 was given to Ochiel Opii, by their grandfather, and the same was registered in the names of Ochiel Opii and Otiengino Ocheli. They aver that their father had only 2 sons and 5 daughters. All the daughters are dead, while the 1 son is deceased, but survived by a widow, the 2<sup>nd</sup> respondent herein. The proposal was to share South Teso/Asinge/671 between the 2 survivors, the surviving son and the widow of the deceased son.
12. The handwritten notes of the trial court were not converted to typescript. I see that the calligraphy of the trial magistrate is legible, and I shall summarise the evidence, on record, based on that handwritten record.
13. The appellant was the first to testify. He was a son of the deceased. He named his siblings as Pilot Omukui, Rose Amoogo, Malaya Angeligit, Atyanga Arutini, Atyanga, Boniface Otieno, Ekudeli Okware and Barasa Ekisa. He identified his mother as Albina, saying his father had 3 wives, the other 2 being Asike and Ekasion. He and his mother had resided on South Teso/Asinge/671. All was well, until a surveyor was brought to the land, on 4<sup>th</sup> October 2020, by the respondents, in his absence. He was not given a portion of the land, for it was shared only between the 2 respondents and Ekisa. He identified his father as the Mamboleo.
14. The 1<sup>st</sup> respondent followed. He identified the appellant as a cousin. He stated that the name of the appellant was listed in the letter of the Chief, but he did not know why the Chief included it. During cross-examination, he stated that his father, Ochieli, and the father of the appellant, Omusugu, were brothers. He accused the appellant of forcibly getting into the land.
15. The Chief followed, Willimina Akol Ikawa. She stated that she wrote the letter to court, after meeting both the appellant and the respondents. He identified them all as children of Ochiel Opii, but with different mothers. She identified the mother-in-law of the 2<sup>nd</sup> respondent as the mother of the appellant, while the 1<sup>st</sup> respondent was the only son in his mother's house. There was another son, of a 3<sup>rd</sup> widow of the deceased, who had special needs. She testified that the appellant did not live in South Teso/Asinge/671, but in Ngelechom, but one of his wives was resident on South Teso/Asinge/671.
16. She explained that after the father of the appellant and the husband of the 2<sup>nd</sup> respondent died, Omusugu, their mother, was inherited by Ochiel. She further explained that the appellant had inherited land from his biological father, the late Omusugu, that is from his mother's side, in the context of the inheritance matrix, and that what he was claiming was a share from the estate of the man who had inherited his mother. He said that he was entitled to a share from the estate of Ochiel, for he was also his father. She said that she was not aware whether the appellant had obtained title for South Teso/Asinge/586.



17. She was given time to conduct further investigations, which she did. She came back to state that she held a meeting with the family on 30<sup>th</sup> November 2020, where she established that the deceased had married 1 wife and inherited another 2. Albina was an inherited wife, and there was a fight, in that section of the family, over the share due to a mentally challenged son called Ekisa, who stayed with the 1<sup>st</sup> respondent. She stated that clan elders felt that the appellant ought to go back to his mother's land, where she was buried, as per Teso customs. She indicated that both the appellant and the respondents were entitled to inherit from the deceased. She asked for time to go and consult again with the family.
18. She came back, and made an unsworn statement, on 21<sup>st</sup> July 2021, where she reported that she had met clan elders, who advised that all the claimants belonged to the same family, and were all entitled to inherit. She stated that the elders questioned why the appellant should benefit twice, although he was, nevertheless, a beneficiary from the estate of the deceased herein. The 1<sup>st</sup> respondent offered to give the appellant only 1 acre. The appellant insisted on equal distribution, asserting that he had been utilising 6½ acres of the land. The parties were given time for more consultation.
19. A clan elder testified on 29<sup>th</sup> September 2021. It is not clear whether he was sworn. He identified himself as Opiyo Kisorwai Orwati. He identified Ogutu Martin and Opii Benard as from Ngelechom. He identified the sons of the deceased as the appellant, the 1<sup>st</sup> respondent and Ekisa. He identified Ogutu Martin and Opii Benard as grandchildren of the deceased, Ocheli Opii, who were entitled to a share in South Teso/Asinge/671.
20. At the end of it, the ruling of 12<sup>th</sup> September 2021 was delivered. The land, South Teso/Asinge/671, was distributed, so that the 1<sup>st</sup> respondent got 2.15 hectares; Ekisa 2.15 hectares, to be held in trust for him by the 1<sup>st</sup> respondent; the 2<sup>nd</sup> respondent 4.3 hectares (less 1 acre for the appellant); and the appellant 1 acre.
21. It was those confirmation orders that provoked the instant appeal.
22. The matter is fairly straightforward, whether the trial court was wrong in coming to the conclusions that it came to.
23. The starting point should be with the fact that the property in question was registered in the names of the deceased and the late husband of the 2<sup>nd</sup> respondent, in equal shares. The evidence, both in the affidavits and oral testimonies, is not very clear on the configuration of the family of the deceased. The appellant and the respondents appear to be members of the same family. The deceased was the biological father of the 1<sup>st</sup> respondent, but not of the appellant. The appellant had his own biological father, who died, and his wife, the mother of the appellant, was inherited by the deceased. That made him, the appellant, a brother of the 1<sup>st</sup> respondent, by adoption or inheritance, and he became entitled to a share in the estate of the deceased. It is not clear whether the late husband of the 2<sup>nd</sup> respondent was a biological brother of the 1<sup>st</sup> respondent. There is material which suggests that he was, then there is another which suggests that he was not, but that he was in fact a biological brother of the appellant.
24. It was alleged that South Teso/Asinge/671 was ancestral land, held in trust for the family of the appellant. If the late husband of the 2<sup>nd</sup> respondent was a biological brother of the appellant, then that would explain why South Teso/Asinge/671 was registered in the names of the deceased and the late husband of the 2<sup>nd</sup> respondent, for the 1<sup>st</sup> respondent testified that his father, the deceased, was a blood brother of the appellant. However, there is also evidence that the father of the appellant had his own land, South Teso/Asinge/586. The picture is not clear.
25. However, the trial court saw and heard the parties. It believed that the appellant's father had his own land, hence South Teso/Asinge/671 was not ancestral, and was not held in trust for anyone. It also



believed that the late husband of the 2<sup>nd</sup> respondent was not a brother of the appellant, but of the 1<sup>st</sup> respondent. It emerged that under Teso culture or customs, a child of an inherited wife, like the appellant, was entitled to inherit from the estate of the man inheriting his mother, and, therefore, the appellant would be entitled to a share in South Teso/Asinge/671. The issue of culture or custom comes up because the deceased died in 1976, before the Law of Succession Act, Cap 160, Laws of Kenya, came into force, on 1<sup>st</sup> July 1981. Under section 2(2) of the Act, custom would govern succession to such an estate. Therefore, the citation and application of custom would not be out of place.

26. Although the appellant was entitled to a share of South Teso/Asinge/671, under custom, for the deceased had become his father, through adoption, by the inheritance of his mother, the court ruled that it would amount to double inheritance, if he inherited a portion of South Teso/Asinge/671, from his adoptive father, and the whole of South Teso/Asinge/586, from his biological father. The trial court found and held that it would be unjust to benefit from both sides.
27. Was the trial court wrong? I do not think so. The deceased died in 1976, before the Law of Succession Act became operational. The estate was being distributed after 2010, after the coming into force of the new Constitution. Custom would have applied unhindered, were it not for the coming into operation of the new Constitution in 2010, which focuses on equality, equity, justice and non-discrimination, by dint of Articles 10, 20 and 27. The Constitution would frown upon a situation where a person would benefit from estates of 2 fathers, if the outcome would be to disadvantage a section of the family. That is what the trial court considered, and that did not disadvantage the appellant, nor expose him to injustice.
28. I believe that I have said enough, to demonstrate that the trial court did not err, in distributing the estate in the manner that it did. I find no merit in the appeal herein, for the reasons given. I shall, as I hereby do, disallow it. The consequence shall be that the appeal herein is dismissed, and the orders made in Busia MCSCs Nos. 216 and 217 of 2020, of 12<sup>th</sup> September 2022, are hereby confirmed, and upheld. There shall be no order on costs. The appeal herein is disposed of in those terms. Let the original trial court records be returned to the relevant registry. The instant file shall be closed. It is so ordered.

**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT BUSIA, THIS 9<sup>TH</sup> DAY OF MARCH 2026.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Andati, instructed by Wambo Muyala & Company, Advocates for the appellant.

