



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Titus Duta Ngwili (Deceased) (Succession Cause
1040 of 2012) [2025] KEHC 6033 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 1040 OF 2012**

MW MUIGAI, J

MAY 9, 2025

IN THE MATTER OF THE ESTATE OF TITUS DUTA NGWILI (DECEASED)

BETWEEN

KATUMBI MUANGE NTHULI PETITIONER

AND

PRISCILLA TUTA OBJECTOR

JUDGMENT

Pleadings

1. Titus Duta Ngwili (deceased) died on 11th December, 2006 as per death certificate No 00XXXXX31 and he was domiciled in Kenya.
2. On 21/6/2012 Hon Justice A. Makhandia granted orders of 1/6/2012 that Citees namely, Priscilla Mbiki Tuta, Tabitha Mumbi Tuta, Wanza Mutele Tuta & Marita Tuta had 2 months to take up letters of administration for the deceased's estate. In default, thereafter, the Citor could proceed and apply for grant of letters of administration.
3. On 16/10/2012 Solomon Muange Nthuli as Citor filed Petition for letters of Administration Intestate for the deceased's estate.
4. The List of assets comprising of the deceased's estate are;
 - a. Kwa Mautio Commercial Plot No 1010 59ft by 100ft
 - b. Malili 2 acres Plot No 36
 - c. Kalanzoni 10 acres 4.0 hectares
 - d. Agricultural Plot No 519 – 10.8 acres



- e. Commercial Plot No 1225- 2 acres
5. The Petition was gazetted for 30 days vide Gazette Notice No 5290 of December, 2012 published on 28/12/2012 for a grant of letters of administration intestate to estate of late Titus Duta Gwili of Kola, who died at Machakos General Hospital in Kenya, on 11th December, 2006.
6. The Letters of administration Intestate of the Estate of the said Titus Duta Ngwili of Kola (deceased) was granted to Solomon Muange Nthuli on 13th March 2013 by Hon. B. Thurania Jaden L.J.
7. On 28/5/2013, the Administrator/Citor filed Summons for Confirmation of Grant attached the following documents in support of the application;
 - a. Grant of letters of Administration
 - b. Citation order of 25/6/2012
 - c. Agreement of Partnership of share between the Titus D.Ngwili (deceased) & Solomon Muange Nthuli (Citor/Administrator) in Kamba language
 - d. Agreement of Partnership of share translated into English
 - e. Copy of Letter dated 6/4/1995 from Konza Ranching & Farming Co-operative Society Limited by Mr Mbubi Wa Mutahi Ranch /Farm Manager
8. The Administrator/Citor deposed in the Supporting Affidavit to Summons for Confirmation as follows;
 - a. Solomon Muange Nthuli and Titus Duta Ngwili jointly Bought a share of Konza Ranching & Cooperative Society Limited jointly and a shareholder membership number 1085 as per annexed Agreement marked SMN-1
 - b. The letter of 6/4/1995 from Konza Ranching & Cooperative Society Limited marked SMN-2 confirmed this position.
 - c. By deceased's demise 11/12/2006, the deceased had not shared Plot 459 and later Title Deed issued was Plot No 645 as shown by Certificate of Search marked SMN-3
 - d. On 13/5/2011 membership 1085 through widow of the deceased Priscilla Mbiki Tuta and after balloting the deceased was given the following Plots as listed in the Petition above and he claims ½ of each of these properties as per the deceased's joint share.
 - e. The deceased was/is survived by 4 wives/widows and several children had they declined to take letters of administration, hence the Citation and subsequent Court order allowing Citor to file Petition.
9. The Certificate of Confirmation of Grant was granted by Hon.LJ L.Mutende on 17/6/2013 and the listed properties in Summons for Confirmation were divided into 2 equal parts.
10. The Certificate of Urgency Application was filed by Citees among them widow of deceased Priscilla Mbuki Tuta who deposed that she was not aware of the instant petition until she was served with application for rectification of grant.
11. The Applicant sought revocation of grant as it was sought by a stranger and person of lesser priority without following the relevant procedure. The grant was obtained fraudulently by making a false statement or by the concealment from the Court of material disclosure.



12. The issue of administration of the deceased's estate is critical and fundamental to the final disposal of distribution of the deceased's estate.
13. The Citor Solomon Muange Nthuli filed Replying Affidavit on 28/11/2014 and reiterated the contents of the Petition for letters of Administration and Summons of Grant
14. The Citor stated that on 7/1/1985, he transferred the share in Konza and Plot 459 on the understanding that since he was selling 5 acres, the deceased would hold share for himself and deceased jointly.
15. On 3/2/1985, the Applicant Priscilla Mbiki Tuta & his wife entered into an Agreement and he signed that the Konza share was jointly held. The dispute escalated and Konza determined the dispute that the deceased's share was jointly held vide letter of 6/4/1995.
16. The Certificate of Urgency Application was heard and determined by Hon LJ Nyamweya (as she then was) vide Ruling of 2/12/2015 on behalf of Hon LJ L.Mutende on 16/11/2015. The grant was revoked and reissued in joint names of both (Citee) Priscilla Mbiki Tuta & Solomon Mwange Nthuli(Citor) as Administrators of the deceased's estate.
17. Fresh/ new Summons for Confirmation of Grant application was filed on 17/2/2017. The suit abated, on 29/7/2020 the Citor filed Chamber Summons Application was filed to revive the suit. The matter proceeded for hearing on Protest to the mode of distribution vide Affidavit of Objection dated 19/4/2018.
18. When Solomon Muange died the Petitioner Katumbi Muange Nthuli applied to be substituted and the Court granted the application as Co Administrator of deceased's estate.

Hearing

19. PW1 Priscilla Tuti, widow of the deceased, testified and reiterated contents of her Witness Statement filed on 23/1/2023 and the bundle of documents annexed to the Statement. In a nutshell, the Petitioner, Solomon Muange Nthuli collected food stuff from the deceased's shop at the market and thereby formed friendship with the deceased. The Petitioner had his shamba about to be auctioned and came to deceased to help settle the debt and in return get his share in Konza and Plot. The Petitioner entered into an Agreement with her late husband Titus Duta Ngwili for transfer of his shares
20. The Petitioner and the deceased went to Konza got the Transfer Form filled it before the Assistant Chief and took it back to the Konza Committee.
21. The Committee approved that membership number 1085 of Solomon Muange Nthui and transferred to Titus Tuta (deceased) and he held 10 shares.
22. PW1 produced the copies of Membership Card & Application for Transfer as evidence of deceased's acquisition of the listed properties in the Petition. PW1 acquired Title Deed Machakos Konza North Block/11647 in the names of Titus Duta Ngwili and was left with properties in deceased's name
23. In cross examination PW1 stated she did not know of the Agreement of in 1985 between the deceased and the Petitioner. PW1 did not present the Agreement where deceased paid Kshs 15,000/- to settle Petitioner's land debt and share 50/50 the share benefits. PW1 was not aware of any dispute between them and the Farm Manager had no right to write letter of 11/6/1995 without the Committee approval.
24. PW2 Joseph Nguti, a Board Member of Konza Ranching & Farming Co-operative Society, relying on his Statement, testified that he was with the Society from 1979-1981 left and came back in 1985 to



- date. He stated that the Petitioner Solomon Muange Nthuli in 1985 transferred 10 shares , Plot 459 Konza North/Block/645 to Titus Duta Ngwili and Transfer of Shares of 7/1/1985 signed by Chief of Kalama and the Konza Management approved the transfer of shares from Solomon Petitioner to Titus Duta Ngwili. PW2 produced Copies of; Letter dated 1/3/2014 & 20/4/2013; Allotment letter; Share Certificate issued to Titus Duta Ngwili; Application Form for Transfer of Shares, Membership Card issued to Titus Duta Ngwili from Konza Ranching & Farming Cooperative Society.
25. He also produced copies of Title Deed for Machakos Konza North Block 1/645; Letter dated 21/1/2023; Minutes of 22nd May & 27th April 1985, Copy of Members Register, Agricultural Plot title Deed Register and the Co Administrator/Objector's proposed mode of distribution that all properties in 1045 belong to the Objector.
 26. The Petitioner testified through DW1 Mbuvi Mutavi who in 1995 was Ranch/Farm Manager of KonzaRanching & Farming Cooperative Society and he authored the letter of 6/4/1995 after meeting on 4/4/1995, with Titus Duta Ngwili & Solomon Muange Nthuli and each with his wife and on behalf of Konza Ranching & Farming Cooperative Society. He said that they agreed to Partnership of the Share 1085, the letter of 3/2/1985 in Kikamba and translated to English version; their Agreement was signed by both parties witnessed by their respective wives and the Chief/Assistant Chief. He then wrote the letter advising them that the share 1085 was shared but registered in the name of one person in trust for the other as the Regulations did not allow for membership registration of more than 1 person per share.
 27. DW2 Dorcas Katumbi, wife of the Petitioner Solomon Muange Nthuli relied on her Statement of 21/11/2022 and testified that as per the documents filed letters of 3/2/1985 & 9/2/1985 her late husband sold ½ share 1045 and she was present and signed Agreement as a witness. The Agreement was that the share 1045 would be shared and properties that would issue would be jointly owned. Her late husband filed the instant Succession Cause and she seeks ½ the properties held by the deceased under membership 1045.
 28. Petitioner's Submissions Dated 4/12/2024
 1. The application before this court by Petitioner is to have 50% share of all the properties belonging to the late Titus Tuta arising from the sale of membership of a share in Konza Ranch Society Limited and the sale of the parcel of land known as No 459 which latter was registered as Machakos Konza North Block 1/645.
 2. The Petitioner's deceased husband (Solomon Nthuli), originally a member of the Konza Ranching Scheme with membership No 1085, entered an agreement on February 3, 1985, to sell half of his share and any related benefits to Titus Duta Ngwili, now deceased. As noted in the Ruling dated 2nd December 2015 by Justice L.N Mutende at paragraph 6 page 3 it was noted that Solomon Nthuli and Titus Duta signed an agreement dated 9th February 1985 that showed that the latter was to pay Ksh. 15,000/- for 5 acres and was entitled to 50% of the shares in the plot No 459 that was changed to Konza block 1/645.
 3. After the said sale was effected both Solomon Nthuli and Titus Tuta agreed to be joint owners of Machakos Konza North Block 1/645 within Konza Ranch. This meant they were to have 50% share of the plot and anything out of the share.
 4. Titus Tuta Ngwili passed on intestate on December 11, 2006. Following his death, Solomon Nthuli moved the court by way of citation as was in SUCC.C. No 715 of 2011 in which he issued a citation dated 30/08/2011 asking the deceased's four wives namely Priscilla Tuta,



Tabitha Mumbi Tita, Wanza Mutele Tuta and Marita Tuta to either accept or decline the responsibility of administering estate of the late Titus Tuta.

5. On March 1, 2012, Justice Asike Makhandia in SUCC No 715 of 2012 as he then was, ordered that the four wives must apply for the letters of administration within 2 months.
6. The Judge also specified that if they failed to do so, the petitioner would be allowed to proceed with the application himself.
7. The wives did not comply. Consequently, Solomon Nthuli applied for the letters of administration and was granted grant of letters of administration intestate of deceased's Estate on February 20, 2013. This grant was subsequently confirmed on November 17, 2013 by Lady Justice Lilian N. Mutende.
8. As per the confirmed grant by Lady Justice Lilian N. Mutende five properties were listed as property belonging to the late Titus Tuta which were namely: Land 645, Commercial Plot No 1010, Plot No 36 Malili Area, Agricultural Plot No 519 and Commercial Plot No 1235,
Whether the late Titus Tuta was holding the suit parcels in trust for both himself and the petitioner?
9. Titus held the property in trust as we shall demonstrate; indeed Titus held the property in trust
10. A constructive trust arises when one party retains property under circumstances that make it inequitable for them to do so. Here, although the Petitioner retained official membership, the shared ownership agreement and the resolution by Konza Ranch created a moral and legal duty for them to hold the property in trust for both parties. This arrangement ensured that the Petitioner's interest in the property was safeguarded, despite not being formally recorded in the ranch's register.
11. To lend credence to the above we would like to draw the attention of this court to the case of *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) which was an appeal to the Supreme Court. The court had this to say on constructive trust and its purpose:

“The *Trustee Act* defined a trust and trustee as extending to implied and constructive trusts. A constructive trust was an equitable instrument which served the purpose of preventing unjust enrichment. Trusts were created either expressly, where the trust property, its purpose and the beneficiaries were clearly stated, or established by the operation of the law. Like in the instant case, where it was not expressly stated, the trust may be established by operation of the law.

A constructive trust was a right traceable from the doctrines of equity. It arose in connection with the legal title to property when a party conducted himself in a manner to deny the other party beneficial interest in the property acquired. A constructive trust would thus automatically arise where a person who was already a trustee took advantage of his position for his own benefit. 31. It further stated that, the doctrines of equity were applicable.”

12. In light of the above, when Solomon Muange Nthuli filed this succession cause, he sought for only half of the share of No 1085, half of any benefits which may arise and half of the land Machakos Konza North Block 1/645 within Konza Ranch and not the entire property of the deceased. Solomon Muange Nthuli as well as the present petitioner had no interest with the



property which belongs to the Deceased's Estate. The Petitioner is a co-owner of the property known as Machakos Konza North Block 1/645 within Konza Ranch.

13. Priscilla Mbiki Tuta is not the only person entitled to the 50% share of the late Titus Tuta as there are other three co-wives who too should benefit from the share belonging to the Respondent's deceased husband.

29. Objectior's Submissions Dated 27/11/2024

1. The Objector avers that her late husband- Mr. Titus Tuta Ngwili was a customer in one of the businesses owned by the late Solomon Muange and that at one point, the late Mr. Muangs had a case and needed financial assistance as his land was about to be auctioned and as such he and her husband. Mr. Ngwili agreed that he would loan Mr. Muange some money and in return, Mr. Muange would sell and transfer all the shares and properties at Konza held by Member No 1085 which at the time belonged to him.
2. That the parties upon arriving at the agreement proceeded to go to Konza where a transfer was witnessed and approved by the management at Konza in favor of Mr. Ngwili whereby the 10 shares with respect to Member 1085 were officially transferred to Mr. Ngwili and consequently a Share Certificate and a Membership Card were issued to him.
3. That as a member of Konza her husband received: Commercial Plot No 1010 (Kwa Mautio), Plot No 36 (Agricultural Konza/Malili), Agricultural Konza/Malili, Agricultural Plot No 519, Commercial Plot No 1235 and Konza North Block 1/645 (which property Konza North Block 1/645 is the only one issued with a title deed in the Late Titus Tuta Ngwili's name) and that Mr. Ngwili has never shared out the share dividends with any other person in particular Solomon and that there has never been any grievance from Solomon that the he owns half of the properties.
4. The Objector's case is further supported by the testimony of Mr. Joseph Ngoti Ngoti a committee member at Konza who served as a committee member in various committees affirmed the Objector's position that in deed Mr. Muange was the original owner of Member No 1085 and property 459 but that he sometime in 1985 transferred to Mr. Ngwili the 10 shares, Membership at Konza and Member No 1085, property 459 and anything else emanating from the membership.
5. He affirmed that Mr. Ngwili had paid the full price for the shares under Member no, 1085 together with properties emanating from the membership in Konza and Plot No 459 that was in existence and as such the transfer was considered by the Management Committee and the chief and subsequently approved as evidenced by the minutes dated 26/3/1985 and 7/5/1985 and Mr. Ngwili subsequently issued with a membership card.

The 10 Shares Emanating from Member No 1085 belong to Titus Tuta Ngwili Absolutely.

30. It is our submission that the sole issue for determination before this court is with respect to the ownership of the 10 shares which are hived under member No 1085 whereby the member is listed as Titus Tuta Ngwili (deceased) It is our view that once this court has addressed and determined this issue of ownership then the issue of distribution will in essence have also been addressed.
31. Article 40 (1) of the Constitution of Kenya provides for the protection of the right to property. It provides that:
 1. Every person has the right, either individually or in association with others, to acquire and own property.



32. Civil Appeal No 83 of 2017, *Heartbeat Limited v Ng'ambau Heartbeat Community Chidrens's Home & Rescue Center* the court when considering the issues of a trust stated:

“Times without number, this Court has outlined the circumstances under which a Court would be prepared to imply a trust. One such case is *Peter Ndungu Nienga v Sophia Watiri Ndungu* [2000] eKLR wherein the Court succinctly observed: "The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied." Emphasis added.

33. Given that the Petitioner appears to be alluding to the existence of a trust, we believe that she must therefore demonstrate the existence of the same as it is trite that he who asserts must prove. Additionally, we wish to invite this court to further consider Civil Appeal No 83 of 2017 supra the court when addressing itself to a similar matter stated:

“This Court considered the law on trust in detail in *Twalib Hatayan Twalib Hatayan & another v Said Saggat Ahmed Al-Heiy & others* [2015] eKLR, and outlined the basic tenets as follows;

“According to the Black's Law Dictionary, 9 Edition; a trust is defined as

1. “The right, enforceable solely in equity, the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).” Under the *Trustee Act*, "... the expressions "trust" and "trustee" extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property..."

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts.”

Determination

34. This Court outlined the chronology of events and pleadings, proceedings and submissions, culminating to the issue for determination; the distribution of the deceased's estate to the beneficiaries. The estate herein comprises of what assets properties belong to or are in the names of the deceased and available for distribution.
35. The role of the Court is administration and/or distribution of deceased's testate and intestate estates as provided in *Law of Succession Act*.
36. Section 34 of the Act mandates distribution of the deceased's free property where there is no Will.
37. Section 3 of the Act defines free property [of the deceased] to mean Property of which that person was legally competent freely to dispose during his lifetime and in respect of which his interest has not been terminated by his death.
38. The bone of contention in the instant matter is what constitutes the deceased's estate and thus deceased's free property.



39. Throughout filing pleadings and hearing proceedings by parties have disclosed competing and contradicting positions of assets that comprise of estate of Titus Tuta Ngwili -deceased person herein. The following Agreements by the parties' namely, Solomon Muange Nthuli (now deceased) and Titus D Ngwili (deceased) are pertinent;
- a. The Agreement For partnership of Share of 3/2/1985 & 9/2/1985 signed by both Petitioner and deceased and each his wife relied on by the Petitioner written in Kikamba translated to English in part read as follows;
- “I Solomon Muange Nthuli owner of land at Konza Ranch Member No 1085 & Plot 459, I have agreed to change to Titus D.Ngwili such that we are Co owners.....
- The Plot measures 10 acres and each person shall be using 5 acres of the Plot. All survey and development expenses for this Plot shall be borne by both parties....
- Each Party shall cultivate or work on his pportion of the land and shall be entitled to the proceeds and shall bear the expenses therefrom.”
- 9/2/1985 Agreement reads in part;
- “I Solomon Muange Nthuli have agreed with Titus D Ngwili to sell him ½ of the share of Konza Ranch which has 10shares so he has 5 acres. I have changed my name to his name any appear in Konza Ranch instead of mine. Plot 459 & Member 1085 ½ share have sold at Kshs 15,000/-.”
40. Again signed by Petitioner Solomon Muange Nthuli and Titus Duta Ngwili and each of party's wife.
- b. The Application Form For Transfer of Shares dated 7/1/1985 relied on by the Objector widow of deceased shows;
- “Mr Solomon Muange Nthuli ID 5045265/68 Membership 1085/Plot 459 Kalama Location decided on his own free will to transfer his shares to /and Titus Duta Ngwili ID 2613789/65 Katanga Sub location.”
41. This Agreement was witnessed by his wife Katumbi Muange Nthuli DW2 approved by Assistant Chief and Chief of Kalama.
- c. On 13/6/1985 the deceased Titus Duta Ngwili was issued with membership card annexed the list of Documents.
- d. On 1/4/1992 the deceased was registered as sole owner of Machakos Konza North Block 1/465 as per copy of Title Deed annexed by Objector
- e. Share Certificate was issued in the name of Titus Duta Ngwili
42. The Secretary of Konza Farming & Ranching Cooperative Society Limited wrote the following letters on the matter,
- a. Letter dated 20/5/2013 replying Petitioner's advocate letter of 16/5/2013 listed all properties as in the Petition but/and in the names Titus Duta Ngwili only.
- b. Letter dated 1/3/2014 again in response to Petitioner's advocate of 17/2/2014, and informed him that shares were not listed which were the main property which gave benefits to the listed



properties. Secondly, the Konza Ranching & Farming Co operative Society Ltd could not take any action unless and until reflected in the Register that membership No 1085 was Co owned.

- c. The Letter dated 21/1/2023 that indicates the original owner of Membership 1085 was Solomon Muange Nthuli now deceased in 1985 he transferred the shares and Plot to Titus Duta Ngwili after approval by Locational Chief and his Assistant. The Transfer was approved by both Management & Executive (Farm) Committees as sealed deal between seller & his wife and Buyer (and his wife). Transfer fees for both the shares and Plot were paid to the Society as evidenced through the attached Application/Minutes.
 - d. The Secretary enclosed Application Form for the transfer of shares & Plot
 - e. Farm Executive Committee Minutes 26/3/1985
 - f. Full Management Committee Minutes of 7/5/1985
 - g. Copy of Members Register- Titus Duta Ngwili (4 Wives Family Dispute)
 - h. Copy of Old Agricultural plots Title Register. The original Plot no 459 in the names of Titus Duta Ngwili Konza North Block 1/645
43. Against these documents filed by contesting parties is the letter of 6/4/1995 by DW1 Mbuvi Mutavi who testified that after meeting on 4/4/1995, with Titus Duta Ngwili & Solomon Muange Nthuli and each with his wife present, He said that they agreed to Partnership of the Share1085, as per the letter of 3/2/1985 in Kikamba and translated to English version; their Agreement was signed by both parties witnessed by their respective wives. He then wrote the letter of 6/4/1995 advising them that the share 1085 was shared.
44. This Court is perturbed by the following events; why were there multiple alleged binding agreements regarding the same transaction and parties thereto? Namely,
- i. The Application Form for Transfer of Shares of Membership 1085 & Plot 459 signed by Solomon Muange Nthuli, wife DW2 Katumbi Muange Nthuli Assistant Chief Kalama and Chief of Kilome and signed by the Chairman Mr Mbindyo on 13/6/1985 addressed to Chairman Konza Ranching & Farming Coop Soc Ltd dated 7/1/1985 and stamped received by the Konza Society on 13/2/1985.
 - ii) The copy of Another Agreement in Kikamba by Solomon Muange Nthuli that Membership 1085 & Plot 459 was now to be shared with Titus D Ngwili and they signed on 3/2/1985 and PW1 Priscilla Duta & DW2 Katumbi Muange signed too.
 - iii) Further Agreement of 9/2/1985 again that Solomon Muange Nthuli sold ½ share to Titus Ngwili Membership1085 & Plot 459 and he paid in instalments Kshs 15,000/- Again signed by both Solomon and Titus and their wives Priscilla and Katumbi.
45. Strangely, these subsequent Agreements were not sent presented and/or received to Konza Ranching & Farming Cooperative Society Limited and acknowledged.
46. Secondly, the same parties that signed subsequent Agreements were the same ones who signed the Application Form for Transfer of Share and they did not find it strange to sign a subsequent document over the same matter on different terms?
47. Thirdly, why were subsequent Agreements drawn and signed on different terms from the Application Form sent to Konza Society?



48. Fourthly, How come The Petitioner took no action filed civil case contesting sale/purchase/ possession/occupation ownership of the share on membership 1085 ½ Plot 465 clarifying if he sold shares of membership and Plot or not until 10 years later, in 1995 when he complained to KonzaRanching & Farming Cooperative Society Limited and dealt only with DWI who wrote the letter of 6/4/1995.
49. Fifthly, DW1 met Solomon Muange Nthuli and Titus Ngwili on 4/4/1995 and it is not clear what was discussed and how the parties resolved the dispute as there were no Minutes of the meeting.
50. Curiously, DW1 was shown Agreements of 3/2/1995 & 9/2/1995 and not the Konza Application transfer of shares form of 7/1/1985 lodged and approved by the Chairman in Konza Society where he worked.
51. The Petitioner attached Letter of 1/10/1994 by the Chairman of Konza Ranching & Farming Co-operative Society Limited Mr Paul M. Mbole to Titus Duta Ngwili and Solomon Muange Nthuli to appear at the Society Management Committee on 22/10 1994; no information on what transpired is disclosed, whether they met or not, nor of the meeting of 4/4/1995 except the letter DW1 wrote as advice not outcome or decision that the share of 1085 would be shared and land Plot 1/465 would be shared equally. The parties did not sign the letter.
52. From the above outline, in the absence of clear answers from the pleadings and evidence on record this Court finds that the genuine legal document that discloses the free property of the deceased available for distribution is the 1st document;
53. Application Form For Transfer of Shares dated 7/1/1995 that reads;
 Solomon Muange Nthuli ID 5045265/68 Membership No 1085 Plot 459 of Kalama Location have decided at my own will to transfer my share(s) and Plot to Titus Duta Ngwili ID 2613789/6 of Katanga Sub Location witnessed by Solomon's wife/widow Katumbi Muange Nthuli; approved by Mulinge Assistant Chief, Kalama And Peter K. Ndola Kilome.
 This Document was received stamped by Konza Ranching & Farming Cooperative Society Limited received on 13/2/1985 signed by Mbindyo Chairman.
 This document was not contested as forged or signatures obtained by fraudulent means or document was fabricated.
 This Court was asked to infer a constructive trust to ensure equity in order to give effect to the intention of the parties and ensure beneficial interest of a party.
 In the instant case the 1st Agreement was duly signed by parties and witnessed by local administration and presented officially to the Konza Society was not declared void and therefore replaced by subsequent Agreements. These subsequent Agreements were not filed with the Society to show change of circumstances and agreed to by parties.

Disposition

1. The Objector/Co Administrator's objection is upheld the Share 1085 Plot 465 and subsequent properties allocated to the share are free property of the deceased's estate.
2. The Petitioner's claim is not proved on a balance of probabilities and hence the Summons of Confirmation filed dismissed with regard to equal sharing between the Petitioner's family and Objector's family.



3. The Share 1085 & Plot 465 and subsequent properties comprise of deceased's estate available for distribution to deceased's family only.
4. Being a family matter there are no orders as to Costs.

JUDGMENT DELIVERED SIGNED DATED IN OPEN COURT IN MACHAKOS HIGH COURT VIRTUALLY ON 9/5/2025.

M.W. MUIGAI

JUDGE

