

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**SUCCESSION CAUSE NO 21 OF 2023**  
**IN THE MATTER OF THE ESTATE OF WILLIAM MELCHIZEDECK**  
**OKETCH (DECEASED)**

**EDWARD OKELO SIYANA.....1<sup>ST</sup>**  
**PETITIONER**

**TERESIA WERE SOGWA.....2<sup>ND</sup>**  
**PETITIONER**

**VERSUS**

**EDWARD OKELO SIYANA.....1<sup>ST</sup>**  
**OBJECTOR**

**MAUREEN A. ANG'ONDI.....2<sup>ND</sup> OBJECTOR**

**RULING**

**INTRODUCTION**

1. The 2<sup>nd</sup> Petitioner herein filed Summons for Confirmation of Grant dated and filed on 5<sup>th</sup> April 2019 and Further Affidavits that were sworn on 12<sup>th</sup> June 2019, 13<sup>th</sup> June 2019 and 18<sup>th</sup> September 2019 seeking to distribute the estate of the deceased herein. She annexed an Amended Schedule in her Affidavit sworn on 24<sup>th</sup> February 2023.
2. The 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Objector herein filed Affidavits of Protest in opposition to the 2<sup>nd</sup> Petitioner's proposed mode of distribution. The 1<sup>st</sup> Petitioner's Affidavit of Protest was sworn on 17<sup>th</sup> February 2023 and filed on 20<sup>th</sup> February 2023 while that of the Objector was sworn and filed on 17<sup>th</sup> June 2019.
3. In his Affidavit of Protest, the 1<sup>st</sup> Petitioner and 1<sup>st</sup> Objector averred that the deceased had six (6) children, namely, Charles Mukabi (deceased), Saul Henry Okello (alive), Gilbert Ang'ondi (deceased),

Teresa Were Songwa (alive), Peter Musali (deceased) and David Olukoba (deceased). He proposed that the deceased's estate be distributed to all his children equally.

4. The 2<sup>nd</sup> Objector termed that the 2<sup>nd</sup> Petitioner's proposed mode of distribution was skewed, discriminatory and had disinherited a large chunk of the deceased's beneficiaries. She pointed out that the said mode of distribution had only favoured two (2) beneficiaries being the 2<sup>nd</sup> Petitioner and one Saul Henry Okello Oketch, son to the deceased, leaving out other beneficiaries including herself.
5. She contended that the deceased was blessed with six (6) children namely Charles Nimrod Mukabi who was deceased but survived by his two (2) children being Norah Priscillah Khamuye and Kevin William Oketch, Saul Henry Okello who was alive, Gilbert Geoffrey Ang'ondi who was deceased and was her late husband and was also survived by his estranged wife Winnie Wanjiru Kiarie and his children were Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi, Teresa Julia Were who was alive, Peter Dansil Musali who was deceased and survived by his son Charles Mukabi and David Enos Olukoba who was deceased and survived by a daughter called Norah Linda Nakhabi. She was apprehensive that many beneficiaries including orphans the deceased had left behind had been disinherited.
6. She was categorical that she was a daughter-in-law to the deceased having been married to Gilbert Geoffrey Ang'ondi, the deceased's son, long after he had separated with his first wife Winnie Wanjiru

Kiarie. She contended that her marriage was celebrated under the Luhya (Abanyore) customary law and that the deceased participated in her dowry negotiations and payment and took her in as her daughter.

7. She further averred that to enable them live well, the deceased gave them L.R. No West Bunyore Itumbu/893 where they set up their matrimonial home and that the premises also had rental houses where she collected rent to take care of the young family. She added that during their stay on the said parcel of land, no one raised any objection as they were aware that the deceased had given it to them.
8. She further averred that upon the demise and interment of her husband, his estranged first wife, Winnie Kiarie returned to the deceased's homestead and out of jealousy, started colluding with her in-laws, the 2<sup>nd</sup> Petitioner and Saul Henry Okello Oketch to have her evicted. She added that it took the intervention of this court on 16<sup>th</sup> February 2010 to bar her eviction and that of her daughter from the deceased's estate.
9. She asserted that when she recently moved the court to revoke the Grant following a deliberate four (4) year delay by the Administrators to confirm the same, they victimised her by sending her and her tenants an eviction notice to leave the premises contrary to the court orders of 16<sup>th</sup> February 2010.
10. She was categorical that she had no problem with the Petitioners and/or her co-wife but that her only concern was the

unilateral decision by the Petitioners to disinherit her, her daughter and other beneficiaries of the deceased. She argued that they never called a family meeting to discuss the distribution. She termed the Petitioners' distribution as morally and legally wrong.

11. She prayed that she be awarded L.R. No West Bunyore Itumbu/893 where her matrimonial home where the deceased left her to reside and raise Rose Nakhabi, a child they got together. She added that all the deceased's grand children were eighteen (18) years old having finished school and could fend for themselves save for her daughter who was still of tender age and in Class Six (6).
12. She urged the court to also award the rest of the grandchildren who had been disinherited equal shares on the remainder of the estate. She pointed out that L.R. No West Bunyore/Essaba/893 did not belong to the deceased as it did not exist. She added that as per her mode of distribution, each household of the deceased's children would get two (2) parcels of land apart from the 2<sup>nd</sup> Petitioner and Saul Henry Okello Oketch.
13. She urged the court to replace the Petitioners' proposals with her counter proposal to ensure justice and fairness to all without any beneficiary being unfairly deprived.
14. The matter proceeded by *viva voce* evidence. Although the 1<sup>st</sup> Petitioner indicated that he had filed Written Submissions, the same were not in the e-filing portal as at the time of writing decision. The 2<sup>nd</sup> Petitioner's Written Submissions were dated 27<sup>th</sup> June 2025 and filed on 22<sup>nd</sup> July 2025 while those of the 2<sup>nd</sup> Objector were dated

30<sup>th</sup> September 2025 and filed on 13<sup>th</sup> October 2025. The Ruling herein is, therefore, based on the said Written Submissions by the 2<sup>nd</sup> Petitioner and the 2<sup>nd</sup> Objector which they both relied upon in their entirety.

### **LEGAL ANALYSIS**

15. After analysing the evidence on record and the parties' Written Submissions, this court was of the view that the questions that had been raised before it for determination were as follows:-

**a. Whether the 2<sup>nd</sup> Objector was entitled to share in distribution of the estate of the deceased herein as a daughter-in-law;**

**b. Which proposed mode of distribution was equitable.**

16. The 2<sup>nd</sup> Petitioner submitted that as per the evidence on record, the distribution of Luanda Trading Centre Plot 8053/9 L.R No 1836 was unchallenged. She asserted that should the court depart from the Amended Distribution of Kakamega Town Block B111/116, she would abide by the valuation of the property with a view to mirroring the value of the property in her hands or to get her compensated for salvaging the property from the auctioneer's hammer.

17. She asserted that the 1<sup>st</sup> Petitioner's protest to the mode of distribution was dated 20<sup>th</sup> February 2023 before the actual Amended Distribution Schedule was filed on 25<sup>th</sup> February 2023. She added that the evidence presented by the 1<sup>st</sup> Petitioner opposing

the distribution of Kakamega Town Block B111/116 to her was unclear beyond the claim that it was unfair.

18. She pointed out that the 1<sup>st</sup> Petitioner did not have a problem with the rest of the Amended Distribution List. She added that the 1<sup>st</sup> Petitioner had introduced a gender bias that daughters do not inherit in the distribution of the estate which was not departed from at the time of the hearing.

19. She was categorical that the 2<sup>nd</sup> Objector did not prove her alleged marriage with his late brother Gilbert Joseph Ang'ondi as she did not produce a marriage certificate or procedures leading to a customary marriage. She asserted that the Objector testified that some elders attended her traditional wedding but did not call any of them to testify to corroborate her evidence. She added that the Objector further testified that she was aware that her daughter Regina Rose Nakhabi had been allocated property on the Amended Distribution List and was not opposed to it.

20. She invoked Section 35 and 36 of the Law of Succession Act and placed reliance on several cases among them the case of **Re Estate of Francis Andachila Luta (Deceased) [2022]eKLR** where it was held that daughters-in-law were not entitled to a portion of their deceased parents-in-law estate in cases of intestacy whether under the Law of Succession Act or customary law.

21. She further asserted that a suggestion by the court to have the estate valued to ensure equitable distribution had not borne fruit. She contended that she reached out to the 2<sup>nd</sup> Objector's

Advocates on 30<sup>th</sup> May 2025 but no traction was met since the issue of the valuers' costs was not agreed upon.

22. She pointed out that on 25<sup>th</sup> June 2025, Saul Henry Okello, made a unilateral decision to engage a valuer, paid a deposit and valuation fee but that she had not engaged the said valuer. She argued that valuation was a science and any valuer could do it but it was prudent to engage all parties and build consensus as to costs.

23. On her part, the 2<sup>nd</sup> Objector asserted that although the 2<sup>nd</sup> Petitioner denied that she was a wife to Gilbert Joseph Ang'ondi, the 1<sup>st</sup> Petitioner admitted that she knew her as his wife and that Winnie Wanjiru Kiarie (hereinafter referred to as "PW 3") admitted that she was her co-wife. She was emphatic that together with her husband, they had put up their matrimonial home on L.R. No West Bunyore/Itumbu/893 where her daughter was born and brought up.

24. She explained that she had joined the proceedings herein on behalf of her daughter who was a grand daughter of the deceased and not for her own sake as had been mistaken by the 1<sup>st</sup> Petitioner. She was categorical that being a grandchild of the deceased's estate, her daughter was entitled under the principle of representation to have been included in the Petition in place of her deceased father.

25. She invoked Section 51 of the Law of Succession Act and submitted that she and her daughter had not been acknowledged in the succession proceedings herein. She argued that she joined these proceedings as a next of friend to her daughter and obtained

preservation orders restraining their eviction from land parcel West Bunyore/Itumbu/893 where her husband left them. She urged the court to award her daughter L.R. No West Bunyore/Itumbu/893 as it was not claimed by anyone and was their known home.

26. The 1<sup>st</sup> Petitioner testified that Kakamega Town Block B111/116 was occupied by tenants. With regard to Busia Municipal Council No 7983/57, he said that he had listed people who were deceased with the desire to share the property. He added that it was the 2<sup>nd</sup> Objector who was collecting rent from the tenants on that property.

27. It was his further testimony that Gilbert Ang'ondi was deceased and that he was not aware of any property that had been allocated to him prior to the deceased's death. He stated that he knew the wife of Gilbert Ang'ondi was called Maureen, the 2<sup>nd</sup> Objector herein and that she occupied a premise that had been subdivided and rented. He said that he did not know one Douglas Ananda but that her child with Gilbert Ang'ondi was called Rose.

28. On cross-examination, he informed the court that the deceased had six (6) children and four (4) of them were deceased but left survivors. He reiterated that Gilbert Ang'ondi was a son to the deceased and had two (2) wives, PW 3 and the 2<sup>nd</sup> Objector herein, and they were to share his property equally. He stated that he did not see the name of Gilbert Ang'ondi on the Summons of Confirmation of Grant dated and filed on 12<sup>th</sup> June 2019 and the Supplementary Affidavit in Support of Summons for Confirmation of

Grant filed on 13<sup>th</sup> June 2019. He added that only two (2) children of the deceased had been allocated property leaving out the other four (4) children.

29. He further testified that the 2<sup>nd</sup> Objector was currently residing in one of the buildings belonging to the deceased and that the same was not a matrimonial home for her and her late husband but that they used to live there before her said husband died. He stated that he would not be comfortable if the 2<sup>nd</sup> Objector continued staying on the said premises because the properties were to be shared by the six (6) children equally.

30. He pointed out that the deceased left behind many properties and that West Bunyore/ Itumbu/893 where she stayed should be shared equally. He added that they would not split the said plot as it was a commercial plot that generated income which would be shared equally. On re-examination, he confirmed that Kakamega Town Block B111/116 was generating rent being collected by the 2<sup>nd</sup> Petitioner.

31. Kevin William Okech (hereinafter referred to as "PW 2") testified that he was a grand child to the deceased, with his father being Charles Mukabi. He referred to the Amended Schedule of the 2<sup>nd</sup> Petitioner filed on 24<sup>th</sup> February 2023 and confirmed that his father's name appeared in the said document more than once. He pointed out that he had lived with the 2<sup>nd</sup> Petitioner in Kakamega and that she catered for his schooling. He added that he was now independent and could financially take care of himself.

32. On cross-examination, he noted that he was challenging the 2<sup>nd</sup> Petitioner's mode of distribution that had left out many other family members, thus, not a fair distribution. He further testified that he knew his Uncle, Gilbert Ang'ondi who passed away had two (2) wives. He stated that the 2<sup>nd</sup> Objector stayed at 8053/46 behind Luanda Trading Centre while PW 3 stayed at his paternal home. He stated that it was not okay if the 2<sup>nd</sup> Objector continued to stay where she was staying but he left it to the court to decide where she would stay.

33. PW 3 testified that she did not know Douglas Anonda. She admitted that the 2<sup>nd</sup> Objector was her co-wife. She stated that she had visited Kakamega Block B111/116 with her mother-in-law who was now deceased. She said that she was aware that the said property had been charged to Standard Chartered Bank and it was about to be sold due to the loan but that the 2<sup>nd</sup> Petitioner's husband repaid the loan. She pointed out that the loan had been borrowed by her late mother-in-law.

34. It was her further testimony that the 2<sup>nd</sup> Objector stayed in the deceased's property in Luanda as her late husband put her there and that she could not say whether the 2<sup>nd</sup> Objector should inherit the said property or not. She confirmed that the 2<sup>nd</sup> Objector had a child with her husband.

35. Charles Mukabi Watakila (hereinafter referred to as "PW 4") testified that he opposed the mode of distribution by his aunties, the 2<sup>nd</sup> Petitioner and the 2<sup>nd</sup> Objector but agreed with that of the 1<sup>st</sup>

Petitioner. He added that he had seen the 2<sup>nd</sup> Petitioner's Amended Schedule.

36. He confirmed that he knew the 2<sup>nd</sup> Objector as the wife to Gilbert Ang'ondi. He was emphatic that none of them ought to be in the property that she was residing because it was a commercial property and that it would be wasted if she was to remain there as a residential. He stated that he did not know if his uncle put her there as he was too young. He pointed out that he did not have a problem if the 2<sup>nd</sup> Objector remained in the estate but was clear that she could not remain where she stayed because the properties had different values and he did not know the parameters that would be used for her to stay there.

37. The 2<sup>nd</sup> Objector testified that she wanted to be given L.R. No West Bunyore/Itumbu/893 which was in the deceased's name. She stated that she had no agreement that showed that the deceased gave her late husband the said property. She admitted collecting rent from Busia Municipal Council No 7983/77. She added that she did not share the money with anyone in the estate.

38. It was her further testimony that her husband had two (2) wives, with PW 3 being his first wife while she was second wife. She said that she had one (1) child with Gilbert and got two (2) other children after his demise. She added that the father of one (1) child was the late Douglas Ananda. When she was shown the Amended Schedule, she noted that her daughter had been mentioned in No

(3), (4) and (9) of the said document. She pointed out that she was called Regina Rose Nakhabi and was currently in Form Four (4).

39. She averred that her customary marriage was conducted in 2007 and her husband died later that same year. She said that her late husband was not buried in L.R. No West Bunyore/Itumbu/893 but she began residing in the said parcel in 2006. She confirmed that PW 2 and PW 4 had been included in the 2<sup>nd</sup> Petitioner's Amended Schedule. She stated that distribution as proposed was not fair as she did not know how Butiko family had been included.

40. She further stated that she did not want her daughter to be given property in Busia Municipal Council No 7983/77 because it was one (1) and had been given to seven (7) beneficiaries. She insisted that she was interested with West Bunyore/Itumbu/893 as her husband left her there and that she had renovated it as it was unfinished. She added that it had ten (10) to eleven (11) rooms and that some tenants pay Kshs 2000/= and others Kshs 2,500/=, therefore, a total of about Kshs 20,000/= monthly.

41. She further informed the court that it was Saul Okello who took a loan on Kakamega Town Block B111/116 and not her mother-in-law and that since Saul was still alive, he should sort out the issue with the 2<sup>nd</sup> Petitioner's husband and not the 2<sup>nd</sup> Petitioner. She pointed out that PW 3 was collecting the rent with her son at Luanda Trading Centre Plot No 8053/4 LR No 3383 but that the 2<sup>nd</sup> Petitioner was holding in trust which was not fair.

42. Enock Butiko (hereinafter referred to as "PW 6") testified that he knew L.R. No West Bunyore/Itumbu/893 was still in the name of the deceased who gave it to Gilbert but stated that he did not have any document to prove that. He said that PW 5 and Gilbert had one child and that he did not know if she got other children after Gilbert's demise.
43. It was his further testimony that the mode of distribution was just and fair. He stated that Gilbert had two (2) wives and while PW 3 stayed in Essaba, the 2<sup>nd</sup> Objector used the rent from the land she resided to pay fees for her daughter.
44. Rosebella Amuko Ondeko (hereinafter referred to as "PW 7") testified that Gilbert was the Objector's and PW 3's husband. She stated that PW 3 who was the first wife lived at the deceased's home while the Objector lived in the property that Gilbert left her. However, she confirmed that the property belonged to the deceased and that Gilbert had no specific land as the deceased had not subdivided the land.
45. On cross-examination, she said that she was a cousin to the 2<sup>nd</sup> Petitioner and Gilbert and that she knew the Objector in 2005. She confirmed that the Objector's child was in Form Four (4). She proposed that each child of the deceased should get their property.
46. She pointed out in her re-examination that since Gilbert had two (2) wives, the property should be divided between them equally. She added that she knew where the 2<sup>nd</sup> Objector lived and that she should stay there as they give PW 3 her place.

47. The 2<sup>nd</sup> Petitioner testified that she had one living sibling, Saul Henry Okello Oketch, and that the other four (4) siblings died and left eight (8) children whom she had been taking care of together with Saul. She said that she had annexed copies of school fees in her affidavit as proof that she helped all the eight (8) children but paid school fees for Kevin Oketch, Norah Khamuye and Norah Linda Oketch.
48. It was her further testimony that Norah Khamuye's bride price was not paid to her to pay school fees for Kevin but that the same was paid to the committee. She stated that she wanted Kakamega Town Block B111/116 given to her as Topey Turvey Co Ltd was the one that took the loan and that his spouse, one Jason Songwa, wrote a letter to manage the Standard Chartered Bank Account for Kshs 109,000/=.
49. She further stated that after her mother's demise, Gilbert started collecting the rent from the premises and that she could not remember from when he started collecting and when he stopped to do so but that the same was after an agreement with his brothers. She stated that she collected for two (2) main houses in the sum of Kshs 65,000/= per month.
50. She pointed out that Kevin and Charles had an agreement where they collected the rent from four (4) units and that she did not know how much they had agreed to charge the said units. She told the court that she used the money to maintain the plots, pay land rates and assist her nieces and nephews. She further stated

that as a daughter of the deceased she was entitled to a whole property like the said Kakamega Town Block B11/116. She added that she did not have any property where she was born.

51. She was categorical that she had developed the said property and would appreciate it if she was awarded the same as the others shared the rest of the properties. She pointed out that the Butiko Family bought land from her late mother and that she had to record it in her schedule for transfer purposes as the land West Bunyore/Essaba 795 was still in the name of the deceased.

52. She confirmed that the 2<sup>nd</sup> Objector cohabited with her brother Gilbert and they had a child and that PW 3 was the wife of Gilbert. She admitted that she had not included the 2<sup>nd</sup> Objector but had included her daughter in her mode of distribution. She argued that it was upon the family members and the court to decide whether the 2<sup>nd</sup> Objector should be included. She pointed out that the 2<sup>nd</sup> Objector lived at the deceased's property in Luanda and that there was an order not to evict her until the end of the succession herein.

53. She explained that the Butiko family was not a family of the deceased but that it was her mother who sold the land to them and not the deceased. She said that there was a process that was on going for her mother to obtain the Grant and that she did not have the said Grant or the agreement with the Butiko family. She was emphatic that she did not sell any property belonging to the deceased.

54. She further informed the court that L.R. No Bunyore/Essaba/1157 where PW 3 stayed, was their homestead. She argued that it would not be fair for PW 3 to be given all that property alone as they were to hold the same in trust for other beneficiaries. She added that L.R. West Bunyore/Itumbu/893 was a commercial property measuring 0.10 Ha and proposed that everyone gets a share of the said property.

55. Although the 1<sup>st</sup> Petitioner was opposed to the 2<sup>nd</sup> Petitioner's first mode of distribution, his evidence was not clear if he was also opposed to the Amended Mode of Distribution that was later filed by the 2<sup>nd</sup> Petitioner. His argument about the distribution of Kakamega Block B111/116 was also not clear. However, he admitted that as a Co-Administrator to the 2<sup>nd</sup> Petitioner, he wished that distribution herein be done.

56. PW 2 also did not seem to agree with the 2<sup>nd</sup> Petitioner's first mode of distribution that had left out many beneficiaries. However, his position on the Amended Mode of Distribution was not ascertainable from his evidence. PW 3 and the 2<sup>nd</sup> Objector seemed to agree with the Amended Mode of Distribution when they realised that their children had been listed, although, the 2<sup>nd</sup> Objector had condemned the 2<sup>nd</sup> Petitioner's first mode of distribution for leaving out other beneficiaries. She also questioned the inclusion of Butiko family on the Amended Schedule List.

57. PW 4 opposed the 2<sup>nd</sup> Petitioner's and 2<sup>nd</sup> Objector's proposed modes of distribution but was in support of the 1<sup>st</sup> Petitioner's mode of distribution.

58. Regarding inheritance by the 2<sup>nd</sup> Objector's son who was a grand-child of the deceased, Section 41 of the Law of Succession Act Cap 160 (Laws of Kenya) provides as follows:-

**“Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”**

59. The question of whether grandchildren could inherit from their grandfather's estate was addressed by the Court of Appeal in the case of **Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others [2014] eKLR** where it was held that the rule of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation was applicable and that the child of a deceased parent entitled such child to take

the share that their parent would have taken had that parent been alive at the time of his or her parent's death.

60. It was therefore evident that Section 41 of the Law of Succession Act provided that where one of the children of the deceased was himself/herself deceased, and such deceased child was survived by a child or children of his/her own, then the share due to him/her ought to devolve to his/her said child, and where they were more than one, the children would take equally.

61. It was apparent that the 2<sup>nd</sup> Objector's claim that she was a wife of a son of the deceased having undergone a customary marriage under the Abanyore traditions had been strenuously refuted by the 2<sup>nd</sup> Petitioner. However, all other witnesses, including his first wife of acknowledged her as a second wife to the deceased's son, Gilbert Ang'ondi.

62. Be that as it may, the fate of the validity of a claim by a daughter-in-law to inherit as a beneficiary in the estate of her father-in-law was now settled. The position was that the wording of Section 29 (b) of the Law of Succession Act did not include "daughters-in-law" of a deceased as being among beneficiaries of his estate. Daughters-in-law were not children of the deceased and, therefore, they did not fall within the category of the phrase "children of the deceased" as envisaged in the said provision as was held in the case of **In Re Estate of Cecilia Wanjiru Kibicho (Deceased)[2016]eKLR**. A daughter-in-law could also not move the court under Section 26 of the Law of Succession Act for

reasonable provision and who the court may declare to be a dependent.

63. A daughter-in-law could only, therefore, make a claim, not in her own right as a direct beneficiary, but as a legal representative of the estate of a son of the deceased, her husband as was held in the case of **In Re Estate of Catherine Nduku Malinda (Deceased)** **[2020] eKLR.**

64. This court fully agreed and associated itself with the above judicial sentiments. The law does not recognise a daughter-in-law to be a direct beneficiary in the estate of her father-in-law. In this case, the 2<sup>nd</sup> Objector's claim appeared to have been about her as a direct heir, and not for her child. It was only in her Written Submissions that she stated that she made her claim on behalf of her daughter. Thus, she could only sustain a claim, as a legal representative, on behalf of her child since it was only she who was permitted in law, to "step into the shoes" of her late father, and claim his share of the inheritance.

65. Additionally, she did not have any Grant of Letters of Administration entitling her to manage the estate of Gilbert Ang'ondi, the late son of the deceased. She could not, therefore, also purport to agitate a claim on behalf of his estate. The bottom line was that she lacked the requisite *locus standi* to sustain a claim on behalf of the estate of the deceased herein in her individual capacity. Her claim therefore fell on the wayside.

66. This court did not find it necessary to determine whether or not she was indeed married to Gilbert Ang'ondi as PW 3 and other witnesses save for the 2<sup>nd</sup> Petitioner had recognised her as his wife. This is because Winnie Kiarie was also a daughter-in-law and could also not claim directly on her own behalf Suffice it to state that the 2<sup>nd</sup> Objector did not lead evidence that she was married under the Abanyore customary law and that her husband had legal capacity, in the first instance, to contract the marriage after he had married PW 3.

67. A perusal of the Amended Mode of Distributed done by the 2<sup>nd</sup> Petitioner indicated that she had included the names of all grand children of the deceased including the 2<sup>nd</sup> Objector's daughter. Both PW 3 and the Objector did not seem to oppose the aforesaid distribution.

68. As for the property Kakamega Block B111/116, PW 3 confirmed that the said property had been used as security for a loan which was offset by the 2<sup>nd</sup> Petitioner's spouse. The 2<sup>nd</sup> Petitioner was categorical that she had maintained the same and out of the proceeds of rent therefrom, had supported the children of her deceased's siblings. She produced documentation as evidence that she educated and supported some of them. It was evident that she did not go out of pocket as she supported her sibling's children from the rent that she collected from the said Kakamega Block B111/116.

69. Going further, this court agreed with the 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Objector that the 2<sup>nd</sup> Petitioner's first mode of distribution was discriminatory as it had only devolved the estate to the two (2) living children of the deceased in exclusion of the children of the deceased children of the deceased.

70. The 2<sup>nd</sup> Objector had proposed that every grandchild of the deceased be allocated a property or properties. While that appeared to be fair, the court looked at the Valuation Reports by M/S Odongo Kabita & Company Valuers that were filed on 30<sup>th</sup> June 2025 and noted that the properties had different valuations. The same were as follows:-

<b>PROPERTY</b>	<b>VALUATION</b>
WEST/ BUNYORE/ESSABA/711	KSHS 500,000/=
WEST/BUNYORE/ESSABA/713	KSHS 2,000,000/=
WEST/BUNYORE/ESSABA/795	KSHS 8,212,000/=
WEST/BUNYORE/ESSABA/799	KSHS 400,000/=
WEST/ BUNYORE/ESSABA/1601	KSHS 500,000/=
WEST/BUNYORE/ESSABA/1602	KSHS 450,000/=
WEST/BUNYORE/ESSABA/1157	NOT PROVIDED
WEST/BUNYORE/ESSABA/1599	NOT PROVIDED
LUANDA TRADING CENTRE PLOT NO 8053/4 LRN NO 1836	KSHS 4,900,000/=
KAKAMEGA TOWN BLOCK B111/116	KSHS 38,415,000/=
BUSIA/MUNICIPAL COUNCIL NO	KSHS 400,000/=

7983/57	
WEST/BUNYORE/ITUMBI/893	NOT PROVIDED

71. As there were six (6) children and five (5) properties with values between Kshs 400,000/= and Kshs 500,000/=, it was difficult to justify who would own a property jointly and who would own one (1) property individually. It was also evident that the commercial properties had high values which were different making it also difficult for the court to determine which beneficiary would get which property. The only fair and equitable distribution was for the deceased' children to share the rental income equally and to have equal share in all the properties as had been proposed by the 1<sup>st</sup> Petitioner herein. Where the child of the deceased is also deceased, his children, the deceased's grandchildren, shall share their respective deceased fathers' shares of the assets and income equally.

**DISPOSITION**

72. For the foregoing reasons, the upshot of this court's decision was that the 2<sup>nd</sup> Petitioners proposed mode of distribution in the Summons for Confirmation of Grant dated and filed on 5<sup>th</sup> April 2019 and the Objector's Affidavit of Protest sworn and filed on 17<sup>th</sup> June 2019 were not merited and the same be and are hereby disallowed. On the other hand, the 1<sup>st</sup> Petitioner's proposes mode of distribution of the deceased's assets that was in support of his Affidavit of

Protest sworn on 17<sup>th</sup> February 2023 and filed on 20<sup>th</sup> February 2023 was merited and upheld with necessary amendments as follows:-

**1. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi), Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of L.R. No West/ Bunyore/Essaba/711.**

**2. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of West/Bunyore/Essaba/713.**

**3. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod**

**Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the West/Bunyore/Essaba/795.**

**4. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the West/Bunyore/Essaba/799.**

**5. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul**

**Henry Okello and Teresa Julia Were shall have equal share of the West/Bunyore/Essaba/1157.**

**6. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the West/Bunyore/Essaba/1599.**

**7. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the West/ Bunyore/Essaba/1601.**

**8. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod**

**Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the West/ Bunyore/Essaba/1602.**

**9. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the rental income from Luanda Trading Centre Plot No 8053/4 LRN No 1836 with effect from 1<sup>st</sup> February 2026 to be deposited in a joint account in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners.**

**10. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan**

**Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the rental income from Kakamega Town Block B111/116 with effect from 1<sup>st</sup> February 2026 to be deposited in a joint account in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners.**

**11. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the rental income from Busia/Municipal Council No 7983/57 with effect from 1<sup>st</sup> February 2026 to be deposited in a joint account in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners.**

**12. THAT the beneficiaries of the deceased's estate namely Norah Priscillah Khamuye and**

**Kevin William Okech (representing Charles Nimrod Mukabi), Aaron Charles Mukabi, Susan Smith and Rose Nakhabi Ang'ondi (representing Gilbert Geoffrey Ang'ondi) Charles Nimrod Mukabi (representing Peter Dansil Musali), Norah Linda Nakhabi (representing David Enos Olukoba), Saul Henry Okello and Teresa Julia Were shall have equal share of the rental income from West/Bunyore/Itumbu/893 with effect from 1<sup>st</sup> February 2026 to be deposited in a joint account in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners.**

**13. THAT all beneficiaries save for Rose Ang'ondi who is a minor shall agree on the bank to deposit the rental income and shall have a right to request for bank statements at reasonable intervals without causing the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners undue hardship in the supply of such bank statements.**

**14. THAT in the event the parties are not able to agree on the bank to deposit the monies, they are at liberty to seek the assistance of the court in identifying the bank.**

**15. THAT the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners will hold the share of Rose Ang'ondi in trust until she attains the age of eighteen (18) years whereafter she will**

have a right to equal share directly in a similar manner as the other beneficiaries to the deceased's estate.

16. THAT accounts be taken to identify the monies that the 2<sup>nd</sup> Petitioner used to salvage Kakamega Town Block B111/116 that was on loan with a view to being reimbursed to her from the rental income that will be collected from the commercial properties.

17. THAT for the avoidance of doubt, each child of the deceased will have one (1) share in the deceased's assets and where such child is also deceased, that child's children shall share his share of the assets and rental equally.

18. THAT Winnie Wanjiru Kiarie be and is hereby directed to vacate the ancestral home L.R. No West/Bunyore/Essaba/1157 which she occupies as her permanent residence within ninety (90) days from the date of this Ruling.

19. THAT Maureen A. Ang'ondi be and is hereby directed to vacate L.R. No West/Bunyore/Itumbu/893 which she occupies as her permanent residence within ninety (90) days from the date of this Ruling.

**20. THAT Winnie Wanjiru Kiarie and Maureen A. Ang'ondi can only reside in the respective properties they are currently occupying in a permanent capacity with the consent of all the beneficiaries of the deceased's estate.**

**21. THAT for the avoidance of doubt, beneficiaries will be at liberty to buy the shares of the other beneficiaries in any asset or benefit.**

73. As this was a family matter, this court deviated from the general rule that costs follow events and hereby directs that each party bears its own costs.

74. It is so ordered.

**DATED and DELIVERED at VIHIGA this 2<sup>nd</sup> day of February 2026**

**J. KAMAU**  
**JUDGE**