

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO.225 OF 2025

**IN THE MATTER OF THE ESTATE OF THE LATE GRACE
KIAPTISI KIMINING.....DECEASED**

**JIMMY ROY AMATTA.....1ST
APPLICANT**

**JACKLINE CHEPTOO AMATTA.....2ND
APPLICANT**

VERSUS

**PETER SEDEANO AMATTA.....1ST
RESPONDENT**

HARRIET MERCY CHEBOY.....2ND RESPONDENT

JUDGEMENT

1. This cause relates to the estate of the late Grace Kiaptisi Kimining (deceased) who died intestate on 15th June 2010 domiciled in Nairobi.

2. The deceased died leaving the following dependants namely;

(i) Peter Sedeano Amatta - widower

(ii) Harriet Mercy Cheboy

(iii) Jackline Cheptoo Amatta } **Children**

(iv) Jimmy Roy Amatta

3. There has been protracted battles in this cause with respect to the mode of distribution of the estate of the deceased which comprised the following;

(a) I.R. No.98221/LR NO.27024/189 - Langata

- (b) Mavoko Town Block 2/817**
- (c) Kitalale Scheme Plot No.702 - 10 acres**
- (d) Moi's Bridge Plot measuring 25x100ft**
- (e) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.363**
- (f) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.109**
- (g) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.110**
- (h) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.117**
- (i) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.488**
- (j) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.499**
- (k) Utumishi Investment/Kenya Police Sacco
Kitengela Site & Service Plot No.1060**
- (l) CIC Insurance 1,200,000**
- (m) Kengen Shares 1436**
- (n) KCB Shars A/C No.088053**
- (o) Barclays Bank Ruaraka Branch A/C
No.030673731**
- (p) Pension Public Trustee 2,400,000/-**
- (q) Noon Kopir Plot 100x50 Kitengela**
- (r) Noon Kopir plot 100x50 Kitengela**
- (s) Death Gratuity - Kenya Police**

4. Peter Sedeano Amatta, Harriet Mercy Cheboy, Jackline Cheptoo and Jimmy Roy were later appointed joint administrators and administratrixes respectively vide a grant issued on 17/5/2018. This was after the initial grant issued to Peter Sedeano Amatta was revoked after a protracted battle.
5. The parties herein could not agree on how the estate was to be distributed despite several attempts made by this court to persuade them to agree.
6. The 1st administrator Peter Sedeano Amatta vide summons for confirmation of grant dated 28/4/2021 applied for confirmation of grant giving the following proposal on how the estate should be distributed.

(a) I.R No.98221/L.R No.27024/189 – Langata – **Peter Sedeano Amatta**

(b) Mavoko Town Block 2/817 – Peter Sedeano Amatta

(c) Kitalale Scheme Plot 702

i) **Peter Sedeano -5acres**

ii) **Jimmy Roy- 2acres inclusive of homestead**

iii) **Jackline Cheptoo Amatta- 3acre**

(d) Moi’s Bridge Plot 50x100ft – **Jimmy Roy Amatta**

(e) Plot 363 and 364 Utumishi Investment Kenya Police Sacco Kitengela – **Jimmy Roy Amatta**

(f) Plot 109 and 110 Utumishi Investment Kenya Police Sacco Kitengela – **Jackline Cheptoo**

- (g) Plot No.117,488,499 and 1060 Utumishi Investment Kenya Police Sacco Kitengela - **Peter Sedeano Amatta**
- (h) Noon Kopir Plot 100x50ft -**Harriet Mercy Cheboy**
(i)Noon Kopir Plot 100x50ft Kitengela -**Harriet Mercy Cheboy**
- (j) CIC Insurance Kshs.1,200,000/-
i) Peter Sedeano -600,000/-
ii) Jimmy Roy Amatta- 300,000/-
iii) Jackline Cheptoo Amatta - 300,000/-
- (k) Pension - Kshs.2,400,000/-
i) Peter Sedeano - 1,200,000/-
ii) Jimmy Roy 600,000/-
iii) Jackline Cheptoo- 600,000/-
- (l) Death Gratuity - **Peter Sedeano**
- (m) Kenya Police Sacco - 872,940 - **Harriet Mercy Cheboy**
- (n)** Kengen Shares 1436 - **Jackline Amatta**
- (o) KCB Shares - No.083053 - **Peter Sedeano**
- (p) Barclays Bank A/C No.030673731
i) Peter Sedeano Amatta - Kshs.140,000/-
ii) Jimmy Roy Amatta - Kshs.50,000/-
iii) Jackline Cheptoo Amatta - Kshs.50,000/-

7. The proposal met protest by Harriet Mercy Cheboy who filed an affidavit of protest sworn on 4/10/2021.

8. She faults the applicant for squandering and wasting the estate and discriminating her because she is not his biological child.
9. She claims that she bought Mavoko Town Block 2/817 from her own money and is not part of the estate.
10. She further avers that the properties comprising the estate were obtained by her late mother from her own sweat and money.
11. That her late mother met the petitioner in 1987 when she was already working as the Officer Commanding Station (OCS) Railway police station and that he had selfish intentions.
12. That the deceased named her as the next of kin in Kenya Police Sacco and that the amount of 872,940 was paid to her but she took along her siblings when going to get the money because she wanted transparency.
13. She accuses the petitioner/applicant for squandering the estate and wasting it and prays that he is put to account.
14. She has given her own proposal mode vide a proposal dated 19/10/2021. The proposal is as follows;
 - (A) IR NO.98221/L.R. NO.27024/89 Langata
Harriet Mercy Cheboy
 - (B) Mavoko Town Block 2/4817
Harriet Mercy Cheboy
 - (C) Kitalale Scheme Plot No.702 (10 acres)
 - i) **Peter Sedeano - 2.5acres**

- ii) **Harriet Cheboy - 2.5acres**
- iii) **Jackline Cheptoo Amatta - 2.5acres**
- iv) **Jimmy Roy Amatta - 2.5acres**

(D) Plot at Moi's Bridge 25x100ft

Jimmy Roy Amatta

Jackline Cheptoo Amatta

(E) Plot No.363 and 364 Utumishi Investment Kenya
Police Sacco -Langata

Jimmy Roy Amatta

(F) Plot No.109 and 117 Utumishi Investment Kenya
Police Sacco - Langata

Jackline Cheptoo Amatta

(G) Plot No.110and 1060 Utumishi Investment Kenya
Police Sacco - Kitengela

Harriet Mercy Cheboy

(H) Plot No.488 and 499 Utumishi Investment Kenya
Police Sacco - Kitengela

Peter Sedeano Amatta

(I) Noon Kopir Plots (2) - Kitengela

Peter Sedeano Amatta

(J) Kengen Shares

i) **Jackline Cheptoo Amatta**

ii) **Harriet Mercy Cheboy**

15. She further proposes that the cash at Barclays, Death Gratuity and CIC Insurance be divided equally among the 4 dependants.

16. Before the issue of distribution was resolved, there was a partial consensus that was brought about by financial needs that arose when one of the beneficiaries Jimmy Roy Amatta fell ill and required immediate funds for treatment. The parties agreed for partial confirmation of the grant which was adopted by court on 16/6/2025 as follows;

(A) Money held by Public Trustee Kshs.2,400,000/-

i) Peter Sedeano Amatta - 800,000/-

ii) Harriet Mercy Cheboy -533,333/-

iii) Jackline Cheptoo Amatta- 533,333/-

iv) Jimmy Roy Amatta - 533,333/-

(B) Money held at CIC Insurance

**(i) Peter Sedeano Amatta -
400,000/-**

(ii) Harriet Mercy Cheboy -266,666/-

(iii) Jackline Cheptoo Amatta- 266,666/-

(iv) Jimmy Roy Amatta - 266,666/-

(C) Money at Barclays Bank - Ruaraka Branch

**(i) Peter Sedeano Amatta -
350,000/-**

(ii) Harriet Mercy Cheboy -183,333/-

(iii) Jackline Cheptoo Amatta- 183,333/-

**(iv) Jimmy Roy Amatta -
183,333/-**

17. This court has set out the two sets of proposals by the father on one hand and the children on the other. This court

finds that the proposals made in respect to monies held at the Public Trustee (Kshs.2,400,000), CIC Insurance and Barclays Bank -Ruaraka Branch are now overtaken by events as the parties agreed to a partial distribution and the said monies have since been distributed as agreed.

18. The only money remaining perhaps is the death gratuity. The protestors have asked that the money be distributed equally among all the 4 beneficiaries but this court is inclined to adopt the agreed ratio in the distribution of the partially confirmed grant.
19. This court also notes that there is little variation on the 2 proposals on distribution which in the normal circumstances would have been thrashed and a consent entered but in view of the hardline stands taken by both sides then this court has had to step in and determine the mode of distribution as provided for by the law.
20. The provisions of section 35 of Law of Succession Act is no longer applicable because it has been found to be ab initio unfair to a surviving spouse and also contrary to family norms which is geared towards family cohesion. The cited provisions would make the children wish for an end of the life interest of the spouse which is quite discriminatory, undesirable and untenable. In the case of **Douglas Njuguna Muigai -vs- John Bosco Maina & Anor (2014)eKLR** Justice Muriithi found that section 35(1) of the Law of Succession Act is discriminatory and contrary to Article 27 of

the Constitution. The same position was held in the case of **Ripples International -vs- Attorney General & Another, Fida (interested party (2022) KEHC 13210 KLR** where the court held that both parties in marriage held equal rights and none was superior than the other as per the dictum stipulated in Article 45 of the Constitution and declared section 35(1) of the Law of Succession Act unconstitutional.

21. In the present instance the 2nd administrator - Harriet Mercy Cheboy claims that the 1st administrator came late into the life of the deceased and did little in terms of contributing toward acquisition of the properties. The 1st administrator has not countered those claims made on oath or counterclaim that he also contributed towards acquisition of some of the properties comprising the estate. I however find no evidence adduced by the 2nd administrator to prove her claim that the 1st administrator squandered or disposed some assets in the estate.

22. This court based on the evidence tendered and in the interest of justice for all the parties herein finds that the remaining estate of the deceased shall be distributed as follows;

(A) Death Gratuity

To be divided among the 4 beneficiaries

- i) Peter Sedeano Amatta**
- ii) Harriet Mercy Cheboy**

- iii) **Jackline Cheptoo Amatta**
- iv) **Jimmy Roy Amatta**

In the ratio agreed in the partial confirmation of grant.

(B) I.R No.98221/L.R NO.27024/89

- i) **Peter Sedeano Amatta**
 - ii) **Harriet Mercy Cheboy**
 - iii) **Jackline Cheptoo Amatta**
 - iv) **Jimmy Roy Amatta**
- equal share**

(C) Mavoko Town Block 2/4817

Harriet Mercy Cheboy

(D) Kitalale Scheme Plot 702 (10 acres)

- (i) **Peter Sedeano Amatta**
 - (ii) **Harriet Mercy Cheboy**
 - (iii) **Jackline Cheptoo Amatta**
 - (iv) **Jimmy Roy Amatta**
- equal share**

(E) Plot at Moi's Bridge (25x100ft)

Jimmy Roy Amatta

(F) Plots Nos,363 & 264

Utumishi Investment/Kenya Police Sacco Kitengela
Site & Service

Jimmy Roy Amatta

(G) Plot Nos 109 & 110

Utumishi Investment/Kenya Police Sacco Kitengela
Site & Service

Jackline Cheptoo Amatta

(H) Plot Nos 117 & 1060

Utumishi Investment/Kenya Police Sacco Kitengela
Site & Service

Harriet Mercy Cheboy

(I) Plot Nos 488 & 499

Utumishi Investment/Kenya Police Sacco Kitengela
Site & Service

Peter Sedeano Amatta

(J) Noon Kopir Plot (50x100ft)

Peter Sedeano Amatta

(K) Noon Kopir Plot 100x50ft

Harriet Mercy Cheboy

(L) Kengen Shares

Jackline Amatta

(M) KCB Shares No.083053

Peter Sedeano Amatta

23. I will not make any order at to costs because this is a family matter.

**DELIVERED, DATED and SIGNED at KITALE this12th day of
.....MARCH....., 2026.**

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

Judgment delivered in open court

Jackline Cheptoo

Muhindi for Jimmy Roy and Jackline Amatta

Nyamu for Harriet Cheboi

Peter Sedeano in person present

Duke/Chemosop/Joseph -Court assistants