



REPUBLIC OF KENYA



**In re Estate of Kanda Keture (Deceased) (Succession Cause
148 of 2008) [2025] KEHC 10706 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 148 OF 2008
RN NYAKUNDI, J
JULY 23, 2025
IN THE MATTER OF THE ESTATE OF KANDA KETURE (DECEASED)**

BETWEEN

DAVID KIPLAGAT KANDA PETITIONER

AND

TULA KANDA 1ST OBJECTOR

JONATHAN KANDA 2ND OBJECTOR

RULING

Representation

M/s Nyachiro Nyagaka & Co Advocates

Cheruiyot, Olando & Co Advocates

1. What is pending before me for determination in this succession matter is the distribution of the deceased's net estate to the beneficiaries equally as ordained in the provisions of the [Law of Succession Act](#).

Petitioner's Mode of Distribution

2. The Petitioner filed his Mode of distribution dated 26th May 2025 through his Learned Counsel Mr. Nyachiro. The Learned Counsel Mr. Nyachiro submitted that the deceased herein was survived with the following dependents;

House "a"

- a. Kobilu Kanda – Widow (Deceased)
- b. David Kiplagat Kanda



- c. Kristina Kipchumba
- d. Salina Kisang (Deceased)
- e. Andrew Kanda (Deceased)

House “b”

- a. Tarkok Kanda – Widow (Deceased)
- b. Anna Kanda
- c. William Kanda (Deceased)
- d. Flora Kanda
- e. Michael Kanda

House “c”

- a. Tula Kanda – Widow (Surviving)
- b. Betty Kanda
- c. Mary Korir (Wife)
- d. Zablon Kanda (Deceased)
- e. Elizabeth Kanda
- f. Jonathan Kanda
- g. Elijah Kanda
- h. Abraham Kanda
- i. Evans Kanda

3. The Learned Counsel also stated that the deceased left the following properties;
 - a. Lelan/Kaptalamwa/26 measuring 57 acres
 - b. Lelan/Kaptalamwa/249 measuring 135 acres
4. The Learned Counsel submitted that Lelan/Kaptalamwa/249 has an ongoing case at Eldoret Land and Environment Court which is yet to be determined. With this, counsel stated one issue for determination being; The Distribution of Lelan/Kaptalamwa/26 measuring 57 acres
5. The learned Counsel submitted that there was a grant which was issued on 20th March 2024 for partial confirmation in respect to land parcel number Lelan/Kaptalamwa/26 (Measuring 22.4 Ha). Counsel also submitted that before the deceased died, he had distributed the said property among his three wives and all the three wives were settled accordingly and all his assets were also shared equally among his three houses and that as it stands the deceased had always wanted his wives to have equal share of his property and that is why he ensured he settled them in equal share of land. He stated that this was



confirmed by letter dated 10th February 2025. Reference was made to the case of *Scholastic Ndululu Suva v Agnes Nthenya Suva* [2019] eKLR, where the Court of Appeal held as follows:

“It is therefore evident, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

Counsel also made reference to the case of *Rahab Njeri Kariuki v Joyce Waruguru Kariuki & 2 Others*, Succession Cause No. 123 of 199.

6. The learned Counsel further submitted that looking into the topographical report of the land known as Lelan/Kaptalamwa/26, each house is in possession of what was given to them by the deceased and it clearly shows that the deceased really wanted each house to have equal share of the property and the land was subdivided into three portions and the land is being utilized equally. Counsel also stated that when this matter came up for ruling before this Honourable Court on 24th June 2024, this Honourable Court held that,

“the court has taken note of the schedule of distribution filed by the Petitioner, which distributes the available parcel of land equally among the beneficiaries. The principle of law in my judgement are in consonant with the model filed by the Petitioner.”

7. With this, the Learned Counsel submitted on the following mode of distribution to be adopted by this Honourable Court.



NAME	DESCRIPTION OF PROPERTY	SHARE
	Lelan/Kaptalamwa/26 Measuring 57 Acres	To be shared equally among the three houses
House A	LR No. Lelan/ Kaptalamwa/26 Measuring 57 Acres	19 Acres
David Kiplagat Kanda		
Kristina Kipchumba		
Salina Kisang (Deceased)		
Ruth Cherop Kipsang (Daughter)		
Andrew Kanda (Deceased)		
Salina Suter Ruto (Daughter)		
House B	LR No. Lelan/ Kaptalamwa/26 Measuring 57 Acres	19 Acres
Anna Kanda		All 19 Acres
William Kanda (Deceased)		
Hillary Kanda (son)		
Flora Kanda		
Michael Kanda		
House C	LR No. Lelan/ Kaptalamwa/26 Measuring 57 Acres	19 Acres
Tula Kanda- Widow (surviving)		19 Acres
Betty Kanda		
Zablon Kanda (Deceased)		



Mary Korir (wife)	
Elizabeth Kanda	
Elijah Kanda	
Abraham Kanda	
Evans Kanda	

Objectors Mode of Distribution

8. The Objectors filed their proposed schedule mode of distribution dated 13th May 2025 in which the Learned Counsel Mr. Cheruiyot submitted as follows:

Land Parcel No. Lelan/Kaptalamwa/26 (Measuring 22.4 Ha)

Name Share of Heirs

1. 1st House
 - a. David Kanda - 1.4933ha
 - b. Christina Kipchumba - 1.4933ha
 - c. Ruth Cherop Kanda - 1.4933ha
2. 2nd House
 - a. Anna Kanda - 1.4933ha
 - b. Kibet Kemboi Kanda - 1.4933ha
 - c. Flora Kanda - 1.4933ha
 - d. Michael Kanda - 1.4933ha
3. 3rd House
 - a. Tula Kanda - 1.4933ha
 - b. Betty Kanda - 1.4933ha
 - c. Mary Korir - 1.4933ha
 - d. Elizabeth Kanda - 1.4933ha
 - e. Jonathan Kanda - 1.4933ha
 - f. Elijah Kanda - 1.4933ha
 - g. Abraham Kanda - 1.4933ha
 - h. Evans Kanda - 1.4933ha

Land Parcel No. Chepsiro/kiptoi Blk 2/kapsimotwo/184 (measuring 5.261 Ha)

Name Share of Heirs



1. 1st House
 - a. David Kanda - 0.35073ha
 - b. Christina Kipchumba - 0.35073ha
 - c. Ruth Cherop Kanda - 0.35073ha
2. 2nd House
 - a. Anna Kanda - 0.35073ha
 - b. Kibet Kemboi Kanda - 0.35073ha
 - c. Flora Kanda - 0.35073ha
 - d. Michael Kanda - 0.35073ha
3. 3rd House
 - a. Tula Kanda - 0.35073ha
 - b. Betty Kanda - 0.35073ha
 - c. Mary Korir - 0.35073ha
 - d. Elizabeth Kanda - 0.35073ha
 - e. Jonathan Kanda - 0.35073ha
 - f. Elijah Kanda - 0.35073ha
 - g. Abraham Kanda - 0.35073ha
 - h. Evans Kanda - 0.35073ha

Analysis and Determination

9. Before I derive into the determination of the mode of distribution proffered by both counsels representing the parties herein, I would like to give a brief overview of the litigation of this succession cause. The Petitioner herein had filed an application dated 20th June, 2024 seeking orders that This Honourable court be pleased to arrest or stay its ruling/judgment in the matter pending the hearing and determination of the mode of distribution and that the costs of this application be provided for.

10. Vide a Ruling dated 24th June 2024, this Honourable Court spelt itself as follows;

“ 14. The court has taken note of the schedule of distribution filed by the Petitioner, which distributes the available parcel of land equally among the beneficiaries. The principles of the law in my judgment are in consonant with the model filed by the Petitioner. Land parcel number Lelan/Kaptalamwa/249 (measuring 40.47 Ha) to this end shall await the outcome in Eldoret High Court, case number HCC ELC 250 of 2014, whereas for Parcel number Chepsiro/Kiptoi Blk2/Kapsimotwo/184 (measuring 5.261) Ha), the petitioner shall give the status of the property as to whether it is an estate property or it is a property gifted to the administrator.



15. From the foregoing analysis, the grant issued on 20th March, 2024 is as a result partially confirmed in respect to Land parcel number Lelan/Kaptalamwa/26 (measuring 22.4 Ha).
 16. In this case, whilst this is a partial confirmation the court has not disregarded the application for filing of a supplementary affidavit on new disclosures on matters arising out of the administration of this estate. As a consequence, therefore, leave be and is hereby granted for the filling of that supplementary affidavit and that affidavit shall be served upon other beneficiaries named in this Petition and the court may in its discretion make attendant orders to that features in that affidavit. For purposes of clarity, the court is careful not to make piecemeal determination given the prima facie facts of this succession cause that there are other appropriate assets which are yet to be conclusively dealt with as mentioned elsewhere in this ruling requiring the necessity of further interrogation for the ends of justice to be met. The interventions by this court as highlighted, will be better holistically adjudicated on a priority basis on account of the ELC matter being determined, the interim probate account on the contentious asset stated to have been transmitted to David Kiplagat Kanda as alleged by the other beneficiaries without their concurrence. That is a justiciable issue.
 17. The Petitioner is hereby directed to file an interim probate account for Parcel number Chepsiro/Kiptoi Blk2/Kapsimotwo/184 (measuring 5.261 Ha), given that it is contested by the Objectors and for the court to appreciate the contentious issues. Any application seeking inclusion or exclusion of the properties to this estate ought to be decided when all these other pending issues set out in this ruling have been heard and determined on merit.
 18. In terms of this issues a status conference be held on the 21st of October, 2024. In the meantime, a certificate of confirmation of grant shall be issued forthwith on the itemized asset.
 19. Costs be in the cause.”
11. From the ruling above, it is thus clear that what is pending before this court is a determination of the mode of distribution of the intestate estate of the deceased particularly with respect to Parcel Number Chepsiro/Kiptoi Blk2/Kapsimotwo/184 (Measuring 5.261) ha). From the reading of the Ruling herein above, this Court had directed to Petitioner to file an interim probate account for the said parcel. Pursuant to this directive, the Petitioner herein filed a further Affidavit of Probate dated 24th February 2025 where he averred as follows;
- a. That the property Chepsiro/Kiptoi Blk2/Kapsimotwo/184 (Measuring 5.261) Ha) is registered in my name.
 - b. That I took a loan from AFC using the said property and security and that pursuant to the court directions I have started the process of discharging the said parcel of land.
 - c. That I have so far paid discharge fee in discharging the suit property.
 - d. The land was subdivided equally into 3 portions for the 1st, 2nd and 3rd houses and the land is being utilized by the 3 houses equally.



- e. That I have also attached herein the grounds statement in confirmation of how the three plots were divided showing permanent structures in the three plots of land.
- f. That I pray to this Honourable Court to affirm the sharing and occupation on the ground statement being shared equally amongst the 3 houses.

Applicable Law

12. To this end, the applicable law which is relevant to the said parcel of land is Section 40 of the [Law of Succession Act](#). In a case of this nature where the deceased died intestate and was a polygamous man survived by two widows and children 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”

13. 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 JA 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.”

14. *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.”

15. In the case of [In Re Estate of Joseph Eric Owino \(Deceased\)](#) [2022] eKLR, the Court cited the case [In Stephen Gitonga M’murithi v Faith Ngira Murithi](#) where the court made the following observations

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.



Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each house hold of a polygamous deceased. Applying the above principles..... it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the Law of Succession Act by discriminating against the married daughters of the deceased...”

16. Our jurisprudence is now settled on the issue of inheritance that the imperatives of Article 27 of the Constitution is one of the yardsticks in interpreting Section 38 and 40 of the Law of Succession Act. Besides the above authorities, the court in Eliseus Mbura M' Thara v Harriet Ciambaka & another also addresses the issue in the following language:

“The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The law of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.”

17. From the discussed legal principles above, I take note that the Objectors schedule of distribution, which divides the available parcel of land namely Chepsiro/Kiptoi Blk2/Kapsimotwo/184 (Measuring 5.261 HA) equally among the houses, has been noted by the court. The legal principles in my ruling align with the model submitted by the Objectors.
18. Accordingly, I hereby confirm and adopt the Objectors' distribution schedule for parcel number Chepsiro/Kiptoi Blk2/Kapsimotwo/184 measuring 5.261 hectares, with each of the fifteen beneficiaries shall receiving 0.35073 hectares. The Petitioner is directed to complete the discharge process from the AFC loan within ninety days and to prepare subdivision plans reflecting this equal distribution among all parties. The existing occupation arrangements as evidenced by the ground statement shall be preserved during the title processing period, and individual titles shall be registered for each beneficiary's allocated portion.
19. The matter concerning parcel number Lelan/Kaptalamwa/249 measuring 40.47 hectares shall remain stayed pending the final determination of Eldoret High Court case number HCC ELC 250 of 2014.
20. The Costs shall be in the cause.
21. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 23rd DAY OF JULY, 2025

R. NYAKUNDI

JUDGE

