



REPUBLIC OF KENYA



**In re Estate of the Late James Lellasian Lengess (Deceased) (Succession Cause 2659 of 2011) [2025] KEHC 14214 (KLR) (Family) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14214 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 2659 OF 2011**  
**HK CHEMITEI, J**  
**OCTOBER 9, 2025**  
**IN THE MATTER OF THE ESTATE OF THE**  
**LATE JAMES LELLASIAN LENGESSES (DECEASED)**

**RULING**

1. When this matter came before court on 1<sup>st</sup> of October 2025 in the presence of all the beneficiaries as well as the administrators the issue that was bedeviling them was how to share out the sum of Kshs.68,500,000.00 which was a balance of the sale of one of the estate's assets.
2. Two camps emerged. The first camp was that from the first house in which they proposed that the amount be shared out among the five-household left by the deceased as per the Samburu customs.
3. The second camp which comprised the remaining 4 houses proposed that the money be shared out among all the children with the remaining widows getting a larger share.
4. The court after back and forth oral discussions directed the parties to file submissions on this point.
5. The Applicants proposed that the court should follow and align itself with the provisions of Section 33 of the Succession Act because the estate was based in the then Samburu district which is recognised under part V of the Act as an area where when it comes to distribution the court ought to align itself with the governing customary customs.
6. The Applicants relied on the famous cases of *Rono v. Rono & Another* (2005) KECA 326 (KLR)
7. They went on to submit that the contributions by the widows and in particular the first one must be taken into consideration. They relied on *Douglas Muigai & Another v. John Bosco Kariuki & Another*.
8. The Respondents on the other hand were of the view that the amount be distributed among the children equally with the widows each getting a sum of Kshs 3.6 million.
9. They submitted that the court must weigh this decision based on Article 27 of *the constitution* which guards against any form of discrimination on either gender or otherwise.



10. They submitted that majority of the family members wish that the amount be distributed to each beneficiary.
11. They further submitted that consideration must be made for the younger children who are still in need as opposed to those who were already adults and able to fend for themselves.
12. I have perused the above submissions and it is my view that the line taken by the Applicants to the effect that the amount in question be shared out through the Samburu cultural practice because of the provisions of section 33 of the LSA is not tenable.
13. The same is not practicable because the parties as per the 8<sup>th</sup> July 2024 consent agreed on the mode of sharing out the entire amount. The question is why didn't they then argue that the consent must take into account the provisions of Section 33 of the Act?
14. They cannot therefore plead the same now. They are estopped from arguing otherwise. That consent was comprehensive enough and the letter and spirit of it was equal distribution of the entire amount.
15. More importantly are the provisions of Article 27 of *the Constitution* which prohibits discrimination. If the Samburu customary law is to the effect that the sons get a bigger share or the first wife gets a bigger share then it cannot oust *the Constitution*. That will obviously oppress the weaker parties and more specifically the units with more beneficiaries.
16. From the discussion however, it appears to me that it was the first house which wanted the amount to be shared equally to the houses. This is of course ingenious considering that they were few (2), I think against the other houses with seven children. At the same time, they are already adults and able to fend for themselves contrary to the fifth house with young and school going children.
17. The court must of necessity look overally at the interest of each of the beneficiaries and more importantly the vulnerable ones for instance the school going. It is agreed across the board that the fifth house still needed a lot of support.
18. What is the best approach? This is usually left to the discretion of the court which, must be exercised equitably.
19. Looking at all parameters the best approach is to have the cash shared out among the children. They are all adults and with various needs. Those who are married and are having their homes and are already independent must be allowed to make decisions on the manner they shall utilize their share. It is not efficacious to have the administrators or their siblings manage their inheritance.
20. It was as well mutually agreed that the widows were to share out the income from the rentals equally. It is the business of the administrators to identify them and work out a management formular.
21. It was also mentioned to me that the amount was fixed in an interest earning account and the same must have attracted some interest which the counsels suggested could be in the region of Kshs. 10 million or thereabouts.
22. Whatever the amount of interest is, the same should be utilized to pay out any liabilities including legal fees or any other debt due to the estate.
23. In the premises and taking into consideration the submissions as well as the vulnerability or otherwise of the beneficiaries, I direct that the amount of Kshs. 68,500,000 shall be distributed as hereunder:
  - (a) Kshs.4 million each to the first, second, third and fourth widow.



- (b) Kshs 5.5 million to the fifth widow to cover school fees, medical and other expenses for the minor children.
- (c) The balance of Kshs. 47 million to be shared equally between all the children of the deceased.
- (d) Any accrued interest shall be utilized for the payment of any liabilities to the estate and the balance shall be shared out equally among all the children.
- (e) Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**H K CHEMITEI**

**JUDGE**

