



REPUBLIC OF KENYA



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**In re Estate of Jared Koita Cheteri (Deceased) (Succession Cause
E153 of 2002) [2025] KEHC 5074 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E153 OF 2002
RN NYAKUNDI, J
APRIL 24, 2025**

RULING

1. This matter comes before the court to finally distribute the estate of the deceased herein following the court's ruling dated 20th January, 2025, wherein the court ordered a survey of the estate properties by the Director of Survey to establish; 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.
2. The Director of Survey has since conducted the survey as directed and filed a report dated 13th February, 2025. The field visit was conducted on 12th February, 2025, and was attended by various parties including the area chief, security officers, and several members of the Koita family, as well as one Daudi Obunaka, identified as a buyer of part of the land.
3. The 4th Administrator, Risper Namuyeyi Koita, has filed a write-up dated 12th March, 2025, indicating agreement with the surveyor's report and requesting the court to adopt the said report in its entirety, with specific provisions for the distribution of Parcel number Marama/Lunza/801.
4. The survey report reveals the following details about the properties: a) Marama/Lunza/867: The parcel measures a total acreage of 15.60 acres, with approximately 0.20 hectares allocated for road reserve. The land is currently occupied by Lucas Makunda Koita (5.3 acres), Joseph Munyanya Koita (1.7 acres), James Chiteri and Leonida (1.7 acres), and Gladys Indumuli (4.2 acres). It is noted that Lucas Makunda Koita and Joseph Munyanya Koita have sold parts of their portions to several buyers who are currently using the land. There are several buildings on the property built by the beneficiaries who reside there. b) Marama/Lunza/801: The parcel measures a total acreage of 13 acres and is currently occupied by Christopher Okusimba Koita.
5. The survey report included diagrams showing both the current occupation on the ground and a proposed plan for distribution according to the previous court order. The proposed plan divides Marama/Lunza/867 into equal portions of 2.4 acres each, with a road reserve of 0.2 hectares.



6. This adjustment accounts for the fact that the actual acreage of Marama/Lunza/801 is 13 acres rather than the 11 acres previously thought.
7. Equal shares.

Analysis and determination.

8. This matter presents the court with the complex task of balancing legal principles of succession with practical realities on the ground. The court's primary duty is to ensure just and equitable distribution of the deceased's estate among rightful beneficiaries while being mindful of existing circumstances that have developed over time. The passage of nearly four decades since the deceased's death in 1985 has inevitably led to situations where some beneficiaries have occupied, developed, and even disposed of portions of the estate. These realities, while acknowledged, must be reconciled with the legal rights of all beneficiaries to receive their fair share of inheritance.
9. The court notes that the survey has been conducted in accordance with the directions given in the ruling dated 20th January, 2025, and has provided valuable information regarding the current status of the properties belonging to the estate of the late Jared Koita Cheteri.
10. In cases of this nature where the deceased died intestate and was a polygamous man, the anchor on distribution of his estate is Section 40 of the *Law of Succession Act* which primarily provides as follows;
“(1) 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 intestate 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.

“(2) The distribution of the personal and household effects and the residue of the net interest within each house shall then be in accordance with the rules set out in sections 35 to 38”
11. The basic scheme is in line with the principles expounded in the following cases *Rono -v-Rono* Civil Appeal NO. 66 of 2002, where Waki J.A stated inter alia that ; - “ More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife and children of that wife.”
12. *In the Matter of the Estate of Nelson Kimotho Mbiti*(deceased) HCSC NO.169 of 2000, Koome J directed that the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units. The same reasoning was also applied by Judge Ali Roni in the Estate of Ainea Masinde Walubengo(deceased) [2017] eKLR stating that “I am of the view that Section 40 of the *Law of Succession Act* will apply to the circumstances of this Case. Meaning that the Court will distribute the estate of the deceased according to each house taking into account the number of children in each unit including the surviving widow.”
13. Section 40 of the *Law of Succession Act* provides that in polygamous family setups, the estate ought to be distributed among the houses according to the number of children in each house, with each surviving spouse counted as an additional unit. The principle of equal distribution among beneficiaries is a fundamental tenet of succession law, designed to ensure fairness and equity in the distribution of a deceased person's estate.



14. The court is cognizant of the fact that some portions of Marama/Lunza/867 have already been sold to third parties by Lucas Makunda Koita and Joseph Munyanya Koita. While these sales may have been conducted without proper authority given that they occurred before the confirmation of the grant, the court must consider the rights of innocent purchasers who may have acquired interests in the property in good faith.
15. The court is alive to the legal principles of bona fide purchaser for value without notice. Where innocent third parties have purchased portions of the estate property in good faith, believing they were acquiring legitimate interests, the law generally protects such acquisitions. This principle must be balanced against the rights of beneficiaries, who may otherwise be prejudiced by unauthorized sales of their inheritance. The court therefore adopts a balanced approach that recognizes and protects legitimate third-party interests while ensuring that the burden of such sales falls primarily on the shares of those beneficiaries who conducted the sales.
16. Regarding Marama/Lunza/801, the court notes that while Christopher Okusimba Koita currently occupies the entire parcel, the proposed distribution by the 4th Administrator provides for equitable allocation among six beneficiaries, which is in line with the principle of equal distribution.
17. With respect to the remaining properties, namely Plot No. 69 and L.R. NO. 533/10/11 (Molo) Township, the court notes that as per the previous ruling, there is a legal issue regarding the ownership structure of L.R. NO. 533/10/11, which was found to be jointly owned by Koita Kiteri, Elam Kaniri, and David Onzere Aduma, with the deceased's share being one-third.
18. The court recognizes and acknowledges that some beneficiaries have established their habitual residences on portions of these properties and have invested in constructing permanent structures. However, this fact alone cannot override the legal principle of equitable distribution among rightful beneficiaries. The court is mindful that while some beneficiaries may have occupied larger portions of land and constructed structures thereon, they cannot be permitted to appropriate the entirety of what would otherwise be due to other beneficiaries simply by virtue of such occupation. Justice demands that all beneficiaries receive their fair share. Nevertheless, the physical demarcation and subdivision of the land shall be conducted with sensitivity to existing structures, ensuring that homesteads and permanent buildings are not disturbed or demolished wherever possible. Beneficiaries residing in structures that fall within portions allocated to others may negotiate private arrangements for continued habitation or reasonable time for relocation, but such arrangements shall not impede the legal rights of ownership as determined by this court.
19. In light of the above and in the interest of ensuring an equitable distribution of the estate, I make the following orders:
 - a. Marama/Lunza/867: a) The land shall be distributed according to the survey plan, with due consideration for the current occupation and the rights of third-party purchasers. b) The distribution shall be as follows: i. Lucas Makunda Koita - 2.4 acres (subject to the rights of buyers who have already purchased portions) ii. Joseph Munyanya Koita - 2.4 acres (subject to the rights of buyers who have already purchased portions) iii. James Chiteri Koita - 2.4 acres iv. Gladys Indimuli - 2.4 acres v. Celestine Mukosi Chiteri - 2.4 acres vi. Wycliffe Amukoya Koita - 2.4 acres vii. Leonida Ogola Koita - 1 acre c) A road reserve of 0.2 hectares shall be maintained for public use.
 - b. Marama/Lunza/801: a) The land shall be distributed as proposed by the 4th Administrator: i. Samuel Chiteri Koita - 2.4 acres ii. Christopher Okusimba Koita - 2.4 acres iii. Geoffrey



Alwanga Koita - 2.4 acres iv John Nashisakha Koita - 2.4 acres v Stephen Koita - 2.4 acres vi. Risper Namuyeyi Koita - 1 acre

- c. Plot No. 69: a) The entire plot shall be allocated to Leonida Ogola Koita as previously agreed.
 - d. L.R. NO. 533/10/11 (Molo) Township: a) The court confirms that this property was jointly owned by Koita Kiteri, Elam Kaniri, and David Onzere Aduma. b) The deceased's share (one-third) shall be distributed equally among all his beneficiaries, namely: i. Risper Namuyeyi Koita ii. Lucas Makunda Koita iii. Joseph Munyanya Koita iv James Chiteri Koita v Gladys Indimuli vi. Celestine Mukosi Chiteri vii. Wycliffe Amukoya Koita viii. Samuel Chiteri Koita ix. Christopher Okusimba Koita x. Geoffrey Alwanga Koita xi. John Nashisakha Koita xii. Stephen Koita.
 - e. The remaining two-thirds of L.R. NO. 533/10/11 (Molo) Township belonging to Elam Kaniri and David Onzere Aduma shall not be subject to distribution in this succession cause, as they are not part of the deceased's estate.
 - f. The Administrators are directed to ensure that the distribution is carried out in accordance with these orders and to facilitate the necessary transfers and registrations with the relevant land registry offices.
 - g. Any third-party buyers who have acquired interests in portions of Marama/Lunza/867 from Lucas Makunda Koita and Joseph Munyanya Koita shall have their interests recognized and protected, subject to proper verification of their purchase agreements and payment of consideration.
 - h. The Certificate of Confirmation of Grant shall be issued in accordance with these orders.
 - i. Each party to bear their costs
20. This court is satisfied that the distribution ordered herein achieves the twin objectives of adhering to the legal principles governing intestate succession while taking into account the practical realities that have developed over time.

21. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 24TH DAY OF APRIL 2025

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R. NYAKUNDI
JUDGE

