In re Estate of John Mutiso Letu (Deceased) (Succession Cause 261 of 2018) [2024] KEMC 34 (KLR) (10 September 2024) (Judgment)

Neutral citation: [2024] KEMC 34 (KLR)

REPUBLIC OF KENYA

IN THE MACHAKOS LAW COURTS

SUCCESSION CAUSE 261 OF 2018

CN ONDIEKI, PM

SEPTEMBER 10, 2024

IN THE MATTER OF THE ESTATE OF JOHN MUTISO LETU (DECEASED)

BETWEEN

KYALO MUTISO LETU ..... ADMINISTRATOR

AND

ELIZABETH JOHN MUTISO ..... BENEFICIARY

JUDGMENT

Part I: The Summons for Confirmation and Protest Thereto

1. The Respondent filed a Summons for Confirmation of Grant dated 16th July 2021 and filed on 19th July 2021.

2. In response, the Protestor filed an Affidavit of Protest dated 28th April 2022 and filed on even date, chiefly protesting the mode of distribution proposed in paragraph 8 of the Affidavit in support of the said Summons for Confirmation, on the premise that it is inequitable. The Protestor is of the view that the estate should be distributed equally between the two houses.

3. This court referred the matter to mediation on 28th October 2021. The mediation matter was registered as Machakos Mediation No. 31 of 2021. It failed to bear fruit.

Part II: The Beneficiary/protestor's Case

4. This matter proceeded by viva voce evidence.

5. In examination-in-chief of the Protestor, she adopted the position deposed in the said Affidavit of Protest dated 28th April 2022 and filed on even date, as her evidence. She stated that the mode of distribution set out in the Affidavit is not based on the family agreement. She conceded that some parcel of land were acquired and others were ancestral land. She stated that Mitaboni/Kathiani/961

is ancestral land. She stated that the acquired parcels of land were three in number but she could not tell the title numbers. She conceded that all the acquired parcels of land were acquired before she was married. She conceded that in 2014, she was remarried and titles of the said parcels of land came out when she was already remarried. She stated that the Respondent was occupying the Kibwezi land when she was married. She stated that according to the Kamba customs, the property of the deceased should be distributed equally.

6. In cross-examination, the Protestor stated that the first wife had 11 children. She stated that after her marriage in 1997, they did not acquire any property together because the deceased was sickly and frail. She stated that she has 3 children. Two above 30 years and one who died. She stated that all the three children live with their father, who is not the deceased herein. She stated that only one parcel is ancestral land namely Mitaboni/Kathiani/961. She stated that the rest of the properties were acquired by the deceased. She stated that she could not tell whether the co-wife contributed to their acquisition. She conceded that she sold Mitaboni/Kathiani/961 with the consent of the clan and that she sold another parcel of land in Mutongoni. She conceded that she sold two parcels of land. She stated that she was not aware that the deceased sold a property to David Kiilu.

7. In his written Submissions dated 3rd June 2024 and filed on even date, learned Counsel Mr. Kamolo instructed by Kamolo & Associates Advocates representing the Protestor, rehashed the contents of Affidavit of protest.

8. It is submitted is submitted that the only contest is the mode distribution proposed in paragraph 8 of the Affidavit in support of the Summons for Confirmation of Grant dated 16th July 2021.

9. It is urged that the estate of the deceased should instead be distributed according to the number of children in each house but also adding any wife surviving the deceased as additional units to the number of children, citing section 40 of the *Law of Succession*, to buttress this proposition. In this regard, the Protestor places reliance upon *Benson Ndirangu Mathenge [Deceased]* Nakuru HCSC No. 231 of 1998; *Joseph Eric Owino [Deceased]* [2022] eKLR; and *John Musambayi Katumanga* [Deceased] [2014] eKLR.

Part III: The Administrator/Respondent's Case

10. In examination-in-chief of the Respondent, he adopted the position deposed in the said Affidavit dated 16th July 2021, in support of the Summons for Confirmation of Grant. The Respondent acknowledged that the Protestor is his step-mother and that he had been take care of in the said distribution schedule. He stated that his mother died in 1992 and that his father married the step-mother in 1997. He stated that his step-mother left after his father died and started selling some of the properties of the estate and upon seeking advice, he was advised by the chief to hold a family meeting with a view of filing a succession cause to settle the simmering tension in the estate. He stated that the Protestor lives outside the estate because she sold all which was due to her and that on this account, they agreed that what she had already sold will be reflected in the distribution schedule as her share. He stated that they went into mediation and agreed on the mode of distribution but she changed mind soon after the mediation. He asked this court to dismiss the protest and confirm the grant as per the proposed schedule of distribution outlined the said Affidavit.

11. In cross-examination, the Respondent stated that the Protestor is his step-mother. He stated that his own mother died in 1992. He stated that they have never attempted to disinherit the Protestor. He denied the allegation that they had set her house ablaze. He stated that the incident of her house catching fire was investigated by the police and no evidence linked any of them to the incident. He stated that she concocted the incident to have them jailed. He stated that his father left 6 parcels of

land. He stated that the land in Kibwezi is not registered in the name of his late father since it belonged to his late mother. He stated that he had no documents to prove that it belonged to her late mother. He stated that he lives in the Kibwezi land together with his brother Kioko and Kimilu. He stated that his mother and father were buried in Mitaboni/Kathiani/961. He stated that the distribution cannot be equal because a majority of the properties forming the estate were acquired jointly by his father and mother long before the Protestor was married. He stated that his mother contributed to the acquisition of the said properties and they cannot be equally distributed to the two houses. He stated that some lands were bought and other inherited. He stated that he had no sale agreement over parcel Kathiani/Kaewa/1686. He stated that it cannot be divided equally between the two houses because when it was jointly acquired by his father and mother, the Protestor was not a wife of his father. He stated that only ancestral land can be divided equally between the two houses. He stated that the Affidavit is based on a family agreement. He stated that only Mitaboni/Kathiani/961 is ancestral land. He stated that in the Affidavit, the Protestor was allocated 1.5 acres and the Respondent was allocated 4.5 acres because the Protestor came recently and the Respondent's mother was married long before the Protestor. He stated that Mitaboni/Mbee/550 is not ancestral land since it was jointly acquired by his late father and late mother. He stated that Mitaboni/Mbee/1365 was sold by his father to David Kiilu in 1988/89. He maintained that the Kibwezi land belongs to his mother.

12. In her written Submissions dated 10th July 2024 and filed on even date, learned Counsel Ms. Nyaata instructed by Nyaata & Nyaata Advocates representing the Administrator/Respondent, rehashed the contents of Affidavit in support of the Summons for Confirmation of Grant.

13. It is submitted that the Protestor has proposed a mode of distribution which is untenable since one of the properties was sold by the deceased to one David Kiilu, a fact which has not been displaced.

14. It is submitted that in the Affidavit of Protest, the Protestor deposed that the properties should be distributed equally between the two houses. It is further submitted that the Protestor did not dispute in the Affidavit that David Kiilu is a creditor of the estate and the fact that stands undisputed. It is submitted that the submissions cannot stand since a party is bound by her submissions.

15. It is submitted that the total acreage of the land is 7.25 acres and in accordance with section 40 of the *Law of Succession*, if this is divided among the surviving 14 units, each entitled to 0.51 acres and this is what is reflected in the proposed mode of distribution.

16. It is submitted is submitted that the only contest is the mode distribution proposed in paragraph 8 of the Affidavit in support of the Summons for Confirmation of Grant dated 16th July 2021.

17. It is urged that the estate of the deceased should instead be distributed according to the number of children in each house but also adding any wife surviving the deceased as additional units to the number of children, citing section 40 of the Law of Succession, to buttress this proposition. In this regard, the Protestor places reliance upon *Benson Ndirangu Mathenge [Deceased]* Nakuru HCSC No. 231 of 1998; *Joseph Eric Owino [Deceased]* [2022] eKLR; and *John Musambayi Katumanga [Deceased]* [2014] eKLR.

Part IV: Questions For Determination

18. Commending itself for determination, gleaning from the Affidavit of Protest; the Affidavit in Support of the Summons for Confirmation; and the rival written Submissions, is only one question namely whether the mode of distribution of the estate of the deceased as set out under paragraph 8 of the Affidavit in support of the Summons for Confirmation of Grant dated 16th July 2021 and filed on 19th July 2021 is inequitable/unfair.

Part V: Analysis of The Law; Examination of Facts; Evaluation of Evidence and Determination

19. This court notes that in the Affidavit of Protest, the Protestor took a firm position that the estate of the deceased should be distributed equally between the two houses in accordance the Kamba customary law. In her viva voce evidence, this position was maintained.

20. However, in a significant departure from the position taken in the said Affidavit, the Protestor submitted that the estate should be divided using the number of units per house, which survived the deceased. Needless to note, unlike the Affidavit of Protest, the submissions are founded on law and particularly, section 40 of the *Law of Succession of Act*.

21. This court will proceed to determine this protest in accordance with the original issue, as set out in the Affidavit of Protest, whether the mode of distribution of the estate of the deceased as set out under paragraph 8 of the Affidavit in support of the Summons for Confirmation of Grant dated 16th July 2021 and filed on 19th July 2021 is inequitable.

22. In determining this question, this court will be guide by the principles entrenched in section 40 of the *Law of Succession of Act*.

23. Foremost, this court notes that parties to this protest converged at the following material facts.

24. First, the estate constitutes six parcels of land, composed of two categories of land namely ancestral land namely Mitaboni/Kathiani/961 and five acquired parcels of land which are five in number.

25. Second, that among the acquired land, Mitaboni/Mbee/1365, was sold by the deceased to one David Kiilu.

26. Third, that the net estate is thus composed of five parcels of land namely.

27. Fourth, that the Protestor was married the deceased in 1997.

28. Fifth, that the acquired parcels of land were so acquired before the Protestor was married in 1997.

29. Sixth, that the Protestor remarried in 2014.

30. Seventh, the total beneficiaries who survived the deceased are fourteen.

31. This being a polygamous family, section 40 of the Law of Succession applies as opposed to either African customary law as asserted by the Protestor or application of a mode of distribution independent of section 40, both of which were ousted by section 2(1) of the *Law of Succession Act*. See *Mary Rono v Jane Rono & another* [2005] eKLR (also reported as *Rono v Rono & Another* [2005] 1 EA 363, hereinafter "the Rono case") where the Court of Appeal (Omolo, O'kubasu & Waki, JJ.A, as they then were) held "The deceased in this matter died in 1988, while the *Succession Act* which was enacted in 1972, became operational by Legal Notice No. 93/81, published on 23.06.1981. I must therefore hold, as the Act so directs, that the estate of the deceased falls for consideration under the Act. Section 2(1) provides: - ... The application of Customary law, whether Marakwet, Keiyo or otherwise, is expressly excluded unless the Act itself makes provision for it. The Act indeed does so in Sections 32 and 33 in respect of agricultural land and crops thereon or livestock where the law or custom applicable to the deceased's community or tribe should apply. But the application of the law or custom is only limited to "such areas as the Minister may by Notice in the Gazette specify." By Legal Notice No. 94/81, made on 23.06.1981, the Minister specified the various districts in which those provisions are not applicable. The list does not include Uasin Gishu district within which the deceased was domiciled. So that, the law applicable in the distribution of the agricultural land in issue in this matter is also written law. Does

the Act provide for the manner of distribution? Partly, yes. The superior court was of the view that section 27 of the *Act* donates unfettered discretion to the court in the sharing of the estate considering the definition of "dependant" in section 29 to include the "wife and the children of the deceased". It is in exercise of that discretion that the learned Judge disregarded consideration of the sharing proposed by the parties altogether and made her "own independent distribution". It was also pursuant to that discretion that she based her decision to allocate minimal shares to the daughters on the basis that they would get married."

32. Section 40 of the *Law of Succession* provides as follows: "(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. (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38."

33. While construing section 40 of the *Law of Succession Act* In re Estate of Mbiyu Koinange (Deceased) [2020] eKLR (hereinafter "the Koinange case"), Muchelule, J. expressed a judicial view that when a polygamous man dies intestate, his estate should be governed by the said section 40 and the court cannot share the estate in any other way. His Lordship rendered himself as follows: "23... It is already noted that when a polygamous man dies intestate, his estate should be governed by section 40, and the court cannot share the estate in any other way..."

34. However, section 40 and indeed the *Law of Succession Act* does not take away the discretionary power of the court to act equitably or fairly to parties, in distributing the estate. See the Koinange case, Muchelule, J. held thus: "23... However, this does not take away the court's discretion to act fairly to the parties during the distribution of the estate (*Rono –v- Rono* above). Counsel for the 3rd and 4th houses cited Rono's case and the decisions in P & A Cause No. 244 of 2002 Estate of Ephantus Githatu Waithaka; Succession Cause No. 1033 of 1996 In the Matter of the Estate of Mwangi Githure (Deceased); and Succession Cause No. 110 of 2010 In the Matter of the Estate of Samwel Miriti (Deceased), and asked that the claims of the two widows should not be equated to the children of the deceased as that would cause them monumental injustice. This was because of the provision in section 40 that each widow be considered as a unit and to be added to the number of the children of the deceased. To counsel, the widows have a superior claim to the estate." Concerning the question of discretionary power of a succession court, it will be recalled that in the Rono case, the Court of appeal held a judicial view that "While I do not doubt the discretion donated by the Act in matters where dependants seek a fair distribution of the deceased's net estate I think the discretion, like all discretions exercised by courts, must be made judicially or to put it another way, on sound legal and factual basis. The possibility that girls in any particular family may be married is only one factor among others that may be considered in exercising the court's discretion. It is not a determining factor. In this particular case however, I find no firm factual basis for making a finding that the daughters would be married. As shown by the undisputed facts above, all except one were unmarried or divorced in 1994 and were advanced in age. Eleven years later when this appeal was heard, there was no evidence that the situation had changed. It is also an undisputed fact that the deceased treated all his children equally and never discriminated between them on account of sex. It is a factor in my view that was not sufficiently considered although it resonates with the noble notions enunciated in our Constitution and international laws. The Respondents themselves clearly recognized and honoured the wishes of the deceased when they proposed to give 14 acres of the land to each daughter of the deceased. I find no justification for the superior court whittling that proposal down to 5 acres to each daughter. More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the

net estate to the "houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children." A "house" in a polygamous setting is defined in section 3 of the Act as a "family unit comprising a wife ... and the children of that wife". There is no discrimination of such children on account of their sex."

35. It cannot be gainsaid that section 40 thereof ingrains an equitable distribution mode and this has been appreciated in a litany of superior court decisions, including *Benson Ndirangu Mathenge [Deceased]* Nakuru HCSC No. 231 of 1998; *Joseph Eric Owino [Deceased]* [2022] eKLR; and J*ohn Musambayi Katumanga [Deceased] [2014]* eKLR.

36. Minus Mitaboni/Mbee/1365, which is entirely entitled to the creditor of the estate namely David Kiilu, the net intestate estate is as follows:

    i. Kathiani/Kaewa/1711 which is approximately 0.05 hectares multiply by 2.471 acres to convert into acres, making it approximately 0.12355 acres.

    ii. Kathiani/Kaewa/1686 which is approximately 0.13 hectares multiply by 2.471 acres to convert into acres, making it approximately 0.32123 acres.

    iii. Mitaboni/Mbee/550 which is approximately 0.22 hectares multiply by 2.471 acres to convert into acres, making it approximately 0.54362 acres.

    iv. Mitaboni/Mbee/1367 which is approximately 0.32 hectares multiply by 2.471 acres to convert into acres, making it approximately 0.79072 acres.

    v. Mitaboni/Kathiani/961 which is approximately 5.9 acres.

37. The Protestor admitted that she sold the ancestral property namely Mitaboni/Kathiani/961, without a Grant of Letters of Administration. It is now settled law that selling any free property constituting the estate of the deceased without a grant of letters of administration amounts to intermeddling in the estate of the deceased as conceived under section 45 of the *Law of Succession Act*. The net legal effect of such a transaction is that it is a nullity, upon which no good title can be based. S*ee Jane Kagige Geoffrey & Another v Wallace Ireri Njeru & 2 Others* [2016] eKLR; *Gitau & 2 Others v Wandai & 5 Others* [1989] KLR 23; *In Re The Matter of the Estate of David Julius Nturibi M'ithinji (Deceased)* [2012]eKLR), *et alia*. It follows that acts of transfer, exchange, paying out, distributing, donating, charging, leasing or mortgaging of free property of the estate of the deceased without the authority of the court passes no good title to the purchaser. See *Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & Another* [2016] eKLR).

38. This court this concludes that the act of Protestor herein of selling the said ancestral land, Mitaboni/Kathiani/961, passed no good title to the purchaser. The effect of this is that the said property remains part of the estate of the deceased.

39. It translates that each of the 14 beneficiaries is entitled to an equal share of estate of the deceased.

40. Distribution of the estate is not an easy task owing to a complicity of multiple factors pulling apart, including the fact that the value of some properties is unestablished. See the Koinange case where Muchelule, J. observed that "34. The distribution of the estate of the deceased is not an easy exercise. One reason is that the extensive estate has properties whose values are not known. That presents a challenge when the court seeks to be fair and equitable to the beneficiaries. One can easily tell, however, that Closeburn Estate is the flagship property of the estate. Its value can be discerned from the amount that was generated from the sale of portions of it, including the recent sale of 2 acres by Lennah Wanjiku Koinange. And yet, it is basically the 2nd house that has settled on the estate. There is, however, general

agreement that each of the large properties be benefited by all the beneficiaries. These are Muthera Farm, Closeburn Estate, Ehothia Farm, Waehothia Farm and Thimbigua Farm. What is not agreed is how much of each they will each get."

41. However, considering the size of some of the parcels of land, this does not necessarily mean that each beneficiary should have a share in each of the five parcels of land. There are pragmatic factors to take into account including the size of the property to be distributed, the factor whether some beneficiaries have extensively developed the portions they respectively occupy (unless it is demonstrated that such was done to steal the match), whether some properties will be set aside and be sold under the authority of the court to settle liabilities and administration expenses of the estate, whether there are instances of intermeddling by one or more of the beneficiaries in which case their respective shares should be reduced thereby, *et alia*. In distributing the estate of Koinange [deceased] in the Koinange case, this observation was made and Muchelule, J. took applied a pragmatic approach as follows: "34...One can easily tell, however, that Closeburn Estate is the flagship property of the estate. Its value can be discerned from the amount that was generated from the sale of portions of it, including the recent sale of 2 acres by Lennah Wanjiku Koinange. And yet, it is basically the 2nd house that has settled on the estate. There is, however, general agreement that each of the large properties be benefited by all the beneficiaries. These are Muthera Farm, Closeburn Estate, Ehothia Farm, Waehothia Farm and Thimbigua Farm. What is not agreed is how much of each they will each get. 35. Secondly, the beneficiaries have extensively developed the portions they respectively occupy, or have leased some of these portions to 3rd parties who have done extensive developments. This will make the actual sharing on the ground a painful and messy exercise. Some of the beneficiaries undertook extensive developments with the intention of influencing the distribution of the estates. 36. Thirdly, quite a substantial portion of the estate will have to be set aside for sale so that the liabilities and administration expenses are paid from the proceeds. 37. Fourthly, there were a lot of complaints that either the Administrators or some of the beneficiaries had intermeddled with parts of the estate by either selling, leasing and managing without authority and not accounting to the estate. For instance, there are many third parties occupying Closeburn Estate on the basis that they are tenants. One does not know how much rent is paid, and there is no account. There was evidence that David Njunu Koinange, George Kihara Koinange, Margaret Njeri Mbiyu and Eddah Wanjiru Mbiyu each has leased portions of either Ehothia Farm or Waehothia Farm. How much rent has been got remains known only to themselves. It was said that Oceanic Hotel and Ocean View Hotel have been sold by Eddah Wanjiru Mbiyu and Margaret Njeri Mbiyu. It is not known where the proceeds went. Koinange Investments and Development Limited operates prime space in the City of Nairobi and only Eddah Wanjiru Mbiyu knows how much money comes from the business and how it is applied. David Waiganjo Koinange sold a property at Dagoretti and did not account to the estate. Barbara Wambui Koinange sold a property to Tangulizi Ventures Limited from Kiambaa/ Thimbigua/819, and has leased portions of Closeburn Estate. The list is long. All that I wish to say is that, if the court were asked to demand for accounts from each of these beneficiaries the resultant applications and counter applications would further delay and complicate the distribution of the estate of the deceased."

42. And so, except the ancestral land namely Mitaboni/Kathiani/961 (which is approximately 5.9 acres), it is imprudent, implausible, inconceivable and economically worthless considering the development laws in place which require inter alia access roads, to divide Kathiani/Kaewa/1711 (which is approximately 0.12355 acres); Kathiani/Kaewa/1686 (which is approximately 0.32123 acres); Mitaboni/Mbee/550 (which is approximately 0.54362 acres); and Mitaboni/Mbee/1367 (which is approximately 0.79072 acres) into 14 units.

43. Although the relative value of the properties constituting the estate is a determinative factor, this did not seem to be an issue in this Protest.

44. Consequently, when distributing parcels of land, it necessarily calls for a pragmatic approach. This court will thus subject this protest to this approach.

45. The total approximate acreage entitled to each unit will thus be worked out. Since the total acreage is approximately 7.2591.

46. In the face of section 40 of the *Law of Succession*, therefore, each unit is thus entitled to 0.5185 acres.

47. Applying the equitable principles ingrained in section 40 of the *Law of Succession Act* as construed in *Benson Ndirangu Mathenge [Deceased]* Nakuru HCSC No. 231 of 1998; *Joseph Eric Owino [Deceased]* [2022] eKLR; and *John Musambayi Katumanga [Deceased]* [2014] eKLR, et alia, since the 2nd house has three units, this converts into approximately 1.5555 acres and the 1st house which has eleven units is entitled to approximately 5.7036.

48. In the proposed distribution schedule, it is proposed that the Protestor who is a trustee of the 2nd house, be allocated shares as follows:

    i. In Kathiani/Kaewa/1711 which is approximately 0.12355 acres, it is proposed that the Protestor be allocated 1/2. This translates to 0.061775 acres.

    ii. The Protestor was not given a share in Kathiani/Kaewa/1686.

    iii. In Mitaboni/Mbee/550 which is approximately 0.54362 acres, it is proposed that the Protestor be allocated 0.125 acres.

    iv. The Protestor was not given a share in Mitaboni/Mbee/1367.

    v. In Mitaboni/Kathiani/961 which is approximately 5.9 acres, it is proposed that the Protestor be allocated 1.5 acres.

49. In the proposed distribution schedule, therefore, it is proposed that the 2nd house be allocated approximately 1.68678, which is 0.131275 acres above their entitlement. However, having been proposed voluntarily, this court does not find it prudent to disturb the said distribution schedule.

50. Consequently, this court finds the protest unfounded.

Part VI: Disposition

51. Consequently, this court finds the Protest without merit and dismisses it without costs.

52. It follows that the Grant of Letters of Administration Intestate which was made to Kyalo Mutiso Letu on 18th November 2020 is hereby confirmed.

53. Accordingly, distribution of the estate of the Estate of John Mutiso Letu will be done in accordance with paragraph 8 of the Affidavit in Support of the Summons for Confirmation of Grant dated 16th July 2021 and filed together with the Summons on 19th July 2021, with modification of the acreage of Mitaboni/Mbee/550 which was misstated as 0.05 Hectares, to read 0.22 Hactares. In particular, the distribution will be as follows:

    i. Kathiani/Kaewa/1711 (0.05 Ha), to be divided equally between Kyalo Mutiso Letu who will hold in trust for hmself and the beneficiaries of the 1st house, and Elizabeth Ndunge Maingi;

    ii. Kathiani/Kaewa/1686 (0.13 Ha), to be allocated to Kyalo Mutiso Letu who will hold in trust for himself and the beneficiaries of the 1st house;

iii. Mitaboni/Mbee/1365, to be allocated the purchaser/creditor of the estate, namely David Kiilu.

iv. Mitaboni/Mbee/550 (0.22 Ha), 0.375 acres to be allocated to Kyalo Mutiso Letu who will hold in trust for himself and the beneficiaries of the 1st house, and 0.125 acres to be allocated to Elizabeth Ndunge Maingi;

v. Mitaboni/Mbee/1367 (0.32 Ha), to be allocated to Kyalo Mutiso Letu who will hold in trust for himself and the beneficiaries of the 1st house; and

vi. Mitaboni/Kathiani/961, 4.4 acres to be allocated to Kyalo Mutiso Letu who will hold in trust for himself and the beneficiaries of the 1st house, and 1.5 acres to be allocated to Elizabeth Ndunge Maingi.

54. Orders accordingly.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MACHAKOS LAW COURTS THIS 10TH DAY OF SEPTEMBER, 2024

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C.N. Ondieki

Principal Magistrate

Advocate for the Administrator/Respondent:

Advocate for the Beneficiary/Protestor:

Court Assistant: