



REPUBLIC OF KENYA



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In re Estate of the Late George Dipondo (Deceased) (Succession Cause E001 of 2023) [2025] KEHC 15682 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE E001 OF 2023
WM MUSYOKA, J
OCTOBER 31, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE GEORGE DIPONDO (DECEASED)

RULING

1. The deceased herein died on 23rd February 2019, according to the certificate of death herein, serial No. 0621458, dated 3rd April 2019. According to the Chief of Butula Location, dated 19th April 2019, he had 2 wives, called Alice Siang'ani Dipondo and Frida Apiyo Dipondo. He had 6 children with the 2 wives, being Elizabeth Rose Night, Judith Dipondo, Isaac Muriye, Rina Day Dipondo, Paul Netto Dipondo and Andrew Darky Dipondo.
2. Representation was sought, in this cause, by Alice Siang'ani Dipondo, in her capacity as widow of the deceased. She listed herself and her late co-wife, Frida Apiyo Dipondo, and 5 children being Elizabeth Rose Night, Isaac Muriye Dipondo, Dina Dey Dipondo, Paul Netto Dipondo and Andrew Darky Dipondo. She listed the assets of his estate as 8 pieces of land, and 1 motor vehicle, being Isukha/Shirere/2972; Marachi/Elukongo/367, 1930, 1932, 1934, 2150, 2513 and 2533; and motor vehicle registration mark and number KZC 027. Letters of Administration intestate were made on 18th January 2024, and a grant was issued, on 23rd January 2024, to Alice Siang'ani Dipondo. I shall refer to her hereafter as the administratrix.
3. The administratrix filed a summons for confirmation of grant, dated 24th April 2024. She has disclosed the survivors of the deceased as his 2 widows, 3 sons and 3 daughters, the same individuals listed in the Chief's letter. She has proposed devolution of Marachi/Elukongo/1934 and 4684; the Kakamega Town Site and Services Scheme Phase III Plot No. 29; telephone number 0712234277; and bank accounts at Kenya Commercial Bank, being 111731769 and 1248325419, to herself. To Andrew Darkey Dipondo, she has proposed devolution of Marachi/Elukongo/1930, 1932, 2513 and 2553. It is proposed that Marachi/Elukongo/362 be shared between 2 individuals, with Isaac Muriye Dipondo taking 5 hectares and Elizabeth Rose Night taking 2 hectares. It is proposed that Marachi/Elukongo/1399 be devolved to 3 persons, so that Judith Dipondo gets 1.1 hectares, Dina Dey Dipondo gets 0.90 hectares and Paul Netto Dipondo gets 1.22 hectares. 2 motor vehicles registration marks and numbers KYM 783 and KZC 027 are allocated to Dina Dey Dipondo. Isukha/Shirere/2972 is proposed for equal distribution between the 1 surviving widow and the 6 surviving children.



4. Dina Dey Dipondo filed an affidavit of protest to that application, sworn on 16th November 2024. She avers that members of the household of the deceased were not consulted over the appointment of the administrators, and argues that the administratrix seeks to administer the matrimonial home of the late 2nd wife of the deceased, at Isukha/Shirere/2972, without the consent of her children. She avers that the administratrix has not rendered an account, and has not disclosed all the assets and liabilities of the estate. She avers that the deceased had 2 matrimonial homes with the late Frida Apiyo Dipondo, on Isukha/Shirere/2972 and Marachi/Elukongo/1930. She explains that the late Frida Apiyo Dipondo moved to Kakamega, and resided on Isukha/Shirere/2972, until she died on 6th April 2017, and was buried at her matrimonial home, on Marachi/Elukongo/1930. She avers that the children of the 2nd house were dependent on the said 2 matrimonial homes. She avers that the 1st wife, the administratrix herein, had been settled on Marachi/Elukongo/1964. She avers that the late Frida Apiyo Dipondo was the one who purchased Isukha/Shirere/2972, and the administratrix did not participate, in any way, towards that acquisition. Each wife had a separate title deed for their homes at Elukongo, and the families should inherit separately. She suggests that the deceased had divided his 25 acres into equal halves, with each designated for each wife and her children. She states that the Kambi Somali assets, as well as all the assets within Marachi/Elukongo, have not been shared equally, by the administratrix, in her proposals. She urges for protection of matrimonial home interests.
5. There is also a joint affidavit, sworn by Elizabeth Rose Night and Issac Muriye Dipondo, on 6th March 2025. They support the proposals by the administratrix.
6. There is also an affidavit of protest by Andrew Darky Dipondo, sworn on 7th April 2025. It is a replica of that by Dina Dey Dipondo, sworn on 16th October 2024.
7. Paul Netto Dipondo also filed a summons for revocation of grant, dated 9th September 2024. He complains that he was the first son of the deceased, and he was consulted when representation was sought. Alice Siang'ani Dipondo responded, by an affidavit, sworn on 27th September 2024, arguing that she had included all the children of the deceased in her petition, hence there was no cause for alarm.
8. Directions were taken, on 17th October 2024, for the simultaneous disposal of the 2 applications, that is to say the one for revocation and the other for confirmation, by viva voce evidence.
9. The oral hearing commenced on 21st January 2025, with Alice Siang'ani Dipondo, the administratrix, on the witness stand. She was the surviving widow of the deceased. She conceded that the deceased had 2 wives, herself, and Frida Dipondo, who, unfortunately, pre-deceased the deceased in 2017. Alice Siang'ani Dipondo took out representation as the sole widow. She stated that the deceased was survived by 6 children; being Elizabeth Rose Night, Judith Titi Dipondo, Isaac Muriye Dipondo, Dina Dey Dipondo, Paul Netto Dipondo and Andrew Darky Dipondo, with the latter 3 children being of her late co-wife, Frida Dipondo. She stated that she left out a child born outside wedlock, known as Mairi Dipondo, who had since died, and had already gotten his share of the property.
10. On the assets, she testified that Isukha/Shirere/2972, situated at Amalemba, within the Kakamega Township, was bought by the deceased, while living at Kakamega. She said that the property had 8 houses, with rental income, and the rent was being collected by the children of Frida Dipondo; which they were not sharing with the other family. She asserted that that property belonged to the deceased, and should be shared equally. She would have liked to know how much money had been collected, as rent, by way of an account being rendered. She described Isukha/Sherere/2972 as the boma for Frida Dipondo, but she later said it was a common boma, for both families, but the deceased and Frida Dipondo lived there together.



11. During cross-examination, by Mr. Mulama, she stated that she never lived on Isukha/Shirere/2972. She insisted that the rental income be accounted for, and shared. She said she had raised the issue of Isukha/Shirere/2972, with the deceased, before he died, but he said the land belonged to him, and not to the wives. She claimed that the money for the purchase of the property was alleged to be stolen, by the deceased, ostensibly from his employer, but after investigations, it was established that it had not been stolen. She said that she did not have the sale agreement for Isukha/Shirere/2972, for the children took it. She said the deceased used to collect rent from Isukha/Shirere/2972, and share it between her and Frida Dipondo, and the other moneys were used to educate the children. She denied that the deceased had given to her the Kambi Somali plots, and given to Frida Dipondo Isukha/Shirere/2972. She said that her matrimonial home was at Mauko, which she shared with Frida Dipondo. She said that although the second wife was loved more, the deceased would live at Isukha/Shirere/2972 with Frida Dipondo, and at Mauko with her. She testified that she used to visit Isukha/Shirere/2972, and Frida Dipondo would take care of her while there. She said she did not know who sold Isukha/Shirere/2972 to the deceased.
12. During cross-examination, by Ms. Mukhwana, Alice Siang'ani Dipondo stated that she moved to court without involving the children of Frida Apiyo Dipondo, because she could not talk to them, as they would not listen to her. She said there was no peace between her and the children of Frida Apiyo Dipondo. She said the deceased had many pieces of land, she had the searches for them, but did not access the title deeds, as the children of Frida Apiyo Dipondo took all of them. She said she did not have the title documents for the Kakamega Town Site and Service Scheme Phase III Plot No. 129. On the bank accounts, she said Paul Netto Dipondo had the documents relating to the Kenya Commercial Bank accounts. For Marachi/Elukongo/1930, 1932, 2513 and 2553, she said that the deceased had distributed the lands amongst the children, from both houses. She said that Paul Netto Dipondo took the vehicles away, after the deceased died. She stated that the deceased had given Frida Apiyo Dipondo a pick-up, and to her another car. She said the deceased had shared out his assets amongst the children he got outside wedlock, including Mairi Dipondo, who she said was still alive. She said that he was aware of the probate proceedings, and was contented with what he got.
13. She stated that Marachi/Elukongo/362 should not be distributed, as that was where the matrimonial homes for her and Frida Apiyo Dipondo were situated, instead it should be given to her, that is Alice Siang'ani Dipondo. She also stated that the plot at Mauko market should be allocated to her, Alice Siang'ani Dipondo. She asserted that Frida Apiyo Dipondo did not have a matrimonial home elsewhere, that is apart from that at Marachi/Elukongo/362. She said she did not know who sold Isukha/Shirere/2972 to the deceased. She asserted that Frida Apiyo Dipondo did not buy Isukha Shirere/2972. She conceded that the deceased and Frida Apiyo Dipondo lived on Isukha/Shirere/2972. She further stated that the children of Frida Apiyo Dipondo continued to live on Isukha/Shirere/2972, after Frida Apiyo Dipondo, died in 2017, and the deceased lived with them there till he died in 2019. She said that the children of Frida Apiyo Dipondo, specifically Dina Dey Dipondo collected rent from Isukha/Shirere/2972. She denied cutting down trees on the land, saying the same were cleared by the Government, to make way for a road. She said the deceased had livestock, whose number she put at 9, and said each child shall get a share of the same.
14. Stephen Oduori Maili was the next witness. He identified himself as a brother of the deceased, and said that the deceased had been a manager with the National Cereals and Produce Board, and said Isukha/Shirere/2972 was bought at that time. He said that the deceased told him about it. He testified that Frida Apiyo Dipondo and the deceased lived at Kakamega, but they also had a home at Mauko. He stated that after Frida Apiyo Dipondo died, the deceased was left on Isukha/Shirere/2972, with her children, Andrew Darky Dipondo and Paul Netto Dipondo, adding that the daughter was married.



15. Silvanus Musundi Odhiambo was next. He was a cousin of the deceased. He conceded that the deceased and Frida Apiyo Dipondo lived on Isukha/Shirere/2972, with their children, and that the deceased was the registered proprietor of the property. He stated that the deceased also had a home at Mauko. He said they had a house on Isukha/Shirere/2972, and a home at Mauko.
16. Judith Titi Dipondo followed. She was a daughter of the deceased, by Alice Siang'ani Dipondo. She asserted that Isukha/Shirere/2972 was an asset registered in the name of the deceased. She referred to the funeral programme for Frida Apiyo Dipondo, where Isukha/Sherere/2972 was identified as her residence, and Mauko as her home. She said she, Judith Titi Dipondo, had lived on Isukha/Shirere/2972, with the parents, and she regarded it as a family home. She stated that there were several houses on the land, which were rented out. She said Kambi Somali also had rental units. She said that the 1st house had never benefitted from the rental income, from Isukha/Sherere/2972, after the deceased died. She stated that Paul Netto Dipondo had described the home of his mother, Frida Apiyo Dipondo, as being at Marachi Elukongo, and not at Isukha/Shirere/2972.
17. She said that her stepmother, Frida Apiyo Dipondo, lived on Isukha/Shirere/2972 with the deceased, and the children from both sides of the family. She stated that the deceased used to visit Alice Siang'ani Dipondo at Marachi, as she did not live on Isukha/Shirere/2972. She said that the deceased had bought the Isukha/Shirere/2972 property, and he had given to her a list of his assets. She asserted that the deceased and Frida Apiyo Dipondo used to live on Isukha/Shirere/2972, but not as the matrimonial home of Frida Apiyo Dipondo. She stated that, during the lifetime of the deceased, no issues arose over Isukha/Shirere/2972, including on the rents. She said she did not know whether the deceased and Alice Siang'ani Dipondo shared rent from Isukha/Shirere/2972, as that was a husband-and-wife matter. She said that Alice Siang'ani Dipondo never worked and never earned a salary. She said the deceased had acquired many assets with her, as a household. She said that she could not say, for sure, whether Alice Siang'ani Dipondo contributed to the acquisition of Isukha/Shirere/2972. She asserted that Frida Apiyo Dipondo did not own Isukha/Shirere/2972, and she was not aware that she was the one who had acquired it. She said that Isukha/Shirere/2972 was a residence, and not a home, asserting that there was a difference. She said Mzee Likati sold Isukha/Shirere/2972 to the deceased.
18. She said she knew nothing about Mairi Dipondo. She added that, as at the time of the demise of the deceased, none of the children lived on Isukha/Shirere/2972, as they had reached majority age, and had moved out. She stated that after Frida Apiyo Dipondo died, the deceased remained on Isukha/Shirere/2972, but not with any of the children. She said Frida Apiyo Dipondo was not working, but was running a supplies business, dealing in cereals. She also said that she supported the proposals by Paul Netto Dipondo, and also by Alice Siang'ani Dipondo. She said 2 motor vehicles were taken by Alice Siang'ani Dipondo and Andrew Darky Dipondo, and the registration details were changed. She said the deceased had bank accounts, whose details she did not have, and she could not tell who operated the accounts after he died.
19. Paul Netto Dipondo said that he lived on Isukha/Shirere/2972. He said that that property was registered in the name of the deceased, as women were not permitted to own property then, otherwise the property was bought in the 1970s by his mother, Frida Apiyo Dipondo. He said that she worked for an insurance company then, and that her family had also assisted her to acquire the property. He mentioned that Likata sold the land to her. He stated that after Frida Apiyo Dipondo died, he and the deceased sat, to agree on distribution of the rental income. Alice Siang'ani Dipondo was allocated the rent due from the Kambi Somali plots, while the family of Frida Apiyo Dipondo got the income from Isukha/Shirere/2972. He stated that his mother had 2 matrimonial homes, at Mauko and Isukha/Shirere/2972, based on the understanding that the 2 assets were jointly owned. He asserted that Alice Siang'ani Dipondo and her children never lived on Isukha/Shirere/2972, but they used to come and



- go. He stated that the deceased and Frida Apiyo Dipondo used 1 house, within Isukha/Shirere/2972, while the children stayed in another house.
20. He asserted that it was his mother who developed Isukha/Shirere/2972, with resources from her business. He said that he was in primary school then, and he witnessed the property being developed. He put its value at Kshs. 7,000,000.00, as at the time of Frida Apiyo Dipondo's death. He asserted that Alice Siang'ani Dipondo never managed Isukha/Shirere/2972, nor contributed to its acquisition. He explained that Frida Apiyo Dipondo and the deceased had agreed on income from the property being deposited in 1 account, whose money would be drawn to support both families. He conceded that there was no dispute on the survivors of the deceased, nor on the assets. He said he was not aware of any liability. He stated that Isukha/Shirere/2972 was registered in the name of the deceased in 1991, and it was never registered in the name of Frida Apiyo Dipondo, but insisted that she bought it in the 1970s. However, as she did not have a national identity card, it could not be registered in her name. He said that he had no documents showing who purchased the land, and that he had not seen any agreement. He said he had no document to show that the deceased did not buy the land.
 21. He denied having control of Isukha/Shirere/2972, saying that it should be Diana Dey Dipondo who should account for the income from the property, because she was the one who began to collect rents, after the deceased passed on. He conceded that he was benefitting from the rent. He said that he was not aware whether Alice Siang'ani Dipondo or her children were benefitting from the rent. He said he did not support the proposals by Alice Siang'ani Dipondo, because they were not equitable. He said he had done valuations, and his proposals were not based on acreages. He said he did not carry out any professional valuations, and he did not know the values of the assets. He said Frida Apiyo Dipondo was buried on Marachi/Elukongo/1930, and a child of Andrew Darky Dipondo was also buried on Marachi/Elukongo/1930, and so was the deceased. He described Marachi/Elukongo/1930 as an ancestral home, but not a matrimonial home. He said the road at Mauko was expanded, and it affected some trees, which were cut down. He said he did not mind getting a share of the cattle and income related to it.
 22. Fatma Abid testified next. She stated that she got information from her father, that Frida Apiyo Dipondo had bought land from him. She said Frida Dipondo was not buried on Isukha/Shirere/2972, as the law did not allow it, for it was an urban area. She did not know who managed the houses.
 23. Alfred Khan Otieno followed. He testified that Alice Siang'ani Dipondo did not contribute to the acquisition of Isukha/Shirere/2972, and never lived there during the lifetime of the deceased. He stated that it was Frida Apiyo Dipondo who acquired and developed Isukha/Shirere/2972. He said he was not aware whether any income from Isukha/Shirere/2972 was spent on Alice Siang'ani Dipondo and her family, but he said he knew that Frida Apiyo Dipondo used to collect the rent. He said it was the children of Frida Apiyo Dipondo who should benefit from Isukha/Shirere/2972. He said he met the deceased in 1978, when he married Frida Apiyo Dipondo, who was his sister. He asserted that Isukha/Shirere/2972 must have been registered in the name of Frida Apiyo Dipondo in 1972, saying that she was the owner of the land. He said he never saw any sale agreement, executed by Frida Apiyo Dipondo. He said that he gave her Kshs. 600.00 towards the purchase. He said she fully paid for the land, and possession was surrendered to her. He said he escorted Frida Apiyo Dipondo, in 1972, to buy the land.
 24. Peter Oyugi was the next witness. He had been an employee of the deceased, for 28 years. He said Isukha/Shirere/2972 was bought by Frida Apiyo Dipondo, who built the houses on the land. He said that she was a supplier of foodstuffs. He stated that Alice Siang'ani Dipondo never lived on the land, neither did her children, and she never raised issue with it until the deceased died. He said Alice Siang'ani Dipondo did not contribute to the development of Isukha/Shirere/2972. He asserted that the property should revert to the children of Frida Apiyo Dipondo. He said he was hired by the



- deceased, who later handed him over to Frida Apiyo Dipondo. He said that both Frida Apiyo Dipondo and Alice Siang'ani Dipondo had homes at Marachi. He said he never saw the title deed for Isukha/Shirere/2972. He testified that the same was registered in the name of Frida Apiyo Dipondo. He said that he was still the caretaker for Isukha/Shirere/2972, employed by Dina Dey Dipondo. He said he did not know whether Dina Dey Dipondo shared the rental income with Alice Siang'ani Dipondo. He said rent was paid to Dina Dey Dipondo.
25. Andrew Darky Dipondo followed. He testified that Alice Siang'ani Dipondo never resided on Isukha/Shirere/2972, and she never raised the issue, of Isukha/Shirere/1972, during the lifetime of Frida Apiyo Dipondo. He stated that the assets allocated to him by Alice Siang'ani Dipondo had been previously allocated to him by the deceased. He stated that the deceased had also given Paul Netto Dipondo 2 plots, one of which was Marachi/Elukongo/399, which had also been allocated to his mother. He stated that what was allocated to him, by the deceased, was not meant to be shared with others. He did not agree with the proposed distribution on Isukha/Shirere/2972. He said Dina Dey Dipondo collected rent from it. He said that that responsibility was given to Dina Dey Dipondo by the deceased, after he started ailing. He said Paul Netto, Dina Dey Dipondo and him benefited from the rent.
 26. He stated that Isukha/Shirere/2972 was still registered in the name of the deceased. He said he was living in his mother's house at Elukongo. He said there was no dispute on the assets and the survivors. He said he and Dina Dey Dipondo did not give proposals on distribution, as the deceased had fixed that before he died. He said that the name of Frida Apiyo Dipondo was not in the certificate of official search for Isukha/Shirere/2972, but it was in the original title, which he did not have. He said that no child of Alice Siang'ani Dipondo received rental income from Isukha/Shirere/2972, after the deceased died. He said Isukha/Shirere/2972 was registered in the name of the deceased, as the man of the boma. He said Isukha/Shirere/2972 should be given to the children of Frida Apiyo Dipondo. He said that his name had been left out before the probate proceedings commenced, saying that they never sat as a family to agree on administration. He said that the deceased sold his vehicles before he died. He said that the distribution proposed did not reflect the position on the ground.
 27. After the close of the oral hearings, I heard from the other children of the deceased, who had not testified. They made unsworn statements, before me. Elizabeth Rose Night, a daughter of the deceased, with Alice Siang'ani Dipondo, said she agreed with the proposals by Alice Siang'ani Dipondo. Isaac Muriye Dipondo stated something similar.
 28. The parties agreed to dispose of the matter by way of written submissions, which they did file, and I have read through the written submissions, and noted the arguments that they have made.
 29. The deceased herein died in 2019, long after the [Law of Succession Act](#), Cap 160, Laws of Kenya, had come into operation, in 1981. The estate is for distribution in accordance with the provisions of the [Law of Succession Act](#). He died intestate; hence the estate is to be distributed strictly in accordance with the law of intestacy, stated in Part V of the [Law of Succession Act](#), specifically in sections 32 to 42 of the [Law of Succession Act](#).
 30. The deceased died a polygamist, for he had married 2 wives, and he had children with both wives. Section 40 of the [Law of Succession Act](#) defines how the property of a polygamist is to be shared out. Distribution takes into account the number of children in each house. The 2 houses would be grouped into units, made up of the children and the surviving spouses. In this case, each of the 2 houses has 3 surviving children, which would mean that each house has 3 units. When the surviving spouse is added to the 3 surviving children in the 1st house, that would mean that that house has 4 units in total, against the 3 units in the 2nd house. The total units, added up, are 7. The property should be divided into 7 units, to be distributed in the ratio of 4:3. I note that there is no dispute on who survived the deceased.



31. After the division of the assets in the ratio 4:3, the property is then shared, in the respective houses, depending on the configuration in each house. The 1st house has a surviving spouse and 3 surviving children. In this house, distribution shall follow section 35(1) of the *Law of Succession Act*, where the surviving spouse shall hold life interest over the share devolved to this house, to be shared equally between the children, in accordance with section 35(5), upon determination of life interest. The 2nd house comprises of surviving children only. Section 38 shall apply to the distribution in this house, so that the share, devolved to this house, shall be divided equally between the 3 surviving children.
32. For the avoidance of doubt, sections 35 (1)(5), 38 and 40 of the *Law of Succession Act* provide as follows:

“35. Where intestate has left one surviving spouse and child or children

(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) ...

(3) ...

(4) ...

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

“38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

“40. Where intestate was polygamous

(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. The property to be shared, in the mode discussed above, is also not disputed. The only dispute is on whether Isukha/Shirere/2972 belonged to the estate of the deceased herein, or to that of Frida Apiyo Dipondo.
34. From the evidence on record, Isukha/Shirere/2972 is registered in the name of the deceased. That is not disputed. Some witnesses alleged that it had been registered in the name of Frida Apiyo Dipondo, but provided no proof. The overwhelming evidence is that Isukha/Shirere/2972 was registered in the name of the deceased, as at the date of his death, and it was never ever registered in the name of Frida Apiyo Dipondo, and that should make it an estate asset, in the estate of the deceased herein, subject to contrary evidence.
35. Is there evidence to the contrary? I have not seen any. There were allegations that Isukha/Shirere/2972 was in fact bought by the deceased, but registered in the name of Frida Apiyo Dipondo, because the law did not, at the time of the purchase, allow registration of married women as proprietors of land. I have not seen any evidence that Frida Apiyo Dipondo bought Isukha/Shirere/2972, and I have not seen proof, either, that women were not allowed to own property, as at the time of the alleged purchase.
36. The second argument is that Frida Apiyo Dipondo contributed to the acquisition and development of the property, hence she had become part-owner of the property, which meant that the same did not wholly belong to the estate, for part of it belonged to Frida Apiyo Dipondo, on account of her participation in its improvement.
37. Firstly, no concrete evidence was adduced, to establish that Frida Apiyo Dipondo contributed to the acquisition and development of the property in question. Secondly, even if that were so, that would be an issue of matrimonial property, which is not a subject for determination by a probate court, in probate proceedings. The mandate, of determining whether or not property was matrimonial, is governed by the *Matrimonial Property Act*, Cap 152, Laws of Kenya. That determination, in my understanding of the provisions of the *Matrimonial Property Act*, and the Rules made under it, is to be made during the lifetime of both spouses. That would mean that it is an issue that Frida Apiyo Dipondo and the deceased ought to have resolved during their lifetime. It is not an issue to be addressed after both have died. The *Law of Succession Act* does not provide for separation of matrimonial property, in succession or probate proceedings, hence the probate court cannot purport to make a determination on it. See *FEO vs. ACO (Sued as Co-Administratrix of the Estate of the Late BPO) [2024] KEHC 14889 (KLR) (Musyoka, J)*). I have no material to show that matrimonial property was separated during the lifetime of Frida Apiyo Dipondo and the deceased, for me, sitting as a probate court, to reckon it.
38. The other argument is that Isukha/Shirere/2972 was the matrimonial home of Frida Apiyo Dipondo, hence it had become her property on that account, or she had acquired a concrete interest in it, which the court should reckon, and separate, and devolve the property solely to her children.
39. A matrimonial home refers to any property used or occupied by a married couple, as their home, whether that property belonged to one of them, or was jointly in their names, or was rented property. The material, on record, is clear, that Isukha/Shirere/2972 was registered in the name of the deceased, and that Frida Apiyo Dipondo and the deceased moved there, and occupied it. That made Isukha/Shirere/2972 a matrimonial home, hence matrimonial property during their lifetime.



40. However, the concepts of matrimonial property and matrimonial home are of utility only in the context of the Matrimonial Property Act. They are provided for and defined in the Matrimonial Property Act. The remedies, around separating matrimonial property, are provided for there. Matrimonial property, as a concept, is of utility in the context of marriage. Marriage is a union between 2 living human beings. It terminates upon the death of either of them. There is no marriage or matrimony in death. Consequently, there is nothing like matrimonial property in succession. The concept of matrimonial property is alien to succession. Its utility ends with the death of either spouse. It ceases once marriage ends or terminates in the event of death. No wonder, the Law of Succession Act makes no reference, whatsoever, to matrimonial property. The Law of Succession Act, therefore, has not provided room for separation of matrimonial property in probate proceedings, for that concept only applies to marriages, which naturally end with the incidence of death. The probate court, with respect, has no business dealing with separation of matrimonial property, in probate proceedings. There is simply no jurisdiction for it.
41. Isukha/Shirere/2972 was the matrimonial property home for Frida Apiyo Dipondo, which she shared with the deceased, during their lifetime. It was matrimonial property during their lifetime. Frida Apiyo Dipondo died in 2017, and the deceased in 2019. I have not seen any proof, that prior to her death in 2017, Isukha/Shirere/2972 had been separated, and her rights in it determined, by a family or marriage court, in terms of the provisions of the Matrimonial Property Act. To the extent that that never happened during their lifetime, meant that her matrimonial rights over that property had not been pronounced, by a court, before she died in 2017, and they do not exist for agitation, by her successors, in the estate of her now deceased husband. Isukha/Shirere/2972 ceased to be a matrimonial home and matrimonial property in 2017, when Frida Apiyo Dipondo died. It was, and could only be, a matrimonial home and matrimonial property, during the lifetime of both Frida Apiyo Dipondo and the deceased. Once Frida Apiyo Dipondo died, her marriage to the deceased died too, and the rights, that she enjoyed over the property of her husband, the deceased herein, on account of that marriage, died with her. There was nothing to be agitated by her children, thereafter, whether under the Matrimonial Property Act or the Law of Succession Act.
42. The concept of matrimonial property is tied to marriage, and once marriage ends, with the death of 1 of the spouses, matrimonial property ceases to be of application as a concept. In the realm of succession, such property would be identified as a former matrimonial home or former matrimonial property.
43. Matrimonial property rights and rights in succession are provided for under different statutes, and are regulated under different rules, and operate in different orbits and environments. Matrimonial property rights are tied to marriage, and are of relevance in the lifetime of the parties. They are frozen upon the demise of either spouse. Matrimonial property rights do not give an automatic ownership rights to the property of the other spouse, that has to be pronounced by the court, upon proof of contribution in the acquisition or improvement of the property owned by them. See JOO vs. MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ).
44. Rights in succession, taking the form of life interest, operate upon the death of either spouse. Like matrimonial property rights, they do not confer absolute right. They make surviving spouses trustees of the assets of the estate of the deceased, in favour of the children of the dead spouse, which they cannot dispose of willy-nilly, for leave of the court or consent of the children would be necessary, but there is power to allocate the assets amongst the children, through the power of appointment.
45. The mere fact that the assets, being distributed, in succession proceedings, belong to the dead spouse of a surviving spouse or ex-spouse, does not provide the surviving spouse or ex-spouse with a platform to



assert matrimonial property rights, for such rights are tied to marriage, and became extinct upon death. The environment, under which the surviving spouse or ex-spouse is to relate to such property, would now be different, for in lifetime it would be the law regulating marriage, and after death it would be the statutes regulating succession. Anyone, wishing to agitate matrimonial property rights, should not wait until the other spouse or ex-spouse dies. It would be too late to take those issues to the succession process. The matrimonial rights would no longer be available for agitation. It would be different rights in operation, to be agitated in a different environment, under different rules.

46. As these rights are conferred by legislation or statute, which regulates when and how they are to be litigated and applied, then it cannot be up to the courts to pronounce that such rights are to be reckoned in succession proceedings, when the relevant governing statutes or legislation, that is the *Law of Succession Act* and the *Matrimonial Property Act*, do not provide for that, as they do not provide the framework for that reckoning. These areas of law are governed by statute. The courts cannot create law to accommodate what statute does not provide for. It would have to be up to Parliament to make that law change, in the spirit of the doctrine of separation of powers, to accommodate that reckoning that the 2nd house is agitating for.
47. Frida Apiyo Dipondo pre-deceased the deceased. She did not, and could not have, a life interest in Isukha/Shirere/2972. That could only arise in favour of a surviving spouse, not one who pre-deceased the deceased. A life interest cannot arise in favour of the estate of a dead spouse. I raise this because life interest is the equivalent of the matrimonial rights enjoyed by spouses, over the assets of their respective spouses, during their lifetime. Upon death, those matrimonial rights, to access and enjoy the assets of the now dead spouse, become a life interest. The matrimonial rights die, with the death of the 1 spouse, or become transformed into the life interest of the surviving spouse. Since Frida Apiyo Dipondo did not survive the deceased, the question of her, or her estate, having a life interest on Isukha/Shirere/2972, does not arise.
48. In view of the above, Isukha/Shirere/2972 can only be handled, in these proceedings, as an asset in the estate of the deceased. Perhaps, the only consideration I could make, is whether the deceased acquired Isukha/Shirere/2972 with an intention to settle the 2nd house on it, to the exclusion of the 1st house.
49. It is common ground that the deceased and Frida Apiyo Dipondo lived on this land, together with their children. It is highly contested whether the 1st house had anything to do with Isukha/Shirere/2972. Some members of the 2nd house appear to accept that Alice Siang'ani Dipondo used to be a guest on Isukha/Shirere/2972, since it was the matrimonial property for Frida Apiyo Dipondo. Others appear to hold that Alice Siang'ani Dipondo had absolutely no connection with Isukha/Shirere/2972. A section of the 2nd house appears to agree that the income for Isukha/Shirere/2972, during the lifetime of the deceased, was shared with Alice Siang'ani Dipondo, and part of it was utilized to settle school fees for all the children, regardless of the house that they belonged to. Alice Siang'ani Dipondo conceded that Frida Apiyo Dipondo lived in Isukha/Shirere/2972, and she, Alice Siang'ani Dipondo, would only be a visitor on that property.
50. The sense I get, is that part of this property was the matrimonial home for Frida Apiyo Dipondo. She and the deceased occupied only 1 of the houses on it, according to one of the children from the 2nd house. The children occupied 1 other house. There were 9 houses, standing on Isukha/Shirere/2972, in total. Apart from the 2 occupied by the family, the other 7 were occupied by tenants, and the money raised from those rental units was utilized on both houses of the deceased, during his lifetime. That would mean Isukha/Shirere/2972 was not meant to settle the 2nd house exclusively, for the 2nd house only occupied a portion or section of it, and its rental income was spent on both houses by the deceased.



51. Secondly, it is common ground, that Frida Apiyo Dipondo also had a house at Marachi/Elukongo/1930, where the matrimonial home of her co-wife was also housed. She had 2 matrimonial homes, one on Isukha/Shirere/2972 and the other on Marachi/Elukongo/1930. Isukha/Shirere/2972 was town property, where she lived. When she died, the law would not allow burial, in an urban area, and her remains were interred at her other matrimonial home, on Marachi/Elukongo/1930, at Mauko, in Elukongo, Busia County. Her main matrimonial home was, therefore, at Marachi/Elukongo/1930.
52. Since Isukha/Shirere/2972 was not meant exclusively for the 2nd house, it would be available for distribution to all the survivors across the board. The only allowance would, perhaps, be to let the 2nd house retain the house where Frida Apiyo Dipondo had her former matrimonial home, and that would have to be at the transmission stage.
53. Should the rest of the assets be shared equally? As there is no consensus on sharing, although the main dispute centres around Isukha/Shirere/2972, I believe that I should strictly apply section 40 of the [*Law of Succession Act*](#), to the rest of the assets, for justice to prevail.
54. There is the issue of the bank accounts. It was common ground that such accounts existed, but no concrete evidence was led, on the particulars of the said accounts, and on the balances that stand in them, which would be for distribution in these proceedings. I would be reluctant to order distribution of moneys, held in these accounts, where there is inadequate evidence on what balances stand in them, if at all.
55. There is the issue of the motor vehicles. It was said the 2 were taken by the children from the 2nd house. The registration details of the said vehicles were disclosed, but no documentary evidence was tabled on the current status of those vehicles. It was alleged that they were transferred to the names of the children who took them, but no documentary evidence was adduced. One of the children, in the 2nd house, alleged that it was the deceased who sold the vehicles before he died, but, again, no documentary evidence was adduced. I do not believe I should purport to distribute motor vehicles whose current status, of ownership, has not been established.
56. On the accounts, in respect to Isukha/Shirere/2972, there is overwhelming evidence that Dina Dey Dipondo has been collecting rent from this property, and that that rental income is not shared with the 1st house. As discussed above, the evidence on record points to Isukha/Shirere/2972 being estate property. That being the case, the same vests in the administratrix, by dint of section 79 of the [*Law of Succession Act*](#), and not in Dina Dey Dipondo. By continuing to collect the rent, when Isukha/Shirere/2972 does not vest in her, would mean Dina Dey Dipondo has intermeddled with it, by virtue of section 45 of the [*Law of Succession Act*](#). Under section 45, an intermeddler is bound to account, to both the court and the administratrix. Dina Dey Dipondo shall have to account, for the amount of rent collected from the rental units on Isukha/Shirere/2972, since 23rd February 2019, up to the date of the account. That account should include an account on how that money has been spent, and how much is in her hands. Section 45 makes intermeddling a criminal offence, with penal sanctions, which include imprisonment and fines.
57. On whether the grant made to Alice Siang'ani Dipondo should be revoked, I note that she did not disclose one of the children, Judith Titi Dipondo, in her petition, even though Judith Titi Dipondo had been listed in the Chief's letter. Judith Titi Dipondo herself has not complained, and I do note that she is listed in the confirmation application, and allocated shares in the estate.
58. Paul Neto Dipondo has filed a summons for revocation. His complaint is that the Chief's letter implied that the 2nd house had agreed on the appointment of Alice Siang'ani Dipondo as the administratrix, which he argues is not true. I do not think that that would suffice as a ground, for the letter was not



- done by Alice Siang’ani Dipondo. In any case, Alice Siang’ani Dipondo testified that there was no peace between the 2 houses, and chances of getting consensus were nil. In any event, under section 66 of the [Law of Succession Act](#), Alice Siang’ani Dipondo, as the surviving spouse of the deceased, had prior right or entitlement, to be appointed the personal representative of her late husband, over the children.
59. Of course, it cannot escape my attention that the deceased died a polygamist. Justice would require that the 2 houses of the deceased be involved in the administration. It could be that consensus could not be built before petitioning; however, the matter is now in court, and that anomaly can be corrected, without having to revoke the grant. The correction should take the form of appointing an additional administrator, to work with Alice Siang’ani Dipondo.
 60. I have ascertained the survivors of the deceased to be, from the 1st house, Alice Siang’ani Dipondo, as surviving widow, and Elizabeth Rose Night, Judith Titi Dipondo and Isaac Muriye Dipondo as surviving children; and from the 2nd house, Dina Dey Dipondo, Paul Netto Dipondo and Andrew Darky Dipondo as surviving children.
 61. The assets available for distribution are those whose certificates of official search have been availed, being Isukha/Shirere/2972 and Marachi/Elukongo/362, 1930, 1932, 1934, 2150, 2513 and 2553. They were still registered in the name of the deceased as at the time of his death. These are the assets available for distribution. One of the witnesses argued that the document that proves ownership is the title deed, and not a certificate of official search. That is a misconception. The document that carries more weight is the certificate of official search. It is this document which shows the current status of ownership, as per the details or particulars in the register of the title in question, held by the relevant Government lands repositories.
 62. The property shall be distributed, amongst the 7 survivors, in the ratio worked out above, of 4:3.
 63. The final orders shall be as follows:
 - a. That I hereby appoint Paul Netto Dipondo, as an additional administrator of the estate of the deceased herein, to work alongside Alice Siang’ani Dipondo;
 - b. That the grant made to Alice Siang’ani Dipondo, on 18th January 2024, and issued on 23rd January 2024, shall be amended, accordingly, to accommodate Paul Netto Dipondo;
 - c. That the grant made in (b), above, is hereby confirmed;
 - d. That the assets of the estate shall be distributed as follows:
 - i. To Alice Siang’ani Dipondo, Elizabeth Rose Night, Judith Titi Dipondo and Isaac Muriye Dipondo – 4/7 of all the assets listed in paragraph 61, hereabove, to be held by the surviving widow, during life interest, and thereafter to be shared equally by the children, in terms of section 35(1) of the [Law of Succession Act](#), and
 - ii. To Dina Dey Dipondo, Paul Netto Dipondo and Andrew Darky Dipondo – 3/7 of all the assets listed in paragraph 61, hereabove, to be shared out equally, between them, in terms of section 38 of the [Law of Succession Act](#);
 - e. That a certificate of confirmation of grant shall issue accordingly;
 - f. That Dina Dey Dipondo shall render an account, in 90 days, of all the income that she has received from Isukha/Shirere/2972, from 23rd February 2019 to the date of the said account;
 - g. That the administrators shall provide an update of the status on the ownership of the estate motor vehicles;



- h. That the matter shall be mentioned on 3rd February 2026, for the court to receive the accounts statement and the status report, on the items the subject of (f) and (g), above;
- i. That the 2 administrators have 60 days to transmit the assets, distributed in this ruling, to the beneficiaries named;
- j. That the matter shall be mentioned on 27th May 2026, for a report, from the administrators, on the completion of transmission of the estate and completion of the administration, and for further directions;
- k. That each party shall bear its own costs; and
- l. That any party, aggrieved by these orders, has leave of 30 days to challenge the same, by way of an appropriate appeal, at the Court of Appeal.

64. Orders accordingly.

DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT BUSIA, THIS 31ST DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE.

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Were, instructed by Fwaya Masakhwe Were & Company, Advocates for Alice Siang'ani Dipondo.

Ms. Mukhwana, instructed by Maube Mukhwana & Company, Advocates for Paul Netto Dipondo.

Mr. Mulama, instructed by Abok Odhiambo & Company, Advocates for Dina Dey Dipondo.

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