



REPUBLIC OF KENYA



**In re Estate of Jimmy Elishama Nandwa (Deceased) (Succession Cause
158 of 1998) [2025] KEHC 13362 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 158 OF 1998
AC BETT, J
SEPTEMBER 29, 2025**

BETWEEN

JOSEPH NANDWA OBJECTOR

AND

REBECCA VIOLET ETAKWA PETITIONER

JUDGMENT

1. By a Summons for revocation of grant dated 15th February 2019, the Objector Seeks that the grant issued to the Petitioner and subsequently confirmed be revoked on the grounds that:-
 - (i) That the grant was obtained fraudulently by making of false statements and by concealment from the court material particulars and or heirs and or liabilities to the estate of the deceased by leaving out and or excluding the Applicant herein and other beneficiaries and dependents of the estate
 - (ii) That proceedings to obtain the grant were improper, irregular and defective in substance in that part of the estate was distributed to a part of the beneficiaries living out the rest of the estate and the rest of the beneficiaries.
 - (iii) That the Petitioner/Respondent filed and proceeded with this succession cause secretly and that the aim of the Petitioner/Respondent was to defraud and disinherit other beneficiaries and dependents plus the objector/applicant herein and to enrich herself unjustifiably and has misappropriated and transferred the estate to non-beneficiaries.
2. The Objector also seeks an order cancelling, annulling or revoking the registration of titles so that the undermentioned titles do revert to the names of the deceased to pave way for proper distribution.
 - a. L.R No. Kisa/Mwikalikha/4 - (0.32 Ha.)
 - b. L.R No. Kisa/Mwikalikha/34 - (22 acres)



- c. L.R No. Kisa/Mwikalikhha/39 - (1.21 Ha.)
- d. L.R No. Kisa/Mwikalikhha/68 - (6.5 Ha.)
3. The Objector deposed that the deceased was survived by three widows, one of whom is now deceased, and twenty four children. Regarding the children, he deposed that four sons and two daughters are deceased with the deceased's elder son leaving behind a widow and children. He further averred that the deceased also had a grandson namely Dickson Nandwa, who was his dependant. He deposed that the Petitioner had not disclosed all the deceased's dependants.
4. The Objector further averred that the Petitioner deliberately failed to disclose to the court the existence of other properties belonging to the deceased and comprised in L.R. No. Kisa/Mwikalikhha/68, 4 and 3 respectively. According to him, the parcel of land comprised in L.R No. Kisa/Mwikalikhha/3 is the known homestead of the deceased's third widow who has resided therein for over 40 years.
5. The Objector further deposed that the Petitioner fraudulently made a false statement that all the dependants of the deceased had consented to her obtaining the grant despite not acknowledging him, the other two widows of the deceased, and their children as beneficiaries of the estate of the deceased. It is his averment that the letter from the Chief dated 20th March 1998 falsely and fraudulently supported the willful concealment of material facts by the Petitioner who only disclosed dependants from the deceased's first house.
6. The Objector deposed that the Petitioner had intermeddled with the estate of the deceased while acting in collusion with strangers to the estate and had evicted the second widow of the deceased from property forming his estate, to wit L.R No. Kisa/Mwikalikhha/34. Further, that the Petitioner had sold the parcel of land known as L.R No. Kisa/Mwikalikhha/39 which the deceased had before his demise, allocated to Dickson Nandwa. The Objector urged the court to revoke the grant as it was obtained with the mischievous intent of disinheriting other dependants of the deceased.
7. In response, the Petitioner swore a Replying Affidavit which she filed on 11th September 2019. She deposed that at the time of his death, the deceased who was her father had only two titles in his name namely L.R No. Kisa/Mwikalikhha/34 and L.R No. Kisa/Mwikalikhha/68. She further averred that the deceased also had a third parcel of land comprised in L.R No. Kisa/Mwikalikhha/3 which was registered in the name of the deceased's father Elisham Andayi (deceased) and which was the subject of Kakamega H.C. Succession Cause No. 559 of 2009.
8. According to the Petitioner, the deceased had settled his three houses as follows:-
- a. The house of Beatrice Mary Liaka Nandwa (1st House)
L.R No. Kisa/Mwikalikhha/34
- b. The house of Philice Dorah Andayi Nandwa (2nd House)
L.R No. Kisa/Mwikalikhha/68
- c. The house of Philice Akola Jimmy (3rd House)
L.R No. Kisa/Mwikalikhha/3
9. The Petitioner further deposed that the deceased had passed the certificates of titles to the said properties to her and she passed them on to the Assistant Chief who called her stepmothers and handed over each certificate of title in accordance with the deceased's instructions. She further deposed that the Assistant Chief then directed each house to take out succession proceedings and that the fact that she undertook succession proceedings with respect to the property allocated to the first house is due to a bona fide mistake as she did not know that the succession should be done in a single cause.



10. The Petitioner denied evicting the deceased's second widow from her land and deposed that the said widow moved her house in accordance with the Assistant Chief's directions. She further deposed that the deceased's third house is already involved in Kakamega HC. Succession Cause No. 559 of 2009 in which they seek to inherit the deceased's share of his father's estate.
11. In regard to Dickson Jinx Nandwa, the Petitioner deposed that he was gifted the land comprised in L.R. No. Kisa/Mwikalikhha/39 which he sold to one Herbert Okutoyi Akhanyinya and is no longer entitled to any other share in the estate as his mother Jane Joan Wafula from the first house is entitled to a share in L.R. No. Kisa/Mwikalikhha/34. She denied transferring any property of the deceased to third parties and urged the court to dismiss the summons for revocation of grant with costs.
12. In a further Affidavit, the Objector clarified that L.R. No. Kisa/Mwikalikhha/68 is 6.5 acres and not 6.5 hectares. He also deposed that Hellen Nandwa is also a beneficiary of the estate of the deceased from the second house.
13. The application proceeded by viva voce evidence.

OBJECTOR'S CASE

14. The Objector adopted his written statement dated 22nd November 2019 and Affidavits as his evidence in chief. He narrated that at the time of his death, his father had not distributed his land to his children. He said that the deceased was polygamous. His first wife Beatrice Nandwa (deceased) had 11 children, the 2nd wife Philice Dorah Nandwa had 7 children and Philice Akola the 3rd wife had 6 children. He testified that by the time the deceased passed away the three houses had been settled on their own land as follows:-
 - a. The first house on L.R. No. Kisa/Mwikalikhha/34.
 - b. The second house on L.R. No. Kisa/Mwikalikhha/34.
 - c. The third house on L.R. No. Kisa/Mwikalikhha/3 which is still registered in his grandfather's name.
15. The Objector further stated that currently the houses of the deceased are no longer in occupation of the land upon which they had been settled as the second house was forced by the first house to move out of L.R. No. Kisa/Mwikalikhha/34 and to settle on L.R. No. Kisa/Mwikalikhha/68 on the basis that the second house was not supposed to inherit any portion of L.R. No. Kisa/Mwikalikhha/34.
16. In regard to Dickson Jinx Nandwa, the Objector averred that he was a dependant of the deceased but was not involved in the succession proceedings. The Objector also stated that Hellen Nandwa, a daughter of the deceased from the second house was also excluded from the succession proceedings. He stated that the Petitioner omitted L.R. No. Kisa/Mwikalikhha/68, L.R. No. Kisa/Mwikalikhha/4 and L.R. No. Kisa/Mwikalikhha/3 from the schedule of assets of the deceased. He urged the court to ensure fair distribution of the estate of the deceased in accordance to the households.
17. On cross-examination, he said that he was from the second house and that the estate of the deceased comprised four parcels of land as one parcel is in the name of his grandfather. He said that according to the copy of the register, L.R. No. Kisa/Mwikalikhha/4 is in the name of Lucy Amwayi Amunga who is a stranger but before that it was in the name of Philice Akola Jimmy (now deceased) who was his step-mother from the third house. He said that L.R. No. Kisa/Mwikalikhha/34 was registered in the name of the Petitioner while L.R. No. Kisa/Mwikalikhha/39 is currently registered in the name of Herbert Okutoyi Akhanyinya having been transferred to him by Dickson Jinx Nandwa. In respect to L.R. No. Kisa/Mwikalikhha/68, he stated that it is still registered in the name of the deceased.



18. The Objector further stated that his mother is the sole surviving widow of the deceased. He stated that his mother was not forcefully evicted by violence or physical force but was caused by the Petitioner to move out of L.R. No. Kisa/Mwikalikhha/34 by way of verbal communication in the year 2006. He said that his mother had not handed over to him the title deed in respect to L.R. No. Kisa/Mwikalikhha/68. He further stated that he was not aware that there was a meeting between the Petitioner, the Administrator and his mother in which his mother agreed to move to L.R. No. Kisa/Mwikalikhha/68. In response to the court, he said that his brothers from the third house live on L.R. No. Kisa/Mwikalikhha/3 which is in the name of his grandfather who had two sons and that the other son of his grandfather is settled on a different parcel of land from L.R. No. Kisa/Mwikalikhha/3.
19. Dickson Jinx Nandwa testified as PW2 and adopted his witness statement dated 30th June 2021 as his evidence in chief. He said that he is the first grandson of the deceased who used to educate him while the Petitioner is his aunt. He said that he was born on L.R. No. Kisa/Mwikalikhha/34. In his witness statement, he said that he bought L.R. No. Kisa/Mwikalikhha/39 from the deceased at a cost of Ksh. 80,000/= and three cows and that apart from evicting the second widow from L.R. No. Kisa/Mwikalikhha/34, the Petitioner had also sold off L.R. No. Kisa/Mwikalikhha/39. According to him, the Petitioner was intent of depriving him and his co-dependants of their entitlement in the estate of the deceased.
20. On cross-examination, PW2 said that his mother Jane Joan Nafula is from the first house of the deceased and is listed as a dependant herein. He said that he purchased L.R. No. Kisa/Mwikalikhha/39 which according to the records he transferred to Herbert Okutoyi, from the deceased. He also said that the deceased had given the second wife a portion in L.R. No. Kisa/Mwikalikhha/34 which was supposed to devolve to her but the members of the first house constituting his aunts asked her to move out. This was before the Assistant Chief who handed her the title deed in respect to L.R. No. Kisa/Mwikalikhha/68 in pursuant to an agreement made there. He further stated that Philice Akola from the third house was settled on L.R. No. Kisa/Mwikalikhha/3 and that she was buried on the said land when she died. PW2 further said that the third widow had claimed L.R. No. Kisa/Mwikalikhha/68 but the elders made a determination that the second widow was entitled to it. He also stated that the third house was given L.R. No. Kisa/Mwikalikhha/4 which they sold after undertaking succession. The purchaser was David Amunga who is known to PW2 but he registered the land in the name of his wife Lucy Amayayi.
21. PW3 was Moses Muvutu Nandwa who adopted his witness statement dated 29th June 2021 as his evidence-in-chief. He said that the deceased had not distributed his estate before his demise and supported the Summons for revocation of grant. He testified that he was from the 3rd house. He said that he was not aware of Kakamega HC. Succession Cause No. 559 of 2009 that was filed by his deceased mother. He said that the second house was evicted from the land by force.

Petitioner's Case

22. The Petitioner testified as DW1. She said that she was the second born of the deceased who was polygamous. She adopted her Affidavit sworn on 10th September 2019 as her evidence in chief. She said that one day in the year 1995 her father summoned her home from her workplace. On her arrival, he handed over to her the certificates of title in respect to his property for safekeeping. He gave her the title in respect to L.R. No. Kisa/Mwikalikhha/34 and told her that it belonged to her mother who had pre-deceased him. He told her that L.R. No. Kisa/Mwikalikhha/68 belonged to the second wife. He also told her that L.R. No. Kisa/Mwikalikhha/3 and L.R. No. Kisa/Mwikalikhha/4 were joined together but only L.R. No. Kisa/Mwikalikhha/4 was in his name and that the two parcels belonged to the third wife. He handed over to her the title in respect to L.R. No. Kisa/Mwikalikhha/4 and advised her that



L.R. No. Kisa/Mwikalikha/3 was still in her grandfather's name and it was necessary to do succession before the property could be transferred. Later, the deceased passed on in a road accident.

23. DW1 further testified that she decided to take out letters of administration and called the village elder, Assistant Chief, and Chief and explained to them her father's desire. She then took her two step-mothers to the Chief in company of the village elder and there, the Chief distributed the deceased's property as directed by the deceased and advised them to take out succession in accordance with the distribution. She then filed this succession cause and did not include the other parcels of land as they had their own beneficiaries. She averred that she did not include the second and third house in the succession. She denied ever selling L.R. No. Kisa/Mwikalikha/4 or L.R. No. Kisa/Mwikalikha/39. She stated that Dickson is not entitled to a share in the estate of the deceased as it is his mother who should inherit.
24. In response to cross-examination, DW1 said that the deceased distributed the land in the presence of her and her husband only and that the first house was to get 22 acres, the second house was to get 6.5 acres in L.R. No. Kisa/Mwikalikha/68 and 3 acres in L.R. No. Kisa/Mwikalikha/71 while the third house would get 8 acres in L.R. No. Kisa/Mwikalikha/3 and L.R. No. Kisa/Mwikalikha/4. Dickson Jinx was to get 3 acres in Parcel No. 39. She said that although L.R. No. Kisa/Mwikalikha/71 was in the deceased's name, he did not hand over the title to her but it borders and touches the second house's land.

Objector's Submissions

25. The Objector submitted that it is clear that the Petitioner filed the Succession Cause secretly without involving the other two houses of the deceased with the aim of disinheriting other beneficiaries of the estate. He submitted that all the titles that were initially registered in the name of the deceased be cancelled, annulled or revoked and the registration to revert to the name of the deceased for proper distribution.
26. The Objector further submitted that upon doing further inventory of all the assets of the deceased, the estate should be distributed fairly amongst the three houses.

Petitioner's Submissions

27. The Petitioner conceded that there was irregularity in the proceedings to obtain the grant but denied that there was any fraud involved. She submitted that she filed this cause to cater only for the property that had been allocated to her mother's house and that her step-mothers were aware of the deceased's will as is evidenced by the fact that the deceased's third widow Philice Akola Jimmy filed succession proceedings in respect to L.R. No. Kisa/Mwikalikha/4 in Kakamega HC. Succession Cause No. 559 of 2009 and subsequently sold the said land.
28. The Petitioner submitted that there was believable evidence that the deceased had settled the three houses with the first house getting the larger portion of land because it had eleven children while the second house had six children and the third house had five surviving children. She also submitted that L.R. No. Kisa/Mwikalikha/39 had been given to Dickson Jinx Nandwa who sold it to Herbert Okutoyi and therefore it is no longer part of the estate of the deceased. She further submitted that Dickson Jinx Nandwa should not be given a share in his grandfather's estate as his mother is the true beneficiary.
29. The Petitioner urged the court not to apply Section 40 of the *Law of Succession Act* in a manner that would overlook the deceased's directive as to how his houses should be settled.



Analysis And Determination

30. The issues for determination in this matter are as follows:-
- a. Whether the Grant of Letters of Administration issued to the Petitioner on 21st July 1998 and confirmed on 21st April 1999 should be revoked on account of fraud, concealment of material facts, proprietary, irregularity and defective proceedings.
 - b. Whether the deceased had distributed his estate to his three houses during his lifetime.
 - c. Whether Dickson Jinx Nandwa is a dependant of the deceased.
 - d. Whether any titles that were originally in the names of the deceased but had been transferred should be revoked and the titles revert to the name of the deceased.
 - e. How the estate of the deceased should be distributed.
31. Section 51 of the *Law of Succession Act* sets out the mandatory requirements to be met when filing a petition for grant of letters of administration as follows:-

“51(1) Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) An application shall include information as to—

- (a) ...;
- (b) ...;
- (c) ...;
- (d) the relationship (if any) of the applicant to the deceased;
- (e) ...;
- (f) ...;
- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
- (h) a full inventory of all the assets and liabilities of the deceased; and
- (i) such other matters as may be prescribed.”

32. From the evidence, not only did the Petitioner omit the dependants of the deceased from the second and third house, she also failed to file a full inventory of the assets of the deceased. In the circumstances, the proceedings to obtain the grant were defective. Section 76 of the *Law of Succession Act* provides:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;



- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”

33. The Petitioner has submitted that her omission of the assets and the other dependants of the estate of the deceased was not done in bad faith but in cognizance of the fact that the deceased had distributed his estate before his demise. Nonetheless, the process was irregular and tainted with impropriety.
34. I have carefully considered the Petitioner’s claim regarding the alleged distribution. I have also perused the documents filed by the Petitioner from the inception of this cause. In a Replying Affidavit sworn on 25th October 1999 filed in response to Summons for revocation of grant filed by Objector on 12th October 1999 which was later withdrawn, the Petitioner deposed that the deceased had distributed his property to his three houses and had given out certain portions of land L.R. No. Kisa/Mwikalikhha/34 to his nine daughters and one son and had the same demarcated. Nowhere in the said Affidavit did the Petitioner depone that the deceased had summoned her and dictated his wish as to how his estate should be distributed. I also note that nowhere in her evidence did the Petitioner testify that the deceased had allocated L.R. No. Kisa/Mwikalikhha/34 to his 10 children from the first house and had the same demarcated. Further, the Petitioner deposed that she only filed succession in respect of the property that belonged to the first house “to avoid a possible collision with the members of the other two houses as they could not cooperate on me filing a succession in respect of what belonged to them”. This begs the question as to why any of the deceased’s dependants would be unco-operative if at all the deceased had distributed his estate during his lifetime.
35. Bearing in mind the fact that there was no other evidence led to prove that the deceased distributed his land, the only logical conclusion is that the deceased never distributed his land in his lifetime. The Petitioner seemed to have been suggesting that the deceased made an oral will in her presence and in the presence of her husband in the year 1995. Section 9 of the Law of Succession Act provides that:-
- “ 1. No oral will shall be valid unless—
- (a) it is made before two or more competent witnesses; and
- (b) the testator dies within a period of three months from the date of making the will:
- Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.
- (2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19.”
36. No evidence was led to prove that the deceased did make an oral Will as envisaged by the Act. This was crucial in view of the fact that the Petitioner’s house is the greatest beneficiary of the purported Will. It was also necessary to prove that the deceased did indeed verbally distribute his estate for at the time of his death, the second widow Philice Dorah Andayi Nandwa, was in occupation of a portion of L.R. No. Kisa/Mwikalikhha/34 alongside the dependants of the deceased from the first house. The only conclusion I can reach is that the Petitioner, acting in concert with the Assistant Chief, took advantage



of the fact that she was in possession of the deceased's certificates of title, and secured the larger portion of the deceased's estate for the first house.

37. Section 29 of the *Law of Succession Act* defines a dependant as follows:-

- “29. For the purposes of this Part, "dependant" means—(a)the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death.”

38. It is common ground that Dickson Jinx Nandwa is a grandson of the deceased through the eldest daughter Jane Joan Wafula of the first house. His mother is still alive. It is also common ground that the said Dickson was educated by the deceased. However, no evidence was led by Dickson to prove that he was depending on the deceased immediately prior to his death. Although L. R. No. Kisa/Mwikalikha/39 comprising three acres was transmitted to Dickson after his grandfather died, Dickson testified that he purchased the said land from his grandfather at a consideration of Ksh. 80,000/= and three cows. This averment was confirmed by the Petitioner in her Affidavit sworn on 25th October 1999 where she said that the deceased had sold L.R. No. Kisa/Mwikalikha/39 to Dickson. In that regard, Dickson's beneficial interest in the estate of the deceased is that of a purchaser and not as a dependant.

39. On the claim that Dickson is entitled to any other portion of the estate of the deceased, the claim is untenable as the mere fact that one was being educated by the deceased does not entitle one to a claim of dependency. In re Estate of Virginia Wanjiku Githuka (Deceased) [2021] eKLR, the court held thus:-

“Be that as it may not all the raising of such children gives them rights to inherit from the deceased relative unless as provided by the law they can demonstrate dependence. It is not tenable that by merely fostering a child the child acquires rights to inherit. This would create problems and create a challenge for people who just want to assist children in need.”

40. Since the deceased died intestate, his estate should be distributed in accordance with Section 40 of the *Law of Succession Act* which lays down the legal framework for the distribution of the estate of a polygamous man 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.”

41. After confirmation of Grant, the property was transmitted as follows:-

- a. L.R. No. Kisa/Mwikalikha/34 to the Petitioner.
- b. L.R. No. Kisa/Mwikalikha/39 to Dickson Jinx Nandwa who transferred it to Herbert Okutoyi.



Since no one is contesting the transfer of L.R. No. Kisa/Mwikalikha/39 to Dickson, I hold the title issued to the third party to be valid and I decline to cancel it. However, the title in respect to L.R. No. Kisa/Mwikalikha/34 ought to be cancelled as it was transmitted subsequent to defective succession proceedings. As to the title in respect of L.R. No. Kisa/Mwikalikha/4, it appears from the certified true copy of the register that it was transmitted to Philice Akola Jimmy vide Kakamega H.C. Succession Cause No. 559 of 2009 after which she later transferred the same to Lucy Amwayi Amunga in 2017. The third party purchased the land comprising 0.32 hectares after succession had been completed. Moreover, she was not enjoined to these proceedings. She should not be condemned unheard. Nevertheless, the land shall be taken into account when distributing the estate.

42. The Petitioner has urged the court to apply Section 40 of the Act with care bearing in mind that it should only be a useful guideline which does not impose a strict mandatory obligation on the court. In *Scholastica Ndululu Suva v. Agnes Nthenya Sara* [2019] eKLR, the Court of Appeal observed that a blind application of Section 40 may lead to absurdity. It stated that notwithstanding the Section providing for a general distribution of the estate of an intestate 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.
43. In *re Estate of the late Siwanyong Ngilotochi (deceased)* [2021] eKLR, the court while interpreting Section 40 noted that the number of children in each house is not the only factor to be considered in the distribution of the estate of an intestate person as another factor could be the expressed wish of the deceased.
44. The surviving dependants of the deceased are as follows:-
 - a. 1st House (Beatrice Mary Liaka Nandwa) (now deceased) – her children with the deceased are:
 1. Jane Wafula
 2. Rabecca Etakwa
 3. Ruth Alumasa
 4. Florence Omusikoye
 5. Joy Mkale
 6. Lucy Ogeto
 7. Sammy Nandwa – Deceased (survived by a widow and four children)
 8. Rosebird Atsango Bulemi – Deceased
 9. Lydia Nandwa
 10. Grace Onere
 11. Mercyline Nandwa
 - b. 2nd House (Philice Dorah Andayi Nandwa) - Her children with the deceased are:
 1. Tabitha Janet Ambetsa



3. Melisa Nandwa
4. Lilian Nandwa
5. Airen Nandwa
6. Pauline Nandwa
7. Hellen Nandwa

SUBPARA c.

3rd House (Philice Akola Nandwa) - Her children with the deceased are:

1. Atanas Mwalo – Deceased
2. Patrick Elishama
3. Judith Nandwa
4. Moses Mututu Nandwa
5. Tabitha Fridah Nandwa
6. Brown Nandwa

45. Despite the Petitioner claiming that L.R. No. Kisa/Mwikalikha/71 belongs to the deceased, the certificate of official search shows otherwise. The Petitioner also stated that the title deed in respect to the said parcel was never handed over to her by the deceased. There is insufficient evidence to prove that the said title is part of the estate of the deceased and I find that the deceased's assets are as listed earlier. Since the parties agree that L. R. No. Kisa/Mwikalikha/3 is the deceased's rightful share of family land although it is still registered in his deceased father's name, the said parcel of land shall also be deemed to be part of the estate of the deceased. I have made this determination while bearing in mind the evidence of DW3, a child to the third widow who averred that L. R. No. Kisa/Mwikalikha/3 is the known homestead of the third widow for the past 40 years.
46. None of the surviving dependants of the deceased are minors and so the utmost consideration of this court is to distribute the estate fairly and equitably while taking into account the number of children in each house. The lands comprising the estate fall within one registration section and makes it easier for the court to determine distribution as their value may not differ much. The total acreage of the four parcels of land that are available for distribution is 32.79 acres. The first house has 11 children, the second house has 7 children plus the sole surviving widow and the third house has 6 children. This brings the total beneficiaries of the estate to 25.
47. Having ascertained the assets and beneficiaries of the deceased, I find that it will be just and fair for the estate of the deceased to be distributed as follows:-
 - a. The first house to get 14.4 acres from L.R. No. Kisa/Mwikalikha/34.
 - b. The second house to get 3.98 acres from L.R. No. Kisa/Mwikalikha/34 and 6.5 acres comprised in L.R. No. Kisa/Mwikalikha/68.
 - c. The third house to get 3.6 acres from L.R. No. Kisa/Mwikalikha/34 and 0.79 acres comprised in L.R. No. Kisa/Mwikalikha/4. The third house shall solely inherit the deceased's entire share of family land in L.R. No. Kisa/Mwikalikha/3 upon succession.



- d. Dickson Jinx Nandwa remains with 2.99 acres comprised in L.R. No. Kisa/Mwikalikhha/39 which is already transferred to a Purchaser.
48. In the course of the hearing it emerged that the third widow had disposed of L.R. No. Kisa/Mwikalikhha/4 to a third party who is currently registered owner thereof. I will not revoke her title as it was secured after transmission arising from proceedings in Kakamega H.C. Succession Cause No. 559 of 2009. As for L.R. No. Kisa/Mwikalikhha/39, it is common ground that Dickson Jinx Nandwa disposed of it after it had been transferred to him. I find no grounds to have the said title revoked.
49. The final orders shall be as follows:-
- a. The grant of letters of administration dated 21st July 1998 is hereby revoked and the Certificate of Confirmation of Grant dated 21st April 1999 cancelled.
 - b. That a fresh Grant shall issue to Rebecca Violet Etakwa and Joseph Nandwa jointly.
 - c. That the estate of the deceased shall devolve to each of the three houses as outlined in paragraph 47 of this Judgement.
 - d. The said assets shall then be distributed equally to each of the beneficiaries of the respective houses unless any of them elects to waive their right or interest in favour of the co-beneficiaries.
 - e. That the title in respect to L.R. No. Kisa/Mwikalikhha/34 is hereby revoked and reverted to the deceased for purposes of distribution.
 - f. That I decline to revoke the titles in respect to L.R. No. Kisa/Mwikalikhha/39 and Kisa/Mwikalikhha/4.
 - g. The Administrators shall within sixty (60) days undertake survey of L.R. No. Kisa/Mwikalikhha/34 for purposes of excising the two portions that have been allocated to the other two houses of the deceased.
 - h. Upon completion of survey, the Administrators shall jointly or individually apply for confirmation of grant in alignment with the Judgement of the court.
 - i. Each party shall bear its own costs as this is a family matter.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER 2025.

A. C. BETT

JUDGE

In the presence of:

No appearance for the Objector

No appearance for the Petitioner

Court Assistant: Polycap

