



REPUBLIC OF KENYA



**In re Estate of Naaman Ekakoro Echakara (Deceased) (Succession Cause  
23 of 2013) [2024] KEHC 3535 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 23 OF 2013  
WM MUSYOKA, J  
MARCH 22, 2024**

**IN THE MATTER OF THE ESTATE OF NAAMAN EKAKORO ECHAKARA (DECEASED)**

**RULING**

1. According to the certificate of death on record, serial number 915506, of 29<sup>th</sup> September 2006, the deceased herein died on 7<sup>th</sup> August 2006. I have seen a letter from the Chief of Kamuriai Location, dated 14<sup>th</sup> January 2013. It indicates that the deceased had 5 wives, named as the late Damary Amadeke Ekakoro, the late Mary Amung'ing Ekakoro, Jenipher Amojong Ekakoro, Jescah Anyango Ekakoro and Mary Ravenia Ekakoro. He is said to have had 41 children, being Esau AE, Hellen O., Violet Amusugut, Michael E., Rose A., Benson E., Esther A., George A., Joyce A., Haron O., Jane A., James E., Pamela I., Mark P., Risper Atyang, Topista T., Yusuf O., Joshua A., Winston E., Arthur O., Nedy A., Ruby I., Edith J., Elphas O., Josephine, Jackline I., Miriam A., Jemima A., Simon Mourine A., Sylvia A., Joseph O., Stephen A., Ronald A., Karen J., Peter O., Regan E., Eliud E., Elizabeth S., Daglas E., Willis and Irine.
2. Representation to the estate was sought by Mary Revenia Ekakoro, in her capacity as widow of the deceased. She listed the persons in the Chief's letter as the members of the immediate family of the deceased. It was expressed that the deceased died possessed of North Teso/Kamuriai/595, 599 and 891, KAE 093V, KVE 461, KDX 814, plot at Jairus market, shares in East Africa Breweries Limited, ICDC Investment Company Limited and Barclays Bank Limited, and Safaricom booster. Letters of administration intestate were granted to her, on 29<sup>th</sup> September 2014, and a grant was duly issued, dated 8<sup>th</sup> June 2015.
3. Mary Revenia Ekakoro filed a summons for confirmation of her grant, dated 23<sup>rd</sup> September 2016. She identifies the members of the immediate family of the deceased as the 41 individuals listed in the Chief's letter. She has listed 20 assets. The landed assets, being North Teso/Kamuriai/579, 595 and 891, North Teso/Kocholia/854 and 860, plot at Jairus market, 2 plots at Kocholia market, plot No. 595/17A, plot No. 595/AB, plot No. 7 and plot No. 595/17C. She proposes distribution of the landed assets according to the houses. She allocates plot No. 7 to herself and Joseph E. Ekakoro, KUE 461 to Janipher Amojong Ekakoro, KDX 814 to Michael Ekakoro and KAE 093 to Jescah Anyango Ekakoro.



4. Subsequently, proceedings were undertaken, which culminated in 2 additional administrators being appointed, being Mary Revenia, Winstone Ekakoro and Jescah Ekakoro. A grant of letters of administration intestate was made to them on 15<sup>th</sup> February 2017, and issued on 16<sup>th</sup> February 2017. Subsequently the application that Mary Revenia Ekakoro had filed, dated 23<sup>rd</sup> September 2016, together with the protests to it, was withdrawn on 7<sup>th</sup> March 2023.
5. A second summons for confirmation of grant was filed on 28<sup>th</sup> March 2023, at the instance of Mary Revenia Ekakoro. It is a replica of the application dated 23<sup>rd</sup> September 2016, inclusive of the distribution proposed. It has no annexures, and it is not supported by a consent in Form 37.
6. The said application attracted a protest by Jesca Anyango Ekakoro, vide her affidavit of 4<sup>th</sup> April 2023. She largely agrees with the proposal by Mary Revenia Ekakoro, save for a few items, in respect of which she says:
  - a. North Teso/Kamuriai/579 does not exist, as the register was closed upon subdivision of North/Kamuriai/579 into North/Kamuriai/2869, 2870, 2871 and 2872;
  - b. North Teso/Kamuriai/2870, 2871 and 2872 are not in the name of the deceased;
  - c. North Teso/Kocholia/4223, also known as Plot at Kocholia market, is registered in the name of Francis Papat Orute;
  - d. North Teso/Kamuriai/891 has a house on it, constructed by Winstone Etete Ekakoro, with permission of the deceased, and so Mary Revenia Ekakoro cannot take it absolutely;
  - e. North Teso/Kamuriai/2869 be devolved to Stephen Achiya Echakara;
  - f. North Teso/Kamuriai/891 be shared equally between Mary Revenia Ekakoro, Michael Enoloi and Winstone Etete Ekakoro;
  - g. Plot No. 4 Kocholia be devolved equally to Winstone Etete Ekakoro, Arthur O, Ekakoro and Elepher Ekakoro;
  - h. KUE 461 be devolved upon Janipher Amojong Ekakoro; and
    - i. the shares in the limited liability companies be shared equally amongst all the survivors.
7. She has attached copies of some documents of title, for the following parcels of land, showing the persons in whose names they are registered:
  - a. North Teso/Kamuriai/2869 – the deceased,
  - b. North Teso/Kamuriai/2870 – Jesca Anyango Ekakoro,
  - c. North Teso/Kamuriai/2871 – Arthur Osikoli Ekakoro,
  - d. North Teso/Kamuriai/2872 – Haron Omoita Ekakoro, and
  - e. North Teso/Kocholia/4223 – Francis Papat Orite.
8. There is an affidavit by Yusuf Ong’uramong Ekakoro, sworn on 28<sup>th</sup> April 2023. He alludes to a will that the deceased made, and was read by Esau Achiya, in the presence of Mary Revenia Ekakoro, where the deceased distributed his property amongst his wives and children, and not amongst the sons. He says some of the sons were annoyed by that. He avers that:



- a. North Teso/Kamuriai/579 was given to Jenifer Mukade Ekakoro, and her children, and some people already have title deeds out of the property, being Godrick Haron Ekakoro, Arthur Osikol Ekakoro and Jesca Anyango Ekakoro;
  - b. North Teso/Kamuriai/595 was given to Mama Damary, Jesca Anyango Ekakoro and Mary Among'in Ekakoro; and
  - c. North Teso/Kamuriai/891 was given to Winstone Etete, to be subdivided in 3 parts, with one part going to Mary Revenia Ekakoro.
9. Mary Revenia Ekakoro responded to the protest, by her affidavit, sworn on 20<sup>th</sup> June 2023. She affirms the will, but says it was not valid, although its terms were honoured by family members. She explains as follows:
- a. North Teso/Kamuriai/335 was not given to Jenipher Amojong but to the children, so it should go to her children;
  - b. North Teso/Kamuriai/579 was subdivided, fraudulently, and it should go to Jenipher Amojong Ekakoro;
  - c. North Teso/Kamuruai/891 was given to Mary Revenia Ekakoro, but Winstone Etete put up a structure on it by force;
  - d. the Safaricom mast is on her plot, but Winstone, Reagan and Michael got a grant by fraud, and have been collecting rent from the tenants; and
  - e. plot at Kocholia market is occupied by the children of Mary Among'oni Ekakoro.
10. She proposes distribution as follows:
- a. North Teso/Kamuriai/595 and KDX 814 to the late Damary Amadede Ekakoro;
  - b. North Teso/Kamuriai/335 and 579, and KUE 461, to Jenipher Amojong Ekakoro;
  - c. North Teso/Kamuriai/595 and North Teso/Kocholia/854 and 860, and 2 plots at Kocholia market to Mary Among'ini Ekakoro;
  - d. North Teso/Kamuria/891 to Mary Revenia Ekakoro; and
  - e. North Teso/Kamuria/595 (plot 17B) and KAE 093V to Jesca Anyango Ekakoro, who is said to have completed a sale of land the deceased was buying and had it registered in her name, and she also acquired another parcel at Malaba, which she had bought.
11. The application was canvassed through *viva voce* evidence. Mary Revenia Ekakoro was the first to testify. She adopted her affidavit of 20<sup>th</sup> June 2022. She stated that North Teso/Kamuriai/579 was irregularly transferred, and that it should be given to Jenipher as per the will. She claimed entitlement to North Teso/Kamuriai/891. She said the Safaricom mast stood on that property, but the rent on it was collected by 4 individuals. She said she was not claiming North Teso/Kocholia/4223, and that it should be allocated to Mary. She said that the subdivision of North Teso/Kamuriai/595 happened in 2003 during the lifetime of the deceased. She stated that Winstone had a house on North Teso/Kamuriai/891, and he was supposed to remove the house. She said the Safaricom mast did not displace any structure.
12. Yusuf Omuramong, Ekakoro testified next. He stated that North Teso/Kamuriai/579 had been given to his mother. He said that he was aware that it had been subdivided. He also stated that North Teso/



- Kamuriai/891 was for Mary Revenia Ekakoro. He said that the Safaricom booster was on North Teso/Kamuriai/891.
13. Jesca Anyango Ekakoro followed. She was the 6<sup>th</sup> wife of the deceased. She stated that North Teso/Kamuriai/579 no longer existed as it had been subdivided, during the lifetime of the deceased. On North Teso/Kamuriai/891, she said Mary Revenia Ekakoro should share the same with Winstone, as he has a house there. She asserted that the booster was on North Teso/Kamuriai/595, and not North Teso/Kamuriai/891. She said the will had given North Teso/Kamuriai/891 to Mary Revenia Ekakoro, but Winstone had a house there. She said North Teso/Kamuriai/595 was given to 3 wives.
  14. Winston Etete Ekakoro testified next. He stated that North Teso/Kamuriai/891 should be shared between him and Mary Revenia Ekakoro. He said when the will was done the deceased had already distributed his land, but it remained relevant as a guide. He said that he got many plots because the deceased gave them to him, and that his mother had been very industrious, and contributed to acquisition of most of the assets. He said that if the will was invalid then the property could be shared equally.
  15. Gamaliel Etete followed. He was a brother of the deceased. He said the booster was on North Teso/Kamuriai/595. He also said that Winston had put up a house on North Teso/Kamuriai/891, adding that he also had a plot at Kocholia.
  16. I note that although the deceased had a large family of 6 wives and 41 children, these proceedings have involved only a few of these family members, notably Mary Revenia Ekakoro, Winston Etete Ekakoro, Jesca Anyango Ekakoro and Yusuf Omuramong Ekakoro. The voices of the other children and widows of the deceased have not been heard. I can only confirm the grant herein upon getting confirmation that the proposals herein are supported by everyone, as envisaged by Rule 40(8) of the *Probate and Administration Rules*. That would be where all the forty something survivors have signed a consent in Form 37. I have seen no such consent on distribution. In the absence of such a consent, Rule 41(1) of the *Probate and Administration Rules* requires me to hear all the parties: the applicant administratrix, the protestors and all the other survivors. I have only heard the applicant and the protestors. The other 40 have not been heard, yet this also concerns them. The active parties in this litigation have not sought to avail them, or to have them attend court to express their views on the distribution, or to file documents expressing their positions. It is only democratic that they be heard.
  17. Consequently, I shall not determine the summons for confirmation of grant, of 21<sup>st</sup> March 2023, and the protests to it, before I have gotten input from all the other survivors. Section 71(2)(d) of the *Law of Succession Act*, Cap 160, Laws of Kenya, allows me to postpone confirmation of grant for various reasons. I hereby invokes section 71(2)(d), and postpone the said application. The administrators shall cause the survivors who have not testified in this matter, or filed affidavits to that application, to attend court, on a day I shall appoint for them to be heard. It is also open for such survivors to file affidavits to express their respective positions on the matter. It is so ordered.

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

**WM MUSYOKA**

**JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

Mr. Juma, instructed by JV Juma & Company, Advocates for Mary Revenia Ekakoro.



Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for Jesca Anyango Ekakoro.

