

REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE NO 48 OF 2010
IN THE MATTER OF THE ESTATE OF THE LATE NYASYO
MULILI NZALU (DECEASED)

SIMON KIOKO NYASYO1ST
ADMINISTRATOR

JACKSON KIVUNGYA NYASYO.....2ND
ADMINSITRATOR

RULING

1. The 2nd Administrator is the Applicant in the current Summons for Confirmation of grant dated 22nd April 2025. The said Summons seek to have the grant of letters of administration intestate made to Simon Kioko Nyasyo and Jackson Kivungya Nyasyo on 7th April 2010 confirmed in terms of the annexed schedule of distribution on the grounds that no application for provision of dependents is pending; no objection has been lodged, the requisite period of six (6) months has since lapsed and the shares of all beneficiaries entitled to the said estate has been ascertained and that the assets should be distributed as per the annexed schedule.
- 2.The 1st Administrator also filed a Summons for Confirmation of grant dated 8th March 2025 which differs with that of the 2nd Administrator.
- 3.The Administrators were then directed to file submissions on the mode of distribution. The 1st Administrator filed submissions

dated 17th June 2025. It was submitted that what this court ought to consider is the fact that there are permanent structures/homes whose destruction in order to pave way for distribution to be done as suggested by the 2nd Administrator; that eight beneficiaries support the mode of distribution presented by the 1st Administrator save for the 2nd Administrator and Dominic Kimenye Nyasyo whom the court had to issue warrants of arrest against in order to produce a title deed which he hid with the hope that the same would not form part of the estate of deceased's for purposes of distribution. To support the 1st administrator's submissions, reliance was placed on the cases of **Justus Thiora Kiugu & 4 Others v. Joyce Nkatha Kiugu & Anor'**, Civil Appeal No. 30 of 2014 (2015) eKLR and **Succession cause no 217 of 2003 in re Estate of David William Kigumi Kimemia (Deceased)**.

4. The 2nd Administrator filed submissions dated 2nd July 202. It is contended that the summons were unopposed and that the proposed schedule of distribution embodies both equality and equity, taking into account: the legitimate heirs, including the sons and daughters of the deceased, the beneficial interest of the grandchildren of the deceased and the inclusion of all rightful claimants, including those standing in representative capacity for deceased beneficiaries. Reliance was placed on the case of **Rono vs Rono (2005) eKLR**. Further, that the grandchildren of the deceased have not been given direct shares in the estate, but rather their interests are protected within the shares allocated to their deceased parents. This ensures that the rights of minors and indirect heirs are preserved without altering the structure or

equity of the original distribution. It was submitted that the proposal by the 2nd Administrator was not only constitutionally compliant, but also squarely within the framework of equitable succession law.

Analysis and determination

5. I have carefully considered the rival submissions and proposed modes of distribution. It is not contested that the beneficiaries of this estate are;

- | | |
|-------------------------------|---------------------|
| a. Josphat Kimilu Nyasyo | Son (deceased) |
| b. Joseph Muthiani Nyasyo | Son (deceased) |
| c. Kamanthe Mwanza | Daughter (Deceased) |
| d. d) Jonathan Matheka Nyasyo | Son |
| e. Jackson Kivungya Nyasyo | Son |
| f. Dominic Kimenye Nyasyo | Son |
| g. Simon Kioko Nyasyo | Son |
| h. Martha Nzuve Mang'ati | Daughter |
| i. Christina Mulewa Kimeu | Daughter |
| j. Annah Mutende Kiiiio | Daughter |
| k. Josphine Mwikali Mbithi | Daughter |
| l. Regina Ndileve Muli | Daughter |

6. Both Administrators propose equal distribution amongst the beneficiaries in the following properties;

- a. Konza South/Konza South Block 5 (Konza) 308
- b. Konza South/Konza South Block 5 (Konza) 1080
- c. Konza South/Konza South Block 6(Kiu) 1286
- d. Kalama/Muumandu/173

- e. Machakos Konza North Block 1/69/16 at Kyawalia
- f. Konza Ranching & Farming Co-operative Society Limited
- g. Kiu Ranching & Farming Co-operative Society Limited
- h. Kalama Muumandu/168 which both agree should be sold
- i. Machakos Konza North Plot No 1090 Kwamautio.

7. The ones in contention are;

- a. Machakos Konza Block 1/490 for which both parties have suggested different modes of distribution.
- b. Kalama Muumandu/179 which the 2nd Administrator proposes it be sold while the 1st Administrator would like it to be divided equally.
- c. Konza South/Konza South Block 6(Kiu) 521 which the 2nd Administrator proposes it be divided equally while the 1st Administrator would like Dominic to get 2.83 Acres while the other beneficiaries share the remainder equally.
- d. Kalama Muumandu/167.

8. I have also noted that the son of Kamanthe Mwanza (deceased) only gets a share of one property. This does not amount to equal or equitable distribution but is unfair distribution. If the estate is to be divided equally to the children of the deceased then she too should get a share in all the properties which should then be inherited by her son. It would be wrong to decide otherwise as that would amount to discrimination. I therefore find that for the properties that are not in contention, the same shall be shared equally amongst all the children of the deceased but also giving the estate of Kamanthe Mwanza (deceased) an equal share.

9.As regards the properties in contention, the distribution shall be as follows;

- a. Kalama Muumandu/179 shall be shared equally among ALL beneficiaries taking into account the son of Kamanthe Mwanza.
- b. Machakos Konza Block 1/490 shall be shared equally among all beneficiaries but also taking into account the deceased beneficiaries such as Kamanthe Mwanza.

10.The 1st Administrator has alluded to photographs which the court has not seen therefore the issue of houses that are already on the land cannot be verified. Even so, the beneficiaries who want to benefit from the areas they have allegedly constructed may have to forfeit some shares in other properties so as to ensure equal distribution. Further, only the surveyor can confirm the exact acreage of the lands which comprise the estate. The Administrators have a duty to engage the surveyor moving forward so as to identify and demarcate the shares due to each beneficiary on the ground.

Orders accordingly.

Ruling signed, dated and delivered virtually this 27th day of November, 2025.

**E. N. MAINA
JUDGE**

IN THE PRESENCE OF:

Mr. Wekesa for 2nd Administrator

Mr. Thuo for 1st Administrator

The beneficiaries

C/A: Geoffrey

ORIGINAL