



REPUBLIC OF KENYA



**In re Estate of Boniface Okello Okumu (Deceased) (Succession Cause  
288 of 2009) [2025] KEHC 4931 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4931 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 288 OF 2009**

**WM MUSYOKA, J**

**APRIL 25, 2025**

**IN THE MATTER OF THE ESTATE OF BONIFACE OKELLO OKUMU (DECEASED)**

**RULING**

1. The application, that I am called upon to determine, is dated 24<sup>th</sup> September 2024. It is at the instance of Odero Okello. It principally seeks that an independent surveyor visits South Teso/Angoromo/380, for the purpose of determining and confirming the boundaries of all the beneficiaries, as per the certificate of confirmation of grant dated 15<sup>th</sup> December 2022.
2. The complaint was that although the grant had been confirmed in 2010 and 2022, and a certificate of confirmation of grant had been issued in 2014 and 2023, the land had not been distributed. The county surveyor was blamed for the delay, for conducting an exercise which was contrary to what the court had ordered, hence the applicant had declined to sign the mutation forms generated by that surveyor. Hence, the applicant advocates for an independent surveyor. The gist of the case is that the court had ordered equal distribution, but the mutations generated did not provide for equality.
3. I have not seen a response to the application, by the other side.
4. The parties agreed to have the county surveyor summoned, to be examined on what he had done, and to generally explain himself.
5. The summons was issued. Mr. Titus Otieno Ojwang, the Deputy County Surveyor, attended court, on 11<sup>th</sup> February 2025, and was examined by the Advocates for both sides.
6. He explained that he visited the land, to get a feel of it before he embarked on the partition. He established that the land on the ground was larger than what was reflected in the records, as it measured 6.1 hectares against the 5.76 hectares in the records. He also established that the parties were settled and resided on various positions on the land, which, in his opinion, could not be changed. He argued that the court order did not order that any person be removed from where they had settled. He stated that the parties reached an agreement, which was not reduced into writing, but they planted boundaries. He then partitioned the land based on what he saw, and did drawings along those lines. He asserted



that it was impractical to partition the land as per the court order, for the land was very narrow, and had been occupied for a long time, and it could not be distributed in exact equal portions.

7. After the Advocates for both sides were through with examining Mr. Ojwang, they agreed to argue the application through written submissions. Both sides did file written submissions, which I have read through and noted the contents thereof.
8. Let me say something about transmission of estates. The [Law of Succession Act](#), Cap 160, Laws of Kenya, does not provide for transmission. Transmission is a function under the relevant land legislation, in this case the [Land Act](#), Cap 280, Laws of Kenya, and the [Land Registration Act](#), Cap 300, Laws of Kenya. After a grant is confirmed, the probate court is largely functus officio, for it has no role in transmission, for the same has not been spelt out in the legislation that it operationalises, the [Law of Succession Act](#). That process is overseen by the court or courts contemplated under the [Land Act](#) and the [Land Registration Act](#).
9. According to the [Land Act](#) and the [Land Registration Act](#), upon a grant being confirmed, the administrator should submit the certificate of confirmation of grant to the land registrar, for the purposes of transmission. It is the land registrar who is responsible for transmission, not the probate court. The land registrar has powers to settle disputes on that process, and whoever may not agree with him or her ought to move to the court envisaged by the [Land Act](#) and the [Land Registration Act](#), which is the Environment and Land Court or the enabled subordinate courts. As it is, the applicant is dragging me into a matter that is outside the scope of my mandate as a probate court. I would be happier if the parties took their troubles to the Land Registrar, or to the Environment and Land Court or the enabled subordinate court.
10. The [Land Act](#) deals with transmission of estates under sections 49 to 54. For the purposes of these proceedings, the relevant provision is in section 50, which provides as follows:

“ 50. Transmission on death of a sole proprietor or proprietor in common

- (1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of (.....) [deceased]” or “as administrator of the estate of (.....)[deceased]”, as the case may be.
- (2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—
  - (a) any transfer by the personal representative; and
  - (b) any surrender of a lease or discharge of a charge by the personal representative.
- (3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”



11. That provision should be read together with section 61 of the *Land Registration Act*, which provides:

“ 61. Transmission on death of a sole proprietor or proprietor in common

- (1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of ..... [deceased]” or “as administrator of the estate of ..... [deceased]”, as the case may be.
- (2) Upon confirmation of a grant, and on production of the grant the Registrar may, without requiring the personal representative to be registered, register by transmission—
  - (a) any transfer by the personal representative; and
  - (b) any surrender of a lease or discharge of a charge by the personal representative.
- (3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”.

12. In general terms, the 2 provisions are in similar phraseology. However, section 50(2) of the *Land Act* is not in the same terms as section 61(2) of the *Land Registration Act*. The provision in section 61(2) of the *Land Registration Act* refers to confirmation of grant, while that in section 50(2) of the *Land Act* does not. Transmission of estates is a registration process, and, therefore, the primary legislation should be section 61(2) of the *Land Registration Act*. Section 61(2) of the *Land Registration Act* talks about what an administrator should do with a certificate of confirmation of grant, and what the land registrar should do with it upon receiving it.

13. As transmission is a process governed by land legislation, any disputes relating to that process should be subject to section 101 of the *Land Registration Act* and section 150 of the *Land Act*, as read with sections 2 of the *Land Registration Act* and the *Land Act*, both of which identify the Environment and Land Court as the “court” for the purposes of both statutes, together with any empowered subordinate court.

14. Section 2 of the *Land Act* states that ““Court” means the Environment and Land Court established under the *Environment and Land Court Act* (Cap. 8D)”; while section 2 of the *Land Registration Act* provides that ““Court” means the Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D), and other courts having jurisdiction on matters relating to land.”

15. Section 101 of the *Land Registration Act* says:

“ 101. Jurisdiction of court



The Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

16. The *Land Act*, at section 150, provides:

“ 150. Jurisdiction of the Environment and Land Court

The Environment and Land Court established in the *Environment and Land Court Act* (Cap. 8D) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

17. As it is, the applicant is engaging this probate court in matters that it has no mandate over. The administrators should have presented the certificate of confirmation of grant to the land registrar, for implementation, in terms of section 61(2) of the *Land Registration Act*. Any issues with that transmission process, which arise, and which the land registrar is unable to resolve, should then be escalated to the Environment and Land Court, or the enabled subordinate courts, in terms of sections 2 and 150 of the *Land Act* and sections 2 and 101 of the *Land Registration Act*. The probate court can only exercise jurisdiction over review of the confirmation orders, but not the implementation of those orders. It is not for the probate court to guide on implementation, that mandate lies with the Environment and Land Court, or the enabled subordinate courts.
18. Karanjah J., ordered, in orders made on 13<sup>th</sup> October 2022, equal distribution of South Teso/Angoromo/380, between 5 sons and 1 daughter of the deceased, and a certificate of confirmation of grant was duly issued, dated 15<sup>th</sup> December 2022. That order remains intact, to date, for I have not seen any order which has varied or reviewed or revised the distribution. The drawings, done by the surveyor, largely distribute the estate equitably, between the 6 children. I do not see any reason why distribution cannot be carried out in terms of those drawings. According to those drawings Joseph Okumu would get 0.98 hectare, Odero Okello also known as Vincent Odero would get 0.98 hectare, Francis Okumu 0.97 hectare, Bernard Ojambo 0.97 hectare, Stephen Egesa 0.99 hectare and Mary Anyango 0.97 hectare.
19. The application before me asks me to order an independent surveyor to go on the ground and do that which the applicant seeks. The applicant is unhappy with the survey works done by the Government surveyors, and he would like private or independent surveyors, meaning non-Government surveyors, to go to the ground, and do their thing. As I am satisfied that the drawings by the surveyor are a fair reflection of the distribution ordered by the court, I shall not grant the order sought. Let the estate be distributed as drawn by the surveyor.
20. Should the applicant be unhappy with this outcome, I hereby grant him leave, of 30 days, to move the Court of Appeal, appropriately.
21. This matter shall be mentioned after 6 months, on 28<sup>th</sup> October 2025, to confirm whether the estate has been distributed or transmission done, and administration completed, so that the court can close this succession cause file. Each party shall bear their own costs. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**W MUSYOKA**

**JUDGE**



Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Betty Achala, instructed by Abalo & Company, Advocates for the 1<sup>st</sup> administrator/applicant.

Mr. Alex Amasakha, instructed by Amasakha & Company, Advocates for the 2<sup>nd</sup> administrator.

