



In re Estate of Dickson Kihika Kimani alias Kihika Kimani (Deceased) (Succession Cause 158 of 2005) [2025] KEHC 2973 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KEHC 2973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 158 OF 2005
SM MOHOCHI, J
MARCH 14, 2025
IN THE MATTER OF THE ESTATE OF DICKSON
KIHKA KIMANI ALIAS KIHKA KIMANI (DECEASED)**

JUDGMENT

1. This succession cause relates to the estate of the late Dickson Kihika Kimani alias Kihika Kimani a former politician who died intestate on 19th November, 2004. The deceased left behind what would be considered a vast estate and was survived by eight (8) widows and 40 children as hereunder;
 - a. The 1st house - Margaret Wambui Kihika with 7 children,
 - b. The 2nd house Alice Mukuhi Kihika with 11 children
 - c. The 3rd house – Jane Wanjiru Kihika (5 children)
 - d. The 4th house is of Mary Wangari Kihika. (4 children)
 - e. The 5th house is for Winnie Wanjeri Kihika (2 children),
 - f. The 6th house is for Charity Nyambura Kihika (6 children),
 - g. The 7th house is for Miriam Warau Kihika – 3 children; and
 - h. The 8th house – Lucy Wangare Kihika – 2 children
2. The number of widows and children left behind is not in dispute what is I dispute is how the estate will be shared amongst all the beneficiaries of the deceased. A grant of Letters of Administration intestate of the estate of the deceased was made on the 13th October, 2009. The Administrators of the estate were Margaret Wambui Kihika (1st Administrator) Alice Mukuhi Kihika (2nd administrator), Mary Wangare Kihika (3rd Administrator) and Miriam Warau Kihika (4th Administrator).
3. Pursuant to the Ruling of 11th February, 2021, the 1st Administrator the widow from the first house was substituted by Florence Nduta Kihika her daughter, due to her advanced age and illness. The Grant



is yet to be confirmed as the houses with their respective members have failed to agree on the mode of distribution 20 years later.

4. On record there are affidavits in support of the Summons for Confirmation of Grant supported by the widows of the deceased. There is also on record affidavit of protest dated 21st April 2011 by Alice Mukuhi Kihika. There are the affidavits of Mary Wangari Kihika, Winnie Wanjeri Kihika. Charity Nyambura, Miriam Warau Kihika and Lucy Wangari Kihika the 4th 5th 6th, 7th and 8th widows where they all deponed the same averments proposing a similar mode of distribution.
5. The hearing proceeded by way of viva voce evidence where Margaret and Alice the first and second widows respectively testified giving an outline of the estate and the places where the widows had been settled and currently in occupation. They both proposed modes of distribution with each proposing that the first three houses get bigger shares of the estate.
6. The argument is that they had contributed towards the acquisition of the estate and all that the deceased acquired was acquired before the younger wives came in the picture. Further that those were the wishes of the deceased as he had already settled his wives.
7. Alice Kihika even testified to taking part in the purchase of some of the properties. Jane Wanjiru Kihika, the third widow did not testify.
8. Mary Kihika the 4th widow, on the other hand testified on her behalf and that of the 5th 6th, 7th and 8th widows. In a nutshell, the widows from the other houses insist on equal distribution of the estate. That if everyone remains where they are living, others will miss an inheritance. That it would not be fair for one person to take 314 acres at the expense of the other houses.
9. The estate of the deceased is said to comprise of the following properties:-
 - i. Bahati/Engoshura Block 4/3
 - ii. Lare/Teret Block 1/50
 - iii. Bhati/Engoshura Block 4/1
 - iv. Bhati/Engoshura Block 4/6
 - v. Engoshura Block 4/11
 - vi. Njoro/Ngata 1/1945
 - vii. Roselyn Njoro LR No. 7480/2 -150 acres
 - viii. Marmanet Farm LR No. 2480/5 (Laikipia 314 acres in area
 - ix. Naivasha LR No. 1144/121
 - x. Solai LR No. 11387
 - xi. LR No. 118847
 - xii. LR No. 220/55
 - xiii. LR No. 220/56 Muthengara farm
 - xiv. LR No. 220/66
 - xv. Naivasha plot near the market plots No. 1144/110



- xvi. Naivasha plot near the market plots No. 1144/144
 - xvii. Free Area plot LR No. 11098/82
 - xviii. Shamba in Njabini
 - xix. Nairobi House LR No. 209/69/23
 - xx. Rumuruti Township Plot 3671/V/15
 - xxi. Subukia Trading Centre Plot
 - xxii. Bahati Township Plot
 - xxiii. Kabazi Township Plot
 - xxiv. Kikopey Plot
 - xxv. Rumuruti Maralal Road Farm -200 acres
 - xxvi. Mau-Narok Trading Centre Plot
 - xxvii. Jawatho Plot
10. The ownership of most of the above properties, by the deceased is doubtful. The ownership documents were never produced despite the Court's directions of 13th June, 2024. The Court subsequently ordered the administrators to file Affidavits including proof of assets forming part of the estate and none complied by the date of this judgment. The Court noted the lack of working in unison on the part of the Administrators.
11. The Counsels nonetheless proceeded to file written submissions.

Erishifa Wanjiru Kihika Submissions (beneficiary in the first house)

12. It was submitted that the wealth created in 1953 and 1978 was wealth created by the deceased together with the first three widows. That upon the deceased's death, he held trust for his first three wives.
13. It was argued that as at 1978 Margaret had been married for 25 years, Alice for 14 years and Jane 7 years therefore the properties should be distributed to 27.15%, 15.2% and 7.5% respectively and they will share the other half of the estate with the other five wives according to Section 40 of the [Law of Succession Act](#).
14. It was submitted that Section 35 and 40 of the [Law of Succession Act](#) guarantees each widow to a life interest to free property of the deceased and not what was held in trust by the deceased for another person. That the children of the deceased will under Section 38 of the [Law of Succession Act](#) share the remainder equally after the life interest of their mothers. That once the property comes to the house, the same is shared according to the Rule in Saunders v Vaultier as was applied in Justus Thiora Kiugu v Davud Kubanjia Kiugu [2015] eKLR.
15. It was argued that under Section 35 of the [Law of Succession Act](#), the widow has power to give her children a portion of the estate and that only under the act can a child get part of the capital from the estate contrary to Rono v Rono. That the share of the widow is determined by the number of members in the house.
16. It was also submitted that the order made in 2019 regarding LR No. 209/69/23 be set-aside and replaced with an order that some properties be sold to meet administration expenses.



17. As regards the Confirmation of Grant, it was submitted that this be the first case that Section 84 of the Law of Succession Act is applied for the widows to be appointed as trustees in whose names the assets will come to each house. As for the first house, the children can appoint one who will act in place of their aged and sickly mother.
18. It was submitted that although no searches were provided for some properties, the Court ought to proceed based on the properties described in the affidavits filed by the widows that there is need for the valuation of the assets of the deceased for two purposes setting apart the properties that belong to Margaret, Alice and Jane from that of the deceased and that which is available for sharing by the 8 houses.

1st Administrator's Submissions

19. The 1st Administrator Submitted on 2 issues
 - i. How will the estate be distributed?
 - ii. How will the Bills for catering for distribution of the estate be paid?
20. On distribution, it was submitted that the first, second and third widows had contributed to the estate before the others came in. That the first widow was working having been in marriage for 25 years by 1978 and contributed to the growth of the estate. That it would be fair and just to distribute the estate of the deceased up to 1978 to the first three wives.
21. The 1st Administrator Largely agreed with the submission of Erishifa Wanjiku Kihika her elder sister but had a point of departure on the following properties in terms of distribution.
 - i. That Njoro Roselyne farm was previously purchased as 357 acres and the deceased sold 200 acres during his lifetime and gave four(4) acres to PCEA church. Therefore, the size available for distribution is 153 acres and not 200 as proposed.
 - ii. That the incomplete house behind house number seven (7) be divided equally between the first three (3) wives and thirteen (13) children who have not received houses, since the three (3) wives going as per proposal of Erishifa and ten (10) out of the twenty-three (23) children in the first three (3) houses have already received houses. That it shall be fair and in the principal of equity the remaining thirteen (13) children each get a share too
 - iii. Professor Wamani's house that was bought at Kshs 3,500,000, the deceased only paid Kshs. 1,200,000 Jane Wanjiku a beneficiary paid the balance of Kshs. 2,300,000 at a point it when it was about to be repossessed. The title dead currently is in her name and hence not available for distribution
 - iv. The piece of land opposite Egerton University approximately two (2) acres was repossessed by Professor Wamani. The deceased had not paid for it nor had it been transferred in his name. she prayed that the Court be guided by the decision and sentiments of the Supreme Court in OO v MBO (2023) KESC 4 (KLR) where the Supreme Court held that "the guiding principle in determining whether Article 45 (3) of the constitution conferred proprietary rights is that apportionment and division of matrimonial property may only be done where parties fulfil their obligation of proving what they are entitled to by way of contribution...Therefore, a party must prove contribution to enable a Court to determine the percentage available to it at distribution.



22. Further it was submitted that the estate of the deceased only comprises of properties owned by him at the time of his demise and any property that is not registered under his name or owned by him cannot be distributed as part of his estate.
23. Pertaining the Bills, it was proposed that Naivasha Plot 1144/110, Naivasha 1144/144, Naivasha L.R 144/121 and Rumuruti/Maralal Farms 20 acres be sold to cater for valuation and advocates costs.

2nd Administrator's Submissions

24. The 2nd Administrator identified four issues for determination:
 - i. The beneficiaries of the estate of the deceased
 - ii. The net intestate estate of the deceased available for distribution
 - iii. The distribution of the net intestate estate of the deceased
 - iv. Costs of the Application.
25. On the beneficiaries, it was submitted that there was no dispute as to what had been outlined in the Affidavit of Protest by the 2nd Administrator sworn on the 21st of April, 2011 with minor beneficiaries being churches and relatives of the deceased who had been given some small portions of land by the deceased in his lifetime as set out in paragraph 7(a) (ix), b (i) and f (i) & (iii).
26. On the net estate of the deceased, it was submitted that Section 3 of the Law of Succession Act defines the free property of a deceased property and referenced the case of in the Estate of Job Ndunda Muthike (Deceased) [2018] eKLR to submit that any property registered in any party other than the deceased was not free property of the deceased to dispose during his lifetime and therefore not part of the estate.
27. It was argued that the following properties; Shamba in Njabini, Subukia Tradig Centre Plot, Bahati Township Plot, Kabazi Township Plot, Kikopey Plot, Rumuruti/Maralal Road Farm and Rumuruti-Narok Trading Centre cannot be distributed for the reason that they are neither identifiable nor clearly defined. With no land reference numbers, distributing them would be in vain. The Administrators ought to verify their land reference numbers and obtain documentary proof.
28. As regards the property in Westlands Nairobi, L.R 209/69/23, Bahati/Engoshura Block 4 (Matete) 3, Bahati/Engoshura Block 4 (Matete) 4 and Bahati/Engoshura Block 4 (Matete) 6 they are registered in the names of third parties as according to the verification of ownership documents availed and as such are not free property of the deceased.
29. According to the 2nd Administrator, the following properties form the net intestate estate of the deceased and are available for distribution;-
 - i. LR No. 220/55, LR No. 220/56 and LR No. 220/66 Muthengera farm -109 acres
 - ii. L.R 7480/2 (Roselyne Farm) -150 acres
 - iii. L.R 118847 (Shangilia Farm) 57 Acres
 - iv. L.R 248015 (Marmanet Farm) 314 Acres
 - v. LR No. 2480/5 (Laikipia 314 acres in area
 - vi. Bahati/Engoshura Block 4/11
 - vii. Lare/Teret Block 1/1945



- viii. Naivasha LR No. 1144/121
 - ix. Naivasha LR No. 1144/110
 - x. Naivasha LR No. 1144/14
 - xi. Solai LR No. 11387
 - xii. Free Area L.R. 11098
 - xiii. L.R 367/V/15- Rumuruti
30. In distributing the above properties, it was submitted that Section 40 of the *Law of Succession Act* ought to be considered as it demands equity and fair distribution on the net estate. Reference was made to the case of *Mary Rono v Jane Rono* [2005] eKLR to submit that heirs of the deceased should inherit not on equality but on equity and fair distribution.
 31. Further reliance was placed in *Esther Wanjiru Githatu vs Mary Wanjiru Githatu* [2019] eKLR to submit that, the respective contribution of the widows and their houses in acquisition of the properties should be taken into account and considered for a bigger share of such properties than the widows that came after acquisition of property.
 32. Counsel also submitted that the discretion of the Court conferred under Section 40 of the *Law of Succession Act* to distribute the estate is not absolute as the Court has to also take into account the wishes of the deceased in the manner in which he settled the widows and their children, the wishes of the widows, blood and marriage relationships, history of their connection with the specific properties and the need to avoid unnecessary disruptions.
 33. It was argued that there is also need to value the net intestate estate as appreciated by the Court of Appeal in *Lita Violet Shephard vs Agnes Nyambura Munga* [2018] eKLR in order to guard against unfair distribution.
 34. The proposal according to the 2nd Administrator on distribution by the estate is as follows:
 - i. LR No. 220/55, LR No. 220/56 and LR No. 220/66 Muthengera farm -109 acres. That since all the widows testified that the deceased gave them equal portions despite the acreage not being agreed upon the same should go to the 8 widows and one Daniel Kungu Kimani in equal shares.
 - ii. L.R 7480/2 (Roselyne Farm) -150 acres to be given to Margaret and her 7 children since she was married in 1953 and participated in acquisition of this property and settled there since 1970
 - iii. L.R 118847 (Shangilia Farm) 57 Acres- to go to Jane Wanjiru Kihika as she was settled there by the deceased
 - iv. LR No. 2480/5 (Laikipia (Marimanet Farm) 314 acres in area since the house has 12 units and the deceased had settled the 2nd Administrator there and having worked to pay the purchase price would like to get the property. She urged the Court to take judicial Notice of the value of the land in Laikipia is considerably lower than Nakuru. Further that the PCEA church took possession of 1½ in honour of the wishes of the deceased
 - v. Bahati/Engoshura Block 4/11- To be distributed in accordance with the wishes of the deceased and as confirmed by the testimonies of the widows. This is in line with paragraph 7 (g) of the Affidavit of protest dated 21st April, 2011.
 - vi. Lare/Teret Block 1/1945 be given to Margaret



- vii. Njoro/Ngata Block 1/1945 be sold and the proceeds shared amongst the beneficiaries
- viii. Naivasha LR No. 1144/121 and Naivasha LR No. 1144/110 should go to the 2nd Administrator Alice, pursuant to the letter dated 31st December, 2024
- ix. Naivasha LR No. 1144/14 be sold and the proceeds shared amongst the beneficiaries
- x. Solai LR No. 11387 and Free Area L.R. 11098 to go to Jane Wanjiru Kihika
- xi. L.R 367/V/15- Rumuruti to be given to Patrick Kihui a son to Alice who lives with a disability.

4th 5th 6th, 7th and 8th Widows' Submissions

- 35. On behalf of the 4th 5th 6th, 7th and 8th widows it was submitted that this Court should distribute what is available and whose ownership is not contested. That Section 40 of the *Law of Succession Act* forms the statutory foundation on which the principles relevant hereto are applied.
- 36. They too referenced the view of the Court in the case of Mary Rono vs Jane Rono [2005] eKLR and relied in Kilonzo vs Kilonzo & Another [2024] KECA 354, in re Estate of the Late George Cheriro Chepkoiom (Deceased) 2017] eKLR to submit that division of property in a polygamous family is a matter for the discretion of the Court therefore matters agreed upon are not at the discretion of the Court.
- 37. It was contended that there were the properties settled by agreement.
 - i. Pertaining Muthengera farm (L.R. 220/55, 56 and 60, it was submitted that each of the houses should inherit the portions of land where they were settled by the deceased.
 - ii. Pertaining Bahati/Engashura block 4/11(Matete) it was submitted that the Court should give effect to the specific allocation of the houses as was set out at paragraph 7(g) of the affidavit of the second widow.
- 38. As for the properties Marmanet Limuga farm Njoro measuring 314 acres, the Roslyn Farm measuring 200 acres and the Subukia Shangilia farm measuring 57 acres being occupied by the first three widows it was submitted that, the first three widows had been in the parcels for a long time, that their children are all adults and not school going in contrast to the 4th to 8th widows, the 4th to 8th widows ought to get shares commensurate with the disadvantage they have suffered
- 39. It was further submitted that there was no evidence of contribution from the first three wives as all the properties were registered in the name of the deceased and none was joint property.
- 40. As for Bahati/Engoshura block 4/1, 4/3 and 4/6 the acreage is not clear and therefore a survey of the land should be carried out to establish the exact acreage of the estate to be share among the 8 households.
- 41. It was submitted that since the order made in the interlocutory proceeds pertaining the land in Nairobi L.R 20969/23 to have the parcel sold to facilitate the winding up of the estate the same be confirmed by the Court and in the event there are any proceeds from the sale, they may be shared amongst the eight households
- 42. It was further submitted that there is need to have ownership documents of the following parcels of land Lare/Teret block 1/150, Jewatho plot, L.R. 1109/82 Free area plot, Naivasha L.R. 1144/144, Githiga Farm Kiamunyi, Solai L.R. 11387, Njoro/Ngata Block 1/1945, Rumuruti Township plot number 3671/V/15, Subukia Trading Centre plot and Two Bahati Trading Centre plots Kabazi trading



Centre plot, Kekopey plot, Njoro land next to professor Wamani's house, 2 acres opposite Egerton University and Mau Narok Trading Centre plot before any order can be issued.

43. It was argued that most of these parcels of land have very oblique references. The said properties be sold and the proceeds be distributed among the houses.

Affidavit of Jane Wanjiki Kiika (beneficiary first house)

44. Jane Wanjiku Kihika swore an Affidavit on 19th December, 2024 seeking leave to respond and clarify some errors. For staters she claimed that she Soley bought the "Prof. Wamani Property" also known as Lare/Teret Block 1/49 in 2007.
45. That the deceased died in 2004 therefore he could not have purchased the property and the estate could not have made any contribution to the purchase. She is the sole owner of the property and her mother has secured residence there having been evicted in the molo clashes.
46. It was her case that the properties in the proposal by the 2nd Administrator that "Njoro Professor Wamani's home and the adjacent 2½ acres be inherited by Margaret Wambui, that 2½ acres next to professor Wamani's house to be shared by 8 wives equally and a piece of land opposite Egerton university approximately 2 acres to be shared by the 8 wives equally" do not belong to the estate. That the said professor Wamani did not have a third property.
47. She also contended that the submissions filed by the first administrator were null and void as the contravene the orders issued on 13th June, 2024 by the Court.

Replies of Erishifa Wanjiru Kihika and Jane Wanjiku Kihika to the Submissions of Florence Nduta Kihika dated 25th November, 2024

48. The two submitted that those submissions affect Jane Wanjiku property rights as she holds Lare/Teret Block 1/49. That the contention that she holds the property jointly with the deceased is not supported by evidence.

Analysis and Determination

49. The issue which the court has to determine is the mode of distribution of the estate of the deceased. The Administrators and Beneficiaries are entitled to a share of the estate and have been unable to agree on the mode for almost twenty years now. In Re- Estate of G.K.K (deceased) (2017 eKLR it was stated that –

“The primary function of a probate and administration court is distribution of the estate of the dead person.”

50. The *Law of Succession Act* which is a self-contained law with provisions and rules governing the administration of estates. In its pre-ample, it states in past that it is the 'law relating to intestate and testamentary succession and the administration of the estate of deceased persons'.
51. It has provided for the mode of distribution of the estate where the deceased is survived by a wife and children and had married more than once under any system of law permitting polygamy. In this case the deceased is survived by eight (8) of his wives all still alive and forty (40) Beneficiaries.
52. All surviving spouses are to be considered as an additional unit to the number of beneficiaries and are entitled to an equal share of the estate.



53. The following Widows and their children are found and deemed beneficiaries eligible to inherit a share of the estate of the deceased;

a. Margaret Wambui Kihika (1st Widow)

- i. Rosemary Wanjeri
- ii. Edwin Thuku
- iii. Elishifa Wanjiru
- iv. Jane Wanjiku
- v. Edward Kungü
- vi. Hellen Wangari
- vii. Florence Nduta

b. Alice Mukuhi Kihika (2nd Widow)

- i. Peter Kimani
- ii. Norman Kihiu
- iii. Elvis Kungu
- iv. Catherine Wanjeri
- v. Antony Giehia
- vi. Susan Wakarura
- vii. Caroline Wanjiku
- viii. Pauline Nyambura
- ix. Ann Nduta
- x. Christine Mwihaki
- xi. Partrick Karingu

c. Jane Wanjiru Kihika (3rd Widow)

- i. Phylis Njoki
- ii. Cyrus Kimani
- iii. Daniel Kungu
- iv. John Wesley Kamunya
- v. Caroline Wanjiku

d. Mary Wangari Kihika (4th Widow)

- i. Sarah Wanjeri
- ii. Robinson Kimani
- iii. Violet Wanjiru



- iv. Lazarus Kinuthia
 - e. Winnie Wanjeri Kihika (5th Widow).
 - i. Alex Kimani
 - ii. Patricia Wanjeri
 - f. Charity Nyambura Kihika (6th Widow)
 - i. Evans kahiga
 - ii. Judy Muthoni
 - iii. Johnson Wanderi
 - iv. Serah Wanjeri
 - v. Miriam Wanjiku
 - vi. Ishmael Kimani
 - g. Miriam Wairimu Kihika (7th Widow)
 - i. Janet Wanjeri
 - ii. Victor Kimani,
 - iii. Evanson Gichuru
 - h. Lucy Wangari Kihika (8th Widow)
 - i. Victor Kimani,
 - ii. Jackson Wanyaga,
54. This probate has seen it all, the total volume in pleadings number six (6) volumes of files running into thousands of pages and has now been pending within the judicial system for twenty (20) years now and the Summons for confirmation of grant Application has now been pending for ten (10) years.
55. The worries and concerns of the 1st - 3rd Houses and those of the 4th -8th houses are palpable and apparent which can be summarized as the pioneer spouses feeling that the statutory formula for distribution of the deceased estate is unfair in that they might have a share less than what they have for decades enjoyed, that the 4th – 8th Houses contending that the 1st – 3rd houses control the lion share in the deceased estate and that if such an arrangement persists then the share remaining for distribution assures an unfair outcome, in that, there might be beneficiaries who might not receive any share.
56. While the *Law of succession Act* and the Probate and Administration Rules attempt to provide the distribution formula, it does not expect an outcome with mathematical precision as I held in re Estate of the Late Elizabeth Wanjiku Gichohi (Deceased) (Succession Cause 174 of 2004) [2024] KEHC 14019 (KLR) (8 November 2024) (Ruling)
57. In other words, by virtue of the probate being intestate the Law attempts to adjudicate disagreement on mode of distribution proposed by the various parties with fairness and equity remaining the beacon of focus.
58. The 1st - 3rd Houses have appreciated the tangent by making concession and proposing a formula that departs from the strict Application of the law.



59. The 4th - 8th Houses on their part insist on the application of equal distribution principle urging that any other approach may result in some beneficiaries not getting any share all together. This court thinks that such an outcome is impossible and that what the court is being subjected to, is transactional and maintenance of hardline positions.
60. This court concurs with the 2nd Administrator that, the respective contribution of the widows and their houses in acquisition of the properties should be taken into account and considered and appreciates that, polygamous men are generous in nature and would wish for equality within their large families, but would not in the course of expanding their families, disrupt lives of the other existing prior spouses by reducing acreage of their existing matrimonial homes in most instances the new brides would be settled separately and acquisitions in the name of the House would then continue.
61. It is this court's considered opinion that, had the deceased been alive he would have addressed such glaring inequity where the first 3 houses are definitely in possession of shares that would make members of the other houses salivate.
62. The death of the deceased was never intended to cause divisions in this family and any stakes placed on the current holdings of matrimonial homes of the 1st to the 3rd houses should be viewed as making such an attempt just because the deceased is dead but such a claim could not have possibly been made by anyone in the presence of the deceased in his lifetime.
63. While it is proposed that the court appreciates that the deceased was married for 52 years before his demise and the 1st to the 3rd houses were in place by 1978 and that this therefore being the midstream the marriage life of the deceased remains a feature by itself in this estate.
64. The deceased equally demonstrated desire to distribute the estate on equal basis as is demonstrated in the property commonly known as LR No. 220/55, LR No. 220/56 and LR No. 220/66 Muthengera farm -109 acres.
65. I do find and concur with the 1st Administrator that, Njoro Roselyn farm was previously purchased as 357 acres and the deceased sold 200 acres during his lifetime and gave four (4) acres to PCEA church. Therefore, the size available for distribution is 153 acres and not 200 as proposed.
66. This court finds that even where the 4th - 8th houses postured for strict application of Section 40 of the [Law of Succession Act](#) no evidence has been laid justifying the proposal.
67. This court is alive to the Risk of deploying a formula factoring consideration of the years the 1st to the 3rd houses were in union with the deceased leading to discriminative outcomes bearing in mind the estate remains unvalued.
68. The court notes that the petition had estimated the value of the entire estate at petitioning at Kshs 180,000,000/- with a liability of kshs 4,000,000/- and it is imperative for the court to equally consider the value of this estate as an additional factor to inform the final distribution
69. The failure by all administrators to avail title documents has equally further hampered the court from rendering a decision that is pronounced with finality.
70. Assets that are subject to a dispute of one kind or other are not free, and are not available for distribution, until the dispute is settled or resolved. See Naomi Wanjiku Waweru & another vs. Teresia Nyokabi Njuguna [2015] eKLR (Musyoka, J), Alex Waweru Kibura & 2 others vs. Teresiah Nyokabi Njuguna [2019] eKLR (Maina, J), In re Estate of Gerald Mwangi Mugo (Deceased) [2019] eKLR (Gikonyo, J), In re Estate of M'Ikiugu M'Mkindia (Deceased) [2019] eKLR.



71. This court finds the following assets not be forming part of the estate of the deceased or being unavailable for distribution;
- i. Shamba in Njabini,
 - ii. Subukia Trading Centre Plot,
 - iii. Bahati Township Plot,
 - iv. Kabazi Township Plot,
 - v. Kikopey Plot,
 - vi. Rumuruti/Maralal Road Farm
 - vii. Rumuruti-Narok Trading Centre
 - viii. Naivasha plot near the market plots No. 1144/110
 - ix. Naivasha plot near the market plots No. 1144/144
 - x. Naivasha LR No. 1144/121
 - xi. Lare/Teret block 1/150,
 - xii. Jewatho plot,
 - xiii. L.R. 1109/82 Free area plot
 - xiv. Githiga Farm Kiamunyi,
 - xv. Solai L.R. 11387,
 - xvi. Njoro/Ngata Block 1/1945,
 - xvii. Rumuruti Township plot number 3671/V/15,
 - xviii. Subukia Trading Centre plot
 - xix. Two Bahati Trading Centre plots
 - xx. Kabazi trading Centre plot,
 - xxi. Kekopey plot,
 - xxii. Njoro land next to professor Wamani's house,
 - xxiii. 2 acres opposite Egerton University
 - xxiv. Mau Narok Trading Centre plot.
72. The Administrators are all expected to collectively present proof of ownership and where any dispute of ownership subsists then such a dispute shall be referred to the appropriate forum and can only be available for distribution upon determination of such dispute.
73. The following assets are found to be free and available for distribution
- i. LR No. 220/55, LR No. 220/56 and LR No. 220/66 Muthengera farm -109 acres
 - ii. L.R 7480/2 (Roselyne Farm) -153 acres



- iii. L.R 118847 (Shangilia Farm) 57 Acres
- iv. L.R 248015 (Marmanet Farm) 314 Acres
- v. LR No. 2480/5 (Laikipia 314 acres in area
- vi. Bahati/Engoshura Block 4/11

74. Owing to the foregoing the court is of the considered opinion that the assets remaining in paragraph 73 (ii-v) above shall be subjected to valuation to inform final orders on distribution.
75. In exercise of my discretion flowing from Section 40 of the *Law of Succession Act* constrained to order that, the following assets forming part of the estate of the deceased are available to be distributed as follows:



Property	Beneficiaries	Share
LR No. 220/55, LR No. 220/56 and LR No. 220/66 Muthengera farm -109 acres.	ALL eight (8) Houses and one Daniel Kungu Kimani at 12 acres each house	to be shared equally amongst all 49 units
Engoshura Block 4/11	<p>House No.1-Susan Wakarura Kihika</p> <p>House No. 2- Elvis Kungu Kihika</p> <p>House No.3- Cyrus Kimani Kihika</p> <p>House No. 4- Daniel Kungu Kihika</p> <p>House No. 5-Anthony Gichia Kihika</p> <p>House No. 6- To be sold and proceeds to expended towards valuation of the entire estate.</p> <p>House No.7 (Housing Block for the 8 wives) - Each wife one house.</p> <p>House No. 8- Wesley Kamunya Kihika</p> <p>House No. 9- Patrick Kihiu Kihika</p> <p>House No. 10- Edwin Thuku Kihika</p> <p>House No. 11-Peter Kimani Kihika.</p> <p>House No. 12-Rosemary Wanjeri Kihika</p> <p>House No. 13 (Big red tiled house)-Tracy Wambui Kungu.</p> <p>The Incomplete House and the plots behind House No.7- to be divided equally between the first 3 wives and their 23 children.</p> <p>The land next to the incomplete houses - to be</p>	to be shared equally amongst all 49 units



	<p>divided between the first 3 wives and their 23 children.</p> <p>The Land between the perimeter fence and house No. 1- to be divided between the first 3 wives and their 23 children.</p>	
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76. The Administrators shall be expected to simultaneously agree on a common valuer and commence the sale of House No 6 in Engoshura Block 4/11 within 30 days from today.
77. Any Beneficiary willing and able to purchase the House No 6 in Engoshura Block 4/11 shall greatly assist in securing much sought resources for the valuation and administrators are urged to explore the offer being made to all beneficiaries as the 1st option.
78. The valuation shall be undertaken and a valuation report filed within ninety days of today.
79. The Valuation and its resultant report filed shall not be subject to any arguments bearing in mind the final judgment is arrested awaiting the valuation report hence to window for further litigation exists.
80. A mention date after the expiry of one hundred and twenty (120) shall be assigned to confirm valuation and fix final judgment date.
81. Being alive to the fact that anyone within this huge family may be aggrieved by this judgment, I hereby allow a 45 day leave to Appeal and the leave period shall serve as a period of stay of execution of judgment /or decree.
82. This being a protracted family matter and to foster healing and forgiveness towards family unity, Parties shall bear their own costs.

It is so Ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 14TH DAY OF MARCH, 2024.

MOHOCHI S.M

(JUDGE)

