

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET

SUCCESSION CAUSE NO. 41 OF 2021

[FORMERLY ELDORET HC. P&A CAUSE NO. 278 OF 2013]

IN THE MATTER OF THE ESTATE OF THE LATE KIPCHUMBA
MISOY:.....DECEASED

REGINA JEPKOECH

MISOI:.....1ST APPLICANT

ROSE

CHEPTOO:.....2^N
^D APPLICANT

SILAS KIPLANGAT

CHUMBA:.....3RD APPLICANT

VERSUS

PHILIP KIPCHIRCHIR

CHUMBA:.....RESPONDENT

AND

PHILISTER CHEBITOK MISOI:.....1ST
INTERESTED PARTY

JULIET CHEPLETING:.....2ND
INTERESTED PARTY

ZIPPORAH CHEMELI MISOI:.....3RD
INTERESTED PARTY

TERESA CHEPKOSGEI:.....4TH
INTERESTED PARTY

ARNODAH CHEMISIK KISABEI:.....5TH
INTERESTED PARTY

**RICHARD KIPKORIR CHUMBA:.....6TH
INTERESTED PARTY**

**JONATHAN CHUMBA:.....7TH
INTERESTED PARTY**

**SHADRACK KIPRUTO CHUMBA:.....8TH
INTERESTED PARTY**

**PATRICK KIPKEMBOI CHUMBA:.....9TH
INTERESTED PARTY**

RULING

- 1.** Without going deeply into the history of this case which revolves around the estate of the **Late Kipchumba Misoy** [deceased], it may nonetheless be stated that upon the death of the deceased on or about the 11th June 2002 at the age of fifty nine [59] years the petition for grant of letters of administration Intestate respecting the deceased's estate was presented in court on 18th September 2013 by the surviving widow, **Regina Jepkoech Misoy**.
- 2.** The Chief's letter dated 2nd September 2013 accompanying the petition showed that the deceased was survived by the Petitioner as the sole wife and twelve [12] children i.e. Six [6] daughters and six [6] sons. The eldest daughter was **Rose Cheptoo** and the eldest son, **Philip Chumba**. The youngest daughter was **Julia Chepleting** and the youngest son, **Sila Chumba**. All the twelve children were already adults at the time of the presentation of the Petition and

were all treated as dependants of the deceased along with their mother, the Petitioner.

3. In the petition, the assets or property identified as belonging to the deceased and available for distribution amongst the dependants were the following: -

- (a) Land Parcel No. Pioneer/Ngeria Block 1 [EATEC]/2651**
- (b) Land Parcels Nos. Ngeria/Chepyakwai Block 2[Kaplelach]/227, 210**
- (c) Land Parcel No. Ngeria Chepyakwai Block 2[Kaplelach]/228**
- (d) Land Parcels Nos. Nandi/Kamobo/3047, 3048, 3046**
- (e) Land Parcel No. Nandi/Komobo/3043**
- (f) Land Parcel No. Nandi/Komobo/3041**
- (g) Land Parcel No. Nandi/Komobo/3042**
- (h) Land Parcel No. Nandi/Komobo/3044**
- (i) Land Parcel No. Nandi/Komobo/3045**
- (j) Land Parcel No. Pioneer/Ngeria Block 1[EATEC]/2661**
- (k) Land Parcel No. Pioneer/Ngeria Block 1[EATEC]/2650**

4. It was on the basis of all the information provided in the petition that on the 19th December 2013, the court issued

the foundational grant of letters of administration intestate, but this was to be later amended on the 11th June 2019 to include the deceased's eldest, **Philip Kipchirchir Chumba** as a **Co-Administrator** of the estate.

The amendment was prompted by an application made by Philip for revocation of the grant. The application was dated the 17th April 2018.

5. Section 71 of the Law of Succession Act, requires that a grant be confirmed after the expiration of six months from the date of issue. This provision read with **Section 83[9] of the Succession Act** indicate that the confirmation of the grant and the administration of the estate ought to be undertaken within a short period of time. Therefore, failure or neglect to complete the administration of the estate expeditiously would amount to a breach of the Succession Act. It was clearly against that background that the application for revocation of the grant was made by the deceased's eldest son.

6. Indeed, it was stated in the summons for revocation of grant that the grant was in-operative due to the failure of the then sole administrator widow of the deceased to have it confirmed within a period of one year. It was also stated that the sole administrator had sub-divided and sold part of the estate without the consent of all the other beneficiaries

and had also sub-divided a part of the estate and allocated it to herself and the youngest son of the deceased, **Sila Kiplangat.**

7. In its ruling of the 11th April 2019 on the application for revocation in which the sole administrator widow of the deceased was the Respondent, the Court stated as follows: -

“One thing is clear, the grant of letters of administration had not been confirmed and that issuance in no way give the Respondent authority to complete the transaction she purported to engage in.

Secondly, there is no evidence that the deceased had sold the parcels to the named purchasers as no sale agreement was annexed nor did any of the purported purchasers swear an affidavit to state the correct position.

The Respondent alludes to a will whose copy she has not annexed and the allegation remains hot air.

As for the parcels she concedes to have sold, the Respondent does not say how much she sold them for and she must render proper and detailed accounts within 21 days of this ruling.”

8. The court further stated that: -

“Certainly the Respondent ranks first in order of priority as regards who ought to apply for a grant of letters of administration, but that does not bar other beneficiaries from seeking to be co-administrators to stem the fast rate of disposal of the estate even before confirmation of grant. Consequently, the grant issued to the Respondent is revoked and a fresh one do issue in favour of the Applicant and the Respondent as joint administrators.

The findings aforementioned had the ultimate effect of revoking the original grant issued on 19th December 2013 to the surviving widow of the deceased, **Regina Jepkoech Misoi** and substituting it with the fresh grant dated 11th June 2019 in which the widow and her eldest son were named as the co-administrators of the estate and directed to file respective submissions on the mode of distribution of the estate.

9. This meant that the entire estate was restored to its original form as indicated in the affidavit in support of the petition dated 16th September 2013 [*Form P&A 5*]. Therefore, anything that may have been done in altering the original status of the entire estate on the strength of the revoked grant was not only unlawful, but also null and void “*ab-initio*.” This was indeed confirmed by the court in its ruling of the 12th February 2020 on an application by the

deceased's eldest son **[Philip]** for cancellation of new titles issued on the strength of the revoked grant.

10. The direction given to the deceased's widow by the court on 11th April 2019, to render proper and detailed accounts was apparently not followed. The process of confirming the fresh grant and distributing the estate to the dependants/ beneficiaries was therefore to commence on a clean slate. That was the reason why the parties were directed by the court to file respective submissions on the mode of distribution of the estate. Seemingly, the application by the Co-Administrator/ 2nd Petitioner dated 28th August 2020 for confirmation of the fresh grant was in compliance with the court's directions.

11. This court allowed that application on the 4th July 2023 when it came up for hearing. In that regard, the certificate of confirmation of the fresh grant was issued on 5th July 2023, but was followed by three [3] separate application for its revocation. The first such application was dated 2nd October 2023 by the Co-Administrator/ 1st Petitioner wife of the deceased while the second application was dated 8th November 2023 by the beneficiaries children of the deceased, **Sila Chumba, Zipporah Misoi** and **Teresa Chepkosgei.** The third application was dated 29th November 2023 by other beneficiaries children of the

deceased, **Richard Kipkoros Chumba** and **Patrick Kipkemboi Chumba**.

12. On 15th May 2024, the court directed that the application dated 2nd October 2023 be heard in priority to the other two similar applications. This court, after hearing the application rendered its ruling on 13th February 2025, in which it concluded as follows: -

“in sum, the present application is well merited and is hereby allowed to the extent that the impugned certificate of confirmation of grant issued by this court on 5th July 2023 be and is hereby revoked forthwith and any transaction arising from it is hereby declared null and void “ab-initio” to the extent that all the titles respecting the estate or part thereof do revert to the name of the deceased until such time that the estate shall be properly and lawfully distributed amongst the true beneficiaries.

In order to prevent an acrimonious distribution of the estate and facilitate a smooth and peaceful process of distribution the impugned grant of letters of administration intestate issued to the first and second petitioners by dint of the ruling of the court made on 11th April 2019, which gave rise, to the impugned summons for confirmation

of grant dated 28th August 2020, must be and is hereby revoked together with the impugned certificate of confirmation of grant.”

13. The court went further to issue another fresh grant of letters of administration intestate to four [4] Co-Administrators viz: -

1. Regina Jepkoech Misoy [First Administrator/ Petitioner]

2. Philip Kipchirchir Chumba [Second Administrator/ Petitioner]

3. Rose Chpetoo [deceased’s eldest daughter]

4. Sila Chumba [deceased’s youngest son]

The four administrators were directed by the court to engage and come up with a fresh summons for confirmation of the new grant within a period of six months or any other shorter period that they may deem necessary.

14. On the 15th May 2025, the court ruled that the other two applications dated 8th November 2023 and 29th November 2023 for revocation of the certificate of confirmation of grant had been sealed and overtaken by events by its ruling dated 13th February 20025 on the similar application dated 2nd October 2023.

Apparently, the four administrators did not engage or even attempt an engagement on the distribution of the estate which therefore proved to be a thorny issue for the parties to resolve on their own. This explains why three of the administrators took out the summons for confirmation of grant dated 12th May 2025 and the fourth one filed an affidavit of protest dated 16th May 2025, in opposition to the proposed mode of distribution of the estate.

15. The protestor/ Second Administrator/ Petitioner [Philip] not being agreeable to the mode of distribution mode by the First Administrator/ Petitioner **[Regina]**, the Third Administrator **[Rosa]** and the Fourth Administrator **[Sila]** made his own mode of distribution as specified in his protest affidavit which was filed together with written submissions dated 9th June 2025.

On the 15th July 2025, the court directed that the present be canvassed by affidavit evidence and written submissions but, on the 19th August 2025 an amended summons for confirmation of grant was filed by the first, third and fourth administrators.

The new summons was allowed by consent of the parties. On 6th October 2025 with leave to the Protestor/ 2nd Administrator to file an amended protest and further submissions if the need arose.

16. It would appear that the need did not arise as the Second Administrator/ Petitioner/ Protestor relied fully on his submissions dated 9th June 2025, in support of the protest. The First, Third and Fourth Administrators fully relied on their Submissions dated 11th November 2025, in support of their application for confirmation of the grant and opposition to the protest by the Second Administrator.

17. This court considered both the application for confirmation of the grant and the protest thereto in the light of the rival submissions by the parties.

It is without doubt that both parties agitate for confirmation of the freshest grant in terms of their respective mode of distribution or proposals specified in the supporting affidavit dated 19th August 2025 and the affidavit of protest dated 16th May 2025.

As it were, the contest on distribution of the estate is ironically between the administrators against the Second Administrator. The rest of the beneficiaries are treated as mere interested parties, yet they held a big state in the distribution of the estate.

18. When the impugned grant for letters of administration intestate was issued to the four [4] administrators on 13th February 2025, they committed themselves to faithfully undertake the administration of the estate in accordance

with the law and to render a just and true account thereof whenever required by law so to do.

However, the circumstances arising in this case and the very fact of the present contest on distribution of the estate is a clear demonstration of the administrators abdication of their responsibilities and duties as provided for in **Section 83 of the Succession Act.**

19. Be that as it may and for avoidance of doubt this matter is an intestate succession cause rather than a testate succession. That is why the cause was filed as a petition for grant of letters of administration intestate and not a petitioner either for grant of probate or grant of letters of administration with will annexed. Therefore, the distribution of the free property of the deceased intestate herein would be in accordance with the provisions of Part V of the Succession Act and not in accordance with the terms of any form of will.

20. In any event, the validating of a will whether oral or written would come into focus if it is introduced or invoked as a factor in the distribution of the estate of an intestate deceased because by its definition a “Will” is the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death. The Will must be duly made and executed in accordance with the law.

Sections 9 and 11 of the Succession Act would in the circumstances apply.

21. By and large, a person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect [**See, Section 34 of the Succession Act**].

Under **Section 3[1] of the Succession Act**, free property in relation to a deceased person means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death.

22. The identification of such free property as belonging to the deceased either as a legal or beneficial owner thereof would be a key factor in the distribution of the deceased's immovable assets or property such as parcels of land. In that regard, the starting point for distribution of the estate in this case would be to determine whether the property listed in the affidavit in support of the petition dated 16th September 2013, represents the sum total of and is actually the free property belonging to the deceased available for distribution amongst his dependants, being only those listed as such in the petition.

23. Any person not listed in the petition and attempts to make a claim on the estate property or part thereof would be regarded as an intermeddler or stranger to the estate unless he/she enjoys a purchaser's interest in the property and/or is a creditor of the estate or part thereof. The power to distribute any capital assets belonging to a deceased person crystallizes only after confirmation of a grant as provided in **Section 71 of the Succession Act [See, Section 55[1] of the Succession Act]**.

24. **Section 71[1] of the Succession Act** provides that: -
“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.”

The proviso to **Section 71** above states 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.

25. The identity of the estate property vis-à-vis ownership thereof by the deceased and the identity of all those person beneficially entitled to a share of the property are crucial factors in the distribution of the estate.

With regard to the identities of the beneficiaries no dispute arises. The applicants herein, the protestor and the so-called interested parties are the actual and true beneficiaries of the deceased's estate as confirmed by the chiefs letter dated 2nd September 2013 and the list of beneficiaries contained in the affidavit in support of the petition for the grant [**form P&A 5**].

26. The identity of the entire estate property availed for distribution as listed in the petition **Form P&A 5** is also not disputed. The search certificates from the lands office filed herein with the petition do confirm and prove that the listed estate property is all the property of the deceased and may be segmented into the parts for ease of reference i.e. property situated within Nandi County and property situated within Uasin-Gishu County. All these were duly registered in the name of the deceased as the sole proprietor and none had any encumbrance to it.

27. Thus, this property within Nandi County comprises of **Land Parcels No. Nandi/Kamobo No. 3041, 3042, 3043, 3044, 3045, 3046, 3047 and 3048**, while the property

within Uasin-Gishu County comprises of **Land Parcels No. Pioneer/Ngeria Block 1 [EATEC]/2650, 2651, 2661** and **Land Parcels No. Ngeria/Chepyakwai Block 2[Kaplelach]/210, 227** and **228**. This is the entire estate property available for distribution to all the named beneficiaries. Ideally, such role is reserved to the administrators of the estate after due consultations and consensus with each and every beneficiary and as mandated under **Section 83 of the Succession Act** for purposes of completing the administration of the estate.

28. Section 83 [9] of the Succession Act states that: -

“Within six months from the date of confirmation of the grant or such longer period as the court may allow, to complete the administration of the estate in respect of all matter other than continuing trusts and to produce to the court a full and accurate account of the completed administration.”

An administrator has a duty Under **Section 83 [i] of the Succession Act** to: -

“Complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court either of its own motion or on the application of any

interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

29. It is clear that the administrators herein have not properly discharged their duties in the manner provided by the law and this explains why they have differed and taken opposite directions or positions in their attempt to distribute the estate property. The proposal made by the Applicants is opposed by the protestor who came up with an alternative proposal. Both parties have in their respective submissions, supporting and protest affidavits urged this court to agree with either of them and confirm the grant accordingly.

30. However, the proposals by both parties are subject to the court’s acceptance of either proposal, but carry little weight in the application of statutory principles. **[See, Elizabeth Chepkoech Salat Vs. Josephine Chesang Salat [2015] KECA 650 [KLR].**

Part V of the Succession Act sets out the statutory principles applicable in the distribution of the free property of an intestate deceased.

31. The schemes of distribution of the estate property as formulated by either party can only be handpicked against the other and be accepted by the court if it fits well with the

statutory principles guiding the distribution of the estate in an intestate succession and is reflective of a distribution which is lawful, fair and equitable in the circumstances of this case.

It is rather curious that none of the other Beneficiaries/ Interested Parties filed affidavits and/or consents in support of either of the proposals. They seem to have left the distribution in the hands of the four administrators and taken a neutral position in the matter.

32. The consent alluded to in the Applicants supporting affidavit, dated 19th August 2025 and marked Annexure **“RJM 2B”** does not relate to the present grant, but rather to a previous grant which was revoked. In itself, the supporting affidavit is deponed by the first and fourth Administrators only. The protest affidavit dated 16th May 2025 is deponed by the Second Administrator only. There is no affidavit deponed by the Third Administrator. It would therefore appear and it is indeed so, that the contest on the distribution of the estate is essentially between three administrators i.e. the First, Second and Fourth Administrators with the Third Administrator assuming a lukewarm presence.

33. In any event, the consent alluded to herein was not executed by each and every beneficiaries and would not

therefore have the force of law as a valid consensus of the signatories on the distribution of the estate property.

This matter being an intestate succession the rules governing distribution of an intestate deceased as found in Part V of the Succession Act are clearly designed to protect the interests of all the rightful beneficiaries to ensure fair, equitable and lawful distribution of the estate property. In that regard, the rights of spouses and children are given utmost priority.

34. Section 35 [1] of the Succession Act provides for the distribution of estate property where the intestate deceased has left one surviving spouse and children as in the present case in the following terms: -

“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.”

35. Under **Section 35 [2] of the Act:** -

“A surviving spouse shall during the continuation of the life interest provided by sub-section [1] have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.”

The present application in which the First Administrator, Widow of the deceased, is the lead applicant may as well be treated as an exercise of her power of appointment under the aforementioned **Sub-Section [2] of Section 35 of the Succession Act.**

36. In the same vein, the protest affidavit by the Second Administrator, eldest son of the deceased, may be treated as an objection to the manner in which the First Administrator intends to exercise her power of appointment [**Section 35 [3]** and **[4]** of the **Act.**

A widow's life interest is therefore not a matter of choice but a matter of law meant to safeguard both the children and the surviving spouse of the deceased, but the ultimate destination of the estate property should be to the children.

37. In Re the Estate of Jolly Jimmy Githieya [Deceased] [2013 eKLR], it was held as follows: -

“Life interest creates a trust in favour of the children. That is why during life interest the surviving spouse cannot deal with the property as if it belongs to them. However, the law does allow the surviving spouse to tinker with the life interest. Under Section 35[2] of the law of Succession Act, they may pass all or any part of the net estate by way of gift among any surviving child or children. In such case the gift would take effect immediately. This is called a power of appointment. It is a power exercisable by the surviving spouse at their discretion. The exercise of the power of appointment is not a right available to the children.”

38. The life interest denotes that the surviving spouse has the right to use and benefit from that estate of the intestate deceased for the course of her life time, but ownership of the property does not pass to her/him and is instead held in trust for the children.

The facts of this case leading to the present application and protest clearly indicate that it was not the intention of the First Administrator to hold in trust for the beneficiary children of the deceased the entire estate property, but to exercise

her power of appointment to allocate the property to all her beneficiary children by way of gift.

39. Be that as it may, the entire estate property which may easily be described as family property ought to be distributed amongst the four administrators and all the other beneficiaries according to the principles of fairness and equality.

The Applicants contended that their proposed mode or scheme of distribution is a reflection of the principles aforementioned. The protestor contended as much with regard to his mode/scheme of distribution of the estate.

40. It is worthy of note that a property not in existence or which did not belong to the deceased as at the time of his death cannot legally be regarded as being part of the estate of the deceased, hence would be unavailable for distribution to the beneficiaries. It may also be noted that a widow's life interest in the estate property may in some circumstances not be strictly applied if it would be in the interests of justice to all the affected parties.

41. Indeed, it was held by the Court of Appeal in **M'murithi Vs. Murithi [2015] KECA 347 [KLR]**, that: -

“In the circumstances of this case having found that the principle in Section 38 was the

appropriate applicable principle ordering a life interest would have occasioned injustice to all the dependants as opting for such an option would have only bestowed upon the widow Naomi a hovering interest over the individual interests of all the other beneficiaries thereby making it impossible for all the beneficiaries to enjoy freely the resulting benefits from the deceased's estate. We find it was prudent for the learned trial judge to accord a direct unencumbered benefit to the widow Naomi as opposed to a life interest.”

42. Under **Section 38 of the Succession Act**, where an intestate deceased is survived by children but no spouse, the net intestate estate shall be equally divided among the surviving children. Similarly, under **Section 35[5] of the Act**, the whole residue of the net intestate estate is to be divided equally among the surviving children if the surviving spouse dies or is re-married, in the case of a widow. The law of succession Act therefore solidifies the element of equality as a vital principle in the distribution of estate property alongside the principle of fairness.

43. Thus, equality is about ensuring that all the beneficiaries have the same rights and opportunities. This

means that every beneficiary must be given similar opportunities or resources regardless of their personal circumstances. Fairness on the other hand is rather subjective and may vary from person to person, but it is about treating people rightly and equally taking into accounts individual needs and circumstances. Different people may thus be treated differently, but in a way that would be appropriate to their specific situation.

44. The principle of equal distribution of the net estate of an intestate deceased to the surviving children irrespective of gender or whether they are married or not or comfortable in their marriage is enshrined in **Section 38** of the **Succession Act. [See, Stephen Gitonga Mmurithi Vs. Faith Murithi [2015] eKLR] [Supra].**

45. Both principles of fairness and equality are what justice is all about and this means that in the circumstances of this case the beneficiaries must be held accountable to the same laws and standards regardless of their personal circumstances. This court was therefore called upon to consider whether the schemes of distribution of the estate property presented herein by the Applicants and the protestor respectively are lawful, just, fair and equitable for purposes of confirming the present grant of letter of administration and distributing the estate property among the beneficiaries.

46. If both schemes pass the test of fairness and equality, then the resultant effect would be a hybrid distribution of the deceased's estate, but if one passes the test at the expense of the other, then this court would have reason to accept it and confirm the grant in accordance therewith.

47. In that regard, it is apparent that the most contentious of the entire estate are the parcels of land situated in Nandi County rather than those in Uasin-Gishu County. These are the parcels described as **Nandi/Kamobo/3041, 3042, 3042, 3044, 3045, 3046, 3047 and 3048**, whose ownership was traced to the deceased by dint of the documents from the lands office. Indeed, the ownership of the parcels in Uasin-Gishu was traced to the deceased through the same documents. These are parcels described as **Ngeria/Chepyakwai/Block 2[Kaplelach]/210,227 and 228 and Pioneer/Ngeria/Block 1[EATEC]/2650, 2651 and 2661.**

48. As regards, the proposal made by the applicants it is clearly evident that it was founded on an alleged "*Will*" made by the deceased and expressed in a handwritten document whose photocopy is annexed to the Applicant's supporting affidavit and marked exhibit "**RJM - 1A.**" The Applicant's averments and submissions on the document was an invitation to this court to treat the

document as a valid will of the deceased if not his final wishes on how his estate property should be distributed to his dependant's when his time in this world and "*all its evils*" arrived.

49. The Protestor disowned the said document and contended that it never existed and/or was never made by the deceased as alleged.

The obligation to prove the existence and validity of the document as being the will and final testament of the deceased or his final wishes on the distribution of his property lay with the applicants.

50. Part II of the Law of Succession Act provides for Wills, such that every person who is of sound mind and not a minor may dispose of all or any of his free property by Will, and may thereby make any disposition by reference to any secular or religious law as he chooses.

Under **Section 8 of the Act**, a Will may be made either orally or in writing and shall be valid only if it passes the tests prescribed in **Section 9 and Section 11 of the Act**.

51. The Court of Appeal in the case **of Beth Wambui & Another Vs. Gathoni Gikonyo & 3 Others [1988] eKLR**, considered a testamentary document by the deceased and found that it did not qualify as a written Will, but noted that although the document was not witnessed as

required it expressed the deceased's wishes and could be regarded as an oral Will. That, there is nothing to prevent a person making an oral will disposing of his property.

52. The court referred to **Section 8 and 9 of the Succession Act** and stated as follows: -

“In Rufus Ngethe Munyua [deceased] Public Turstee Vs. Wambui [1977] KLR 137 where the deceased gave instruction of the disposal of his properties to his wives and children and that those instructions were written on a piece of paper by the person recording it, the deceased having died few days later, Harris J. held the writing disposing the property to be an oral will. In the present appeal, the deceased gave instructions which were written and signed by him in presence of the two witnesses. He died few days later. In this case on the authority of Re Rufus Ngethe Munyua and Section 8 and 9 of the Law of Succession Act I hold the document dated 12th May 1978 [Document B] capable of being construed as an oral will.”

53. In the present case, the impugned **document [annexture marked “RJM -1A”]** is a photocopy containing no date, no signature of the author, no signature of a witness or two. Its original copy was not availed and its authenticity

was never established and proved by any form of evidence from the Applicants. In the circumstances, the document does not qualify as a Will both under **Section 9 and Section 11 of the Section Act.**

54. In the cases referred herein above, the questionable documents were proved to be authentic and having been made by the deceased through or in the presence of witnesses and even if they could not qualify as valid written will, they were nonetheless treatable as oral wills. The Applicants herein failed to lead proper and cogent evidence to show that the impugned document was indeed made by the deceased and hence, an expression of his wishes on how his property was to be distributed to his dependants.

55. It would follow therefore that the Applicants ought not have relied or made the mistake of relying on the impugned documents or purported will of the deceased in formulating their scheme of distribution of the deceased's free property. In any event, as already slated herein above these proceedings are grounded on an intestate succession and not a testate succession. That is why the grant sought to be confirmed dated 13th February 2025 is a grant for letters of administration intestate. The introduction of the impugned document by the Applicant's in the course of these proceedings was clearly a misconception if not an afterthought thereby touching on the credibility of not only

this application for confirmation of grant, but also the Applicant's purposed mode of distribution of the deceased estate property.

56. The upshot of the foregoing findings would be that the Applicant's mode of distribution cannot be relied upon for want of credibility and for failure to accord to the principles of justice, fairness, equality and/or equity which are clearly demonstrated in the protestor's mode of distribution of the estate, more so considering the more or less undisputed contentions by the protestor in his submissions to the effect that his proposal is fair and takes care of the location of the development of each beneficiary and present occupation, plus previous occupation during the deceased's lifetime and that the proposal respects the portions of land and properties where each beneficiary has been living and/or has substantial developments thereon. It is for all the reasons foregoing that this court accepts and approves for necessary orders the protestor's mode of distribution of the deceased free property in its entirety and as reflected in Paragraph 15 of the affidavit of protest.

57. However, it is notable that both in the Applicant's mode of distribution and the Protestor's mode of distribution some assets which were not included in the petition for grant of letters of administration dated 16th September 2013 and

filed herein on 18th September 2013, were included and availed for distribution in this application.

Such assets include Land Parcels described as **Ex-Eatec B520, 20, 558, 559** and **B-41** and were introduced into this cause after the issuance of the original amended grant dated 11th June 2019 in favour of the first Applicant and the Petitioner herein as Co-Administrators.

58. The introduction came when the First Administrator **[Regina]** filed an affidavit on the mode of distribution dated 5th June 2023 in answer to the Second Administrator's **[Philip]** summon for confirmation of grant dated 28th August 2020. In effect, the First Administrator's counter affidavit on the mode of distribution was a protest to the mode of distribution proffered by the Second Administrator in his summons for confirmation of grant.

59. The reasons behind the inclusion of the new assets was not properly and/or substantially explained, but this would not be regarded as a fatal omission because the possibility that the ownership of the said assets was traced to the deceased long after the issuance of the mother grant dated 19th December 2013 or even the subsequent grants could not be overruled.

In any event, substantial justice cannot be surrendered at the expense of procedural technicalities **[See, Article 159 [2] [a] of the Constitution]**.

60. Save for the parcels described as **Ex-Eatec B-20, 559 and L-41** which are not accepted by both the Applicants and the Protestor the inclusion of **Parcels No. Ex-Eatec 520 and 558** in the Protestor's mode of distribution is acceptable as it would ensure that all the property of the deceased hitherto known and formerly unknown are subjected to this distribution process in keeping with the principles of fairness, equality and equity.

61. In sum, the Applicant's application for confirmation of grant dated 12th May 2025 as amended on 19th August 2025 is hereby dismissed with orders that the grant of letters of administration intestate dated 13th February 2025, be and is hereby confirmed in terms of the Protestor's mode of distribution set out in paragraph 15 of the affidavit of protest dated 16th May 2025.

A certificate of confirmation of grant do accordingly issue forthwith.

Both parties shall bear their own costs of the application

Ordered accordingly.

Delivered and Dated this 17th day of December 2025

**HON. J. R. KARANJAH,
JUDGE**