



**In re Esxstate of Isaac Sindiga Onsare (Deceased) (Probate & Administration  
155 of 1999) [2024] KEHC 12303 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12303 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 155 OF 1999  
RN NYAKUNDI, J  
OCTOBER 11, 2024**

**IN RE ESTATE OF ISAAC SINDIGA ONSARE (DECEASED)**

**BETWEEN**

**TERESA NYABOKE SINDIGA ..... 1<sup>ST</sup> PETITIONER**

**ARTHUR SINDIGA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MARY KANUNAH SINDIGA ..... OBJECTOR**

**JUDGMENT**

1. The matter herein relates to the estate of Isaac Sindiga Onzare who died on 29<sup>th</sup> May, 1999. The Petitioners filed a petition for letters of administration which triggered an objection by Mary Kanunah Sindiga and vide this court's judgment dated 23<sup>rd</sup> March, 2005 the objection was allowed and the Objector and her son were incorporated as beneficiaries of the estate of the late Isaac Sindiga Onzare. Subsequently, a grant was issued to Teresa Sindiga and Mary Kanunah Sindiga on 20<sup>th</sup> February, 2006.
2. The Petitioners moved this court on 7<sup>th</sup> March, 2023 through summons for confirmation seeking confirmation of the Grant issued on 20<sup>th</sup> February, 2006.
3. The Petitioners averred that the Grant is ripe for confirmation to enable the Petitioners/Administrators distribute the estate according to law. That the identification of all persons beneficially entitle to the said estate and their respective entitlements have been ascertained and determined. The Petitioners proceeded to identify the properties forming part of the deceased's estate and proposed a model of distribution as hereunder:



| No. | Property                                                                        | Size      | Beneficiary             |
|-----|---------------------------------------------------------------------------------|-----------|-------------------------|
| A   | WaNjare/<br>Bomorenda/1758                                                      | 0.012Ha   | Teresa Sindiga          |
| B   | Kakamega/<br>Sergoit/328                                                        | 12 Acres  | Teresa Sindiga          |
| C   | Kakamega/<br>Sergoit/329                                                        | 11 Acres  | Teresa Sindiga          |
| D   | L.R. No. 8500 Plot<br>No. 464 Langas Estate                                     |           | Teresa Sindiga          |
| E   | WaNjare/<br>Bomorenda/1160                                                      | 0.08Ha    | Teresa Sindiga          |
| F   | WaNjare/<br>Bomorenda/1772                                                      | 0.17Ha    | Teresa Sindiga          |
| G   | WaNjare/<br>Bogiakumu/15                                                        | 2 Acres   | Mary Kanunah<br>Sindiga |
| H   | Eldoret Airstrip Plot                                                           | 1/8 Acres | Mary Kanunah<br>Sindiga |
| I   | Plot PDP No. ELD<br>17/81/1A Sub Plot<br>No. 61 17/2/99<br>Eldoret Municipality |           | Mary Kanunah<br>Sindiga |
| J   | L.R No.<br>1679/111/138A<br>Eldoret Municipality                                | ¼ Acres   | Mary Kanunah<br>Sindiga |
| K   | Motor Vehicle Reg.<br>No. KAJ 125V<br>Mercedes                                  |           | Mary Kanunah<br>Sindiga |

### Bank Accounts

- National Bank of Kenya – Kisii – 67% to Teresa Sindiga – 33% to Mary Kanunah
- National Bank of Kenya – Eldoret – 67% to Teresa Sindiga – 33% to Mary Kanunah
- Standard Chartered Bank of Kenya – Eldoret 67% to Teresa Sindiga – 33% to Mary Kanunah.
- Kenya Commercial Bank Limited Kipande House – 67% to Teresa Sindiga – 33% to Mary Kanunah.



## Life Policies

- a. American Life Insurance Policy (now CFC Life Insurance Company) – 67% to Teresa Sindiga – 33% to Mary Kanunah
- b. Jubilee Insurance Company Limited – 67% to Teresa Sindiga – 33% to Mary Kanunah.

## Shares

- a. Kenya Airways
  - b. Firestone
  - c. Standard Chartered Bank 67% to Teresa Sindiga
  - d. Jubilee Insurance Limited 33% to Mary Kanunah
  - e. Housing Finance Company of Kenya Ltd
4. The Objector filed an affidavit in protest of the proposed mode of distribution by the petitioners. According to the Objector, in a case where the deceased had more than one house like in this case, the law provides for distribution of his net estate, 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, making a total of 6 units in the instant case.
  5. She further averred that in addition to the assets itemized in the schedule in the summons for confirmation of Grant, the deceased had shares in Serena Holdings Limited which is not captured in the schedule and also a Bank account which were held jointly with him at HFCK bank both of which form part of his estate and should be included.
  6. That as regards the mode of distribution, it is not fair that both Kakamega/Sergoit/328 or Kakamega/Sergoit 329 be given to Teresa Sindiga on behalf of the 1<sup>st</sup> family for the reason that one of the said properties either Kakamega/Sergoit/328 or Kakamega/Sergoit/329 was purchased much later jointly by herself and the deceased.
  7. She deposed that in 1996 to 1997, she cultivated on the said parcel of land which they had purchased jointly. She proposed that she should be given either of the parcels of land.
  8. That as regards L.R No. 8500 Plot 464 Langas Estate, the said property has 4 apartments and a posho mill constructed on it.
  9. That she participated in the construction of the apartments and upon completion of the apartments the deceased, herself, Brian, Durvie and Elijah Sindiga occupied the premises as a family and lived together between the years 1995-1997. That prior and after the death of the deceased, the said apartments were rented out and the posho mill was also in working condition and ought to be generating income. She proposed that the rent receivables from the apartments and posho mill be shared equally on a month to month basis amongst the 6 of them as dependants of the intestate estate.
  10. The objector further proposed that the rent and income so far collected be accounted for by the 1<sup>st</sup> and the 2<sup>nd</sup> petitioners and/or the two administrators by way of rendering statement of accounts for purposes of distribution to other four (4) beneficiaries.
  11. That in the alternative, after receiving the rent and income account statement from her co-administrator and her share together with her son's of the rent and income so far collected from the



said property, the said property be shared equally between Teresa and her children and herself together with her son for each family to manage their apartments on their own.

12. Further that Wanjare/Bomorenda/1758, Wanjare/Bomorenda/1160 or Wanjare/Bomorenda/1772 situated in Suneka town has a shop and a two-bedroom house developed on it and she proposed that the same ought to be sold and the proceeds divided into six (6) units.
13. That as regards Wanjari/Bogikikumu 15 is her home as they purchased the same jointly with the deceased and the title is registered jointly with the deceased.
14. That as regards properties described as Eldoret Airstrip Plot PDP No. Eld 17/81/1A and sub plot No. 61, 17/2/99 Eldoret Municipality and LR No. 1679/111/138A Eldoret Municipality are properties which in her view were surrounded with a lot of controversy, they do not exist and the title documents are also not in existence.
15. That the co-administrators have generously allocated them all to her for the reason that they are aware that the properties might not exist. That if they exist, they should be sold and the proceeds shared amongst the six units. She proposed her model as hereunder:



| No. | Property                                                                       | Size      | Beneficiaries                                                                                                            |
|-----|--------------------------------------------------------------------------------|-----------|--------------------------------------------------------------------------------------------------------------------------|
| 1.  | Wanjare/<br>Bomorenda/1758                                                     | 0.012 Ha  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga e.<br>Durvine Sindiga f.<br>Elijah Sindiga |
| 2   | Kakamega/<br>Sergoit/328                                                       | 12 acres  | Teresa Sindiga                                                                                                           |
| 3   | Kakamega/<br>Sergoit/329                                                       | 11 acres  | Mary Kanunah<br>Sindiga                                                                                                  |
| 4   | L.R. No. 8500 Plot<br>No. 464 Langas Estate                                    |           | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga e.<br>Durvine Sindiga f.<br>Elijah Sindiga |
| 5.  | Wanjare/<br>Bomorenda/1160                                                     | 0.08Ha    | Teresa Sindiga/Mary<br>Kanunah Sindiga                                                                                   |
| 6.  | Wanjare/<br>Bomorenda/1772                                                     | 0.17Ha    | Teresa Sindiga/Mary<br>Kanunah Sindiga                                                                                   |
| 7.  | Wanjare/<br>Bogiakumu/15                                                       | 2 acres   | Mary Kanunah<br>Sindiga                                                                                                  |
| 8.  | Eldoret Airstrip Plot                                                          | 1/8 acres | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga e.<br>Durvine Sindiga f.<br>Elijah Sindiga |
| 9.  | Plot PDP No.<br>ELD 17/81/1A sub<br>plot No. 6117/2/99<br>Eldoret Municipality |           | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga e.<br>Durvine Sindiga f.<br>Elijah Sindiga |
| 10. | L.R. No. 1679/<br>III/138A Eldoret<br>Municipality                             | ¼ acre    | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga                                                                |



|     |                                                                                                |  |                                                                                                                          |
|-----|------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                |  | d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga                                                              |
| 11. | Motor Vehicle Reg<br>No. KAJ 125V<br>Mercedes Benz                                             |  | Mary Kanunah<br>Sindiga                                                                                                  |
|     | Bank Accounts                                                                                  |  |                                                                                                                          |
| 12. | National Bank of<br>Kenya (Kisii Branch)                                                       |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |
| 13. | National Bank of<br>Kenya (Eldoret<br>Branch)                                                  |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |
| 14. | Standard Chartered<br>Bank of Kenya<br>(Eldoret Branch)                                        |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |
| 15. | Kenya Commercial<br>Bank (Kipande<br>House Branch)                                             |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |
| 16. | HFCK Bank account                                                                              |  | Mary Kanunah<br>Sindiga                                                                                                  |
| 17. | Insurance Policies<br>American Life<br>Insurance Policy<br>(Now CFC Life<br>Insurance Company) |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |



|     |                                                                                                                                                                |  |                                                                                                                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------|
| 18. | Jubilee Insurance Co. Limited                                                                                                                                  |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |
| 19. | Shares Kenya Airways<br>Firestone Standard<br>Chartered Bank<br>Limited Jubilee<br>Insurance Ltd<br>Housing Finance<br>Company Ltd. Serena<br>Holdings Limited |  | a. Teresa Sindiga<br>b. Mary Sindiga<br>c. Arthur Sindiga<br>d. Brian Sindiga<br>e. Durvine Sindiga<br>f. Elijah Sindiga |

16. The Petitioners through Teresa Nyaboke filed a supplementary affidavit and deposed that he did not have any objection to the counter proposal by the 2<sup>nd</sup> Administratrix on the following assets:

- a. Wanjare/Bogiakumu/15
- b. L.R No. 1679/111/138a – Eldoret Municipality
- c. Eldoret Airstrip Plot
- d. Plot PDP No. ELD 17/81/1A Sub Plot No. 6117/2/99 (Eldoret Municipality)
- e. Motor Vehicle Reg. No. KAJ 125 V Mercedes Benz.
- f. Cash in National Bank of Kenya (Kisii Branch)
- g. Cash in National Bank of Kenya (Eldoret Branch)
- h. Cash in Standard Chartered Bank (Eldoret Branch)
- i. Cash in Kenya Commercial Bank (Kipande House Branch)
- j. Insurance Life Policy with American Life Insurance (now CFC Life Insurance Company)
- k. Insurance policy with Jubilee Insurance Company Limited.
- l. Shares in;
  - i. Kenya Airways
  - ii. Firestone
  - iii. Standard Chartered Bank Limited
  - iv. Jubilee Insurance Limited
  - v. Housing Finance Company
  - vi. Serena Holdings Limited.



17. The Petitioner deposed that she has since established that Wanjare/Bomorenda/1160 is not part of the deceased's estate as explained hereunder:
  - a. The land belonged to Suneka General stores and the deceased bought only part of its measuring 25 by 60 feet on 6/10/1989.
  - b. Upon sub-division the said 25 x 60 feet was transferred to the deceased as Wanjare/Bomorenda 1758
18. The Petitioner made a case that she took loans and contributed to the acquisition of some of the properties forming part of the estate. For instance, she stated that the properties known as Wanjare/Bomorenda/1758 and Wanjare/Bomorenda/1772 were purchased in the 1980s were bought partly through her loan proceeds. Further that the properties known as Kakamega/Sergoit/328 and Kakamega Sergoit/329 were acquired around the same time she applied for a loan.
19. That in respect to L.R No. 8500 Plot 464 (Langas Estate) the same has 4 units as stated. The property was developed by the deceased and herself. The 2<sup>nd</sup> administratrix did not contribute to its development at all.
20. That the only reason why the 2<sup>nd</sup> administratrix ended up staying in that house was because when the deceased started co-habiting with her, they were still married and she was the one occupying the university house allocated to the deceased.
21. That she was operating a shop and posho mill on the said property by 1996. The posho mill no longer exists. She invited the court to note that it has been almost 30 years since.
22. According to the Petitioner, the 2<sup>nd</sup> Administratrix and her son are not entitled to the 2 properties in Kisii, the two properties in Kakamega and the Langas property on the following grounds:
  - a. All those properties were acquired and where applicable developed before she got "married" to the deceased.
  - b. That she directly contributed to the acquisition and development of the said properties.
  - c. She has been in in occupation of all of the said properties since their acquisition to date (Save for the langas property which she occupied briefly)
  - d. The two properties in Kisii measure 0.08 Ha and 0.17 Ha. On the other hand, she owns 2 acres within the same locality.
  - e. She averred that she does not have a matrimonial home anywhere in this world while she has one with two complete houses where the deceased was buried. The Langas property is the only complete property they developed together and she urged the court to consider it her matrimonial home.
23. The Petitioners through learned counsel Mr. Omondi filed their written submissions dated 19<sup>th</sup> May, 2023 essentially in support of her averments regarding the distribution of the estate of the deceased.
24. The Objector equally filed her submissions dated 29<sup>th</sup> May, 2023 and urged the court to apply the provisions of Section 40 of the [Law of Succession Act](#).

### **Determination**

25. The crux of the dispute in this estate is not on who should inherit the properties but the properties to be distributed and they how so. On one hand proposed a mode of distribution which somewhat



incorporated properties which she later confirmed not to have titles and therefore not part of the estate. The Objector on the other hand proposed an equal distribution of all the properties save for her matrimonial home and money held in HFCK Bank which she proposed to be allocated to her solely.

26. What therefore needs establishing from the onset are properties forming part of the estate. Through an affidavit sworn on 29<sup>th</sup> November, 2023, Teresa Nyaboke Sindiga an administrator of the estate deposed that she was unable to trace any document of title for properties namely: Plot PDP No. ELD 17/81/1A sub plot No. 6117/2/99), Eldoret Municipality, Eldoret Airstrip Plot and L.R. NO. 1679/111/138A Eldoret Municipality. The end result is that these listed properties cannot be said to form part of the estate at this point. May be at a later stage once the Administratrix present cogent evidence establishing that they belong to the deceased.
27. Similarly, for the property known as Wanjare/Bomorenda/1160, evidence was attached through a sale agreement dated 6<sup>th</sup> October, 1989 clearly indicating that the deceased purchased a section of it and not the whole of it. The Petitioner deposed that the resultant title of the said purchase was Wanjare/Bomorende/1758, which was been duly incorporated as part of the estate of the deceased.
28. The properties therefore that have qualified as forming part of the estate are:
  - a. Wanjare/Bomorenda/1772
  - b. Kakamega/Sergoit/328
  - c. Kakamega/Sergoit/329
  - d. Wanjare/Bomorenda/1758
  - e. L.R. No. 8500 Plot No. 464 Langas Estate
  - f. Wanjare/Bogiakumu/15
  - g. Motor Vehicle Reg No. KAJ 125V Mercedes Benz
  - h. National Bank of Kenya (Kisii Branch)
  - i. National Bank of Kenya (Eldoret Branch)
  - j. Standard Chartered Bank of Kenya (Eldoret Branch)
  - k. Kenya Commercial Bank (Kipande House Branch)
  - l. HFCK Bank account
  - m. American Life Insurance Policy (Now CFC Life Insurance Company)
  - n. Jubilee Insurance Co. Limited
    - Shares
    - Kenya Airways
    - Firestone
    - Standard Chartered Bank Limited
    - Jubilee Insurance Ltd
    - Housing Finance Company Ltd.
    - Serena Holdings Limited



29. Section 40(1) of the *Law of Succession Act* provides for distribution of the estate of a polygamous deceased's person as follows:

“40(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.”

30. In the case of Scholastic Ndululu Sura versus Agnes Nthenya Sura (2019) eKLR, the Court of Appeal held 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 the discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

31. Having considered the unique circumstances of the case and the affidavit evidence from both sides, the estate of the Isaac Sindiga Onzare is hereby distributed as follows:



| No. | Property                                            | Size     | Beneficiaries                                                                                       |
|-----|-----------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------|
| 1.  | Wanjare/<br>Bomorenda/1758                          | 0.012 Ha | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga<br>Durvine Sindiga<br>Elijah Sindiga |
| 2   | Kakamega/<br>Sergoit/328                            | 12 acres | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga<br>Durvine Sindiga<br>Elijah Sindiga |
| 3   | Kakamega/<br>Sergoit/329                            | 11 acres | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga<br>Durvine Sindiga<br>Elijah Sindiga |
| 4   | L.R. No. 8500 Plot<br>No. 464 Langas Estate         |          | Teresa Sindiga                                                                                      |
| 6.  | Wanjare/<br>Bomorenda/1772                          | 0.17Ha   | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga<br>Durvine Sindiga<br>Elijah Sindiga |
| 7.  | Wanjare/<br>Bogiakumu/15                            | 2 acres  | Mary Kanunah<br>Sindiga                                                                             |
| 11. | Motor Vehicle Reg.<br>No. KAJ 125V<br>Mercedes Benz |          | Mary Kanunah<br>Sindiga                                                                             |
|     | Bank Accounts                                       |          |                                                                                                     |
| 12. | National Bank of<br>Kenya (Kisii Branch)            |          | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga<br>Durvine Sindiga<br>Elijah Sindiga |
| 13. | National Bank of<br>Kenya (Eldoret<br>Branch)       |          | Teresa Sindiga Mary<br>Sindiga Arthur<br>Sindiga Brian Sindiga                                      |



|     |                                                                                                                                           |  |                                                                                         |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------|
|     |                                                                                                                                           |  | Durvine Sindiga<br>Elijah Sindiga                                                       |
| 14. | Standard Chartered Bank of Kenya (Eldoret Branch)                                                                                         |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |
| 15. | Kenya Commercial Bank (Kipande House Branch)                                                                                              |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |
| 16. | HFCK Bank account                                                                                                                         |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |
| 17. | Insurance Policies American Life Insurance Policy (Now CFC Life Insurance Company)                                                        |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |
| 18. | Jubilee Insurance Co. Limited                                                                                                             |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |
| 19. | Shares Kenya Airways Firestone Standard Chartered Bank Limited Jubilee Insurance Ltd Housing Finance Company Ltd. Serena Holdings Limited |  | Teresa Sindiga Mary Sindiga Arthur Sindiga Brian Sindiga Durvine Sindiga Elijah Sindiga |

32. The above legal position as supported by the provisions of the law leads me to make the following declarations:

- a. That a Certificate of confirmation of Grant be generated forthwith for the court's endorsement by the Administrators to this estate
- b. The costs of this application be in the cause.



**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11<sup>TH</sup> DAY OF OCTOBER 2024.**

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**R. NYAKUNDI**

**JUDGE**

Email: omondiadvocates@gmail.com

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In the Presence of:

Mr. Omondi for the 1<sup>st</sup> and 3<sup>rd</sup> Administrators

Ms. Olotch for the Objector

