

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
SUCCESSION CAUSE NO. 27 OF 2001
IN THE MATTER OF THE ESTATE OF JONATHAN KEGOHI
KASAVULI NDIWA (DECEASED)

**JACKTON MARK KEGOHI.....1ST ADMINISTRATOR
/APPLICANT**

**BELICE KAYUNDI NDIWA.....2ND ADMINISTRATOR
/APPLICANT**

VERSUS

**LEVIS ANYANDA KEGOHI.....3RD
ADMINISTRATOR/RESPONDENT**

**LINDA NELIMA KASAVULI.....2ND
RESPONDENT**

**SARAFINA KADALI KEGOHI.....3RD
RESPONDENT**

RULING

Background

1. Vide a Petition for letters of administration dated **27th February 2001**, as filed by the 1st and 2nd Administrators/Applicants herein the following were listed as the assets belonging to the estate of the deceased:
 - a. Huruma Farmers Co-operative Plot No. 241.**
 - b. Plot No. Kiminini/344.**
 - c. Plot No. Kiminini/343.**
 - d. Nyangori/Gimarakwa/269.**

- e. King'ongo/Block 21/1049.**
- f. Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District.**
- g. Kin'ongo/Block 21/10492.**
- h. Kolongolo Farm**
- i. Simbi Farm Plot No. 282 Kapsenger.**
- j. Stocks/Shares in Kenya Breweries Limited, KCB Ltd & Kenya Airways.**
- k. Motor Vehicle Registration No. KCA 262P Toyota Corolla Saloon.**

2. The deceased was survived by the following beneficiaries:

- a. Belice Kayundi Ndiwa-widow**
- b. Elizabeth Jerrah-Daughter**
- c. Jackton Mark Kegohi-Son**
- d. Damaris Adega Kiprop- Son**
- e. Sellah Kadasi Keya- Daughter**
- f. Tom Edemba Ndiwa- Son**
- g. Jared Kasavuli Ndiwa- Son**
- h. Zachariah Luther Kasavuli- Son**
- i. Josphe Odunga Ndiwa- Son**
- j. Frank Kivai Ndiwa- Son**
- k. Caroline Miriyo Ndiwa- Daughter**
- l. Rose Iminza Ndiwa- Daughter**
- m. Johnson Gimisi Kegohi- Son**

3. On **21st June 2021**, letters of administration of the estate of **JONATHAN KEGOHI KASAVULI NDIWA** (deceased) were granted to the 1st and 2nd Administrators/Applicant.

4. Vide a Protest application dated **27th August 2007**, and filed in Court on **17th September 2007**, one **Teresa Wafula Wakasiaka** contested the making of the grant alleging that she was also a widow of the deceased herein

and that they had 3 issues who had been excluded from the estate of the deceased herein.

5. Vide a Judgement delivered by my learned colleague **Lady Justice H. Omondi** (as she was then) this court proceeded to recognise the three children of Teresia Wafula Wakasiaka and the deceased herein and ordered the 1st and 2nd Administrators to include them in the list of beneficiaries for purposes of distribution of the estate of the deceased. The list of the beneficiaries of the deceased was thus amended to include the following persons:

- a. Levis Anyanda-Son**
- b. Linda Nelima-Daughter**
- c. Seraphin Kadali-Daughter**

6. Vide an application dated **17th May 2023**, the 3rd Administrator/Protector herein sought an annulment and/or revocation of the grant of representation issued on **21st June 2001** to the 1st and 2nd Administrators/Applicants herein and craved that the 3rd Administrator/Protector herein be appointed as the Administrator of the estate of the deceased.

7. Vide a ruling dated and delivered on **5th July 2024**, this Court under the stewardship of my erudite colleague, **Justice D.K. Kemei**, proceeded to allow the 3rd Administrator/Protector's application; issued a fresh grant in the names of the 1st, 2nd and 3rd Administrators herein and ordered the Administrators to the estate of the deceased set down the pending summons for confirmation of grant dated **20th February 2023** for hearing on priority basis.

8. On **4th September 2024**, the 1st and 2nd Administrators/Applicants herein, filed summons for revocation/annulment of grant dated **2nd September 2024**, on the grounds that there was no justification by my erudite colleague to revoke the initial grant as they had been administering the estate of the deceased herein diligently.
9. Vide a ruling delivered on **27th March 2025**, this Court ruled that the 1st and 2nd Administrators/Applicant's application did not meet the threshold as set out under Order 45 of the Civil Procedure; that this Court was functus officio and could not sit on appeal on its own decision. The summons for confirmation of grant dated **20th February 2023**, was then fixed for hearing.

Summons for confirmation of grant

10. Vide Summons for Confirmation of Grant filed pursuant to **Section 71** of the **Law of Succession Act** and **Rule 40 (1)** of the Probate and Administration Rules, the 1st and 2nd Administrators herein seek to have the Grant of Letters Administration issued to the 1st, 2nd and 3rd Administrators, confirmed and that the costs of the application be in the cause.
11. The application is supported by the grounds on the face of the application and by a Supporting Affidavit of the 1st and 2nd Administrators wherein it is deposed that the deceased died on **22nd November 2000**, and that the 1st and 2nd Administrators are desirous of Confirming the Grant of Letters of Administration as six (6) months have lapsed since the date of the issue of the Grant. The applicants depose that the shares of all beneficiaries have been ascertained

and determined as per the wishes of the deceased and they have proposed the following mode of distribution :

BUNGOMA/KIMININI/344		
NO.	NAME	ACRE
1.	JACKTON MARK KEGOHI	5 ACRES
2.	JOSEPH ODUNGA NDIWA	3.5 ACRES
3.	CALEB AKWESERA NDIWA	2.75 ACRES
4.	DAVID KEGOHI KASAVULI	2.5 ACRES
5.	DAVID WAKHISI LIAMBILA	13 ACRES
6.	ELIZABETH JEREHA NDIWA	1 ACRE
7.	GEOFFREY KASAVULI	3.5 ACRE
BUNGOMA/KIMININI/343		
NO.	NAME	ACRE
1.	ZACHARIA LUTHER	8.3 ACRES
2.	BELICE KAYUNDI NDIWA	1.0 ACRE
3.	JOHNSON KEGOHI	8.5 ACRES
4.	FRANK KIVAI NDIWA	8.5 ACRES
5.	ROSE IMINZA NDIWA	1.0 ACRE
6.	CAROLINE MIROYO	1.0 ACRE
7.	DAVID KEGOHI KASAVULI	0.25 ACRE
BUNGOMA NDIVISI/NDIVISI/231		
NO.	NAME	ACRE (2 ACRES)
1.	LEWIS ANYANDA KASAVULI	0.6 ACRES
2.	SARAFINA KADALI KEGOHI	0.6 ACRES
3.	LINDA NELIMA KASAVULI	0.6 ACRES
MOTOR VEHICLE KAC 262P		
NO.	NAME	
1.	BELICE KASAVULI NDIWA	
SHARES AT KBL		
NO.	NAME	
1.	BELICE KASAVULI NDIWA	
SHARES AT EABL		
NO.	NAME	
1.	BELICE KASAVULI NDIWA	

SHARES AT KCB		
NO.	NAME	
1.	BELICE KASAVULI NDIWA	
SHARES AT NATIONAL BANK		
NO.	NAME	
1.	BELICE KASAVULI NDIWA	
SHARES AT NCBA LTD		
1.	BELICE KASAVULI NDIWA	
SHARES AT KENYA AIRWAYS		
1.	BELICE KASAVULI NDIWA	

12. The applicants further propose that the share of Tom Edemba Ndiwa (now deceased) be distributed to his surviving heir **Geoffrey Kasavuli**, while that of Jared Kasavuli Ndiwa (also deceased) be distributed to his two dependants namely **Caleb Akwesera Ndiwa** and **David Kegohi Kasavuli**.
13. The applicants deposed that whereas Damaris Adegga Kiprop and Selia Kadasi Keya were allotted 1 acre each in parcel No Bungoma/Kiminini/344, they had both sold their said allocations to one David Wakhisi Liambira.
14. A consent to Confirmation of Grant pursuant to **Rule 40 (8)** of the **Probate and Administration Rules** that was exhibited indicated that only the children of Belice Kayundi Ndiwa and the deceased had consented to the 1st and 2nd Administrators/Applicants proposed mode of distribution.
15. While opposing the 1st and 2nd Administrators proposed mode of distribution, the 3rd Administrator/Respondent herein swore an Affidavit in protest on **17th May 2023**, alleging that the 1st and 2nd Administrators/Applicants proposed mode of distribution is in total disregard to the law and due process. He deposed that the distribution and

inclusion of property Ndivisi/Ndivisi/231 which has never formed part of the estate of the deceased herein is a scheme by the 1st and 2nd Administrators to isolate and deny them their right to inherit from the estate of the deceased. He further deposes that vide a letter dated **16th February 2023** drawn by Omagwa Agima & Co. Advocates and addressed to the 1st and 2nd Administrators herein, he had proposed that the estate of the deceased be distributed as follows.

<u>LINDA NELIMA KASAVULI</u>	
NO	
1.	5 Acres from plot No. Kiminini/344.
2.	3 houses from Huruma Eldoret Plot No. 241.
3.	1 house from Plot No. 7 Central Kolua Nyalunya
4.	Shares at Kenya Breweries, KCB and Kenya Airways to equally distributed.
<u>LEVI AYANDA KEGOHI</u>	
1.	5 Acres from plot No. Kiminini/344
2.	1 house from Huruma Eldoret Plot No. 241
3.	2 Houses from Plot No. 7 Central Kolua Nyalunya
4.	Shares at Kenya Breweries to be equally distributed.
<u>SARAPHIN KADALI KEGOHI</u>	
1.	5 Acres from plot No. Kiminini/344
2.	4 houses from Huruma Eldoret Plot No. 241
3.	1 house from Plot No. 7 Central Kolua Nyalunya
4.	Shares at Kenya Breweries to be equally distributed.

16. In response to the Affidavit of Protest sworn by the 3rd Administrator, the 1st Administrators swore a Replying Affidavit on behalf of the 2nd Administrator herein and on his own behalf on **19th June 2023**, wherein he denied the contents of the Affidavit of Protest. He averred that there is no land parcel Ndivis/Ndivisi/344 and that after the delivery

of the Court's judgement on **25th June 2015**, there was a discussion between the 2nd Administrators household and the Respondents wherein it was agreed that the Respondents should scout around for a parcel of land measuring 5 Acres within Bungoma County whose value is equivalent to the value of land in Tabani Settlement Scheme. That pursuant to that agreement, the Respondents identified a parcel of land located at Misikhu area measuring 2 acres and upon discovering that a neighbour in possession of 2 Acres was desirous of selling, he proceeded to brief the Respondents and showed them the land measuring 2 acres for purposes of purchasing the same. He deposed that after the requisite execution of the sale agreement, on 28th August 2021, he proceeded to handover the said 2 acres to the Respondents but they all declined to take possession thereof. He further deposed that they are ready to settle the Respondents at any location of their choice as long as the acquisition of the said land is within their financial capability.

17. In regard to land parcel no. Bungoma/Kiminini/344, the 1st administrator deposed that said land was distributed to them by the deceased and that they have been utilizing the same as a household prior to the demise of the deceased. That with reference to Huruma Plot No. 241, he deposed that the said parcel belonged exclusively to the 2nd Administrator herein and it does not form part of the estate of the deceased.
18. On land parcel Plot No. 7 Central Kolua Nyalunya, he deposed that the same is his personal property and it does not form part of the estate of the deceased.
19. Finally, on the shares, he proposed that the same should go to the 2nd Administrator.

20. The 3rd Administrator/Respondent swore a Supplementary Affidavit on **30th October 2023**, wherein he deposed that the Respondents herein were lawfully recognized as the beneficiaries to the estate of the deceased herein. He further deposed upon the demise of the deceased, the 1st and 2nd Administrators had forcefully evicted them from their home on Bungoma/Kiminini/344 thus rendering them homeless. He deposed that the deceased herein did not distribute the said land to the 1st and 2nd administrators as alleged and further that he had never consented to a re-settlement on a different parcel of land
21. The 2nd and 3rd Respondents herein swore their Affidavit of Protest sworn on **30th March 2025**, wherein they urged this Court to only confirm the fresh grant as issued by Justice D.K. Kemei on **9th July 2024**. They deposed that the list of assets of the estate of the deceased was as follows;
- i. Huruma Farmers Co-operative Plot No. 241.**
 - ii. Plot No. Kiminini/344.**
 - iii. Plot No. Kiminini/343.**
 - iv. Nyangori/Gimarakwa/269.**
 - v. King'ongo/Block 21/1049.**
 - vi. Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District.**
 - vii. Kin'ongo/Block 21/10492.**
 - viii. Kolongolo Farm**
 - ix. Simbi Farm Plot No. 282 Kapsenger.**
 - x. Stocks/Shares in Kenya Breweries Limited, KCB Ltd & Kenya Airways.**
 - xi. Motor Vehicle Registration No. KCA 262P Toyota Corolla Saloon.**
22. Further, they posited that the only properties captured for distribution in the present Summons for Confirmation of

Grant are: Plot No. Bungoma/Kiminini/344, Plot No. Bungoma/Kiminini/343, Motor Vehicle Registration No. KCA 262P Toyota Corolla Saloon and shares in Kenya Breweries Limited, KCB Ltd & Kenya Airways to the exclusion of the majority of the assets of the deceased which include: Huruma Farmers Co-operative Plot No. 241, Nyangori/Gimarakwa/269, King'ongo/Block 21/1049, Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District, Kin'ongo/Block 21/10492, Kolongolo Farm, Simbi Farm Plot No. 282 Kapsenger.

23. They averred that the distribution of the estate of the deceased ought to be done in a fair and equitable manner instead of it being discriminative and disproportionate
24. In response to the 2nd and 3rd Respondents Affidavit of Protest, the 2nd Administrators/Applicants swore a Replying Affidavit on **12th June 2025**, on behalf of the 1st Administrator/Applicant and on her own behalf wherein she deposes that she married the deceased herein on 25th December 1952, under Tiriki Luhya Customs and that their union was blessed with 12 children. That in the year 1963-1966, she joined politics under the KANU Youth Wing where she performed well under the guidance of her uncle, one Heron Boyoywa. She deposed that at the instance of her said uncle, the area chief gifted her two parcels of land namely Bungoma/Kiminini/343 and 344, but given that in that era women were not allowed to register for national identity cards she decided to use that of her late husband, deceased herein, to register the said plots. She deposed that she subsequently acquired a loan facility and used her business as collateral whereafter she purchased shares from Huruma Farmers' Co-operative where she was allocated Plot No. 241 which was registered in her name and upon her

repayment of the loan, she constructed rental houses on the said parcel of land. That she then moved into one of the houses and rented out the rest.

25. In regards to Simbisi Farm Plot No. 282 Kapsengere she deposed that the same is ancestral land which belonged to her father-in-law and that it was gifted to the 1st Administrator who sub-divided it giving rise to land parcel Nandi/Kapsenger/1541 and 1542.
26. The 2nd Administratrix deposed that Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District also belongs to the 1st Administrator. She deposed that she is not aware of the existence of land parcels Nyangori/Gimarakwa/269, King'ongo/Block 21/1049, Kin'ongo/Block 21/10492 and Kolongolo Farm, and placed the Respondents to strict proof.
27. The 2nd Administratrix deposed that the stocks/shares in Kenya Breweries Limited, KCB Ltd and Kenya Airways were amalgamated and placed into her custody by the Court. As regards to the motor vehicle registration no. KAC 262P Toyota Corolla Saloon, she deposed that the same was sold off by the Respondents mother, but she was able to reclaim and but the same is now grounded as it was vandalized while in police custody.
28. Finally, she averred that the only assets comprising of the estate of the deceased are: Bungoma/Kiminini/343, Bungoma/Kiminini/344, Shares at KBL, EABL. KCB and Kenya Airways and motor vehicle registration no. KAC 262P Toyota Corolla Saloon. She refuted the claims that the Respondents were not allocated anything in the mode of distribution and she maintained that an alternative parcel of land was

purchased for them in a different location away from her children so as to avert constant conflicts.

29. In response, the 3rd Administrator/Respondent filed a Supplementary Affidavit sworn on **17th June 2025**, wherein he deposed that upon filing the petition for grant of letters of administration herein, the 1st and 2nd Administrators voluntarily listed all the assets belonging to the estate of the deceased herein and declared under oath that the list was the full and true inventory of his assets and that they are estopped from making contrary averments. He deposed that the allegations that it was the 2nd Administrator/Applicant who purchased Bungoma/Kiminini/343 and 344 and Plot No. 241 Huruma Farmers Co-operatives are mere allegations as no evidence has been availed to that effect and that the availed title shows that it was issued 15 years after the death of the deceased herein.

30. Further, in respect to Simbi Farm Plot No. 282 Kapsengere and Plot No. 7 Central Kolua Loction in Nyalunya Sub-Location, Kisumu District, he averred that he has no issue as the title indicates the owner as the 1st Administrator/Applicant and the same clearly does not form part of the estate of the deceased, but the Court ought to not that the titles were registered 5 and 22 years respectively after the demise of the deceased person despite been disclosed to form part of the estate of the deceased making the registration of the 1st Administrator as the owner fraudulent. He also deposed that the same applies with regards to Nyangori/Gimarakwa/269, King'ongo/Block 21/1049, Kin'ongo/Block 21/10492 and Kolongolo Farm.

31. Finally, he deposed that parties are bound by their respective pleadings and the 1st and 2nd Administrators have

the obligation to account for every asset belonging to the estate of the deceased herein.

32. The 1st and 2nd Administrators/Applicants swore a Further Affidavit on **1st July 2025**, in response to the 3rd Administrator/Respondent's Supplementary Affidavit wherein they alleged that the 2nd Administrator only received her identity card in 1994 and that the Kiminini properties were acquired in 1964. They averred that 2nd Administrator has been in occupation of Plot No. 344 since 1968 to date and has developed it substantially. They also deposed that the 2nd Administrator's father-in-law hived off part of L.R. No. Nandi/Kapsengere/1046 creating amongst others L.R. No. Nandi/Kapsengere/1541 where the 1st Administrator's house is located according to the title deed annexed and marked **JMK 1(b)**, and the remaining portions L.R. No. Nandi/Kapsengere/1542 was amalgamated with other small portions which the 1st Administrator purchased from his neighbours namely: L.R. No. Nandi/Kapsengere/1354, 1355 and 1357 and formed L.R. No. Nandi/Kapsengere/1421 which he registered in his name. They deposed that L.R. No. Nandi/Kapsengere/282 does not exist but L.R. No. Nandi/Kapsengere/482 does belong to the 1st Administrator as he purchased it from a neighbour according to the title deed annexed and marked as **JMK-3**.

33. Finally, with regard to Plot No. 7 at Central Kolua Location Nyalunya Sub-County Location Kisumu, they deposed that the same belongs to the 1st Administrator/Applicant as he purchased it from one Mbeda as per the sale agreement annexed and marked **JMK4**.

34. The summons for confirmation of grant dated **20th February 2023**, was canvassed by way of written submissions.

Submissions

1st and 2nd Administrators written submissions

35. Vide written submissions dated **1st July 2025**, the 1st and 2nd Administrator argue that their proposed mode of distributed according to the filed Summons of Confirmation was consented to by every beneficiary except the Respondents herein. They posit that the decision to settle the Respondents on a land outside the deceased persons assets was to prevent further conflicts and that their proposed mode of distribution is fair and equitable, and that the Respondents have not given their proposed mode of distribution.

Respondents written submissions

36. The Respondents filed their submissions dated **10th April 2025** and took the position that the 1st and 2nd Administrators' proposed mode of distribution is marred with discrimination and is disproportionate and they urge this Court to reject the same on grounds that it excludes most of the assets and beneficiaries of the estate of the deceased person. They urge this Court to adopt the 3rd Administrator/Respondent's proposed mode of distribution as being fair and equitable.

Analysis and determination.

37. Grants are confirmed under **Section 71** of the **Law of Succession Act**, which states as follows:

“Confirmation of Grants

71. Confirmation of grants

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and

when confirmed such grant shall specify all such persons and their respective shares.”

38. In confirmation applications, there are two principal factors for the Court to consider namely; appointment of administrators and distribution of the estate. The principal purpose of confirmation is the distribution of the assets left behind by a deceased.

39. This Court issued a fresh Grant on **9th July 2024**, to the 1st, 2nd and 3rd Administrators herein, and made further orders that any titles arising from the sale of part of the estate of the deceased using the Grant issued to the 1st and 2nd Administrators herein be cancelled and that the title so issued to revert back to the name of the deceased awaiting the agreement of the parties on mode of distribution and /or a determination by this Court. It is evident from the Court record that not all beneficiaries of the estate of the deceased herein as listed in Form 38R:26(2) consented to the 1st and 2nd Administrators proposed mode of distribution and the 3rd Administrator/Respondent and 2 & 3rd Respondents availed their respective Affidavits of Protest alleging discrimination and unequitable distribution by the 1st and 2nd Administrators as per the proposed schedule of distribution. Where there is no consensus on the proposed mode of distribution by all beneficiaries, this court is then tasked with the decision to distribute the estate of the deceased premised on the law and established principles that ensure fair and just distribution.

40. I have considered the rival positions of the parties as depicted in their respective proposed modes of distribution of the estate of the deceased and I have also considered the submissions on record and the sole issue that rears up for

determination is **which is the appropriate mode of distribution of the estate of the deceased?**

41. It is evident from the certificate of death filed herein with the petition, that the deceased died intestate on 22nd November 2000. His beneficiaries inherit by descent. According to Section 2(1) of the Law of Succession Act, the law applicable is the Law of Succession Act as deceased died intestate after the commencement of the said Act on 1st July, 1981.
42. The law relating to the distribution of the estate of an intestate was stated by the Court of Appeal sitting in Meru in **Justus Thiora Kiugu & 4 others V. Joyce Nkatha Kiugu & another, [2015] eKLR**. While reinforcing the duty of the Court to promote alternative forms of dispute resolution under Article 159 (c) of the Constitution of Kenya, the Court held that if the parties agree on a mode of distribution of the estate of an intestate, then the Court must adopt that consent and make it an order of the Court. If the parties are unable to agree, then the Court has no discretion but to distribute the property as per the provisions of the Law of Succession Act, Cap 160 Laws of Kenya.
43. It has been alleged by the 1st and 2nd Administrators that the deceased had already settled his children with the 2nd Administrator/Applicant on some of his properties, but the Respondents deny that position. It is imperative to note that the 1st and 2nd Administrators did not avail any evidence in form of minutes to prove that indeed a meeting occurred and the mode of settlement that was allegedly done by the deceased. It was incumbent upon the 1st and 2nd administrators to adduce concrete and verifiable evidence to

prove the alleged settlement by the deceased of some of his properties to some beneficiaries prior to his demise. This evidence can come in the form of a valid will, documented statements made by the deceased, or other reliable evidence. I am not satisfied that the deceased expressed any wishes regarding the distribution of his estate.

44. It is trite that the primary duty of a succession Court is to identify the free property of a deceased person and to distribute it to his rightful beneficiaries. Thus, where issues are raised regarding title to land or where a customary trust is presumed, such issues ought to be resolved in a separate suit or proceedings before the Environment and Land Court.

45. The above position was re-iterated in the case of **re Estate of Mbai Wainaina (Deceased) [2015] eKLR** where the Court stated as follows:

“..The mandate of the probate court under the Law of Succession Act is limited. It does not extend to determine issues of ownership of property and declarations of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather that the provisions of the Law of Succession Act and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.”

46. A perusal of form P & A 5 reveals that the 1st and 2nd Administrators listed the following assets of the estate of the deceased :

- i. **Huruma Farmers Co-operative Plot No. 241.**
- ii. **Plot No. Kiminini/344.**
- iii. **Plot No. Kiminini/343.**
- iv. **Nyangori/Gimarakwa/269.**
- v. **King'ongo/Block 21/1049.**
- vi. **Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District.**
- vii. **Kin'ongo/Block 21/10492.**
- viii. **Kolongolo Farm**
- ix. **Simbi Farm Plot No. 282 Kapsenger.**
- x. **Stocks/Shares in Kenya Breweries Limited, KCB Ltd & Kenya Airways.**
- xi. **Motor Vehicle Registration No. KCA 262P Toyota Corolla Saloon.**

47. It is trite rule of practice that parties are bound by their own pleadings and so is the court. The 1st and 2nd Administrators are so bound by Form P & A 5 to the extent that they cannot at this juncture divorce themselves from it.

48. In the case of **Malawi Railways Ltd vs Nyasulu [1998] MWSC 3**, Malawi Supreme Court of Appeal cited with approval an article by Sir Jack Jacob entitled **"The Present Importance of Pleadings"** published in **[1960] Current Legal Problems. At p. 174** the learned author posited that: -

"As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and

cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

49. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of **Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR** found and held as follows in an election petition: -

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be

permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”

50. It is elaborate from the record that the 3rd Administrator/Respondent's mode of distribution was strictly focused on his share and that of his two sisters instead of being wholistic. On the other hand, the proposed mode of distribution by the 1st and 2nd Administrators did not capture all the assets of the deceased herein. That being the position, I find that the point of divergence between the Respondents and the Administrators is narrowed to the inclusion of all the beneficiaries and all the deceased persons assets in the distribution of the estate of the deceased herein.

51. In view of the above, the following orders are hereby made:

- i. The mode of distribution as proposed by the 1st and 2nd Administrators lacks merit and is dismissed.
- ii. The mode of distribution as proposed by the 3rd Administrator/Respondent lacks merit and is dismissed.

iii. The mode of distribution as proposed by the 2nd and 3rd Respondents lacks merit and is dismissed.

iv. The deceased's estate is hereby distributed as follows:

A. Huruma Farmers' Co-operative Plot No. 241.

1) Belice Kayundi Ndiwa

B. Plot No. Kiminini/344. (measuring 13.9 Ha)

1) Elizabeth Jerrah-Daughter (0.93Ha)

2) Jackton Mark Kegohi-Son (0.93Ha)

3) Damaris Adegga Kiprop- Son (0.93Ha)

4) Sellah Kadasi Keya- Daughter (0.93Ha)

5) Tom Edemba Ndiwa- Son (0.93Ha)

6) Jared Kasavuli Ndiwa- Son (0.93Ha)

7) Zachariah Luther Kasavuli- Son (0.93Ha)

8) Jospeh Odunga Ndiwa- Son (0.93Ha)

9) Frank Kivai Ndiwa- Son (0.93Ha)

10) Caroline Miriyo Ndiwa- Daughter (0.93Ha)

11) Rose Iminza Ndiwa- Daughter (0.93Ha)

12) Johnson Gimisi Kegohi- Son (0.93Ha)

13) Levis Anyanda-Son (0.93Ha)

14) Linda Nelima-Daughter (0.93Ha)

15) Seraphin Kadali-Daughter (0.93Ha)

C. Plot No. Kiminini/343. (To be divided equally as per the measurements) #no record to ascertain exact measurements.

1) Elizabeth Jerrah-Daughter

2) Jackton Mark Kegohi-Son

3) Damaris Adegga Kiprop- Son

4) Sellah Kadasi Keya- Daughter

5) Tom Edemba Ndiwa- Son

6) Jared Kasavuli Ndiwa- Son

- 7) Zachariah Luther Kasavuli- Son
- 8) Jospeh Odunga Ndiwa- Son
- 9) Frank Kivai Ndiwa- Son
- 10) Caroline Miriyo Ndiwa- Daughter
- 11) Rose Iminza Ndiwa- Daughter
- 12) Johnson Gimisi Kegohi- Son
- 13) Levis Anyanda-Son
- 14) Linda Nelima-Daughter
- 15) Seraphin Kadali-Daughter

D. Nyangori/Gimarakwa/269. (To be divided equally as per the measurements)#no record to ascertain exact measurements.

- 1) Elizabeth Jerrah-Daughter
- 2) Jackton Mark Kegohi-Son
- 3) Damaris Adegga Kiprop- Son
- 4) Sellah Kadasi Keya- Daughter
- 5) Tom Edemba Ndiwa- Son
- 6) Jared Kasavuli Ndiwa- Son
- 7) Zachariah Luther Kasavuli- Son
- 8) Jospeh Odunga Ndiwa- Son
- 9) Frank Kivai Ndiwa- Son
- 10) Caroline Miriyo Ndiwa- Daughter
- 11) Rose Iminza Ndiwa- Daughter
- 12) Johnson Gimisi Kegohi- Son
- 13) Levis Anyanda-Son
- 14) Linda Nelima-Daughter
- 15) Seraphin Kadali-Daughter

E. King'ongo/Block 21/1049. (To be divided equally as per the measurements) #no record to ascertain exact measurements.

- 1) Elizabeth Jerrah-Daughter
- 2) Jackton Mark Kegohi-Son

- 3) Damaris Adegga Kiprop- Son
- 4) Sellah Kadasi Keya- Daughter
- 5) Tom Edemba Ndiwa- Son
- 6) Jared Kasavuli Ndiwa- Son
- 7) Zachariah Luther Kasavuli- Son
- 8) Jospeh Odunga Ndiwa- Son
- 9) Frank Kivai Ndiwa- Son
- 10) Caroline Miriyo Ndiwa- Daughter
- 11) Rose Iminza Ndiwa- Daughter
- 12) Johnson Gimisi Kegohi- Son
- 13) Levis Anyanda-Son
- 14) Linda Nelima-Daughter
- 15) Seraphin Kadali-Daughter

F. Plot No. 7 at Central Kolua Location in Nyalunya Sub-Location Kisumu District. (measuring 0.12 Ha)

- 1) Jackton Mark Kegohi-Son (0.013 Ha)
- 2) Damaris Adegga Kiprop- Son (0.013 Ha)
- 3) Tom Edemba Ndiwa- Son (0.013 Ha)
- 4) Jared Kasavuli Ndiwa- Son (0.013 Ha)
- 5) Zachariah Luther Kasavuli- Son (0.013 Ha)
- 6) Jospeh Odunga Ndiwa- Son (0.013 Ha)
- 7) Frank Kivai Ndiwa- Son (0.013 Ha)
- 8) Johnson Gimisi Kegohi- Son (0.013 Ha)
- 9) Levis Anyanda-Son (0.013 Ha)

G. Kin'ongo/Block 21/10492. (To be divided equally as per the measurements) #no record to ascertain exact measurements.

- 1) Elizabeth Jerrah-Daughter
- 2) Sellah Kadasi Keya- Daughter
- 3) Caroline Miriyo Ndiwa- Daughter
- 4) Rose Iminza Ndiwa- Daughter
- 5) Linda Nelima-Daughter

6) Seraphin Kadali-Daughter

H. Kolongolo Farm (To be divided equally as per the measurements) #no record to ascertain exact measurements.

- 1) Elizabeth Jerrah-Daughter
- 2) Jackton Mark Kegohi-Son
- 3) Damaris Adegga Kiprop- Son
- 4) Sellah Kadasi Keya- Daughter
- 5) Tom Edemba Ndiwa- Son
- 6) Jared Kasavuli Ndiwa- Son
- 7) Zachariah Luther Kasavuli- Son
- 8) Jospeh Odunga Ndiwa- Son
- 9) Frank Kivai Ndiwa- Son
- 10) Caroline Miriyo Ndiwa- Daughter
- 11) Rose Iminza Ndiwa- Daughter
- 12) Johnson Gimisi Kegohi- Son
- 13) Levis Anyanda-Son
- 14) Linda Nelima-Daughter

I. Simbi Farm Plot No. 282 Kapsenger. (measuring 0.907 Ha)

- 1) Elizabeth Jerrah-Daughter (0.064Ha)
- 2) Jackton Mark Kegohi-Son (0.064Ha)
- 3) Damaris Adegga Kiprop- Son (0.064Ha)
- 4) Sellah Kadasi Keya- Daughter (0.064Ha)
- 5) Tom Edemba Ndiwa- Son (0.064Ha)
- 6) Jared Kasavuli Ndiwa- Son (0.064Ha)
- 7) Zachariah Luther Kasavuli- Son (0.064Ha)
- 8) Jospeh Odunga Ndiwa- Son (0.064Ha)
- 9) Frank Kivai Ndiwa- Son (0.064Ha)
- 10) Caroline Miriyo Ndiwa- Daughter (0.064Ha)
- 11) Rose Iminza Ndiwa- Daughter (0.064Ha)
- 12) Johnson Gimisi Kegohi- Son (0.064Ha)

- 13) Levis Anyanda-Son (0.064Ha)
- 14) Linda Nelima-Daughter (0.064Ha)
- 15) Seraphin Kadali-Daughter (0.064Ha)

J. Stocks/Shares in Kenya Breweries Limited, KCB Ltd & Kenya Airways.

1) Belice Kayundi Ndiwa

2) Motor Vehicle Registration No. KCA 262P Toyota Corolla Saloon.

1) Belice Kayundi Ndiwa

v. That grant of letters of administration issued on **9th July 2024**, to the 1st, 2nd and 3rd Administrators is hereby confirmed and that the estate of the deceased shall be distributed as directed vide clause (iv) above.

vi. A Certificate of Confirmation of grant shall issue to the 1st, 2nd and 3rd Administrators.

vii. Each party to meet their own costs.

Dated and delivered at Bungoma this 27th day of November 2025.

Mwanaisha S. Shariff

Judge

In the presence of :

Mr Obwatinya for the 1st and 2nd Administrator/Applicants

HIGH COURT SUCCESSION CAUSE NO. 27 OF 2001

**Mr Bryan Khaemba for the 3rd Administrator/Respondent
and the 2nd and the 3rd Protestors**

Peter Machoni - Court Assistant