

**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.92 OF 2017**

**MARGARET KEMUNTO TONGI.....  
APPLICANT**

**VERSUS**

**DANIEL MAGETO  
TONGI.....RESPONDENT**

**RULING**

1. Margaret Kemunto Tongi the applicant herein has brought this application dated 26/1/26 seeking for the following reliefs namely;

- i) Spent***
- ii) Spent***
- iii) That this court be pleased to vary and/or set aside and/or review the portion of the judgment relating to the matrimonial home or family home to the effect that the home be a neutral place of residence for all beneficiaries and that Peris Mokeira Tongi be allowed to reside there.***
- iv) That costs be in cause.***

2. The applicant has listed the following grounds namely;

- a) *The estate of the deceased has been distributed by this court to the beneficiaries.*
- b) *That the dependents/beneficiaries are all satisfied with the court's judgment.*
- c) *That there is an importance issue that was not brought to the court's attention that has necessitated this application.*
- d) *That there is a special need that needs to be given special attention.*
- e) *That Peris Mokeira Tongi is a special child in the family and has lived in the family house in her entire life.*
- f) *That she was recently taken ill and hospitalized at St Luke's Hospital Eldoret for 4 months and later discharged but is bed ridden.*
- g) *That Daniel Mogusu Tongi has threatened to evict everyone from the family house because he was given a share that includes the matrimonial home.*
- h) *That this court has power to grant the reliefs sought and that the relief is aimed at ensuring that Peris Mokeira Tongi is not disadvantaged or rendered homeless.*
- i) *That the other beneficiaries are ready to compensate Daniel Mogusu Tongi so that the matrimonial home is not to be distributed.*

3. In her oral submission made through learned counsel M\ Wahome the applicant contends that the respondent is not opposed to the issues raised but that the respondent has raised extraneous and irrelevant issues.
4. The respondent in this application has filed a response by way of a replying affidavit sworn on 3/2/26. He avers that the application is brought in bad faith and is only meant to delay or obstruct the implementation of judgment of this court.
5. He further avers that the application is also aimed at unlawfully interfering with lawful enjoyment of his decreed share yet he has not interfered with anyone's share.
6. He conceded that the Peris Mokeira Tongi, who is his sister lives with disability and is currently unwell recuperating at the parent's house.
7. He denies the contention that the disability and the needs of Peris Mokeira Tongi were not brought to the attention of this court.
8. That this court was well seized of that fact when it directed that the share going to the subject be registered in the names of her daughter June Kwamboka and granddaughter Zain Kerubo to hold in trust of Peris Mokeira Tongi.
9. That Peris Mokeira Tongi is currently under the care of her adult daughter June Kwamboka who is a teacher and she has not raised any issue or complainant about threat of eviction or any mistreatment.

10. He faults the intention of the applicant because other beneficiaries like Evans Tongi, family of Jackson Tongi, Ruth Tongi and the family of June Kwamboka have forcefully occupied his house and not the parents' house occupied by Peris Tongi.
11. He avers that he was locked out completely from his home during the holidays.
12. That he does not object Peris Tongi occupying their parents' house adding that she has a full time nurse.
13. That they agreed as a family that Peris Tongi would continue occupying the parents' house as her brothers put up another house where her share is located.
14. This court has considered this application and the response made. This court finds that the application or rather the contestation is rather unnecessary because the parties are in agreement that Peris Mokeira Tongi is a person in need because of her mental and physical condition. Indeed when this court delivered its judgment on 22/9/25, it specified the equal share going to Peris Mokeira Tongi will be held by June Kwamboka and Zain Kerubo in trust for Peris Mokeira Tongi and for their own benefit as well.
15. This court clearly stated that the respondent herein being the last born in the family will get an equal share like the rest of his siblings but his share would include where the matrimonial or parents' home is situate as per customs of the parties herein.

16. That decision was quite clear that the issue of the family home could also be agreed among the beneficiaries.

17. The respondent has stated on oath that he does not object to the occupation of that house by Peris Mokeira Tongi and her caretaker as they make arrangements to relocate to their share which in my considered view is a good gesture given the condition of the subject.

In the premises this court finds no basis to review or set aside the judgment delivered on 22/9/25 in the manner sought by the applicant save that I direct the respondent to allow Peris Mokeira Tongi to continue occupying the parents' house as she recuperates and as the trustees (June Kwamboka and Zain Kerubo) make arrangements to relocate her to where the surveyor will indicate. This court reiterates that the subject together with the caretaker will only occupy the house she has been occupying pending relocation or any other arrangements as maybe mutually agreed by the family. The other beneficiaries will occupy and utilize their respective portions as indicated by the surveyor as delved by this court. I will not make any order as to costs in this application.

**DELIVERED, DATED and SIGNED at KITALE this .....3<sup>RD</sup> .... day of  
.....MARCH....., 2026.**

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

***Ruling delivered in open court***

***In the presence of***

***Kibonei for the Respondent***

***M/s Ogoti holding brief for Wahome for the Applicant***

***Duke/Chemosop- Court assistants***