

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO.49B OF 2023**

**IN THE MATTER OF THE ESTATE OF MIKA KIPKEMBOI  
BWANA- DECEASED**

**PHILIP KORIR  
BUWANA.....PETTIONER/APPLICANT**

**VERSUS**

**NICHOLAS KIPLIMO KEMBOI.....1<sup>ST</sup>  
PROTESTOR/RESPONDENT**

**BENJAMIN KIPCHUMBA BILOI...2<sup>ND</sup>  
PROTESTOR/RESPONDENT**

**JUDGMENT**

1. This cause relates to the estate of MIKA KIPKEMBOI BWANA (deceased) who died intestate on 30/6/2008. The record shows that the deceased died domiciled at Sirende Sub-location within Trans-Nzoia and left behind 3 wives and children as follows;-

**(1) 1<sup>st</sup> House**

Rebecca Bwana widow (deceased)

- i) Philip Korir Buana
- ii) Leah Buana (deceased)
- iii) Real Cherotich Asinomuk
- iv) Zipporah Chelagat

**(2) 2<sup>ND</sup> House**

Susana Cherotich (deceased)

- i) Zachariah Kipkosgei Kemboi (deceased)
- ii) Nicholas Kiplimo Kemboi
- iii) Priscah Cherotich Kemboi
- iv) Eliud Kipruto Kemboi

**(3) 3<sup>rd</sup> House**

Sarah Chepkemobi Ngeny

- i) Benjamin Kipchumba Ngeny
- ii) Kennedy Kiplagat Serem
- iii) Grace Chebe
- iv) Anthony Biwott Menjo
- v) Selly Cheptoo Kemboi
- vi) Peris Chepkemei (deceased)
- vii) Miriam Chepkosgei Serem
- viii) Dickson Kogo

2. The parties herein are in agreement that the deceased's estate comprises the following namely;

- (i) A parcel of land known as Kwanza/Kwanza Block 5/Korosi/17 measuring 220.45acres*
- (ii) Kwanza/Kwanza Block 5/Korosi/38 measuring 0.5acres*
- (iii) Waitaluk/Kapkoi Block (Toro)1 measuring 53.825acres*
- (iv) Kolongolo Block 3 Kapkoi West measuring 7 acres*

3. Philip Korir Buana, Nicholias Kiplimo Kemboi and Benjamin Kipchumba Biloi were appointed joint administrators on 3/5/2023 and issued with a rectified grant dated 14/5/2024.
4. The 1<sup>st</sup> administrator namely Philip Korir Buana filed summons for confirmation of grant dated 19/4/2024 and gave a proposal on how he preferred the estate of the deceased to be distributed. The other 2 administrators Nicholas Kiplimo Kemboi and Benjamin Kipchumba Biloi protested through an affidavit of protest dated 24/3/2025 and gave their own preferred mode of distribution. In brief the protestors proposed that the sons to the deceased each gets around 30 acres while the daughters to the deceased each gets 3 acres. They also suggested one Salim Kipchumba Buana be given 2 acres which the deceased had gifted him during his lifetime.
5. In view of disagreement, this court gave directions that the protest be disposed by way of viva voce evidence.
6. The 1<sup>st</sup> administrator, Philip Korir Buana (**PW1**) testified that the deceased settled him in Toro Farm and told him that he was to occupy half of it translating to 26.5 acres, but deceased died before making formal subdivision and transfer. He stated that he made his proposal on the issue of distribution in paragraph 5 of the affidavit in support of summons for confirmation of grant. According to him the estate of the deceased should be divided into 3, according to the number of houses (wives). He added that the deceased

also had a 4<sup>th</sup> wife who has one child named Salim Buana. He stated that she should also get a share though he did not explain who she was and why he excluded her in his proposed mode of distribution.

7. He further testified that the beneficiaries be given varying shares in terms of acreage but gave no basis for the proposal. He however summarized his proposal and proposed that the entire estate be divided into 3 according to the number of houses (wives).
8. Isaac Ayabei Kibiama (**PW2**) testified that he was an old man aged 96 years and has been a Bishop for 70 years. He stated that he and the deceased knew each other while in Uganda. That they later bought land together in Toro, with the deceased buying 53 acres. He stated that he knew the deceased was married to 3 wives and that the deceased settled PW1 because he was an alcoholic and troublesome.
9. Zipporah Chelagat Mika (**PW3**) a daughter to the deceased testified and stated that she preferred the estate to be divided into 4 and that she was against the distribution being done as per the number of children.
10. Daniel Misoï Koskei (**PW3**) testified that his own father was a friend and neighbour to the deceased. That he knew deceased owned 217 acres at Korosi, 53 acres at Toro Farm and 9 acres at Kwanza. He stated that the deceased settled his children namely Philip, Zipporah. Leah (deceased) and Rael (PWD) at Korosi Farm.

11. According to him the deceased had a 4<sup>th</sup> wife who is Salim's mother and took care of Philip and his siblings at Korosi. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> wives stayed at Korosi. According to him the 1<sup>st</sup> and 2<sup>nd</sup> houses should share land at Toro while the parcel at Korosi should be shared equally.
12. Benjamin Kipchumba Biloi (**DW1**) one of the protestors testified that the family agreed that those children (beneficiaries) who had been given parcels by the deceased should remain where they are and that their sisters Leah and Rael be given 2 acres each.
13. According to him the mother to Salim was not married to the deceased and that it was agreed that Salim gets 3 acres.
14. He stated that he is opposed to the proposal made by the 1<sup>st</sup> administrator because he introduced 2 strangers namely his counsel and Irene Mwaura as beneficiaries and excluded other children of the deceased. He proposed that each son be given an equal share in the estate (which he calculated to 30 acres each) while the daughters get 3 acres each. He added that the mother who is still alive should be given 10 acres.
15. Selly Cheptoo Kemboi (**DW2**) on her part stated that she was a daughter to the deceased and that she was in support of the proposal made by Benjamin and Nicholas that each daughter of the deceased was to get 2 acres each. She however stated that if they are given 3 acres each they will

be satisfied. She stated that her sister named Rael is a person living with disability and that her son named Kipchirchir sold 2 acres given to her and went and bought land in Nandi. She stated she supported the proposal that daughters be given 3 acres each with the balance being shared equally among the sons.

16. Jonathan Kipchirchir (**DW3**) stated that the deceased was his grandfather. That he is a son to Rael who is a daughter to the deceased. He stated that he was permitted to sell 2 acres that his mother had been given so that he could translocate to Nandi where he currently stays. He stated that he and his mother were satisfied with the share given to him and have no further claim in the estate.
17. The parties closed their respective cases at that stage and filed written submissions in support of the respective positions taken.
18. The petitioner through written submissions by learned counsel Walter Wanyonyi & Co Advocate dated 28/8/2025, contends that the deceased was married to 4 wives and lists the four houses as follows;-

**A. 1<sup>st</sup> house**

- i) Philip Korir Buana
- ii) Sharon Chepkemei Seorei representing Leah Buana
- iii) Rael Cherotich Asinomuk
- iv) Zipporah Chelagat Mika

### **B. 2<sup>nd</sup> house**

- i) Susan Cherotich (deceased)
- ii) Zacharia Kipkosgei Kemboi (deceased).
- iii) Nicholas Kiplimo Kemboi
- iv) Priscah Kemboi Cherotich
- v) Eliud Kipruto Kemboi

### **C. 3<sup>rd</sup> house**

- i) Sarah Chepkemboi Ngeny (widow)
- ii) Benjamin Kipchumba Biloi
- iii) Kennedy Kiplagat Serem
- iv) Grace Chebet
- v) Anthony Biwott Menjo
- vi) Selly Cheptoo Kemboi
- vii) Peris Chepkemboi (deceased)
- viii) Miriam Chepkosgei Serem
- ix) Dickson Kogo

### **D. 4<sup>th</sup> house**

- i) Mary Talian
- ii) Salim Kipchumba Buana

**19.** The petitioner cites the provisions of section 40 of Law of Succession Act submitting that because the deceased was polygamous, the estate should be divided equally among the surviving children without any discrimination on age, gender or financial status of the children. He relies on the decisions of **Re estate of Njuguna (deceased) (2024) KEHC**

**14106 (KLR) and the case of Re estate of James Njenga Muiruri (deceased) (2021) eKLR.**

20. The petitioner interestingly has gone ahead to give a proposal that clearly departs from his contention that the estate be divided equally among the children without any discrimination. He gives proposal that is clearly discriminatory because while he proposes that he should be given 26.6 acres on behalf of the 1<sup>st</sup> house, he proposes that the 3<sup>rd</sup> widow be given 10 acres while the daughters be given between 2 acres and 3 acres. He gives no justification for this other than asking this court to ensure that the estate is distributed in accordance with section 40 of the Law of Succession Act and ensure that the children are given a share where their mothers lived to ensure that there are minimum disruptions.
21. The protestors on the other hand through submissions dated 15/9/2025 made through their counsel M/s Nasike Wafula & Associate Advocates submits that distribution should be done in accordance with section 40 of the Act and relies on the case of **Ramaita & Anor -vs- Ramaita (2025) KECA 300 KLR**. They however contend that the daughters be given 3 acres because some of the beneficiaries had consented to that mode.
22. This court has considered the evidence tendered by the parties and their respective submissions. There is no dispute

that the deceased died intestate. The assets comprising the estate are also uncontested. The properties are as follows;

- i) Kwanza/Kwanza Block 5/Korosi/17 measuring approximately 220 acres.*
- ii) Kwanza/Kwanza Block 5/Korosi/38 measuring 0.5 acres.*
- iii) Waitaluk/Kapkoi Block 1(Toro) measuring approx. 54 acres.*
- iv) Kolongolo Block 3/Kapkoi West measuring 7 acres.*

23. There is slight difference of opinion between the petitioner and protestors over the exact sizes of Kwanza/Kwanza Block 5/Korosi/17 and Kapkoi West. According to the petitioner the two plots measure 217 acres and 9 acres respectively. While the protestors opine that the plots measure 220 acres and 9 acres respectively. The difference is not much of an issue for determination of this cause since the surveyor would still go to the ground and confirm actual acreage when carrying out subdivisions.

24. The other issue of contention between the petitioner and protestors is whether the deceased was married to 3 wives or 4 wives. According to the petitioner the deceased had 4 wives but the protestors insist he was married to only 3.

25. This court has considered the evidence tendered and finds that the marriage of the 4<sup>th</sup> wife is not clearly established and the evidence tendered was insufficient to

prove that one May Talian was married to the deceased. The petitioner's own list of documents filed herein and dated 16/5/2025 includes the Eulogy of the deceased in this cause and the document clearly states that the deceased was married to 3 wives. It is however evident that Salim Kipchumba Buana, said to be a son to the said Mary Talian is recognized as a son of the deceased. He is therefore entitled to equal share of the estate as the other children of the deceased.

26. It is agreed by both counsels on record that the applicable section of the law with regard to the distribution of the estate is section 40 of the Law of Succession Act. Section 40 of Law of Succession Act provides as follows;

***(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.***

***(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.***

The above provision means that children of each house are to be added and where there is a surviving spouse, then she is added as a unit. Upon the additions of all the members of each house, the provisions of section 38 takes effect which

means that the estate is divided equally among all the children adding any surviving spouse as an additional unit. Section 35 provides that a surviving spouse is entitled to life's interest on the share going to her and upon demise, the share be divided equally among the surviving children.

27. The above is what the law dictates. The family however have the latitude to agree among themselves to adopt a mode of distribution agreeable to all of them and so long as the mode is fair and equitable, courts would usually have no problem adopting the same in order to maintain peace and family cohesion.

28. In this matter, both the petitioner and protestors agree that whereas the law provides for equal distribution of the estate regardless of gender or any other form of discrimination, the daughters of the deceased have agreed to each take 3 acres of the estate while the sons take bigger share. Selly Cheptoo Kemboi **(DW2)** testified that the sisters had accepted to take 3 acres and had no problem with the arrangement. Zipporah Chelagat Mica **(PW2)** testified too and stated that she supported the petitioner's proposal. The petitioner proposes that the daughters each gets 3 acres of the estate.

29. This court therefore finds that in view of the general consensus from all the family members/beneficiaries, the daughters to the deceased will each get 3 acres of the estate.

30. The suggestion that the surviving widow gets only 10 acres is also consented by the widow vide consent to the mode of distribution dated 24/3/2025. The petitioner also proposes the same share. The same is therefore adopted by this court.

31. In view of the above, this court finds that the daughters of the deceased are 8 namely;-

- i) *Leah Buana (deceased) (represented by daughter Sharon Chepkemei).*
- ii) *Rael Cherotich Asinomuk*
- iii) *Zipporah Chelagat*
- iv) *Prisca Cherotich Kemboi*
- v) *Grace Chebet*
- vi) *Selly Cheptoo Kemboi*
- vii) *Peris Chepkembi (deceased)*  
*(Benjamin Kipchumba to hold in trust for Precious Cherop)*
- viii) *Miriam Chepkosgei Serem*

32. The above daughters will get a total of 24 acres. Added to this is 10 acres for Sarah Chepkemboi Ngeny. That brings the total of 34 acres. The entire estate comprises the following;

- i) Kwanza Block 5/Korosi/17 - 220acres
- ii) Kwanza Block 5/Korosi/38 - 0.5acres
- iii) Waitaluk/Kapkoi Block 1(Toro) -53acres

iv) Kolongolo Block 3/Kapkoi        - 7acres  
Approx.281.5acres

281.5 less 34acres leaves about 247.5acres.

33. The sons are 9 namely;

(a) *Philip Korir Buana*

(b) *Nicholas Kiplimo Kemboi*

(c) *Zacharia Kipkosgei Kemboi (deceased)*

*(Margaret Chebet Birgen to hold in trust for her children*

*(d) Eliud Kipruto Kemboi*

(e) *Benjamin Kipchumba Biloi*

(f) *Kennedy Kiplagat Serem*

(g) *Anthony Biwott Menjo*

(h) *Dickson Kogo*

(i) *Salim Kipchumba Buana*

The remaining acreage of approximately 247.5 acres means that each of the 9 sons will get 27.4 acres.

34. The parties have all agreed to give a church half an acre and have also agreed that in order to have minimum disruptions each beneficiary be settled where they were brought up or are currently living.

35.The estate of the deceased shall therefore be distributed as follows;

**A)Kwanza/Kwanza/Korosi 17 measuring approximately 220.45acres**

- i) Sarah Chepkwony Ngeny - 10acres
- ii) Nicholas Kiplimo Kemboi - 20.6acres
- iii) Philip Korir Buana - 20.6acres
- iv) Margaret Chebet Birgen - 20.6acres
- v) Eliud Kipruto Kemboi - 20.6acres
- vi) Benjamin Kipchumba Biloi - 20.6acres
- vii) Kennedy Kiplagat Serem - 20.6acres
- viii) Grace Chebet - 3acres
- ix) Anthony Biwott Menjo - 20.6acres
- x) Selly Cheptoo Kemboi - 3acres
- xi) Dickson Kogo -20.6acres
- xii) Benjamin Kipchumba Biloi to hold 3acres in trust for Precius Cherop until she attains age of 18 years)
- xiii) Miriam Chepkosgei Serem - 3acres
- xiv) Salim Kipchumba Buana - 20.6acres
- xv) Rael Cherotich - 3acres

**B. Kolongolo Block 3/ Kapkoi West**

- i) Sharon Chepkembi Saorei -3.5acres  
(on behalf of Leah Buana)
- ii)Prisca Chepkoech Kemboi - 3.5acres

**C. Waitaluk/Kapkoi Block 1 (Toro) 1 measuring 53.8acres**

- i) Philip Buana - 5.9acres
- ii) Nicholas Kemboi - 5.9acres
- (iii)Margaret Chebet Birgen - 5.9acres
- (iv) Benjamin Kipchumba Biloi - 5.9acres
- (v)Kennedy Kiplagat Serem -5.9acres

(vi) Salim Kipchumba Buana -5.9acres

**D.Kwanza/Kwanza Block 5/Korosi/38 -measuring  
0.5acres**

SDA Church

36.This court has tried as much as practically possible to distribute the properties at Kapoki/Toro and Kwanza/Korosi/17 to ensure that each son to the deceased has an equal share in both sides. The brothers are at liberty to exchange their respective portions if they so agree.

I also direct the surveyor to visit the parcels comprising the estate and carry out subdivision of the parcels and in the event that the parcels measure less or more than what is stated herein, any extra acreage or less acreage will be shared equally taking care of access roads and any other easement necessary to make the parcels economically viable, accessible and convenient to the beneficiaries.

I also direct the surveyor to as much as practical divide the parcels considering where the beneficiaries have put up homes or development. The surveyor's fees will be shared equally among the sons as they have taken the lion's share of the estate. I also give liberty to any of the beneficiaries of Kwanza/Korosi/17 to consider swapping with the church if they have put up premises in Plot 17. The same could be swapped with parcel number 18 by any of the beneficiaries who feels fine with the arrangement.

I will make no order as to costs.

**DELIVERED, DATED and SIGNED at KITALE this .....2<sup>nd</sup>.... day of  
.....FEBRUARY....., 2026.**

**HON JUSTICE R.K. LIMO  
KITALE HIGH COURT**

**Judgment delivered in open court**

**In the presence of**

**Lichuma holding brief for Kibonei for Respondent**

**Wanyonyi for the Administrators**

**Duke/Chemosop- Court assistants**