



**In re Estate of Pius Mzee Ayeki - Deceased (Succession Cause
301 of 2012) [2025] KEHC 13457 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13457 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 301 OF 2012
S MBUNGI, J
SEPTEMBER 29, 2025**

BETWEEN

CONSOLATA SHILWATSO CHARLES ADMINISTRATOR

AND

**ANTHONY HUKU AYAGH (SUBSTITUTED BY CENTRINE NEKESA
WAFULA) OBJECTOR**

RULING

1. The objector herein filled an affidavit of protest dated 23rd September 2024 where she filled a protest to oppose the proposed mode of distribution annexed to the summons for Confirmation of Grant dated 22/5/2024 claiming that it departed from the judgment delivered on 21/12/2023.
2. According to the protestor the judgment stated that the estate land was to be distributed equally to all the children of the 3 households of the deceased with the widow who was the administrator having a life interest over the share due to her children.
3. She claimed that the administrator erroneously proposed that she gets equal share as the deceased children which went against the court's judgment.
4. She avers that the estate land being LR Kakamega/shibuname/1455 measuring 4.0 Hactares that is 10 acres was to be divided among the deceased children.
5. She went ahead to name the deceased children and their distributed share as follows;
 - a. Wilkister Khulundu- (o.8 Ha) 2 acres-----Daughter to the 1st wife (Night Atemba)
 - b. Harrision Ayekha (0.8 Ha) 2 Acres----- son from 2nd wife (Agrippina Muhembi)
 - c. Francisca Achenda (0.8 Ha) 2 Acres----- Daughter to the 3rd wife (Consolata Administrator)



- d. Imelda Kalara (0.8 Ha) 2 Acres----- Daughter to 3rd wife (Consolata Administrator)
 - e. Marion Mutakale- (0.8 Ha) 2 Acres--- Daughter to the 3rd wife (Consolata Administrator)
6. She opposed the mode of distribution and prayed that the estate be distributed according to paragraph 7 of the judgment delivered on 21/12/2023 which was never appealed against.
 7. The application was to be canvassed by way of written submissions. Both the petitioner and the objector filled their submissions.

Submissions

8. In support of their submissions dated 13th November 2024, the objector avers that the court's judgment dated 21st December 2023 directed that the summons for confirmation be served upon all the deceased children and that the petitioner to have a life interest over the share of her children who were Francisca Achenda, Imelda Kalara and Marion Mutakale.
9. According to the protestor, the petitioner filled summons for confirmation of the grant dated 22nd May 2024 with the following proposed mode of distribution.
 - i. Wilkister Khulundu-----1.667 acres
 - ii. Harrison Ayekha -----1.667 acres
 - iii. Francisca Achenda -----1.667 acres
 - iv. Imelda Kalara-----1.677 acres
 - v. Marion Mutakale-----1.667 acres
 - vi. Consolata Shilwatso Charles-----1.667 acres(Petitioner)
10. She avers that the petitioner apportioned herself an equal share as the children of the deceased which was contrary to the court's judgment and in contravention with section 35 of the *Law of Succession Act*.
11. She supported her arguments with the case of Re Estate of Francis Kinuthia Nderu (Deceased) (2021) Eklr and Re estate of Nicholas Kaaka Kapore (deceased) (2018) eKLR where she avers that in the decisions, the spouse of the deceased was not to get equal shares as the children as was the position in the judgment by Hon. P.J Otieno judgment that was never reviewed or appealed against and that the estate was to be distributed to the deceased children in equal shares while the petitioner was to have only the life interest on the shares that was due to her children.
12. The petitioner filled her submission dated 26th February 2025 where she submitted that the deceased was survived children named in the affidavit of confirmation of the grant and relied on section 40 of the *law of Succession Act*.
13. she claimed that as the widow of the deceased, she was entitled to a share of the estate as a single unit and the distribution by the petitioner is per section 40 of the *law of Succession Act* and that the same should be allowed.

Analysis and determination.

14. I have looked at the applications, the affidavits in support as well as the submissions by the petitioner as well as the objector.



15. I have managed to peruse the court's record and judgment by Hon. P.J Otieno dated 21st December 2023 where the court was clear that the estate of the deceased to be equally divided among the three households and that the surviving widow to have the life interest an order that was not appealed or reviewed by the petitioner.
16. I have isolated one issue for determination.
Is it the petitioners or Objectors proposal on distribution of estate complies with the Judgment delivered on 21st December, 2023 by Hon. P.J Otieno

Determination

17. The Petitioner's proposed mode of distribution, which allocates her 1.667 acres alongside the five children, is contrary to the judgment of 21st December 2023 and Sections 35 and 40 of the *Law of Succession Act*.
18. The judgment clearly directed that the estate be divided equally among the five children, with the Petitioner holding a life interest over the shares of her children (Francisca Achenda, Imelda Kalara, and Marion Mutakale).
19. The Petitioner, as the surviving widow, is entitled only to a life interest over the shares of her three children, as held in the judgment.
20. The Objector's proposed distribution of 2 acres (0.8 Ha) to each of the five children—Wilkister Khulundu, Harrison Ayekha, Francisca Achenda, Imelda Kalara, and Marion Mutakale—complies with the court's judgment.
21. The estate, measuring 10 acres, shall thus be divided among the five children, with the Petitioner retaining a life interest over the 6 acres allocated to her three children.
22. Based on the foregoing, the court makes the following orders:
 - a. The Objector's affidavit of protest dated 23rd September 2024 is upheld;
 - b. The Petitioner's proposed mode of distribution annexed to the Summons for Confirmation of Grant dated 22nd May 2024 is dismissed for being contrary to the judgment dated 21st December 2023.
 - c. The estate of the deceased, comprising land parcel LR Kakamega/shibuname/1455 (10 acres), shall be distributed as follows:
 - i. Wilkister Khulundu – 2 acres (0.8 Ha)
 - ii. Harrison Ayekha – 2 acres (0.8 Ha)
 - iii. Francisca Achenda – 2 acres (0.8 Ha)
 - iv. Imelda Kalara – 2 acres (0.8 Ha)
 - v. Marion Mutakale – 2 acres (0.8 Ha)
 - d. The Petitioner, Consolata Shilwatso Charles, shall hold a life interest over the shares of her children (Francisca Achenda, Imelda Kalara, and Marion Mutakale), totaling 6 acres.
 - e. Each party to bear its own costs for this is a Family matter.
36. Right of Appeal 30 days.



DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29th DAY OF SEPTEMBER, 2025.

S.N. MBUNGI

JUDGE

In The Presence Of;

C/A: Angong'a

Ms Munihu for the Petitioner present online.

Ms Kadenyi for the Objector present online.

