



REPUBLIC OF KENYA



In re Estate of the Late William Tongi Mogusu (Deceased) (Succession Cause 92 of 2017) [2025] KEHC 12970 (KLR) (22 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 92 OF 2017**

RK LIMO, J

SEPTEMBER 22, 2025

IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM TONGI MOGUSU

BETWEEN

LOICE MORAA TONGI 1ST PETITIONER

JACKSON MOGAKA TONGI 2ND PETITIONER

AND

DANIEL TONGI MOGUSU 1ST OBJECTOR

JOHN MAGETO TONGI 2ND OBJECTOR

AND

MARGARET KEMUNTO TONGI APPLICANT

JUDGMENT

1. This cause relates to the estate of the late WILLIAM TONGI MOGUSU (deceased) who died on 13/8/2018 domiciled within Trans-Nzoia County.
2. The deceased died intestate leaving behind the following dependants namely;-
 - i. Loice Moraa Tongi – widow
 - ii. Jackson Mogaka Tongi
 - iii. John Mageto Tongi
 - iv. Margaret Kemunto Tongi
 - v. Evans Onkoba Tongi



- vi. Daniel Tongi Mogusu
- vii. Ruth Kerubo Tongi and
- viii. Peris Mokeira Tongi

3. The assets comprising the estate are listed in the petition herein as follows:-

- a. Trans-Nzoia/Kipsoen/180
- b. Trans-Nzoia/Kipsoen/175
- c. Trans-Nzoia/Kipsoen/182
- d. Trans-Nzoia/Kipsoen/292
- e. Trans-Nzoia/Kipsoen/293
- f. Trans-Nzoia/Kipsoen/315
- g. Nyaribari Masaba/Boguche/238
- h. Kitaru Settlement Scheme/19
- i. Trans-Nzoia/Koisagat/2
- j. Trans-Nzoia/Kabomboi
- k. Nyaribari Masaba/Kiamokawa/17
- l. Fiat Tractor Reg Nno.KDX 263
- m. Motor vehicle REg No.KAB 851Q
- n. Fiat Tractor KVE 502
- o. Bank Accounts
 - i. KCB A/C No.110XXXX55
 - ii. A/C No.535210 Kitale Branch
 - iii. KCB Shares No.089014 & No.20735
 - iv. 30579 Ordinary Shares at National Bank of Kenya
 - v. Safaricom Shares
 - vi. Kenya Prisons Department Sacco Shares

4. The liability listed in the petition is a debt of Kshs.2,200,000/- owed to one Justry .P. Lumumba . Later another liability to the estate was added to be that of Ruth Kerubo Tongi who is owned Kshs.965,000/-.

5. All beneficiaries in this cause are in agreement of who the dependants are as listed above. There is also no contest on what constitutes or comprises the assets and liabilities in the estate. John Mageto Tonti and Daniel Tongi Mogusu have however in their written submissions disputed the debt of Kshs.965,000/- owed to Ruth Kerubo Tongi. They point out that no evidence was presented to prove the debt.



6. It also transpired in the course of proceedings that a beneficiary by the name Jackson Mogaka Tongi passed on and the administrators applied that his share in the estate be held by his son ELVIS KINARA MOGAKA in trust of his siblings.
7. The appointed administrator Loice Moraa Tongi (deceased) vide summons for confirmation of grant dated 24/6/2021 applied for confirmation of grant and proposed that all assets save for money in the bank and listed shares be distributed equally among all beneficiaries. She proposed that the money held in the bank accounts and the shares be distributed to her.
8. John Mageo Tongi and Daniel Tongi Mogusu on the other hand protested and their main bone of contention is that the deceased had partially distributed his estate to mainly the sons namely Jackson Tongi, John Tongi, Evans Tongi and Daniel Tongi with each son being gifted 15 acres while Peris Mokeira (said to be mentally challenged) getting 10 acres from a parcel of land at Kipsoen Scheme. They propose that the alleged initial distribution be factored in and the remainder of the estate be shared equally among all the beneficiaries.
9. The 1st administrator submitted through counsel, John Mageo Tongi, the 3rd administrator sold 4 acres of land comprising the estate during the pendency of this cause without consent of other beneficiaries. If this is true then the purported sale is not only illegal but null and void by operation of section 55 of Law of Succession Act as read with Section 82 (b) (ii). Section 55 of Law of Succession Act provides:-

“(1)No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.

(2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death”.

The provisions of Section 82(b) (ii) is more explicit. It states:-

“No immovable property shall be sold before confirmation of the grant”.

10. The law therefore does not allow any administrator, or beneficiary to dispose any part of the estate even with the consent of other beneficiaries. One certainly cannot consent to commit an illegality. The purported sale by John Mageo if at all is void ab initio.
11. This court has considered the proposal made by the protestors as opposed to the proposal made by the 1st administrator. This court finds that the two proposals are almost similar save for the protestors’ proposal that there were shares gifted to them by the deceased during his lifetime.
12. This court finds that the deceased died intestate. There is no Will that has been presented to this court. This cause therefore will be treated as an intestate proceedings.
13. The parties in this cause recognize one another. There is no dispute that the deceased left one widow surviving him and seven children. The widow is now deceased. It is also uncontested that another dependant namely Jackson Mogaka Tongi also passed on during the pendency of this cause. There was an application that Elvis Kinara Mogaka be appointed to stand in to hold his share in trust. Since there is no objection raised, Elvis Kinara is hereby appointed a trustee of the share of the estate that was to go to his late father. He shall however hold that share in trust of his 6 siblings in equal share.



14. The circumstances obtaining in this cause shows that the provisions of section 38 *Law of Succession Act* does apply in the distribution of the estate. The provisions provides:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”.

15. The law provides for equal distribution of the estate. This court finds that the proposal by the protestors that distribution does factor in what had been gifted to the sons and Peris Tongi is not supported by facts or law.

16. The liability of Kshs.2,200,000/- to Justry .P. Lumumba is uncontested. That amount shall be paid to him from A/C 110XXXX55 at KCB Kitale Branch.

17. The liability of Kshs.965,000/- to Ruth Kerubo Tongi has been contested by the protestors. This court finds that the liability has not been proved or established by the evidence presented to court.

18. This court has been informed that one of the beneficiaries namely Peris Mokeira Tongi is mentally challenged. Again this fact is uncontested. Her share will therefore be held by her daughter Jane Kwamboka and Zain Kerubo in trust for her.

19. The protestors have proposed that some parcels of land be sold and proceeds shared equally among all the dependants. That proposal can only be sustained if all beneficiaries were in agreement.

20. In the premises this court finds that it is fair and just to have the following assets comprising the estate distributed equally as follows:-

A. Land Parcels

(i) Trans-Nzoia/Kipsoen/175

(ii) Trans-Nzoia/Kipsoen/182

(iii) Trans-Nzoia/Kipseon/292

(iv) Trans-Nzoia/Kipseon/293

(v) Trans-Nzoia/Kipsoen/315

The above parcels to be distributed equally among the following dependants;

i. Elvis Kinara Mogaka to hold in trust for himself and 6 siblings.

ii. John Mageto Tongi

iii. Margaret Kemunto Tongi

iv. Evans Onkoba Tongi

v. Daniel Tongi Mogusu

vi. Ruth Kerubo Tongi

vii. Jane Kwamboka and Zain Kerubo to hold in trust for Peris Mokeira Tongi and for their benefit equally.

The distribution of the above parcels shall factor in where any of the beneficiaries has constructed a house. The youngest son Daniel Mogusu



Tongi's share to include where the matrimonial home is situate unless the parties otherwise agree.

b. Nyaribari Masaba/Boguche/238

To be shared equally among the 7 beneficiaries in terms of (A) above.

c. Kitaru Settlement Scheme/19

To be shared equally among the 7 dependants in terms of (A) above.

d. Trans-Nzoia/Koisagat (Sore Farm)

To be shared equally among the 7 beneficiaries in terms of (A) above.

e. Trans-Nzoia/Kabomboi

To be shared equally among the 7 beneficiaries in terms of (A) above. Alternatively if the parties agree, the portion be sold and proceeds be shared equally among all the 7 beneficiaries in terms of A above.

f. Nyaribari Masaba/Kiamokawa/17

To be shared equally by 7 beneficiaries in terms of (A) above.

g. Motor Vehicles

(i) Motor vehicle KAB 851Q

(ii) Fiat Tractor Reg No.KDX 263

(iii) Fiat Tractor Reg No.KVE 502

The same be sold and proceeds shared equally among the 7 beneficiaries.

h. Money in the Bank

(i) Money in A/C No.110XXXX55

(ii) Fixed deposit A/C No.53210

Kshs.2,200,000/- be paid to Justry P Lumumba. A reasonable amount to be agreed by the beneficiaries be set aside to cater for subdivisions of the various parcels and the balance be shared equally among the 7 beneficiaries.

i. Shares

(i) KCB Shares No.089014 & No.29725

(ii) Shares No.30579 at National Bank of Kenya

(iii) Safaricom Shares

(iv) Shares with Kenya Prisons Department Sacco.

All the above shares to be sold and proceeds shared equally. Alternatively if the parties agree, the shares be divided equally among 7 beneficiaries in terms of (A) above.

21. This being a family matter I make no order as to costs.

DELIVERED, DATED AND SIGNED AT KITALE THIS 22ND DAY OF SEPTEMBER, 2025.

HON JUSTICE R.K. LIMO



KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Wahome for the 1st and 2nd Petitioners

Kibonei for the Objectors

Duke/Chemosop – Court assistants

