



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Jared Koita Cheteri - (Deceased) (Succession Cause  
E153 of 2002) [2025] KEHC 161 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 161 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E153 OF 2002  
RN NYAKUNDI, J  
JANUARY 20, 2025**

**IN THE MATTER OF THE ESTATE OF JARED KOITA CHETERI-(DECEASED)**

**AND**

**THROUGH LUCAS MAKUNDA JOSEPH, MUNYANYA KOITA  
KITERI, JAMES CHITERI KOITA AND RISPER NAMUYEYI KOITA**

**RULING**

1. The deceased passed away on 15<sup>th</sup> December, 1985, and in 2002, seventeen years following his death, Risper Namuyeyi Koita and Wycliffe Amukoya Koita, in their respective capacities as widow and son of the deceased, initiated proceedings by petitioning for letters of administration intestate. Following comprehensive legal proceedings, a certificate of confirmation of grant was issued on 17<sup>th</sup> February, 2011. Subsequently, this certificate faced contestation through summons for revocation filed on 7<sup>th</sup> May, 2024, primarily challenging its validity on the grounds that the chief's letter underpinning the Certificate of Grant had failed to encompass all rightful beneficiaries.
2. A ruling was issued on the aforementioned summons, effectively nullifying the certificate of confirmation of grant dated 17<sup>th</sup> February, 2011, and incorporating additional beneficiaries: Lucas Makunda, Joseph, Munyanya Koita Kiteri, James Chiteri Koita, and Risper Namuyeyi. Consequently, a new Grant of Letters of Administration Intestate was issued on 19<sup>th</sup> June, 2024. Subsequently, Risper Namuyeyi Koita filed an application for confirmation of this new grant, accompanied by a consent agreement detailing the distribution of the estate among the beneficiaries. The summons outlined the estate's composition as follows:
  - a. Marama Lunza 867 Measuring 16 Acres
  - b. Marama Lunza 801 Measuring 13 Acres
  - c. Plot No. 69
  - d. LR No. 533/10/11 (Molo) Township



3. The deceased was survived by the following:
- a. Risper Namuyeyi Koita
  - b. Lucas Makunda Koita – son
  - c. Joseph Munyanya Koita – son
  - d. James Chiteri Koita – son
  - e. Gladys Indimuli – Daughter
  - f. Celestine Mukosi Chiteri – Daughter
  - g. Wycliffe Amukoya Koita – Son
  - h. Samuel Chiteri Koita – son
  - i. Christopher Okusimba Koita – Son
  - j. Geoffrey Alwanya Koita – son
  - k. John Nashisakha Koita – son
  - l. Stephen Koita – son
4. In the said summons the estate was distributed as follows:

Maram Lunza 867 Measuring 16 Acres

- a. Lucas Makunda Koita – 2.5 Acres
- b. Joseph Munyanya Koita 2.5 Acres
- c. James Chiteri Koita – 2.5 Acres
- d. Gladys Indimuli – 2.5 Acres
- e. Celestine Mukosi Chiteri – 2.5 Acres
- f. Wycliffe Amukoya Koita – 2.5 Acres
- g. Leonida Ogola Koita 1 Acre.

Marama Lunza 801 Measuring 13 Acres

- h. Samuel Chiteri Koita – 2 Acres
  - i. Christopher Okusimba Koita – 2 Acres
  - j. Geoffrey Alwanga Koita – 2 Acres
  - k. John Nashisakha Koita – 2 Acres
  - l. Stephen Koita – 2 Acres
  - m. Risper Koita – 1 Acre
- Plot No. 69
- n. Leonida Ogola Koita – Whole share.
- LR No. 533/10/11 (Molo) Township



- a. Risper Namuyeyi Koita
  - b. Milton Apollo Onzere
  - c. Lucy Njeri Kaniri
5. Risper Namuyeyi Koita subsequently filed a further affidavit in which she made a clarification regarding Marama Lunza 801 where it came out that the property measured 13 acres and not 11 acres as earlier indicated. She proposed that the distribution be adjusted and five of the stated beneficiaries in the said parcel be allocated 2.4 Acres each.
  6. The parties filed their submissions in arguing their respective views. In a nutshell, the administrators as led by Learned Counsel Mr. Chepkwony submitted that their client's model of distribution was the appropriate as it is more equitable.
  7. The Objectors' counsel Mr. Ndege equally filed his written submission in which he essentially argued that the property known as LT No. 533/10/11 Molo town is owned by Koita Kiteria, Elam Kaniri and David Onzere Aduma. That the objector herein Lucy Njar Kaniri has since obtained a certificate of confirmation of grant in respect of the estate of Elam Kaniri Lugalo.
  8. Learned Counsel Mr. Ndege submitted that the said property be shared equally between the estate of Koita Kiteri, Elam Kaniri and David Onzere Aduma as indicated in the transfer documents and not as indicated in the consent for summons for confirmation of Grant.
  9. Finally, it is submitted for the Objectors that the summons for confirmation of Grant has allocated the land to the children of Koita Kiteri whereas the land was owned by Koita Kiteri Elam and David Onzere Aduma in equal shares.

### **Analysis and determination**

10. The matter before this court concerns the distribution of the estate of the late Jared Koita Cheteri, who passed away on 15th December 1985. The estate comprises four distinct properties, and while proposals for distribution have been made, this court recognizes the necessity of obtaining precise information regarding the current occupation and utilization of these properties.
11. Section 40 of the *Law Succession Act* deals with the distribution of the estate of a polygamous family and provide as follows: -
  - a. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
  - b. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38."
12. From the above legal provisions, in a polygamous marriage setup, the estate ought to be distributed among the houses in accordance with the number of children in each house, with each surviving spouse counted as an additional unit. The distribution model in such set ups where there are more than one wife must take into account both the houses established during the deceased's lifetime and the number



of children born to each house, with each surviving spouse being counted as an additional unit in computing the proportionate share of each house.

13. A significant legal issue has been raised by Mr. Ndege regarding the ownership structure of LR No. 533/10/11 (Molo) Township. While the current proposed distribution contemplates sharing this property among certain beneficiaries of the deceased's estate, documentary evidence presented through counsel demonstrates that this property was originally owned jointly by three distinct parties: Koita Kiteri, Elam Kaniri, and David Onzere Aduma. This ownership structure is supported by transfer documents, and significantly, Lucy Njar Kaniri has already obtained a certificate of confirmation of grant in respect of the estate of Elam Kaniri Lugalo in Molo Succession Cause No. E088 of 2018.
14. This revelation fundamentally alters the analysis of how this particular property should be distributed. The court cannot proceed to distribute the entirety of LR No. 533/10/11 as if it were solely owned by the deceased, when documentary evidence suggests it was held in joint ownership. The principle of *nemo dat quod non habet* (one cannot give what they do not have) applies here. The estate can only distribute the deceased's rightful share of this property, which appears to be one-third, based on the evidence presented.
15. Accordingly, I make the following orders:
  - a. The Director of Survey shall visit the estate and file a report within thirty (30) days from the date of this ruling establishing:
    - i. The current habitual residence of the beneficiaries
    - ii. The nature of structures and improvements on the properties
    - iii. A survey plan showing equal shares in relation to current occupation
      - a. All beneficiaries shall grant unrestricted access to the Director of Survey and their team.
      - b. The costs of the survey shall be met from the estate funds.
16. Orders accordingly. Status conference on 18/2/2025

**DATED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF JANUARY 2025**

**In the Presence of**

**M/s Chepkwony Advocate**

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**R. NYAKUNDI**

**JUDGE**

