



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER E155 OF 2017

**IN THE MATTER OF THE ESTATE OF ELISHA
CHEMWETICH KENDAGOR (DECEASED)**

CHRISTOPHER KIPLAGAT NG'ETICH ----- 1ST

ADMINISTRATOR

KIPTUI NG'ETICH ----- 2ND

ADMINISTRATOR

RULING

1. By Ruling of my brother (H. M. Nyaga, Judge) delivered on 18th October 2023, Grant of Letters of Administration herein issued to Christopher Kiplagat Ng'etich and Rosa Kabon Cheptoo was revoked and a fresh Grant was issued to the former and one Kiptui Ngetich.
2. The Court also shared out the deceased's Estate, save properties known as **L.R. Baringo/Sabatia/103/39** and **L.R. No. 9413 (Kabarak Farm)** which will hereinafter be

referred to as “the Sabatia and Kabarak Properties” respectively. The Court required the two properties to be valued and reports filed in court “pending further directions of the Court.”

3. Two Valuation Reports, both dated 5th April 2024, by Kaerad Card Limited in respect of the properties commissioned by the 2nd House of the Deceased were subsequently filed. The Reports opine that the Kabarak and Sabatia Properties were valued at Kshs. 280,000,000/= and Kshs. 10,000,000/= respectively.
4. Another Valuation Report by Lipak Consultants Limited dated 23rd January 2024 done on instructions of the 1st House puts the value of the Sabatia and Kabarak Properties at Kshs. 8,500,000/= and Kshs. 430,000,000/= respectively.
5. After perusing the Reports, the Court opined on 19th July 2024; “that there ought to be equal distribution of the estate among the beneficiaries. It was directed that the parties should; “... sit down and see how each beneficiary will get an equal share of the estate in terms of value. The

1st house's share will be taken into account and be assigned a value of Kshs. 10 million which is more or less the value given by the 2 valuers.”

6. Unfortunately, the Beneficiaries have failed to reach consensus. Instead some have filed affidavits suggesting their preferred mode of distribution of the Kabarak and Sabatia Properties.
7. Joyce Jebet Ng'etich, a daughter from the 1st House of the deceased, swore an affidavit on 13th October 2025 purportedly with written authority of her female siblings from the 1st House. *Inter alia*, she avers that there is no agreement among the Beneficiaries and accuses her male siblings from both Houses of seeking to unfairly get bigger shares of the Estate, hence the failure to obtain concurrence.
8. The same deponents swore another affidavit on 17th February 2025 underscoring the same stance. She lists down a total of 16 “surviving beneficiaries” of the Estate from both Houses of the deceased, at paragraph 7 of the affidavit. They include one daughter-in-law and one

grandson of the deceased shown to represent Estates of their named deceased relatives.

9. According to the said Joyce Jebet Ngetich, *H. M. Nyaga, Judge* gave the 1st House the Sabatia Property which was assigned a value of Kshs. 10,000,000/=. This sum was to be discounted from the value of the Kabarak Property and the balance thereof divided equally among all the surviving beneficiaries, states the deponent.
10. It would appear from their affidavit evidence that the deceased's daughters of the 1st House want the Estate to be distributed to Beneficiaries equally in terms of acreage. It is proposed that the Kabarak and Sabatia Properties be subdivided after identification of Beneficiaries' shares and resultant survey costs be borne equally.
11. Contending that their male siblings are intent on delaying the matter as they continue utilizing the Kabarak property they are in control of, the daughters of the 1st House urge the court to order the Administrators of the Estate to execute transmission documents within 6 months of confirmation of the Grant.

12. One of the Administrators of the Estate (Kiptui Ng'etich) who will hereinafter be referred to as the "2nd Administrator" replied to the affidavit of the daughters from the 1st House, through his affidavit purportedly sworn on 25th February 2025. He confirms that the Beneficiaries could not reach an amicable settlement of the dispute. Stating that he is a Beneficiary from the 2nd House, he contends that his siblings from the 1st House want them to get less of the Estate because they are fewer. The Court is told *inter alia* that members of the 2nd House have always lived on and utilized the Kabarak Property whilst the members of the 1st House occupied the Sabatia Property. The 2nd Administrator thinks that the 2nd House would be disadvantaged if distribution of the Estate is based on the value of the properties in question only. He suggests that the difference in valuation of the Kabarak Property by the two Valuers (Kshs. 150,000,000/= be assigned as its value. Thereafter the court does distribute the property in terms of acres between the two Houses.

13. Alternatively, the 2nd Administrator proposes that the Kabarak and Sabatia Properties be shared out based on the value estimated by the two firms of Valuers.
14. Regarding legal costs incurred, the 2nd Administrator prays that they be paid from the Estate after sale of a portion thereof.
15. I have not seen any evidence put forth by the 1st Administrator and members of the 1st House after the court's directions of 18th October 2023 and 19th July 2024.
16. It is only the Kabarak and Sabatia properties that remain to be distributed. My brother *H. M. Nyaga, Judge* in his Ruling and/or orders of 18th October 2023 and 19th July 2024 favoured transmission of the Estate in accordance with its value, equally among the Beneficiaries from the two Houses as provided by the law. The guiding principles are set out in **Section 40(1) of the Law of Succession Act** alluded to in the previous Ruling of 18th October 2023 and bears restating here. The legal provision is in the following terms;

“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.”

The law does not segregate on the basis of sex, marital or financial status of the Intestate’s children.

17. I have noticed a big disparity in valuation of the Kabarak Property by the two Valuers, a difference of Kshs. 150,000,000/=. It is unreasonable for two experts to arrive as such a variance over generally the same period of conducting valuation. The court will nevertheless try to resolve this unconscionable difference in exercise of its discretionary power.
18. Doing the best I can in the circumstances, I would assign the Kabarak Property a monetary value of Kshs. 350,000,000/= (Three Hundred and Fifty Million Shillings). In addition to the value of Kshs. 10,000,000/= already

given to the Sabatia Property, the total value is Kshs. 360,000,000/=.

19. The members of the 1st and 2nd Houses of the deceased are undisputed. They are 12 and 6 respectively as per the parties' affidavits and Form P & A 5 filled out at the time of petitioning for Grant of Letters of Administration Intestate herein. This represents a ratio of 12:6 or 2:1 that shall be the formula for sharing the Kabarak and Sabatia Properties together allocated a value of Kshs. 360 Million between the 1st and 2nd Houses of the deceased.
20. From the Court's arithmetic, the 1st and 2nd Houses shall get Kshs. 240,000,000/= (Two Hundred and Forty Million Kenya Shillings and Kshs. 120,000,000/= (One Hundred and Twenty Million Kenya Shillings) respectively. As the 1st House is exclusively taking the Sabatia Property assigned a value of Kshs. 10,000,000/=, this sum shall be discounted from their share of the Kabarak Property.
21. The two houses may buy off each other's shares in the two properties for ease of distribution, failing which a Licenced Surveyor be commissioned to sub-divide the properties

between the two houses while taking into account the value assigned.

22. As regards members of each house, they will agree amongst themselves on the mode of apportioning their share, failing which each shall be entitled to an equal share, and subdivision of the properties shall be undertaken by a Licensed Surveyor.
23. The parties are given upto 4/3/2026 when the matter is fixed for mention, to complete the process of sharing and/or subdividing the properties by which date the Administrators are hereby directed to have obtained a Certificate of Confirmation of Grant.
24. The Parties shall bear their own costs of this Cause including survey fees.
25. Ruling accordingly.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 17th of November, 2025.

In the presence of:

Mr. Karanja Advocate for the 1st Administrator

Ms Omwenyo Advocate for the 2nd Administrator

**Mr. Langat Advocate for the Beneficiaries of the 1st
House of the Deceased**

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

Original