



REPUBLIC OF KENYA



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**In re Estate of Sande (Deceased) (Succession Cause E021 of 2022)  
[2026] KEHC 2597 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2597 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE E021 OF 2022**

**AC BETT, J**

**FEBRUARY 20, 2026**

**IN THE MATTER OF THE ESTATE OF MICHAEL JOSHUA SANDE (DECEASED)**

**BETWEEN**

**JESCA OBELI SANDE ..... 1<sup>ST</sup> PETITIONER**

**BETTY PAMBA SANDE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**AYS ..... OBJECTOR**

**RULING**

1. Michael Joshua Sande died on 20<sup>th</sup> January 2021 and was survived by a widow and six children. Following his death, the widow and one of his daughters petitioned for Letters of Administration, which were issued to them on 20<sup>th</sup> March 2023.
2. On 6<sup>th</sup> June 2023, AYS, the Objector, filed summons for revocation of the Grant on the grounds that the Petitioners had failed to disclose three prime properties situated in Nairobi, as well as certain bank accounts that were held by the deceased and that the Petitioners had not first sought his consent before filing the petition. He also accused the Petitioners of failing to administer the estate diligently.
3. In response, the Petitioners refuted the Objector's claims. They contended that he was the one who deliberately refused to consent to the Petitioners taking out the Grant of Letters of Administration. They averred that they intended to distribute the estate in line with the wishes of the deceased and that the deceased had pronounced his wish that the land comprised in L.R. No. E.Bukusu/E.Sangalo/xxx devolve to the Objector whom they maintained, was born out of wedlock and was not in good terms with the deceased towards the end of his life.



4. In a ruling delivered on 11<sup>th</sup> October 2024, Hon. P. J. O. Otieno J. dismissed the summons for revocation of the Grant and directed that the question of what wishes the deceased had expressed or whether the property was still part of the estate would be dealt with at the point of Confirmation.
5. By an application dated 3<sup>rd</sup> January 2025, the Petitioners sought the confirmation of the Grant earlier made to them and proposed that the property comprised in L.R. No. E.Bukusu/E.Sangalo/xxx do devolve to the Objector, while all the assets of the deceased do devolve to his widow, the 1<sup>st</sup> Petitioner.
6. The Objector was aggrieved with the proposed distribution of the estate of the deceased and filed an affidavit in protest on 9<sup>th</sup> June 2025. He averred that the proposed mode of distribution was unfair because the Administrators had not made a full disclosure of the deceased's assets. Additionally, he averred that L.R. No. E.Bukusu/E.Sangalo/xxx, which was allocated to him, was currently the subject of legal proceedings in Bungoma CM's ELC. Misc. Case No. E002 is a fact that was well known to the Petitioners. The Objector further averred that L.R. No. 1160/140, situated in Karen Estate, Nairobi, belonged to Amianda Limited and held properties, including a four-bedroomed mansion with two guest houses, on land measuring 2.5 acres. Yet, the Petitioners had left out the details that would enable the court to determine its exact value and importance.
7. The Objector averred that in his estimation, the Karen property, which is jointly owned by the 1st Petitioner and the deceased by virtue of their equal shares in Amianda Limited, was valued upwards of Ksh. 170 million, and was the deceased's most valuable asset.
8. It was the Objector's further averment that the deceased also owned one eighth of an acre in Ngei Estate, Nairobi, which property L.R. No. NAIROBI/BLOCK 72/xxx is developed with a bungalow where one of his step-sisters lives.
9. Apart from the aforesaid two properties, the Objector averred that the deceased owned a house on L.R. No. NAIROBI/BLOCK 209/xxxx/8, SOUTH C MAFULU A, which he urged this court to allocate to him as it was currently being rented out and he would therefore not displace any of the siblings from the property.
10. The two issues for determination are whether all that property known as L.R. No. E.Bukusu/E.Sangalo/xxx is free property of the estate and available for distribution, and the extent of the Objector's entitlement to the estate of the deceased.
11. I have considered the parties' respective affidavits, their written submissions and the relevant law.
12. Whereas there is no dispute that the Objector is a biological son of the deceased and therefore a beneficiary of his estate, throughout the proceedings, what resonates is the Petitioners' sentiments that since the Objector was born "out of wedlock", his entitlement to the estate of the deceased is less than his siblings and the Objector should lower his expectations and accept what was offered to him which is a rural property currently under litigation.
13. From the record, the deceased died intestate, and this was already pronounced by the court in its ruling dated 11<sup>th</sup> October 2024. Although the Petitioner claimed that the deceased had distributed his property during his lifetime, no evidence was tendered to prove the claim. In the circumstances, the estate of the deceased should be administered in accordance with Section 35 of the *Law of Succession Act*, which provides that:-

“...where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—



- (a) the personal and household effects of the deceased absolutely; and
- (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

- (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
- (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to—
  - (a) the nature and amount of the deceased's property;
  - (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
  - (c) the existing and future means and needs of the applicant and the surviving spouse;
  - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
  - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
  - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
  - (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.
- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”[Emphasis mine].

14. In an affidavit sworn by the 2<sup>nd</sup> Petitioner, she deponed that the 1<sup>st</sup> Petitioner's children have elected to have their mother inherit the net estate of the deceased, excluding the property comprised in L.R.



No. E.Bukusu/E.Sangalo/xxx, which they have assigned to the Objector. She attached affidavits sworn individually by each of the 1<sup>st</sup> Petitioner's children confirming the proposed mode of distribution. The 1<sup>st</sup> Petitioner did not swear any affidavit.

15. The Constitution under Article 27 prohibits discrimination against a person either directly or indirectly and guarantees every person equality before the law with a right to equal protection and equal benefit of the law. It does not countenance a situation where different people are accorded different treatment by virtue of their circumstances. Article 27 (4) and (5) stipulate:-

“(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)”

16. As a corollary to Article 27 of the Constitution, the Law of Succession Act in Section 3 (2) (3) of the Act defines a child as:-

“References in this Act to "child" or "children" shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility. [Emphasis mine]

A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.” [Emphasis mine]

17. In the case of FAAF v. RFM & 2 others [2025] KESC 45 (KLR), the Supreme Court affirmed the rights of a child to inherit their parents' estate and declared that Article 27 of the Constitution of Kenya overrides personal law, including Islamic law that is embedded in the Constitution. In the circumstances, it is evident that the right of a child to equal treatment in matters of inheritance is well settled.
18. From the parties' pleadings and submissions, it is apparent that the Objector seeks an apportionment of his share of the estate notwithstanding the fact that the widow of the deceased is still alive. Such apportionment can only be done pursuant to Section 35 (3) of the Law of Succession Act.
19. In determining what share should be awarded to the Objector, the court must be guided by the factors laid out in Section 35 (3) of the Act, notwithstanding the fact that the right of the children does not crystallize until the determination of the life interest through death, as determination through remarriage was declared unconstitutional.
20. In the case of Tau Katungi v. Magrethe Thorning Katungi & Another [2014] KEHC 3226 (KLR), Hon. Justice Musyoka W. considered the import of Section 35 and held thus:-

“16. “Life interest” is not defined in the Law of Succession Act. Black's Law Dictionary, ninth edition, West, 2009, defines it as “an interest in real or personal property measured by the duration of the holder's or another person's life.” In the context of Section 35 it is an interest held by the surviving spouse during their life “in the whole of the residue of the net interest estate.” Its effect



is that the surviving spouse first enjoys rights over the property and at his or her death the property passes to other persons. In the context of Section 35, the widow is entitled to enjoy rights over the residue of the net intestate estate, that is after taking away the chattels and settlement of liabilities, during her life time with the property passing to the children upon her demise or remarriage of she be a widow.”

21. The court in the Tau Katungi (Supra) case went on to state:-

“ 22. The power of appointment provided for in Section 35(2) of the Act enables the holder of the life interest to distribute the property the subject of the life interest prior to the life interest determining in a manner envisaged in the proviso to Section 35(1). He or she can distribute any or all the property, the subject of a life interest. Section 35(3) provides a remedy to any child who feels aggrieved with the manner of the exercise of the power of appointment or by what he or she considers to be an unreasonable withholding of the exercise of the said person.”

22. None of the parties made reference to Section 35 of the Act in their submissions. Despite the failure to refer to the provisions of Section 35, this court, which is deemed to have the knowledge of the law, is under duty to consider the same in light of the fact that the 1<sup>st</sup> Petitioner’s children have consented to her inheriting the entire estate of their deceased father rather than retaining a life interest over the same.

23. Whereas Section 35 dictates that the life interest in the estate of the deceased herein should vest in the widow, the Beneficiaries have opted to distribute the estate. The effect of confirming the Grant as prayed would result in the 1<sup>st</sup> Petitioner acquiring absolute rights over the estate of the deceased. As rightfully submitted by the Petitioners, it is trite law that a child will be excluded from benefit only if they renounce or disclaim their share. This was affirmed in the case of *In the Matter of the Estate of Elizabeth Wanjiku Munge (Deceased)* [2015] eKLR, where W. MUSYOKA J posited thus:

“ 27. It should be noted, however, that a beneficiary under a will or a survivor in intestacy cannot be compelled to take a share in the estate against their wish. In other words, it is not mandatory that a beneficiary takes his bequest or legacy under the will of the deceased or that a survivor in intestacy takes the share allotted to them. In both cases, there is liberty to renounce or disclaim the right to the share. The usual practice is for such beneficiary or survivor or heir to file a deed or instrument of renunciation disclaiming such right.”

24. As it was apparent from the entire proceedings, the Objector, who does not enjoy a cordial relationship with his stepmother and her children, did not renounce his right to benefit from the estate of his father. In light of the poor relationship evinced in the course of the proceedings, it would therefore be extremely difficult for the Objector, if his entitlement is not apportioned to him, to benefit from his legitimate share of the estate.

25. If the deceased had been married to the Objector’s mother, the estate would have been distributed in accordance with Section 40 of the *Law of Succession Act*, and the Objector would have relied on his mother for any apportionment from their house’s share. In this case, the Objector does not have the benefit of such a safeguard.

26. There are times when it may not be practical to distribute the estate of a deceased person equally due to the peculiar circumstances of the case. In such cases, the court may invoke its inherent powers to ensure



equitable distribution of the estate. In the case of *Mary Rono v. Jane Rono* [2005] eKLR, the Court of Appeal considered the circumstances of the case and held that notwithstanding the provisions of Section 40 (1) of the *Law of Succession Act*, the court still had a discretion to take into account the circumstances of the case in order to ensure equitable distribution of the estate. Despite the fact that the case of *Mary Rono v. Jane Rono* (Supra) concerned a polygamous household, the principle of equity cut across all succession proceedings.

27. The Objector through no fault of his own, finds himself the outsider in his father's estate. The principles of equity dictate that his rights are protected and that can only be done through progressive and purposive interpretation of Section 35 of the *Law of Succession Act*.
28. Since the Objector is an acknowledged son of the deceased but not the biological son of the 1<sup>st</sup> Administrator, equity dictates that his beneficial share in the estate of the deceased do devolve directly to him regardless of the fact that the deceased, as a widow, has a right to a life interest in the entire estate. The court is alive to the provisions of Sections 35 and 40 of the *Law of Succession Act*. It is of the view that, notwithstanding the fact that the deceased was not polygamous, his household was the result of relationships with the different women, and the 1<sup>st</sup> Petitioner did not take in the Objector as her child. Nevertheless, the Objector is entitled to equal treatment just like the 1<sup>st</sup> Petitioner's children. The law should therefore be extended to protect the Objector and his rights and dignity as a son of the deceased
29. In this case, the deceased left behind several properties, which, regrettably, the parties did not subject to valuation to ascertain their worth. The balances in the five accounts belonging to the deceased were also not disclosed. The court nevertheless takes judicial notice of the fact that the properties situated in Nairobi and developed are definitely worth more in value than the farm properties in Kakamega and Bungoma.
30. I have also noted that the Administrators did not make a full disclosure of the real assets of the deceased as they failed to include in the proposed mode of distribution, land parcel No. NAIROBI/'BLOCK' 72/xxx situate within Ngei Estate in Nairobi, as confirmed by the Certificate of Official Search. The Administrators did not refute the Objector's averment that the said land is developed with a bungalow in which one of his step-sisters resides. They also did not refute the Objector's averments that the house on L.R. No. NAIROBI BLOCK 209/xxxx/8 SOUTH C MAFULA A is a rental house.
31. It is not lost to the court that the deceased held 50% shares in Amianda Limited, which is the registered proprietor of L.R. No. 1160/140 situate in Karen, measuring approximately 2.5 acres, and which is developed. The 50% shares form part of the estate and would comprise 1.25 acres to be distributed between Jesca, the widow, and her five children, translating to 0.25 acres of prime land for each beneficiary. Further, the rural properties that are to devolve to the widow all have a combined area of 27.5 acres and some of them are developed as opposed to the Bungoma property that comprises 9.8 acres.
32. In allocating the Objector, only the Bungoma property comprised in L.R. No. E.Bukusu/E.Sangalo/xxx, the Administrators have subjected the Objector to unfair discrimination, which will place him at a disadvantage vis-à-vis his co-beneficiaries. It is common ground that the said Bungoma property is the subject of a claim of adverse possession. In the event the case is decided in favour of the Claimant, the Objector would be left with nothing. This would not only be unreasonable but also grossly unjust. Moreover, the decision to allocate the Objector the Bungoma property alone is arbitrary and unconscionable taking into account the numerous properties that the deceased owned.
33. After painstakingly considering the summons for confirmation of Grant and the Objector's protest, I am persuaded that the circumstances of the case call for a vesting of one of the properties in Nairobi to



the Objector. Since the South C property is currently on rental and the Objector has expressed interest in the same, the court finds it appropriate that the same devolves to him.

34. As to whether the Bungoma property is available for distribution, none of the parties furnished the court with a final decree. The said property cannot, therefore, be considered to be part of the free estate of the deceased available for distribution until the final determination of the claim of adverse possession. However, the Objector proposes that the same devolve to him pending the outcome of the claim, subject to the court granting him liberty to apply in the event the claim at the Environment and Land Court succeeds, as the widow is inheriting clean titles. Bearing in mind the fact that the Objector has been assigned a property under dispute, and in the event of the suit being lost, the Objector would be left with only the Ngei property out of the vast estate. This would violate the principle of equitable distribution.

35. Accordingly, the Protest succeeds, and I make the following orders:-

- a. That the property comprised in L.R. No. NAIROBI/BLOCK 209/xxxx/8 SOUTH C do devolve to the Objector.
- b. That all that property known as L.R. No. E.Bukusu/E.Sangalo/xxx do devolve to the Objector subject to the rider that in the event the claim for adverse possession succeeds, the Objector shall be at liberty to apply for re-distribution.
- c. That the rest of the estate devolves to the widow, Jesca Obeli Sande, as consented by her children.
- d. That a Certificate of Confirmation of Grant of Letters of Administration do issue to the two Administrators with the mode of distribution as follows:-

Schedule

Beneficiary -Asset - Share Of Beneficiary



AYS	AYS/xxx	Whole
	L.R. Nairobi/ Block 209/xxxx/8 (South C)	Whole
Jesca Obeli Sande	(a) L.R. Nairobi/ Block 72/xxx, Ngei Estate	Whole
	(b) Kisa/ Mundobelwa/ xxxx	
	(c) Kisa/ Mundobelwa/1674	
	(d) Kisa/ Mundobelwa/ xxxx	
	(e) Kisa/ Mundobelwa/ xxxx	
	(f) Kisa/ Mundobelwa/ xxxx	
	(g) Kisa/ Mundobelwa/ xxxx	
	(h) Kisa/ Mundobelwa/ xxxx	
	(i) Bunyala/ Budonga/xxx	
	(j) Butsotso/ Shikoti/xxxx	
	(k) Proceeds at ABSA Bank - Account No. 07022xxxxxx	



(l) Proceeds at Co-operative Bank – Account No. 011103233xxxxx
(m) Proceeds at Co-operative Bank – Account No. 011109233xxxxxx
(n) Proceeds at Co-operative Bank – Account No. 0110039xxxxxx
(o) Proceeds At Standard Chartered Bank – Account No. 0100340xxxxxx
(p) Shares in Amianda Limited

e. This being a family matter, there shall be no orders as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026.**

**A. C. BETT**

**JUDGE**

In the presence of:

Mr. Gichamba for the Administrators

Ms. Mburu for the Objector

Court Assistant: Polycap

