



**In re Estate of Ibrahim Likabo Muhieso (Succession Cause
172 of 2008) [2025] KEHC 15750 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 172 OF 2008**

AC BETT, J

NOVEMBER 5, 2025

IN THE MATTER OF THE ESTATE OF IBRAHIM LIKABO MUHIESO

BETWEEN

CLEMENT LUCHITIO LIKABO PETITIONER

AND

CLEMENT BOYIA LIKABO ADMINISTRATOR

AND

JUDITH NYAWINA APPLICANT

RULING

1. This ruling pertains to the distribution of the estate of the deceased herein. Pursuant to protest proceedings in which the court held that L.R. No. Kakamega/Shitochi/1064 and L.R. No. Kakamega/Virembe/761 form part of the estate of the deceased.
2. The court deferred the confirmation of grant and directed that the Administrators do file a letter from the Area Chief listing all the male and female children of the deceased. The court further directed that should the daughters of the deceased have no interest in the estate, then they should file affidavits to renounce their claims.
3. In compliance with the court's directions, the Administrators filed a letter dated 16th June 2025 from the Chief, Shihuli Location in which he stated that the deceased had the following dependants:-
 - i. Clement Boyia (son)
 - (ii) Clement Luchitio (son)
 - (iii) Sebenzia Lihabi Peter (daughter)



- (iv) Alexander Muhembe Ligabo (son)
 - (v) Mary Achitsa Ligabo (daughter)
 - (vi) Margaret Khati Nandwa (daughter)
4. The daughters, Margaret Khati Nandwa, Sebenzia Lihabi Peter and Mary Achitsa Ingusu also swore affidavits in which each one of them confirmed that they had no interest in the estate of the deceased.
 5. On 23rd July 2025, the daughters of the deceased also attended court physically and Ms. Mburu submitted that they had filed their affidavits as required by court. The said daughters also confirmed that they did not have any interest in the estate of the deceased. According to them, the deceased had distributed his land to his sons during his lifetime and they did not intend to disturb the distribution.
 6. The court is now tasked with the distribution of the estate of the deceased. The court's duty is heightened by the fact that the court had found that the deceased had not distributed his land during his life time, and the beneficiaries of his estate are three, namely Clement Luchitio Likavo, Alexander Muhambe and Judith Nyawina who represents Clement Boyia Likabo.
 7. L. R. No. Kakamega/Shitochi/1064 comprises 0.7 hectares while L. R. No. Kakamega/Virembe/761 comprises 0.9 hectares.
 8. From the record, the land comprised in L. R. No. Kakamega/Shitochi/1064 had been distributed pursuant to a Grant that was confirmed on 22nd February 2020 which was later revoked.
 9. *The Constitution* of Kenya vide Article 27 embeds the principle of non-discrimination of persons and provides that:-
 - “27. Equality and freedom from discrimination
 - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
 - (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
 - (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).”
 10. By dint of *the Constitution* therefore Clement Boyia Likabo, who is referred to by the rest of his siblings as “an outgrower” because he is a step-brother, is guaranteed equal treatment and benefit of the law. Article 27 (5) enjoins the court to protect the “outgrower” from discrimination based on the grounds that his mother was not married to the deceased at the time of his birth.



11. More significantly, the Law of Succession act, which was enacted in 1972 long before the current Constitution does not countenance the discrimination of biological children of a deceased person in matters of inheritance. Section 3 (2) and (3) of the Act defines a child as:-
- “(2) References in this Act to "child" or "children" shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.
- (3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.”
12. In view of the above, it is apparent that all the three sons of the deceased must be treated equally. While considering the distribution of their father’s estate.
13. Under Section 38 of the Law of Succession Act, where the surviving dependents of the deceased are only children, the estate should devolve equally to the children.
14. It is well settled that the court has the discretion to distribute the estate of a deceased person where the Beneficiaries are not in consensus. The distribution need not necessarily be equal and depends on each individual cause. However, the distribution must be equitable.
15. The three Beneficiaries of the deceased failed to find a common ground concerning how the estate of the deceased should be distributed. Whereas the third Administrator urged the court to allocate the Shitochi land to her on behalf of Clement Boyia Likabo ostensibly while the Virembe land devolves to the 1st and 2nd Administrator. She urged that would ostensibly cover for the deceased’s absence in her late husband’s life to compensate for paternal home that he was never accorded. She further urged the court that in the event the court finds Section 40 of the Law of Succession Act applicable, then it should allocate shares to the parties in accordance with their current occupation and development.
16. I have carefully considered the issue of distribution and the submissions made earlier on by the parties. It was not disputed that the 1st and 2nd Administrators had sold their shares in L.R. No. Kakamega/Shitochi/1064 to the 1st Protestor upon confirmation of the original grant and that the said Purchaser has been in occupation of the said land to date. I was also not disputed that the market value of the two parcels of land comprising the estate of the deceased are disparate. Therefore, in order to ensure equity, each Beneficiary should get a share in the two parcels of land.
17. Ultimately, I make the following orders:-
- a. L. R. No. Kakamega/Shitochi/1064
- (i) Judith Nyawina as legal representative of Clement Boyia Likabo (deceased) – one-third share.
- (ii) Clement Luchitio Likabo and Alexander Muhembe Likabo – two-thirds share (to hold in trust for Fredrick Muhanji Mangala and Margaret Masitsa Luchesi according to the acreage purchased by each of them).
- b. L. R. No. Kakamega/Virembe/761



- i. Judith Nyawina as legal representative of Clement Boyia Likabo (deceased) – Equal Share.
- ii. Clement Luchitio Likabo – Equal Share.
- iii. Alexander Muhembe Likabo – equal share
- c. The survey and subdivision of the two parcels of land shall be done in accordance with the current occupation and development on the land.
- d. There shall be no other as to costs as this is a family matter.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 5TH DAY OF NOVEMBER 2025.

A. C. BETT

JUDGE

In the presence of:

..... for the Petitioner

..... for the Applicant

Court Assistant: Polycap

