



REPUBLIC OF KENYA



**In re Estate of Webo Wasike Mayungu (Deceased) (Succession Cause
19 of 2020) [2026] KEHC 734 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 19 OF 2020**

S MBUNGI, J

JANUARY 29, 2026

IN THE MATTER OF THE ESTATE OF WEBO WASIKE MAYUNGU(DECEASED)

BETWEEN

DONALD MUKONES WEBO PETITIONER

AND

BEATRICE NAFULA WEBO 1ST OBJECTOR

ANDREW WANJALA WASIKE 2ND OBJECTOR

JUDGMENT

1. The matter refers to the estate of Webo Wasike Mayungu, who died intestate on 14th November, 2016. At the time of his demise, the deceased was survived by several sons and liabilities.
2. His eldest son, Donald Mukones Webo, applied for a grant of letters of administration Intestate of the estate. On 15th June 2021, the court issued to the petitioner the letters of administration.
3. The objectors herein filed a summons for revocation of the grant that was issued to the petitioner because the grant was obtained through fraudulent means. They contend that the petitioner failed to include the family of the deceased's second family in the succession process despite the deceased being a polygamous man.
4. On 26th May,2021, this court, through Hon. William M. Musyoka, issued a revised fresh Grant of letters of Administration Intestate on 26th May, 2021, where the court included the petitioners and the two objectors, Beatrice Nafula Webo, Andrew Wanjala Wasike and Donald Mukones Webo as administrators to the deceased estate.
5. The petitioner went ahead and filled a summons for confirmation of the grant on 30th September 2022, together with a proposed mode of distribution, which he avers included all the deceased children from both houses.



6. The objector, Andrew Wanjala Wasike, filed an affidavit of protest as one of the administrators, where he asserts that the petitioners had failed to involve the other administrators in the succession process despite the matter being referred to mediation, which failed due to the petitioners' non-corporation.
7. According to the objector, the proposed mode of distribution does not include all the deceased's assets, and the beneficiaries claim that the mode of distribution was not fair, as their father had already gifted himself and his brothers 10 acres of land. In comparison, the petitioner made reference to only 4 acres.
8. In a ruling dated 29th April 2025, Hon. S. Chirchir stated that there were gaps and irregularities in the evidence presented and that the parties had failed to properly indicate the deceased children from both houses as well as the properties that the deceased owned, hence could not confirm the grant. The Hon. Judge directed that the parties avail ownership of the deceased's properties and a list of the deceased's children according to their houses, indicating those alive and the deceased, as well as the children left behind.
9. On June 28th June 2025, the petitioner, Donald Muknoes Webo, filed a supplementary affidavit stating that the deceased Rhoda Masitsa(deceased), Tunai Naliaka (deceased) and 18 children.
10. He asserts that the 1st family Rhoda Masitsa children were;
 - a. Donald Mukones Webo- Adult son
 - b. David Wasike Webo- Adult son
 - c. Wasikhuyu Wekesa- Adult son
 - d. Phillet Masinde Webo- Adult son
 - e. Patrick Masinde Webo- Adult son
 - f. John Simiyu Webo- Adult son
 - g. Reuben Wanjala Webo-deceased- survived by son Oscar Wanjala Webo
 - h. Beatrice Nasambu Webo- deceased – survived by daughter Jane Nangeso
 - i. Grace Nasimiyu Webo- adult daughter
 - j. Daniel Matasi Webo- deceased- survived by daughter Teresa Matasi
 - k. Joel Juma Webo- adult son
 - l. Naomi Neununa Webo- deceased- survived by daughter Diana Neununa
11. That the second son consists of Tunai Naliaka, widow (deceased)
 - a. Joash Khisa Webo, deceased- survived by son Benson Mayungu
 - b. Beatrice Nafula Webo- Adult Daughter
 - c. Jane Mulongo Webo- adult daughter
 - d. Keturuta Nekesa Webo- deceased survived by daughter Rachel Nekesa
 - e. Reba Taabu Webo- Adult Daughter



12. He stated that despite the court order that he avail the order given on 11/10/2012 in Kakamega HCC No. 74 of 1989, he was not party to the suit since his uncle had sued their father and that the 1st objector would be best suited to avail a copy of the order.
13. He went further to list the deceased estate as Kakamega/ Lugari 3627, 3628,3629,3630,3631,3632,3633,3634,3635,36338 and 3627.

Analysis and determination

14. It is also not in dispute that he was a polygamous man, having married two wives, namely Rhoda Masitsa (deceased) and Tunai Naliaka (deceased), and that he was survived by children from both houses, some of whom are deceased but left surviving issues.
15. The applicable law in the distribution of the estate of a polygamous intestate is Section 40 of the *Law of Succession Act*, which provides that the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, with the surviving wife being counted as an additional unit. Although both widows are deceased, the principle of equality among houses remains applicable, subject to the number of children in each house and the circumstances of each case.
16. The Court of Appeal in *Mary Rono v Jane Rono & another* [2005] KECA 326 (KLR) emphasized that distribution in polygamous intestate estates must adhere strictly to Section 40, rejecting any gender-based discrimination and mandating proportional division based on units per house. The appellate bench overturned a lower court's unequal allocation, holding that "the estate must be divided equally among all children without regard to sex, and the widows as additional units."
17. The court record shows that the initial grant issued solely to the petitioner was challenged for non-disclosure and exclusion of beneficiaries from the 2nd house. This prompted the court, through Hon. William Musyoka J, to issue a fresh and revised grant on 26th May 2021, appointing Donald Mukones Webo, Beatrice Nafula Webo, and Andrew Wanjala Wasike as joint administrators.
18. Once administrators are appointed jointly, the law imposes upon them a fiduciary duty to act collectively and in consultation, particularly on matters as fundamental as confirmation of the grant and distribution of the estate. This position was restated in *re Estate of G K K (Deceased)* [2017] KEHC 5664 (KLR), where justice W. Musyoka held that unilateral action by one administrator, without the involvement of others, amounts to maladministration.
19. The petitioner, Donald Mukones Webo, proceeded to file a summons for confirmation of grant on 30th September 2022, accompanied by a proposed mode of distribution and consent on the mode of distribution, which was not signed by all the beneficiaries. The objector, Andrew Wanjala Wasike, protested, contending that the process was undertaken without consultation, that not all assets were disclosed, and that the proposed distribution was unfair, particularly in light of alleged inter vivos gifts of land to some beneficiaries.
20. In the ruling delivered on 29th April 2025, Hon. S. Chirchir J correctly observed that there existed material gaps and irregularities, including a lack of clarity on:
 - a. the complete list of beneficiaries from both houses;
 - b. the status of deceased children and their surviving issue; and
 - c. the full inventory of the deceased's assets.
21. The court consequently declined to confirm the grant and issued clear directions requiring compliance.



22. The petitioner has since filed a supplementary affidavit listing the beneficiaries and the assets of the estate. While this is a step in the right direction, it does not cure the core concern raised by the protest and underscored by the court, namely, that the proposed mode of distribution was neither joint nor consultative, and that it lacked a reasoned basis explaining how and why specific allocations were made.
23. The High Court in the matter of the Estate of M'Marete M'Nthiga (Deceased) [2004] eKLR, held that a mode of distribution must not only list beneficiaries and assets, but must also demonstrate that the distribution is lawful, fair, and acceptable to the majority of beneficiaries, or otherwise be justified by cogent reasons.
24. Further, allegations of prior gifts inter vivos must be addressed within the framework of Section 42 of the *Law of Succession Act*, which requires such gifts to be taken into account when distributing the net estate. However, such claims must be clearly pleaded, supported by evidence, and factored into a transparent and reasoned distribution proposal, rather than being raised in a piecemeal or adversarial manner.
25. This court is persuaded that the dispute herein is not merely about listing beneficiaries or assets, but about the failure of the administrators to discharge their joint statutory duty by presenting the court with a unified, comprehensive, and equitable proposal for distribution.
26. In light of the foregoing analysis, and guided by Sections 40, 42, 71, and 83 of the *Law of Succession Act*, as well as the cited authorities from Kenya Law Reports, this court makes the following findings and orders:
 - a) The deceased died a polygamous intestate, and his estate must be distributed in strict compliance with Section 40 of the *Law of Succession Act*, taking into account the number of children in each house and the surviving issue of deceased children.
 - b) The administrators, Donald Mukones Webo, Beatrice Nafula Webo, and Andrew Wanjala Wasike, are joint administrators and are under a legal obligation to act collectively, consultatively, and in good faith in the administration of the estate.
 - c) The proposed mode of distribution filed unilaterally by the petitioner does not meet the legal threshold for confirmation of grant, as it is not a joint proposal, does not adequately address all beneficiaries and assets, and lacks a clear and reasoned justification.
 - d) The administrators are hereby directed to file, within sixty (60) days, a joint mode of distribution which shall: include all the beneficiaries from both houses, clearly indicating those alive and the surviving issue of those deceased; include all the assets of the estate, supported by documentary proof of ownership; demonstrate how Section 40 has been applied between the two houses; expressly address any alleged gifts inter vivos in accordance with Section 42 of the Act; and
 - e) Provide a well-reasoned explanation for the proposed allocation to each beneficiary.
 - f) In default of compliance, the court shall not hesitate to invoke its powers under Section 76 of the *Law of Succession Act* to issue such further orders as may be necessary to safeguard the estate and the interests of all beneficiaries.
27. The summons for confirmation of the grant is accordingly held in abeyance pending compliance with the above directions.
28. It is so ordered.



29. Right of Appeal 30 days explained.

30. Mention 16.7.2026.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF JANUARY,2026.

S.N MBUNGI

JUDGE.

In the presence of:-

CA: Ang'onga/ Nekesa

Ms. Oduor for the 1st petitioner/Administrator present online.

Tanui holding brief for Ngugi for the Objector present online.

