



**In re Estate of Appoloniah Apondi Shikhukhulo (Deceased) (Succession Cause 262 of 2009) [2026] KEHC 1667 (KLR) (16 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1667 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 262 OF 2009  
WM MUSYOKA, J  
FEBRUARY 16, 2026**

**IN THE MATTER OF THE ESTATE OF APPOLONIAH  
APONDI SHIKHUKHULO (DECEASED)**

**RULING**

1. What I am called upon to determine is a summons for confirmation of grant, dated 1<sup>st</sup> March 2023.
2. The application is at the instance of 2 of the administrators, Kenneth Tillarh Mukasa and John Godfrey Wanyama. The deceased was their mother. They have identified the survivors of the deceased, and the assets that the deceased died possessed of. They have also identified, amongst the assets, some that had allegedly been disposed of by their co-administrator, Noel RO Sikhukhulo. They have proposed distribution of the assets amongst the beneficiaries. On one of the assets stands a private school, Brother Nicholas High School, run by the family, in respect of which they propose that the parcel of land, on which it stands, be allocated to the school, which ought to continue being run as a family enterprise, in which all the beneficiaries shall have shares, proportionate to their respective contribution.
3. Noel RO Sikhukhulo filed a protest affidavit, sworn on 2<sup>nd</sup> May 2023. He explains that he and another previous administrator had disposed of some of the assets, to defray administration expenses, and that those assets were no longer in the name of the deceased. Some were disposed of to raise funds to put up houses for some of the survivors, being Noel RO Sikhukhulo, the late Vincent Mwali Mpaka and the late Fredrick Onyango Sikhukhulo. He protests that the assets being allocated to him were neither in his name nor that of the deceased. He argues for equal distribution, on grounds that that was what the deceased desired. He then makes his own proposals on distribution.
4. Kenneth Tillarh Mukasa and John Godfrey Wanyama reacted to that protest; vide an affidavit they swore on 19<sup>th</sup> January 2024. They state that there was no agreement on the disposals that Noel RO Sikhukhulo and his then co-administrator carried out, and that that was done in wastage of the estate. There are accusations of irregularly leasing out estate assets without involving them. They call for proof of the allegations that some assets were sold to put up houses for some of the sons of the deceased. They argue that Noel RO Sikhukhulo ate his cake, and he should not be allowed to have it.



5. A number of other affidavits were filed thereafter, to place further documents on record.
6. A formal hearing was conducted, where Kenneth Tillarh Mukasa, John Godfrey Wanyama and Noel RO Sikhukhulo testified. They breathed life into their respective filings. They also filed written submissions thereafter. I have read the written submissions, and noted the arguments made in them.
7. I also heard from the other survivors of the deceased, who are not administrators. They did not testify, but made oral unsworn statements. I took those statements to gauge their respective positions or stands on the distributions proposed by the administrators. They said that they were aware of the succession proceedings, and supported the proposals by Kenneth Tillarh Mukasa and John Godfrey Wanyama. Those interviewed were Edwin Ngozo, Judith Tabbi, Jane Mary Ashihundu, Humphrey Ouna, Berita Atieno Oloo, Topista Malova, Consolata Mary Nabwire, Violet Shikuku, Ernest Othieno Oduor, Linah Apondi, Aaron Mukasa, Cynthia Tabii, Alphonse Mukasa, Emmanuel Tabi, Nicholas Tabii, Georgina Lucy Sikhukhulo, Andrew Tabi and Mandela Nicholas Mwali.
8. Confirmation of grants is provided for under sections 55 and 71 of the [Law of Succession Act](#), Cap 160, Laws of Kenya, to facilitate distribution of capital assets. The mechanics of obtaining confirmation are set out in section 71 of the [Law of Succession Act](#) and Rules 40 and 41 of the Probate and Administration Rules.
9. The deceased died intestate, on 6<sup>th</sup> May 2009. Her estate is, therefore, for distribution exclusively in terms of the intestacy provisions in Part V of the [Law of Succession Act](#). She was survived by children only, for her husband had pre-deceased her. That would mean that the applicable provision would be section 38 of the [Law of Succession Act](#), which provides for equal distribution. Equality in distribution may not be practical, in certain circumstances, but distribution ought to be as equitable as possible or practicable. Some of the children have died, but are survived by children of their own, who would be the grandchildren of the deceased. Section 41 of the [Law of Succession Act](#) would apply to the shares due to such dead children. The effect of section 41 is that whatever is due to the dead children of the deceased should devolve upon their own children, who ought to step into their shoes. Often, rather than devolve the estate directly to such grandchildren, or the children of the dead children, the share could go to the surviving widows or spouses of the dead children of the deceased.
10. Rules 40 and 41 of the Probate and Administration Rules set out the procedures. The court is required to be satisfied of who the survivors of the deceased and the beneficiaries of the estate are, as ascertained by the administrators. The shares, of the survivors and those beneficially entitled, should also be ascertained, based on the assets ascertained as comprising the estate. This is required by rule 40(4) of the Probate and Administration Rules, as read with the proviso to section 71(2) of the [Law of Succession Act](#).
11. Have the survivors of the deceased or the persons beneficially entitled to a share in the estate been ascertained? There is, largely, agreement, on who is entitled, beneficially, to a share in the estate. There is only one issue around this, raised by Noel RO Sikhukhulo. That is about the status of Consolata Mary Nabwire. Noel RO Sikhukhulo argues that Consolata Mary Nabwire should not be a beneficiary of the estate, for she was not a child of the deceased. There is no contestation, on the status of Consolata Mary Nabwire, from the other administrators and the other survivors of the deceased. What emerges is that Consolata Mary Nabwire was a child that the deceased had taken into the family as her own.
12. The argument, by the majority, appears to be anchored on section 3(2) of the [Law of Succession Act](#), which recognises such informal adoptions, for the purposes of succession. However, that provision appears to limit such informal adoption to males only, not females, perhaps founded on the notion that much of what is available for distribution would be land, which, in most cases, would be ancestral,



- and, on account of patriarchy or patrilineal succession, would be unavailable to women. The deceased herein was female, and going by the above, section 3(2) would not apply to her case.
13. The *Law of Succession Act* was passed in 1972, and operationalised in 1981. Some of the positions, stated in it, are no longer tenable, in view of the promulgation of *the Constitution* of Kenya in 2010. Article 27 of *the Constitution* frowns on discrimination, based on gender, and it would override section 3(2) of the *Law of Succession Act*, making it possible for informal adoptions, by females, being countenanced, for succession purposes. That would make Consolata Mary Nabwire a child that was informally adopted into the family, by dint of section 3(2), and, thereby, entitled to a share in the estate.
  14. Have the shares of each of the persons beneficially entitled been ascertained? Yes, they have. The administrators are, however, split into 2, on distribution. Kenneth Tillarh Mukasa and John Godfrey Wanyama have proposals that differ from those made by Noel RO Sikhukhulo. There is some convergence on some assets. Their principal point of departure is what should be devolved to Noel RO Sikhukhulo. Noel RO Sikhukhulo says that what is proposed for allocation to him no longer forms part of the estate, for those assets were sold and transferred to third parties. Kenneth Tillarh Mukasa and John Godfrey Wanyama say that that could be so, but argue that it was Noel RO Sikhukhulo who sold those assets, and retained the proceeds, for he did not bring them into the estate, nor account for them. Noel RO Sikhukhulo says that some of them were sold to meet administration expenses, but he provided no proof, and rendered no accounts. He says some were sold to raise funds to put up homes for some of the sons. Again, he provided no proof of that. In any event, the estate is not obliged to build houses for adult survivors of the deceased.
  15. “Children,” for succession purposes, under the *Law of Succession Act*, does not carry the same meaning as “children” under the *Children Act*, Cap 141, Laws of Kenya. The argument, by Noel RO Sikhukhulo, could carry weight, if he was a minor, which would have afforded him the protections under the *Children Act*. Sadly, for him, he was a full-grown man, when these sales happened, to whom the *Children Act* could not apply. I would agree with Kenneth Tillarh Mukasa and John Godfrey Wanyama, that Noel RO Sikhukhulo benefited from what he sold, unlawfully, and that ought to be taken to be his share of the estate.
  16. On the assets to be distributed, Noel RO Sikhukhulo says that the deceased had shares in East Africa Breweries Limited and Barclays Bank of Kenya Limited, and proposes equal distribution of those shares. Unfortunately, he has provided no proof of existence of those shares. He also raises issues about accounts that the deceased, allegedly, operated in various commercial banks. Again, he has provided no proof of existence of such accounts, and whether, if they exist at all, they hold funds that would be available for distribution.
  17. I have carefully considered the distribution proposed by Kenneth Tillarh Mukasa and John Godfrey Wanyama, and I am satisfied that it comes very close to what is provided for under section 38 of the *Law of Succession Act*. I shall allow confirmation of the grant, in those terms. Should it turn out that the deceased had shares in East Africa Breweries Limited and Barclays Bank of Kenya Limited, then the said shares shall be distributed equally between all the children, including those that are since dead, whose share shall devolve in accordance with section 41 of the *Law of Succession Act*.
  18. The application, dated 1<sup>st</sup> March 2023, is hereby allowed. The estate herein shall be distributed in terms of paragraph 17 above. A certificate of confirmation of grant shall issue accordingly. The administrators shall cause transmission of the estate to happen, in accordance with those orders, within 6 months. The matter shall be mentioned, on 24<sup>th</sup> September 2026, to confirm completion of transmission and administration. Each party shall bear its own costs. Leave is hereby granted, to whomever may be aggrieved, by these orders, to challenge the same, at the Court of Appeal. Orders accordingly.



**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN CHAMBERS, AT BUSIA, THIS 16<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Noel RO Sikhukhulo, the 3<sup>rd</sup> administrator/protestor, in person.

Advocates

Ms. Betty Achala, instructed by Abalo & Company, Advocates for the applicants, Kenneth Tillarh Mukasa and John Godfrey Wanyama.

