



In re Estate of John Kirrinkai Koonyo (Deceased) (Succession Cause 14 of 2018) [2024] KEHC 6015 (KLR) (23 May 2024) (Judgment)

Neutral citation: [2024] KEHC 6015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 14 OF 2018**

F GIKONYO, J

MAY 23, 2024

IN THE MATTER OF THE ESTATE OF JOHN KIRRINKAI KOONYO (DECEASED)

BETWEEN

- RICHARD LANET KOONYO 1ST APPLICANT**
- WILLIAM S. KOONYO 2ND APPLICANT**
- STANLEY T KOONYO 3RD APPLICANT**
- CHARLES S. KOONYO 4TH APPLICANT**
- RUTH KOONYO 5TH APPLICANT**
- SERAH NAIKUNI 6TH APPLICANT**
- CHARITY PELO 7TH APPLICANT**
- ROSELIN TIAMAT KASAURA 8TH APPLICANT**

AND

- SELEONE KOONYO 1ST RESPONDENT**
- LABAN KOONYO 2ND RESPONDENT**
- JANE KOONYO 3RD RESPONDENT**
- MOITALEL KOONYO 4TH RESPONDENT**

JUDGMENT

1. The succession proceedings herein relate to the estate of the late John Kirrinkai Koonyo who died on 25/06/2009 survived by several wives and children. The deceased died having made a will dated



- 21/04/2009. In the said will the deceased listed his beneficiaries as well as properties he believed to belong to him.
2. Salome Leshan (deceased's sister) and Eliud Koonyo were appointed in the will as the executrix and executor, respectively. After the deceased's demise, the two petitioned for a grant of letters of representation with a will annexed vide a petition dated 27/01/2011 on the strength of the said will.
 3. Some daughters of the deceased have also applied through the summons for a provision for dependants under section 26 of the *Law of Succession Act* brought after grant has been applied for but not confirmed dated 06/05/2011.
 4. The applicants beseech the court to exercise discretion and to make reasonable provisions for them as dependants from the deceased's net estate, they also sought for costs of the application to be provided for.
 5. The summons is predicated upon the ground set out on the face of the application and the affidavit of Richard Lanet Koonyo sworn on 06/05/2011. The applicants' main contentions are that the deceased did not adequately provide for them in the will, included persons who did not depend on him, and purported to will off some properties in which he had no proprietorship. Further the deceased did not give any explanation for the disparities. They therefore urged the court to interfere with the will.
 6. The Summons are opposed by Salome Leshan vide replying affidavits sworn on 31/01/2011 and 02/06/2011. She denied the averments made by the applicants in support of the summons. She averred that the deceased was married to 5 wives. She averred that the daughters of the deceased were left out because having been married they lost their right to inherit from the deceased's estate as per Maasai customary law. She claimed that the relationship between the applicants and the deceased was not cordial and thus informed the manner in which the will was drafted including the deceased barring them from attending his funeral.
 7. The 1st respondent swore a replying affidavit on 24/10/2014. He averred that Cis Mara/Olchorro/107 does not form part of the estate as it is registered in the name of Sirere Ole Kilesi who is not a member of the Koonyo family. He also denied any transaction between him and Rev Moses Ikayo over a piece of land known as Cis Mara/Olkeri/7.
 8. The 2nd respondent swore a replying affidavit on 24/10/2014. He averred that Plot No. 66Narok Town cannot form part of the deceased's estate as the same was transferred to him and the 3rd respondent during the lifetime of the deceased.
 9. The 1st applicant swore a replying affidavit on 21/10/2021 concerning the various parcels of land said to belong to the deceased.
 10. Viva voce evidence was also adduced upon the summons as well as proof of will. Each party adduced evidence in support of their respective stand points on the matter.
 11. The applicants called three (3) witnesses while the respondents called four (4) witnesses.
 12. Some parties claimed that, some properties in the will are not estate property. Others claimed that, some estate properties have been omitted in the will and these proceedings.
 13. Towards the end of the trial, and borne out of the evidence, it became necessary for this court to order and direct the district land registrar, Narok to prepare a report with respect to certain parcels of land said to form or not to form part of the deceased's estate. Consequently, a report dated 14/07/2023 was prepared and filed in court on 17/07/2023, whereby the parcels of land registered in the deceased's



name were ascertained. On record also are two reports; dated 29/06/2021 filed on 17/08/2021 and dated 19/04/2023 filed on 26/04/2023.

14. Upon conclusion of the oral hearing, the parties were directed to file written submissions. The applicants filed submissions dated 15/09/2023 and supplementary submissions dated 23/10/2023. The 2nd Respondent filed submissions dated 14/09/2023 and further submissions dated 10/01/2024. The respondents filed submissions dated 29/04/2024.

Analysis and Determination

15. Arising from the pleadings, the evidence adduced, the reports by the land registrars as well as the submissions of the counsel, the issues for determination are: -
- i. Whether the will of the deceased is valid
 - ii. Who are the beneficiaries
 - iii. Which properties form part of the estate property
 - iv. Distribution of estate properties.

Whether the will of the deceased is valid

16. The formal requirements of validity of a written will are stipulated in section 11 of the [Law of Succession Act](#) as below –

‘No written will shall be valid unless-

- (a) The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
 - (b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
 - (c) The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.’
17. The applicants submitted that the will seemed to have complied with the statutory requirements as to the attestation of the same. However, according to them, no evidence was tendered to demonstrate that the same was attested to properly. Further, the testator’s state of mind was also not established. The deceased failed to properly identify his property and instead, he mentioned general local references for the same either by the village, trading, centre, or adjudication section. Therefore, the applicants concluded that, the will in question is invalid and incapable of execution. The applicants relied on section 11 of the [Law of Succession Act](#), and *Re Estate of Gatuthu Njuguna (Deceased)* [1998] eKLR.
18. The respondents submitted that the deceased observed all factors and saw it fit to dispose of his property in his way. The deceased was of sound mind when putting his thoughts on how to dispose of his property. The deceased’s ill relationship with the applicants does not make the will invalid all his actions transpired through his affection, interest, and desires which he indicated in his will.



The deceased indicated his interest in how his property should be disposed of having considered his dependants. The respondents relied on the cases of *Re Estate of Murimi Kennedy Njogu*(Deceased) [2016]eKLR, *Banks Vs Goodfellow* [1870] LR 5 QB 549 as cited with approval in the case of *Vaghella Vs Vaghella*, *Wingrove Vs Wingrove*[1985] 11 P & D 81, *Sospeter Kimani Waithaka Succession Cause No. 341/1998*, and *Elizabeth Kamene Ndolo Vs George Mata Ndolo* [1996] eKLR.

19. PW1-Charles Sankale Ole Koonyo testified that he learned that the deceased left the will and did not leave anything to their house except 5 acres in No. 35 to Ruth and Stanley. He stated that they had disagreed with the deceased when he was sick in 2009 when they demanded he distribute the land to them. He denounced the will and walked out in protest.
20. According to PW1 they have disputed the will because it was not sealed. It was not signed but thumb-printed and the deceased could sign. Wainaina read it and was with the sister of the deceased.
21. In his affidavit in support of the summons, Richard Lanet Koonyo stated that the deceased drafted his will at the time when he was very ill and suffering from chronic diabetes and that he later suffered a stroke. He further stated that the will as-is, is incapable of implementation as it does not mention the amount of acreage each dependant is entitled to out of the parcels named.
22. Salome Leshan in her replying affidavit stated that the applicants had taken the deceased to court vide Narok SPMCC NO. 43 of 2008 seeking orders to compel the deceased to award them a share of his property and the deceased in his will sought to exclude them from attending his funeral and /or claim a share of his property.
23. DW1- Eliud Koonyo testified that advocate Wainaina wrote the will. He was not present when the will was executed but was present when it was read before the council of Maasai elders. Advocate Wainaina was appointed as executor. Those who attested the will were Joseph Longisa and Joseph Laban. He further stated that the deceased was mentally fit when he wrote the will.
24. DW2-Laban Koonyo. He testified that the deceased wrote the will when he was in good health and was mentally fit.
25. PW6(sic)-Timothy Sumare Jipelekenya a civil servant in the Ministry of Interior and National Coordination. He testified that he was working at the county commissioner's office Narok in the year 2008. He was in Narok North deputy county commissioner's office when the family of the deceased on 15/01/2010 when the family of the deceased went to the DCC's office concerning the distribution of the wealth of the deceased. The DCC arranged a meeting and consulted the Maasai council of elders. He stated that the will was prepared by advocate Wainaina who read the will in the presence of 24 family members. He stated that Richard, Stanley, and Charles were also present but did not sign the minutes. He prepared the minutes of the meeting but did not sign them.

Mental capacity to make will

26. Under sections 5(3) & (4) of the *Law of Succession Act*, the testator was deemed to be of sound mind, and it was upon applicants to establish any mental incapacity.
27. The deceased was aged 81 years at the time of death. A copy of his death certificate indicates that the deceased died on 25/06/2009. The cause of death is stated in the copy of the death certificate to be cardiac arrest; toxemia; metastatic carcinoma of prostate. There is nothing in this to show he was not in sound mental status to write a will.



28. Other than claiming that the deceased was ill and not mentally fit to write a will, there was no evidence tendered to show that the deceased suffered from any mental incapacity at the time of making the will herein.
29. Accordingly, the deceased is deemed to have been of sound mind at the time he made the will.
30. The applicants have failed to discharge their burden of proof in relation to the challenge to the testamentary capacity of the deceased. This court finds their claims to be unsupported by evidence and are dismissed.

Formal legal requirements in making a will

31. This court has examined the will dated 21/04/2009. The will contains the name of the deceased, and directly beside it, is his left-hand thumbprint, which shows that the testator intended to give effect to the will. The thumbprint has been witnessed by two people, namely: Joseph Longisa Ole Sadera and Joseph Laban Kishoyian, who signed below the testator's allocated section.
32. In *John Wagura Ikiki & 7 others v Lee Gachigia Muthoga* [2019] eKLR, the court of appeal adopted the holding of Githinji J (as he then was) in *Karanja & anor v Karanja* (2002) 2 KLR 22 where the learned judge stated as follows:

“Where the will is regular on the face of it with an attestation clause and signatures of attesting witnesses and the signature of the testator, there is a rebuttable presumption of due execution (Omnia esse riteatta).”

33. This court is equally satisfied in this matter that the will of the deceased was regular on the face of it. The impugned will was signed and attested to, and no evidence could dislodge the presumption that it was properly executed. This court therefore finds that the will was properly executed and witnessed. In the premises, the Will executed by the deceased herein dated 21st April 2009.
34. The court is satisfied that the will meets the requirement of section 11 of the *Law of Succession Act*.
35. Consequently, the will is declared to be the valid will of the deceased.

The beneficiaries

36. The applicants submitted that they take an issue with the inclusion of Jack Sempele, Solomon Sempele, Bidan Sempele, Lawrence Sempele, Philip Sempele, Shem Sempele, and Peneti Sempele as they were neither beneficiaries nor dependants. They argued that, no material has been placed before the court to prove their dependency and thus cannot be considered as such in the application of the provisions of the *law of succession act*. The applicants relied on section 29 of the *Law of Succession Act*.
37. PW1 testified that the deceased was married to four wives; Ruth, Josephine, Jane, and Margaret(deceased). He listed the children of each of the wives and in total the children were 32 children. He stated that Sempeles were not family members but their neighbours.
38. PW3 -Kasaine Koonyo a cousin to the deceased testified that the deceased introduced the Sempeles as his neighbours.
39. DW1-Eliud Memusi Koonyo, a brother to the deceased. He testified that the deceased had five wives; Ruth, Idah, Jane, Josephine, and Margaret. Two are deceased and three are alive. Margaret died before the deceased while Idah died after. The deceased had 24 sons and 16 daughters.



40. DW2 confirmed that the deceased had 5 wives. He confirmed that Idah Sempele was a wife. The Sempeles are for the 5th wife. He knows Sempeles as sons of the deceased.
41. DW3-Philip Sempele, he testified that the deceased was his father. Idah was his mother and a 2nd wife to his father. Idah died in 2011. There are 13 children. He produced an obituary in Daily Nation of 01/07/2009 as D Exh1. His mother's name and his brothers appear. He stated that they preferred to use the name Sempele, their grandfather's name (mother's father)
42. In the will dated 21/04/2009, the deceased has listed the following persons as beneficiaries of his estate;
1. Stephen K. Koonyo
 2. Laban Koonyo
 3. Jane N Koonyo
 4. Elvis S Koonyo
 5. Isack M. Koonyo
 6. Lukas K Koonyo
 7. William S Koonyo
 8. Chief Stanley T. Koonyo
 9. Sankale C Koonyo
 10. Richard Koonyo
 11. Charles S Koonyo
 12. Stephen K Koonyo
 13. Pushati J Koonyo
 14. Philip M Koonyo
 15. Marima P Koonyo
 16. Kasaine Koonyo
 17. Semeyian Koonyo
 18. Lemomo Koonyo
 19. Jack Sempele
 20. Solomon Sempele
 21. Bidan Sempele
 22. Joseph Koonyo
 23. Stephen Koonyo
 24. Daniel Koonyo
 25. Katuta Sempele
 26. Jeremiah Koonyo



27. Francis Koonyo
28. Mrs Ruth Koonyo
29. Senewa Koonyo
30. Kiparusi Kumomoru
31. Lawrence Sempele
32. Philip Sempele
33. Shem Sempele
34. Peneti Sempele
35. Patrick Leken
36. John Koonyo
37. Philip Koonyo
38. Semeyian P Koonyo
39. Francis Koonyo
40. Martine Koonyo
41. Lenny Koonyo
43. vide a letter dated 23rd August 2010, the district commissioner Narok North has listed beneficiaries of the estate of the deceased.
44. The list is as follows;
 1. Josephine Koonyo (1st Wife)
 2. Philip Marima Koonyo
 3. Nancy Mantaine Supuko
 4. Stephen Kilusu Koonyo
 5. Florence Seela Topisia
 6. Lukas Kasaine Koonyo
 7. Beatrice Siteyia Tiiyio
 8. Rodah Koonyo
 9. Peter Semeyin Koonyo
 10. Irine Senewa Koonyo
 11. Jane Nkaayio Koonyo (2nd Wife)
 12. Grace Nailepo Kirapash(Deceased)
 13. Joseph Pushati Koonyo
 14. Emily Sengenpoi Koonyo



15. Juliana Tutayo Kiminta
16. Isack Moitalel Koonyo
17. Mary Salaon
18. Ann Milanoi Ikayo
19. Daniel Konana Koonyo
20. Laban Longisa Koonyo
21. Margaret Kiserian Koonyo (3rd Wife)
22. Elvis Seleon Koonyo
23. Wilson Lemomo Koonyo
24. Francis Sonkoi Koonyo
25. Jeremiah Lesevio Koonyo
26. Aidah Sempele (4th Wife)
27. Solomon Sakinoi Sempele
28. Jackson Kalebu Sempele
29. Serah Sointoyia Sempele
30. Francis Leyian Sempele
31. Bidan Sempele
32. Lawrence tatiyia sempele
33. Philip sempele
34. Lorna Larus
35. Elvis Peneti Sempele
36. Ian Shem Sempele
37. Timothy Katuta Sempele
38. Patrick K Liken Sempele
39. Silvestor Martine Koonyo
40. Lenny Kusayo Koonyo
41. Ruth Koonyo (5th Wife)
42. Richard Lanet Koonyo
43. William Salash Koonyo
44. Charles Sankale Koonyo
45. Stanly Tongei Koonyo



46. Serah Naikuni
 47. Everline Timnoi Muntet (Deceased)
 48. Eunice Tosiar (Deceased)
 49. Charity Pelo Kiok
 50. Roseline Yiamat Kasura
45. The said list has not been challenged.
 46. The evidence show that, late John Kirrinkai Koonyo left behind five wives and forty children.
 47. Although it was claimed that the Sempelles are not dependants but neighbours, evidence show that they are dependants of the deceased.
 48. This court therefore finds that the people listed therein are beneficiaries of the estate of the deceased.

Properties forming part of the estate property

49. Section 3 of the Act defines estate as
 - “the free property of a deceased person.” “Free property”, in relation to a deceased person, means the 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.
50. The deceased in his will listed the following properties;
Immovable properties
 1. Plot No. 60 Narok Town at Majengo
 2. Plot No. 66 Narok Town Centre
 3. Plot No. 3 Olchorro Centre
 4. Plot no. 15 (banda)- olchorro centre
 5. Plot no ntulele market
 6. Plot no. ewaso ngiro
 7. Plot no. 16 entoltol centre
 8. Plot no. Siyiabei Centre
 9. Plot no. ololulunga
 10. Oloshurkeek
 11. Enabelbel
 12. Iretet
 13. Olkeri
 14. Siyiapei
 15. Kisiriri



16. Inkaimereruak
 17. Oloropil
Movable properties
 18. Tractor registration no. KUK 565
 19. Knapsack sprayer (Jacto)
 20. Firearms- shotgun and rifle 3006
 21. Ivory leadership club(rungu)
51. The report dated 29/06/2021 was filed by K. Too, the land registrar. From the report, it can be deduced that the following parcels are still registered in the names of the late John Kirrinkai Koonyo (deceased herein).
 - i. Cis Mara/Olchoro/655,
 - ii. Cis Mara/Enabelbel Nenetia/106(sub-divide into Cis-Mara/Enabelbel/Enenetia/950,951 and 952).
 - iii. Cis-Mara/Siabei/35.
 52. Cis Mara/Olorropil/256 is registered in the names of John Kirrinkai Koonyo and William Salaash Koonyo as common ownership of ½ undivided share. The land is still registered to them to date.
 53. Cis-Mara/Narok Township/66. This lease was registered to John Kirrinkai Koonyo on 24/01/1972 for a term of 33 years. On 09/09/2019, the lease was transferred to Fatuma Farah and Fahra Hassan. A certificate of lease was issued to them on the same day.
 54. Cis-Mara/Siabei/107 was registered to John Kirrinkai Koonyo on 3/07/2008. On 6/11/2009 this title was closed for subdivision and new No.s Siabei 108 to 117 were assigned. These new Numbers were later transferred to third parties. Restrictions have since been placed on all of them.
 55. The land registrar, Mr Too filed a follow-up report dated 14/07/2023 to the one prepared on 29/06/2021. According to the report land parcel numbers Cis Mara/Siabei/112, 111,115,114,113,116 were registered in the name of John Kirriankai Koonyo on 06/11/2009. The said parcels were transferred on 08/12/2015, 04/12/2015, 08/12/2015, 20/08/2013, 20/07/2010, 30/12/2010 to Daniel Konana Koonyo, Jeremiah Leseiyo Koonyo, Isaac Moitalel Koonyo, Laban Longisa Koonyo, Bidan Sempele And Sikona Sempele, and Joseph Pushati Koonyo Koonyo respectively. Restrictions were placed on the said parcels on 29/12/2015.
 56. Cis Mara /Siabei 110 and 117 are still in the names of John Kirriankai Koonyo to date.
 57. The applicants submitted that this court ought to cancel the titles and have them revert to the name of the deceased. The applicants listed the titles to be canceled to include Cis-Mara/Siabei/ 108, 112,111, 115,114,113,116, and Narok Township/66.
 58. The applicants listed the properties currently in the names of the deceased as Cis Mara/ Siabei/117,109,110 and 35, Cis Mara/Olorropil/256, Cismara/Enabelbel Enenetia/950,951 and 952, Cismara/Olchoro/655and Cis mara/ Siabei/35.
 59. The applicants submitted that the deceased had known proprietary interest in the following properties though proof of ownership of the same has not been tendered; Narok Majengo Plot No. 60, Plot No.



- 16 Entontol, Cis Mara/Enabelbel/ Enengatia/106, Cis Mara/Siapei/35, Cis Mara/Ollorropil/256, 3,655 and 55.
60. The applicants submitted that the following assets are part of the assets forming part of the estate; motor vehicle registration no. KUK 565(tractor), knapsack sprayer, firearms (2), ivory leadership club.
 61. The applicants submitted that parcel that parcel No. LR No. Narok Township /66 was illegally transferred to the 2nd and 3rd respondents who transferred to third parties.
 62. The applicants submitted that the transfer of LR No. Narok Township/66 was done in violation of status quo orders issued on 17/05/2015 by Mshila J.
 63. The 2nd objector/respondent submitted that LR. NO. Narok Township/66 leased by the deceased expired naturally in 2003 since there was no application made for its renewal and/ or extension. Upon the expiry of the lease in favour of the deceased, the land reverted to the government and was registered as tenants in common for a term of 66 years from 2003. Therefore, it does not form part of the deceased's estate. The 2nd objector/respondent relied on section 13(2) of the Land Act as read with Rule 3(2) of the Land (Extension and Renewal of Leases) Rules, 2017.
 64. The 2nd objector/respondent submitted that it is necessary that the land registrar Narok, Mr. Tom. M. Chepkwesi who is the maker of the report dated 19/04/2023 appeared in court to produce the same before court. The 2nd objector/respondent relied on Section 35(1)(b) and 65 of the Evidence Act, Joao Francis Quadros V Sdv Transami Kenya Ltd [2005] eKLR.
 65. The 2nd objector/respondent submitted that on 22/02/2021, the Ministry of Lands sent the district land registrar- narok the lease document in favour of the 2nd and 3rd respondents duly signed and stamped for registration purposes.
 66. The 2nd objector/respondent submitted that status quo orders were issued on 27/05/2015 and not 17/05/2015 by A. Mshila J in Nakuru HCP&A no. 12 of 2011. The said orders were discharged by A.K. Ndung'u J in the same matter vide ruling delivered on 18/01/2017. The arguments that the 2nd and 3rd respondents disobeyed the orders on 09/09/2019 are misplaced and unfounded since no orders of that nature were still in force.
 67. The respondent submitted that the report dated 14/07/2023 confirmed that the 2nd and 3rd respondents were later registered by the government on leasehold tenure of 66 years from 2003 on plot LR No. Narok Township/66 hence the same does not form part of the deceased's estate.
 68. The respondents submitted that the deceased had initiated the transfer before his death and his interest in ensuring that all his beneficiaries get their share and titles of their respective properties. Upon his death, the respective beneficiaries followed up with relevant authorities to acquire a certificate of title. The respondents relied on section 26(1) of the Land Registration Act, and Bahola Mkalindi Vs Michael Seth Kseme & 2 Others [2012] eKLR.
 69. The respondents submitted that the deceased had at the time he was alive facilitated transfer and land consent dated 10/07/2008 in respect of cis Mara/Siabei/108,109,110,111,112,113,114,115,116 and 117. And a consent dated 10/04/2008 in respect of narok township plot no. 60. The respondents relied on the case in Lubberts Estate Re [2014] Abca216
 70. PW1 testified that the boom sprayer was omitted. He however does not know if it exists. That there were no plots in Ewaso Ngiro and Siyapei. No sheep were left, and petrol stations sawmills, or shops did not exist.
 71. According to Salome, Stanley Koonyo has a boom sprayer which was the property of the deceased.



Plot No. 60 Narok Town at Majengo

72. PW1- testified that Majengo Plot No. 60 he does not know who was given but they built in it 1970s. The Plot No. 60 is leasehold.
73. Salome Leshan in her replying affidavit stated that the aforementioned plot had been transferred by the deceased during his lifetime to Stephen Koonyo who has since then been in possession and occupation where he has carried out developments thereon like permanent residential and business premises.
74. DW2 confirmed that plot no. 60 Narok Town Majengo was given to Stephen Kilusu Koonyo. He stated that Stephen Kilusu Koonyo has documents for this plot.
75. This property has been listed in the will as being the property of the deceased.

Plot No. 66 Narok Town Centre

76. PW1 testified that plot no. 66 narok town was partially developed temporary structures. The same was given to the 3rd house; Laban and Jane (the 3rd wife). It was allocated by the council of narok. He stated that this plot was the property of the deceased.
77. The 1st applicant in his affidavit stated that the deceased made no gifts in contemplation of his death and that Narok Town 66(leasehold) was the deceased's property. The applicants argued that the 1st wife is entitled to the said plot since she contributed heavily towards its purchase and payment of rent as she was a teacher.
78. Salome Leshan confirmed that plot no. 66 Narok Town was given to Laban Koonyo and Jane N Koonyo members of the 3rd house. It was allocated to the deceased by the county council of Narok and the same was never jointly purchased by the deceased and his 1st wife as alleged hence the contention that she contributed to its purchase is not true.
79. Laban Koonyo averred that since plot No. 66 Narok Town was transferred to him and 3rd respondent as a gift long before the passing away of the deceased, the same cannot form part of the estate of the deceased. He relied on a plot transfer application form dated 24/10/07.
80. Mr. Tom M. Chepkwesi, the registrar in charge of Narok North and East sub-counties filed a report dated 19/04/2023 in respect of narok township/66.
81. According to the said report this parcel was first registered in the name of John Kirrinkai Ole Koonyo through a lease registered on 24/01/1972. The term of the lease was 33 years from 01/01/1970.
82. Upon expiry of the lease term, a new lease was prepared in favour of Laban Longisa Koonyo and Jane Nkaayio Koonyo for a term of 66 years from 01/01/2003. The lease agreement was registered on 22/03/2021. The parcel was later transferred to Fatuma Jamal Farah and Farhia Hassan on 06/04/2021. A certificate of lease was issued to the purchaser on 06/09/2021.
83. A further transfer of the same parcel was registered to Keroke Ole Pere on 08/12/2022 for the whole parcel and the certificate of lease was issued on 08/12/2022.
84. Section 13(1) of the *Land Act* provides as follows;
 13. Lessee pre-emptive rights to allocation
 - (1) Before the expiry of the leasehold tenure, the Commission shall—



- (a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and
- (b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.

85. Rule 3(1)(2) Land (Extension and Renewal of Leases) Rules, 2017 provides;

- 3. (1) Within five years before the expiry of a leasehold tenure, the Commission shall, in accordance with section 13 of the Act, notify the lessee, by registered post and any other means provided under these regulations, that the lease is about to expire and forward a copy of the notification to the Cabinet Secretary or County Executive Committee Member responsible for matters relating to land in the relevant county government, as the case may be.
- (2) The notification under paragraph (1) shall indicate the date of expiry the leasehold tenure, inform the lessee of the lessee's pre-emptive right, under section 13 of the Act, to apply for the extension of the lease and to whom to make the application.

86. Whether the land parcel No. Narok Township/66 belongs to the deceased's estate and turns on the status of the land by the time the deceased died and on this issue the evidence of the Land Registrar is decisive. The evidence as well as the copy of the register which has been tendered to this court is that, the lease issued by the County Government in respect of land parcel No. Narok Township/66 expired on 01/01/2003 hence, the property reverted to the Government. As the registered proprietor, the deceased would have had pre-emptive rights to apply for the renewal of the lease in accordance with the law.

87. The evidence before this court is that, after expiry of the lease, Laban Longisa Koonyo and Jane Nkaayio Koonyo made the application for renewal of the lease which was renewed in their names by the County Government on 22/03/2021.

88. This court has noted the court order issued on 27/05/2015 by A.Mshila J in Nakuru HCP&A no. 12 of 2011 that the status quo be maintained pending the hearing and determination of the main suit. The said orders were discharged by A.K. Ndung'u J in the same matter vide ruling delivered on 18/01/2017. Thus, this court finds that, the claims that the 2nd and 3rd respondents disobeyed the orders on 09/09/2019 are misplaced and unfounded since the orders were not in place.

89. This court has perused the green card in respect of parcel No. 66 attached to the report dated 29/06/2021. This court has noted that the said parcel was registered in the names of John Kirrinkai Ole Koonyo on 24/01/1972 and 09/09/2019 was transferred to Laban Koonyo and Jane N Koonyo and later on the same date to Fatuma Jamal Farah And Farha Hassan.

90. The lease to the deceased had already expired, and as such, the property reverted to the government. Although the deceased had pre-emptive rights to renewal, and there is nothing to show that the procedure for renewal of lease especially the giving of notice to the person holding pre-emptive rights was applied, the evidence shows that the lease expired during the lifetime of the deceased, and he did not apply for its renewal. A lease was applied for by the two who are also beneficiaries in this case. Coincidentally, the two respondents have been bequeathed the said piece of land under the will.

91. All said, legally, the said piece of land was available for allocation of lease.



92. Given these circumstances, the probate court may not have a legal basis to invalidate the allocation of land parcel No. Narok Township/66. The said parcel of land is now in the names of third parties who are not parties in these proceedings and who have rights which cannot be routed in proceedings where they are not parties. In any case, such ownership issues should be determined in other forums where all parties will be involved, and this court may not be such forum. The probate court only gives effect to any judgment thereto by a competent forum.

Plot No. 3 Olchorro Centre

93. PW1 stated that the deceased transferred olchoro No. 3 during his lifetime. It is developed.

94. This property has been specifically listed in the will.

Plot no. 15 (banda)- olchorro centre

95. According to Salome, the deceased during his lifetime had given this plot to Richard Koonyo. Richard sold this plot to a third party. This property has also been specifically listed in the will.

Plot no Ntulele market

96. None of the parties have talked about this plot. There is however no evidence that it is non-existent or it does not belong to the deceased. It has been specifically listed in the will.

Plot No. Ewaso Ngiro

97. Pw1 stated that this plot does not exist. He however stated that in Ewaso Ngiro is a plot not land.

98. According to Salome, the deceased had been allocated commercial plots within the Ewaso Ngiro trading center and was yet to be shown their location on the ground and plot no.

99. This property has been specifically listed in the will. Although PW1 stated that it is non-existent, there is evidence that the deceased was allocated plots at Ewasongiro.

Plot no. 16 entoltol centre

100. PW1 stated that plot 16 entoltol does not exist or belong to them

101. According to Salome, the deceased had given this plot to William's koonyo who sold it to a third party.

102. Again, there no evidence that the plot is non-existent or it does not belong to the deceased. The plot has been specifically listed in the will.

Plot no. Siyabei Centre

103. PW1 stated that this plot does not exist.

104. According to Salome, Stanley Koonyo was awaiting to be shown his plot within the Siyabei trading centre.

105. It has not been shown that the plot is non-existent or it does not belong to the deceased. The plot has been specifically listed in the will.

Plot no. ololulunga

106. PW1 testified that this plot was sold by the deceased to one ole kiok.



107. According to Salome, the deceased had given this plot to Charles Sankale who sold it to the Sheni family.
108. The plot has been specifically listed in the will.

Oloshurkeek

109. PW1 testified that this land was personal land for the Koonyo family group. It was a group ranch and did not belong to the deceased. The deceased was a chairman of the group. He did not influence the allocation. It was decided by the committee
110. PW1 further stated that the Koonyo family group is a group ranch but he did not provide a certificate of incorporation. The group has been dissolved. The group included people who were not members of the Koonyo family. He was a secretary of the group elected in 1989. The title deeds have been issued. He produced Cis Mara 518 as P Exh 5. Before the subdivision, it was Cis Mara No. 20
111. PW1 testified that Cis Mara 953 and 1546 are his. He produced a search certificate for 953 and a title deed of 1546 as P Exh 2b and 2a respectively. He stated that Richard has Cis Mara 521. He produced the title deed as P Exh 3. Lilian has ½ share Cis Mara 256 he produced a green card P Exh4 Stanley has Cis Mara 518. He produced a title deed as P Exh 5.
112. PW2 confirmed that Koonyo Group Ranch is also known as Oloshurkeek Ranch. The ranch had 190 members. The deceased supplied the names of the children he wanted allocated land.
113. According to the applicant this land was subdivided and each member was issued title deeds.
114. Salome averred that Cis Mara/Olchoro/20 also known as Olushurkeek was at no particular time registered as Koonyo group ranch as per provisions of cap 287 laws of Kenya and is therefore being considered a group ranch under the law. As the initial allottee of all that piece of land known as Cis Mara/Olchoro/20(Oloshurkeek) by allocating the same, the deceased was merely exercising his proprietary rights over the subject piece of land.
115. DW1 confirmed that the deceased had property at Oloshurkeek and Koonyo group ranch.
116. According to DW2, the deceased transferred this ownership of Oloshurkeek (Ole Koonyo Group ranch) before his death.
117. From the evidence adduced this court notes that cis mara/olchoro/677/521,953,960,1546,518 title deeds were issued to Jassan Sanet Koonyo, Richard Lanet Koonyo, Charles Sankale Koonyo, Amos Koonyo, Lemara Koonyo, Charles Sankale Koonyo And Stanley Tonkei Koonyo respectively before the death of the deceased.

Enabelbel

118. According to Salome, before distribution and or subdivision of land parcel No. Cis Mara/Enabelbel Enengetia/106, the same belonged to the deceased. He subdivided it into 3 portions with the intention of allocating and or transferring it to his 3 sons. Each of the sons is in occupation and possession of their respective portions where they have each settled with their children.
119. According to DW2, the deceased transferred Enabelbel Land (Cis Mara/Enabelbel/106) before his death. He produced a green card and consent for Cis Mara/Enabelbel/106 as P Exh1a and 1b.
120. It is easily reconciled that the Enabelbel property in the will refers to this property.



Iretet

121. PW1 testified that Iretet is No. 655. It is also part of the Koonyo family group. He did not know if it was subdivided by any of the family members.
122. According to the 1st applicant this land belongs to the Koonyo family group ranch and thus not open for distribution by the deceased to other dependants. The applicant's sons have an equal share in the said group ranch. Cis Mara/ Enabelbel Enegetia/106 was given to 2nd house alone.
123. Salome averred that though registered as a group the deceased's parcel of land within Iretet was individually owned a piece of land that was capable of being distributed by the deceased as he deemed fit and that in the absence of a registration certificate and or certificate of incorporation a member's register and a constitution, the same is incapable of being treated as a group ranch under the law.
124. According to DW2, Before the deceased died he transferred ownership of iretet.
125. This property has been specifically listed in the will.

Olkeri

126. PW1 testified that Olkeri is no. 107. it belonged to the deceased. His brother's 2nd, 3rd, and 4th houses live on that land. The property was distributed to all houses but theirs was left out.
127. According to Salome Leshan, the deceased before his death had subdivided and executed the instrument of transfer for land parcel No. Cis Mara/Siyabei/107 known as olkeri for purposes of obtaining individual title deeds to various beneficiaries.
128. According to Salome, land parcel no. cis mara/siyabei/107 was distributed to the sons of the 2nd, 3rd and 4th houses who are already in possession and occupation where each of them has erected a residential home.
129. Seleone Koonyo averred that land parcel no. cis mara/olchoro/107 was registered in the name of Sirere Ole Kilesi who is neither a member of the Koonyo family nor part of the properties forming part of the estate of the deceased. He denied being aware of any land sale transaction involving him and Rev Moses Ikayo for a piece of land cis mara/olkeri/7
130. DW1 testified that the titles of the Olkeri farm came out when the deceased was alive. The deceased gave two sons of DW1 land.
131. The said property is said to belong to the deceased. It was however subdivided after the death of the deceased. The title was closed for subdivision on 06/11/2009 to new numbers 108 to 117. It was further transferred to beneficiaries after the death of the deceased and prior to the issuance of letters of administration. This court has also noted that Cis-Mara/Siabei/107 was subdivided after the death of the deceased.
132. These facts impel a re-statement of what courts of law have boldly stated; that, it is axiomatic under sections 55 and 82 of the *Law of Succession Act*, that no immovable property of the deceased shall be sold before confirmation of grant.
133. Therefore, the restriction placed on the property shall remain in force until the court finally distributes the estate.



Siyiabei

134. PW1 testified that the plot on the Siyiabei centre does not exist.
135. According to Salome, cis mara/siabei /35 is where the deceased's homestead is located. The same was left to Ruth Koono and Stanley Koonyo
136. According to PW1 cis Mara 35 has a mud house only used by the deceased. It was left to their mother and Stanley.
137. DW3 testified that land parcel no. 42 at Siyiabei was in the name of Jonah Sitonik Sempele his elder brother. The said parcel has never been the property of the deceased. It was owned by Molonket Sempele who is their grandfather from their mother's side.
138. Siabei/35 is said to be registered in the name of the deceased.

Kisiriri

139. PW1 stated that plots no. 12 and 274 kisiriri were given to the 2nd house. The two parcels belong to their uncle; kiparusi kumomora.
140. According to Salome the deceased left behind land parcel no. 12 and 274 kisiriri with senewa koonyo and Stephen koonyo who were also to act as guardians of kiparusi kumomoru his mentally challenged nephew.
141. This property is specifically listed in the will.

Inkaimereruak

142. PW1 states that the deceased had no land in Inkaimereruak. He stated that the deceased was not a member and had no share.
143. PW3 -Kasaine Koonyo. The deceased was his cousin. He is a chairman of the Oloibor Lukuny Group Ranch Committee (adjudication section). The deceased had no land there his 3 sons Lomet Sankale and Salash had land in the area. The ranch is also called Inkaimere. Only 3 benefitted. Lawrence Sempele or Philip, Shem Peneti Sempele and Patrick are unknown to him. The deceased had asked that the Sempele family be given land on the ranch. The deceased introduced Sempeles as his neighbour. The committee rejected the request. The land has not been subdivided although occupied by members. The size of each member is above 5 acres. The deceased was not a member of the group ranch. He could not give land to sempeles.
144. According to Salome, the deceased had a share within the Ilobor Lukuny adjudication section by virtue of his membership of the group ranch and or adjudication section. At the time of his passing, he had his share allocated directly to a number of his beneficiaries as a way of distributing his estate.
145. The property has been specifically listed in the will.

Oloropil

146. PW1 stated that Oloropil 256 is where he resides with his brothers. Richard and Lenny Koonyo are their cousins and sons of Eliud; the deceased's brother. That the two have never lived on the land. They occupy ½ and William ½. William's share is his not the deceased's. He produced a green card as p exh 4. He argued that their house did not get any assets. During his lifetime the deceased gave them land for example oloropil but later changed his mind.



147. According to Salome Leshan, the deceased had applied and obtained the land control board's consent to subdivide it into two cis mara/olorropil/256 where some beneficiaries were all allocated a share within the resultant parcel of land. The other share was for William Koonyo.
148. DW1 testified that the olchoro land group belonged to the deceased and was divided into olorropil 6 and given to the sons of the 1st wife

Dilemmas

149. Borne out of the evidence, critical dilemmas emerge which require targeted evaluation by the court, perhaps even through further evidence by the registrar.
150. Those dilemmas include; some properties listed in the will require proof of ownership if the will is to be given full effect.
151. The properties in the will have been described generally, requiring assignment of specific and exact description for purposes of specific identification of the properties. The evidence adduced provides basis for this exercise. But, this requires targeted undertaking for proper reconciliation of this dilemma for purposes of enforceability of the will.
152. This court further notes that firearms have been transmitted through testamentary disposition—something that parties did not address in light of the law on firearms.
153. Cis Mara/Narok Township/66 is entangled in complex ownership issues which should be dealt with in another forum.
154. There are those which have been established to be estate property and the court has made specific remark or finding in respect of the property.
155. Further other properties have not been transmitted by the will, for instance, he did not distribute Cis Mara/Olchoro/655. Other properties should be treated under intestate procedures.
156. These proceedings are therefore, of letters of administration with will annexed.

Provision of daughters

157. An application for reasonable provision for daughters has been made.
158. The applicants submitted that some of the deceased's daughters were left out of the will. The daughters are Serah Naikumi, Everlyne Timanoi Koonyo, Eunice Tosiar Koonyo, Charity Pelo, and Roseline Yiamat Kasura.
159. The respondent's argument citing customary law that a married daughter should not inherit is exclusionary and tainted with prohibited discrimination under article 27 of *the Constitution*. Such reason is also repugnant to justice and inconsistent with written law and international instruments on elimination of all forms of discrimination.
160. The applicants being the deceased's daughters are dependants and thus entitled for reasonable provision in the estate of the deceased. The applicants relied on the UN Convention on the Elimination of All Forms of Discrimination against Women, the Covenant on the Elimination of all Forms of Discrimination against Women (CEDAW), articles 24(4) and 27 of *the Constitution* of Kenya, 2010, Re the estate of Lerionka Ole Ntutu (deceased) [2008] eKLR, section 29 of the *Law of Succession Act*



161. The applicants submitted that the summons dated 06/05/2011 is well merited and ought to be allowed and the assets making up the deceased's estate be distributed equitably among the rightful dependants. The applicants relied on sections 27 and 28 of the *Law of Succession Act*.
162. The respondents submitted that the applicants were catered for in the best interest of the deceased and their constraints towards the will proof of greed and dissatisfaction with a fraction that their father gave them regardless of their unfettered behavior which even made them barred from attending the burial.
163. PW1 testified that Ruth had 5 daughters, Josephine 5 daughters, Jane one daughter, and Margaret did not have any daughters. He further stated that in Maasai customary law daughters do not inherit.
164. Dw1 and DW2 testified that Senewa was given land because she looked after her father on hospital bills.
165. According to DW1 the deceased fairly distributed his estate.
166. DW3 testified that none of the daughters have applied to be enjoined as objectors.
167. This court notes that the daughters of the deceased were left out of inheritance for reason that, they were married, thus, lost their right to inherit from the deceased's estate as per Maasai customary law.
168. According to the applicant the deceased failed to make provisions for those who are members of the 1st house out of his estate. Therefore, the will is incapable of implementation as it does not mention the amount of acreage each dependant is entitled to out of the parcels named. Further the deceased did not distribute Cis Mara/Olchoro/655.
169. Daughters were excluded and the law allows the making of the provision even with a will annexed.
170. The court finds that the daughters were excluded from inheritance on reasons that are inconsistent with *the Constitution*, are based on prohibited discrimination and unlawful exclusion. There is need for provision to be made for the daughters who applied. But, in the state of affairs in respect of ascertainment of estate property, the exercise may not be carried out straight-away. For effective provision for the dependants, the issues isolated by the court must be resolved.

Distribution of estate properties.

171. In the circumstances, whereas the will is declared to be valid, implementation of the will is halted until the court unravels all the dilemmas identified above, and makes reasonable provision for the daughters who have applied.
172. Parties will also be given an opportunity to propose how the estate properties which have not been disposed of by the will shall be distributed.
173. This is partial decision. The case shall be assigned a date for the above exercise and distribution of the estate.
174. Costs in the cause.
175. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 23RD DAY OF MAY, 2024.

F. GIKONYO M
JUDGE



In the presence of: -

Ms. Cheronno for Mutai for applicants

Ms. Lyonah for 2nd Respondents /Onsongo h/b for brief

Kilele for Petitioners

Otolo - C/A

