



REPUBLIC OF KENYA



**In re Estate of Josephat Imwana Okoki (Deceased) (Succession Cause  
56 of 2013) [2024] KEHC 2989 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2989 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 56 OF 2013  
WM MUSYOKA, J  
MARCH 22, 2024**

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

**RULING**

1. The certificate of death on record, serial number 197378, of 4<sup>th</sup> November 2013, indicates that the deceased herein, Josephat Imwana Okoki, died on 8<sup>th</sup> August 1997. I see no letter on record from a Chief or an Assistant Chief.
2. Representation to the estate was sought by Laurence Barasa Imwana, in his capacity as son of the deceased. He lists the survivors of the deceased as himself and Remegius Ebu Imwana. South Teso/Asinge/709, 764 and 1019 are listed as the property that the deceased died possessed of. St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai are listed as liabilities of the estate. Letters of administration intestate were issued on 24<sup>th</sup> October 2013, and a grant was duly issued, on even date. I shall refer to Laurence Barasa Imwana as administrator.
3. A Motion, dated 5<sup>th</sup> December 2013, was filed in court, by Milton Omuse Okoki, Peter Omukaga and Mollyfield Kaunya, in their alleged capacities as brothers of the deceased, seeking revocation of the grant. I shall refer to them as the applicants. They allege that the grant herein was obtained secretly, some family members were concealed, especially those with an interest in South Teso/Asinge/764, and that the relevant consents had not been obtained. It is asserted that South Teso/Asinge/764 is ancestral land.
4. There is a reply to the revocation application by the administrator, vide his affidavit, sworn on 18<sup>th</sup> February 2014. He asserts that South Teso/Asinge/764 was never ancestral or family land. He further argues that the applicants were relatives of the deceased, but not his dependents, and that they had their own property, being South Teso/Asinge/565, registered in the name of Ekapoloni Kaunya, and South Teso/Asinge/712 registered in the name of Omuga Okoki.
5. Although some proceedings on that revocation application were conducted, viva voce, before F. Tuiyott J, on 5<sup>th</sup> February 2016, that application has never been determined, and it remains pending.



6. The summons for confirmation of grant, dated 7<sup>th</sup> July 2023, is what I am called upon to determine. It was filed herein on 24<sup>th</sup> September 2023, by the administrator. He proposes to distribute only 1 asset, South Teso/Asinge/764. The proposal is that the same be devolved exclusively to himself. The application is not accompanied by a consent on distribution in Form 37.
7. An affidavit of protest has been filed to that application, by Vincent Ochabo Omukanga, sworn on 16<sup>th</sup> November 2023. He says that consents of the other beneficiaries have not been filed, and South Teso/Asinge/764 is ancestral land, to be shared amongst family members. He goes into details on how he is related to the deceased and the administrator, and the circumstances under which other family members are entitled to that land. He states that that property is not available for confirmation, as it was in the process of being transmitted. It is said that the administrator has his own property, South Teso/Asinge/1019, which he had inherited from his own father. He avers that he had instituted a suit against the administrator, over South Teso/Asinge/764, in Busia CMCCC ELC No. 165 of 2019, but that suit had been dismissed. He attaches several documents to his affidavit to support his case, being land adjudication committee proceedings of 1969; certificate of official search for South Teso/Asinge/764, showing that the same is registered in the name of the administrator as administrator; a green card for South Teso/Asinge/764, showing the same thing; a certificate of official search for South Teso/Asinge/1019 showing the administrator as proprietor of the same since 1992, with a restriction by Patrick Barasa; judgement in Busia CMCCC ELC No. 165 of 2019, where the suit was dismissed, for lack of evidence that South Teso/Asinge/764 was meant to be shared between 11 persons.
8. It would appear that there was another protest filed prior to the filing of the summons of 26<sup>th</sup> September 2023. It was filed in 2021, in purported response to a summons for confirmation of grant filed in 2013. I have scoured through the papers herein, and I have seen no such application. Anyhow, I shall consider the said protest, for the purposes of the confirmation application of 26<sup>th</sup> September 2023. The protest of 2021 is by Daniel Saferio Elalai, sworn on 18<sup>th</sup> March 2021. He claims that he is entitled to 8.75 hectares out of South Teso/Asinge/1019, as the same had been awarded to him by the court in Busia ELC No. 13 of 2015. He has attached a copy of the judgment. In that case he had sued the administrator. It was directed, in that judgement, that he, Daniel Saferio Elalai, was entitled to ½ share of South Teso/Asinge/1019.
9. Although directions had been given for viva voce hearing, the parties opted to canvass the application of 26<sup>th</sup> September 2023, by way of oral submissions that they made before me on 31<sup>st</sup> January 2024. They said that the revocation application of 5<sup>th</sup> December 2013 had been abandoned. I was referred to the judgement in Busia ELC No. 13 of 2015, which had awarded to Daniel Saferio Elalai ½ of South Teso/Asinge/1019, and I was told that he had no other claim to the estate.
10. The administrator has not done justice to the matter herein, by his summons for confirmation of grant of 26<sup>th</sup> September 2023. In his petition, he listed 3 assets, but at confirmation he proposes distribution of only 1 of them. He has not explained what has become of the rest, so that they are now not available for distribution. Secondly, in his petition he listed Remegius Ebu Imwana as a survivor of the deceased. That name does not feature in the summons for confirmation of grant of 26<sup>th</sup> September 2023. There is no explanation why that name has now disappeared, and why that person should not be getting a share from the estate herein. What has become of the other 2 assets and the other 1 survivor of the deceased? An account should be given.
11. The other thing is about South Teso/Asinge/1019. The certificate of official search indicates that it was registered in the name of the administrator in 1992, that was before the deceased died, yet it is listed in the petition as an asset of the estate. The litigation in Busia ELC No. 13 of 2015 was based on facts that it had been sold by the deceased to Daniel Saferio Elalai, but the deceased died in 1997,



before he had transferred the land to Daniel Saferio Elalai. So, was it estate property, a portion of which should be transmitted to Daniel Saferio Elalai? If that is the case, why is it that this property was not listed in the summons of 26<sup>th</sup> September 2023, with a proposal that ½ of it goes to Daniel Saferio Elalai, as per the judgement? In addition, the certificate of official search on South Teso/Asinge/1019 shows a restriction, lodged against the title by Patrick Barasa, in 2017. The question would be, who is Patrick Barasa, and what is his claim to South Teso/Asinge/1019? The next question would be whether the dispute with Patrick Barasa has been resolved, to pave way for removal of that restriction, and the distribution of South Teso/Asinge/1019?

12. The other issue is that the petition lists persons and entities under the liabilities column. These are St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai. In the application of 26<sup>th</sup> September 2023, the administrator has not updated the court on the status of these liabilities. What was the nature the alleged liabilities? Have the same been resolved? This is critical. Only the net intestate estate should be available for distribution. Debts and liabilities must be settled first. Let the administrator state whether St. Anne Ekipor Primary School, Joel Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai have been settled, before we can begin to talk about confirming the grant and distributing the estate. The court shall not countenance the short-changing of creditors.
13. From the look of things, there are far too many issues and gaps in this matter, which need to be resolved, before the grant is confirmed. The administrator should file a further affidavit to address all these issues. Secondly, there are far too many conflicts and contradictions in this matter, which would require a viva voce hearing of the summons for confirmation of grant. Parties should guard against taking shortcuts, which take them nowhere. I disagree with the parties, with respect, that the matter is straightforward, and the court can determine it without hearing the parties mentioned in the cause. A lot has not been accounted for, or explained. It is persons and entities, such as these parties, who are mentioned in the papers and filings, but are not involved actively or effectively, in what is going on in the matter, who emerge later, from the woodwork, after completion of the matter, and cause a lot of grief.
14. For clarity, the issues that the administrator should address are, among others:
  - 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 Chakore Stephen, David Omusungu Ekodoi and Oporu Ebu Elalai, and whether their claims have been settled; among others.
15. I give the administrator 45 days to comply, by filing a further affidavit, addressing all the issues that I have raised above. The matter shall be mentioned after that period, on a date I shall give at the delivery of this ruling. In default, the grant made to the administrator shall be revoked. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT BUSIA THIS 22<sup>ND</sup> DAY OF MARCH 2024**



**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Makokha, instructed by GP Makokha & Company, Advocates for the administrator.

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

Mr. Situma, instructed by Situma & Company, Advocates for Vincent Ochabo Omukanga.

