



REPUBLIC OF KENYA



**In re Estate of Elisha Chemwetich Kandagor (Deceased) (Succession Cause 155 of 2017) [2024] KEHC 8779 (KLR) (19 July 2024) (Directions)**

Neutral citation: [2024] KEHC 8779 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 155 OF 2017**

**HM NYAGA, J**

**JULY 19, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE  
ELISHA CHEMWETICH KANDAGOR (DECEASED)**

**DIRECTIONS**

1. In my Ruling delivered on 18<sup>th</sup> October, 2023, I had directed that the two properties namely: -L.R No.9413/15 (I.R.57223) (Kabarak)L.R. No. Baringo/Sabatia 103/39 (Sabatia) Be valued and reports be tendered to court.
2. That directive was complied with as two reports by Kaerad Card Limited have been presented to the court. They are to the effect that:
  - a. Sabatia land measuring approximately 21.25 acres has a market value of Kshs.10 million. This means the valuation at around 470 per acre.
  - b. Kabarak land measuring about 51.5 acres has a market value of Kshs.280,000,000. This puts the price at around Kshs.5.4 million an acre.
3. There was also a report filed by Lipak Consultants Ltd. The same found the properties valued as follows: -
  - a. Baringo/Sabatia 103/39 was found to measure 21.5 acres and was valued at Kshs.8.5 million. This translates to about Kshs.400,000 per acre.
  - b. L.R. 9413/15 (I.R. 57223) was found to measure 51.4 9 acres and was valued at Kshs.430 million. This translates to around Kshs.8.35 per acre.
4. It is then obvious that asking the 1<sup>st</sup> house to be content with the land at Sabatia and the 2<sup>nd</sup> have to take the land at Kabarak would create a very unequal mode of distribution.
5. It would be unconscionable to allow such a distribution which is evidently unjust and unfair.
6. Clearly, it can now be seen why the latter was so hotly contested.



7. The law, and as restated in the authorities cited earlier, is that there ought to be equal distribution of the estate among the beneficiaries.
8. Equal is a term that may not be defined legally. For instance, does it refer to acreage of land or the value of the land. All these are abstract permutations used and terms used and there cannot be a scientifically accurate way of ensuring equality. The Court does its best to ensure that the parties are generally given equal shares of the estate in terms of value.
9. It is apparent that the 1<sup>st</sup> house settled on the land at Sabatia, which is smaller and of lesser value than the land at Kabarak, where the 2<sup>nd</sup> family was settled. A way has to be found so that the members of the first house get a share that is equal in value as those of the 2<sup>nd</sup> house.
10. That is easier said than done, and given the issue that arose herein, there are other competing interests like those of 1<sup>st</sup> house daughters.
11. It would not be in the interest of the parties to make major relocations as a result of the distribution. It may be that they all have developed certain sections of the deceased's land.
12. In my opinion, the best approach is to take account of the situation on the ground which is not specified to the court.
13. That being the case, I would be reluctant to make order right now.
14. I therefore direct that the parties sit down and see how each beneficiary will get an equal share<sup>4</sup> of the estate in terms of value. The 1<sup>st</sup> house's share will be take into account and be assigned a value of Kshs.10 million which is more or less the value given by the 2 valuers.

**DATED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF JULY, 2024.**

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**H. M. NYAGA,**

**JUDGE.**

In the presence of;

C/A Jeniffer

Karanja Mbugua for 3<sup>rd</sup> Respondent

No appearance for others.

