



In re Estate of Desterio Ekombe Oteng'o (Deceased) (Succession Cause 894 of 2014) [2025] KEHC 7475 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 894 OF 2014**

PJO OTIENO, J

MAY 29, 2025

IN THE MATTER OF THE ESTATE OF DESTERIO EKOMBE OTENG'O (DCD)

AND

**IN THE MATTER OF PETITION BY: ZAINABU SHEUNDA EKOMBE,
MARY MMBONE SHIMBA & CAROLYNE NASAMBU WAFULA**

BETWEEN

**MARY MMBONE SHIMBA 1ST PETITIONER
CAROLYNE NASAMBU WAFULA 2ND PETITIONER
MARY MMBONE SHIMBA 3RD PETITIONER**

AND

**MOHAMMED ALUBANDWA OTENG'O 1ST OBJECTOR
DENNIS ASEKA EKOMBE 2ND OBJECTOR
MARY MMBONE SHIMBA 3RD OBJECTOR**

JUDGMENT

1. What is before the court is the summons for confirmation of grant dated 30th May 2017 filed by the 1st and 3rd petitioners, seeking to distribute the estate of the deceased and makes proposals as hereunder;
 - i). Land Parcel No. S/Wanga/Ekero/2500
 - a) Carolyne Nasambu Wafula
 - b) Purity Ekombe Jointly in equal Shares



- c) Gideon Ekombe
 - ii. Land Parcel No. S/Wanga/Ekero/2500
 - a) Zainabu Shaunde Ekombe
 - b) Idd Etoto Ekombe
 - c) Ramadhan Lukune Ekombe
 - d) Dennis Aseka Ekombe
 - e) Ali Wanga Ekombe
 - f) Hadija Msungu Ekombe
 - g) Mwanaisha Chiliswa Ekombe
 - h) Saumu Habiba Ekombe
 - ii. Land parcel No. S/Wanga/Ekero/2545 to Salim Oteng'o absolutely to be held in trust for him by the petitioners
 - iii. Land parcel No. E/Wanga/Eluche/1116 be distributed as follows;
 - a) Mary Mmbone Shimba
 - b) Isaac Saleh Ekombe
 - c) Solomon Karim Tsuma Ekombe
 - d) Mwanarabu Makokha Ekombe
 - e) Sylvia Namunguva Ekombe
 - f) Robina Hongwa Ekombe
 - g) Rachael Musungu Ekombe
 - h) Salim Oteng'o
 - ii. Land parcel No. E/Wanga/Lubuni/979- to the widows as tenants in common.
 - iii. Cars to be sold and proceeds be shared among the three petitioners jointly in equal shares.
 - iv. Money at the bank to be shared among the three petitioners jointly in equal shares.
 - v. Business/Hotel & Butchery to be sold and proceeds be shared equally among the three petitioners.
2. Objections to the Summons for Confirmation of the grant and proposals on distribution were made on various date during the months of October and November 2017 by the objectors; Dennis Aseka Ekombe, Mohammed Olubandwa Oteng'o and May Mmbone Shimba, the 2nd petitioner.
 3. The grounds of objection by Mohammed Olubandwa Oteng'o were that the deceased being his elder brother and the administrator of their late father's estate, had not distributed to him his share prior to his death. He stated that being the deceased having pursued succession of their father's estate and died before transmitting to him his share he was a rightful beneficiary to the deceased estate together with the petitioners.



4. The 2nd objector Dennis Aseka Ekombe grounded his objection on the fact that that he was a deceased's son, born out of wedlock, hence rightful beneficiary. It was his case that the petitioners excluded him from the succession cause and that he was entitled to a share inland parcel No. E/Wanga/Lubinu/979. He stated that according to an alleged will, land parcel No. S/Wanga/Ekero/1438 was allocated to Francis Ateya, Mohammed Olubandwa, Idd Etodo Ekombe, Ramadhan Lukune Ekombe and Dennis Aseka Ekombe and which the petitioners had ignored. It was his further averments that the petitioners had erroneously alleged that the deceased operated Hotel/Butcher business, whose proceeds would be shared equally among the widows yet the business was his own personal business.
5. Mary Mmbone Shimba, the second petitioner, filed what is headed Supporting Affidavit which the court deems as a protest to the proposed distribution. In that affidavit, she indicates to be in part agreement with petitioners' proposed mode of distribution. Her points of disagreement are that in addition to the listed beneficiaries for property S/Wanga/Ekero/143812, both Mwanarabu Makokha Ekombe and Isaac Sale Ekombe were also entitled to share for two reasons; it is the largest plot and secondly, Mwanarabu had developed his occupied portion of the plot.
6. She was however in agreement with the administrators that land parcel S/Wanga/Ekero/2545 should wholly go to Salim Oteng'o. She equally agrees to the proposal on Parcel No. E/Wanga/Ekero/1116 to be shared equally among Mary Mmbone Shimba, Solomon Karim Tsuma Ekombe, Sylvia Namunguvu Ekombe, Robina Hangwa Ekombe, Racheal Musungu Ekombe and Salim Oteng'o. point of divergence is that she excludes the manes of Isaac Saleh Ekombe and Mwanarabu Makokha Ekombe
7. His proposed mode of distribution of land parcel E/Wanga/Ekero/979, which differs with that by the administrators is that the asset be shared as follows:
 - a. Idd Etoto Ekombe $\frac{1}{2}$ an Acre
 - b. Carolyne Nasambu Wafula (To hold in trust for Gideon Ekombe) $\frac{1}{4}$ an Acre
 - c. Denis Aseka Ekombe
 - d. Ramadhan Lukune Ekombe $\frac{1}{4}$ Acre each
 - e. Ali Wanga Ekombe
 - f. Mary Mmbone Shimba (to hold in trust for Salim Oteng'o minor) $\frac{1}{2}$ an Acre
 - g. Solomon Karim Tsuma $\frac{1}{4}$ an Acre
 - h. Mohammed Oteng'o (brother) $1\frac{3}{4}$ Acres



8. When the file was first placed before this court on 30/10/2023, the evidence on distribution had been taken had and matter heard to conclusion before other judges. The matter was thus fixed for a mention on 2/11/2023 for the court to get some clarification from the parties prior to the judgement. On the material date, it was presented that during hearing of the dispute, all parties agreed that the first objector, Mohammed Alubandwa Otengo, being a brother to the deceased, would get $1\frac{3}{4}$ Acres from parcel No. East Wanga/Lubinu/979.
9. Starting with the 1st Petitioner, the court was told that the Objector was entitled to a portion of 979 which was marked by a trench and tress. She indicated to be living in the same parcel together with the 2nd Petitioner. The 3rd Petitioner affirmed the said position as taken by the 1st petition adding that she lives on parcel South Wanga/Ekero/2500 which has three shops developed on it.
10. On his part that objector told the court that the deceased had shared out the land with marked boundaries and shown each beneficiary its portion save that no survey had been done to establish the exact sizes.
11. Mr. Iddi Etoto Ekombe stated that other than plot 2500, parcel Ekero/1438 was also developed with rental houses and which four sons had been assigned units therein and were collecting rents but three boys and three girls had not been provided for. He added that even on East Wanga/Ekero/1116, which was given to the 2nd widow and developed jointly between the deceased and the widow, was erected rental units, but he was not aware what the rental income was.
12. The court then ordered prior to the judgement for a survey to be conducted on parcels no. 979 based on the boundaries on the ground and establish the size of the portion occupied and used by the objector and what remained in favour of the deceased's families. Further orders were that a valuer be appointed to value all the parcels of land except the parcel 979.
13. It is common ground that the deceased left behind the following properties;
 - South Wamga/Ekero/2500
 - South Wanga/Ekero/1438
 - South Wanga/Ekero/2545
 - East Wanga/Eluche/979
 - Motor vehicle
14. It was asserted by the petitioners but contested by Dennis Aseka Ekombe that deceased also operated and owned a business of Hotel & Butchery. The ownership or attribute as free property is in contention and the court will at the end determine whether or not it forms part of the estate.
15. As directed by the court, there is a survey report filed by Smo Geospatial Systems Ltd, which confirms the area of title No E Wanga /Lubinu/979 occupied Mohammed Olubandwa oteng'o and acknowledged to have been demarcated for him by the deceased, to measures 0.91 ha. There are equally three valuation reports on Parcels No. E.Wanga/Eluche/1116, S. Wanga/Ekero/2545 and 2500. The three are valued at Kshs 3,300,000, 5,359,000 and 3,300,000 respectively.
16. The protests were heard by way of viva voce evidence which evidence the court has perused and given due regard. The court has equally read and taken into account the submission by the 1st and 3rd petitioners.



Issues, Analysis and Determination

17. Even though the proceedings were taken as if the three were objectors, the court views them as protesters because they do not challenge the capacity or suitability of the petitioners as administrators but only challenge the proposed mode of distribution.
18. The summons by the 1st and 3rd administrators has been opposed and protested against by the 2nd administrator as well as two other members of the family; a brother to the deceased who claims a share in the ancestral land and a son to the deceased born out of wedlock.
19. Upon perusal of the viva voce evidence led at the hearing proceedings in the matter, the court notes that the objectors concur with the proposals by the two administrators on most respects and make contrary proposals in other respects. Essentially, there are four proposals on the mode of distribution for consideration by the court in reaching its determination. The four modes are by the 1st and 3rd petitioner, that of the 2nd petitioner, by Dennis Aseka Ekombe, a son born out of wedlock, and Mohammed Olubandwa Oteng'o, a brother to the deceased.
20. As said before, there are points of concurrence inviting no dispute and the court merely needs to confirm such concurrence. All the parties are in agreement that land parcel East Wanga/Ekero/2500 goes to the 3rd petitioner and her children; Purity Ekombe and Gideon Ekombe.
21. It is also agreed that land parcel South Wanga/Ekero/2545 should go to the deceased's brother Salim Oteng'o. Even though the 1st and 3rd petitioners, agree that the parcel goes to the said Oteng'o, they however propose that it should be held for him in trust by the petitioners without assigning any reason why it must be so held. The court finds that it being agreed that Mr. Mohamed Oteng'o gets the parcel as his inheritance from the administrator of his father's estate, the parcel is distributed to him and shall be transmitted absolutely.
22. The other petitioners however disagree on the mode of distribution of parcel no. South/Wanga/Ekero/1438. The 1st and 3rd petitioner propose that the parcel be distributed jointly and in equal shares among;
 - a. Zainabu Shaunde Ekombe
 - b. Idd Etoto Ekombe
 - c. Ramadhan Lukune Ekombe
 - d. Dennis Aseka Ekombe
 - e. Ali Wanga Ekombe
 - f. Hadija Msungu Ekombe
 - g. Mwanaisha Chiliswa Ekombe
 - h. Saumu Habiba Ekombe
23. The 2nd petitioner/objector agrees with that proposal but adds that in addition to the above listed persons, two (2) other beneficiaries; Mwanarabu Ekombe and Isaac Sale Ekombe should be included in its distribution for reasons that the said parcel is the largest and that Mwanarabu Ekombe has developed and occupies a portion thereof. The fact of such development has not been contested by the 1st and 3rd petitioners. There is equally no contest that it is Mwanarabu who collects rent on the said premise. Those fact when juxtaposed against the evidence that the deceased had shown to some



of the beneficiaries, portions of the estate and allowed them to develop same, convinces the court that Mwanarabu developed the portion of the property with the approval of the deceased with the intension that Mwanarabu retains possession thereof. That wish by the deceased deserve respect from the court hence the court determines that Parcel No. S. Wanga/Ekero/1438 be transmitted in favour of: -

- a. Zainabu Shaunde Ekombe
- b. Idd Etoto Ekombe
- c. Ramadhan Lukune Ekombe
- d. Dennis Aseka Ekombe
- e. Ali Wanga Ekombe
- f. Hadija Msungu Ekombe
- g. Mwanaisha Chiliswa Ekombe
- h. Saumu Habiba Ekombe
- i. Mwanarabu Ekombe
- j. Isaac Sale Ekombe

24. The ten beneficiaries shall share the property equally on conditions that if any of them is already in occupation of any portion of the land, the subdivision shall be effected in a way that reckons with and respects such occupation and development effected by such beneficiaries.
25. On parcel East Wanga/Eluche/1116, the 2nd petitioner makes a proposal different from that by the 1st and 3rd petitioners by excluding Isaac Saleh Ekombe and Mwanarabu Makokha Ekombe from the persons to benefit from the asset without assigning any special reason for such exclusion. The court takes the view that there having not been demonstrated a prejudice on any of the beneficiaries if the two get shares from the asset, the proposal by the two administrators takes sways and the protest by the 2nd administrator is adjudged to have no basis. The property is distributed as proposed by the 1st and 3rd administrators.
26. On parcel, East Wanga/Lubinu/979, all the petitioners agree that it should be shared between the widows on behalf of their children with a portion already demarcated and occupied by Mohammed Otengo being given to him. Dennis Aseka Ekombe is also accepted by the widows as a son to the deceased who occupies a portion of the land. The basis is that the deceased had shown to his male children, portions on which some have established homesteads. The court respects such actions as expressing the wishes of the deceased and harmonizes the minor divergence between the administrator by directing that the land be shared by all the sons currently on the land and as shown to them by the deceased.
27. In such scheme, Mohammed Alubandwa Otengo and Dennis Aseka Ekombe, being on the land and having been accepted by the widows as a brother and a son, respectively, to the deceased shall get the portions they currently occupy.
28. It is therefore directed that the land be surveyed within 30 days, from the date hereof, and portions occupied by each son be identified with exactitude. Further, because the widows, or some of them, also live on the land, they shall retain a life interest on the respective portions occupied by each. Such life interest shall obviously terminate upon death.



29. While the 1st and 3rd petitioners propose that money in the bank be shared equally among the three widows, 2nd petitioner differs and makes a proposal that it is only money in Posta be so shared but the money in deceased's Barclays bank account should however be used to educate the 4 school going minors being Rachael and Solomon (2nd petitioner's daughter & son respectively), Purity and Gideon (3rd petitioner's daughter and son respectively).
30. The court notes that the deceased herein died in 2014 while the matter was heard in 2019. At the time, the 2nd and 3rd petitioners had each two school going children. As a result of passage of time now running into 10 years, the court find no material availed to show whether the children are still in school. The court therefore directs that every money, whether in a posta account of bank account be withdrawn and shared equally between the three widows.
31. All petitioners propose that the motor vehicles be sold and proceeds shared. The difference is that while the 1st and 3rd petitioners propose that the sale prices be shared equally among them as widows, the 2nd petitioner proposes that the proceeds from the sale be shared among all family members with the petitioners getting a bigger share. It is the court's direction that the lorries be sold and the proceeds from the sale shared equally among the petitioners as widows.
32. The last of the alleged asset of the estate was described in the petition as the business/hotel & butchery. There was no never any material to show where and on what premises the business was carried out. There was equally no evidence, even by way of a single business permit, to show that the deceased operated such a business. It would thus be futile to imagine that the any such business belongs to the estate. Crucially, Denis Aseka Ekombe has asserted without being controverted that the business belongs to him personally and not the deceased. The court thus makes a determination that for lack of proof of ownership of that business, it does not belong to the estate and is not part of the deceased free property.
33. It is so ordered.

DATED AND SIGNED THIS 29TH DAY OF MAY, 2025.

PATRICK J O OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29TH DAY OF MAY, 2025.

S. MBUGI

JUDGE

In the presence of:

Ms. Muleshe for the 1st and 3rd Petitioners present

Mr. Otinga for 2nd Petitioner absent

C/A: Agong'a

