



REPUBLIC OF KENYA



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**In re Estate of Zaddock Mafura Kiara (Deceased) (Succession Appeal
E082 of 2024) [2026] KEHC 1137 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION APPEAL E082 OF 2024**

MS SHARIFF, J

JANUARY 29, 2026

IN THE MATTER OF THE ESTATE OF ZADOCK MAFURA KIARA (DECEASED)

BETWEEN

JUSTSUS MURUNGA MAFURA APPELLANT

AND

ALBERT KILONG'I MAFURA 1ST RESPONDENT

NATHAN KIARA MAFURA 2ND RESPONDENT

*(Being an appeal from the Judgement of the Senior Principal Magistrate's Court in Kimilili
Succession Cause No. 74 of 2018 delivered by Hon. W.K. Onkunya (PM) on 8th May 2024)*

JUDGMENT

A. Background

1. This appeal relates to the estate of the deceased Zaddock Mafura Kiara who died on 13th August 2007. After the petitioning process, the Letters of Administration were duly issued to the Appellant and Respondents herein on 26th March 2018.
2. The deceased was survived by the following:
 - a. 1st House
 - Delila Nabuyumbu-widow (deceased)
 - Nathan Kiara
 - Robert Wangusi
 - Johnstone Tambinini (deceased)
 - Morgan Peter (deceased)



Humprephy Solongwa
Ruben Nato (deceased)
Francis Kilongi (deceased)
Jane Chesevesi
Pauline Naliaka
Jesciah Nabifwo.

b. 2nd House

Maria Mutenyo-widow
Richard Sifuma (deceased)
Joseph Solongwa
Maurice Murunga (deceased)
Albert Kilongi Mafura
Wyvlifee Wangusi
Dorothy Nekesa
Margaret Naliaka

c. 3rd House

Emmah Khisa-Widow
Evans Kiara
Justsus Murunga Kiara
Mary Nabachenje (deceased)
Rosemary Nasimiyu
Susan Nakhungu
Judith Nafula
Agnes Nato

d. 4th House

Racheal Mukaliza-widow (deceased)
Justus Kiara
Alfred Wangusi (deceased)
Alice Nabachenje (deceased)
Sarah Chesevesi

e. 5th House

Roseline Namalwa- widow
Maureen Chesevesi
Rosemary Nabachenje



3. The estate of the deceased comprised of the following assets namely:
 - a. North Malakisi/East Sasuri/587 measuring 11.0 Acres
 - b. South Malakisi/North Kulisiru/13 measuring 6.6 Ha
 - c. Commercial Plot No. 3 at Sirisia Market Centre
 - d. 264 Ordinary shares at East Africa Breweries Limited

B. The Duty Of A First Appellate Court

4. A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate Court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. (See *Selle & another v Associated Motor Boat Co. Ltd. & others* {1968} EA 123). As was held by the Court of Appeal for East Africa in *Peters v Sunday Post Limited* {1958} E.A. page 424: -

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.”

5. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate Court had discharged the duty expected of it. (See *Santosh Hazari vs. Purushottam Tiwari (Deceased)* by L. Rs {2001} 3 SCC 179).

C. Evidence

6. It was the Appellant’s case that the deceased herein had settled his wives and children as follows:-
 - i. Land parcel North Malakisi/East Sasuri/587 was allocated the 1st widow (now deceased) Delila Nabulumba and the 2nd widow, Maria Mutenyo, and their children.
 - ii. Land parcel No South Malakisi/North Kulisiru/13 was allocated to the 3rd widow, Emmah Khisa Mafura and her children in the year 1986 when the 2nd widow refused to be relocated from land parcel North Malakisi/East Sasuri/587.
7. The Appellant submitted that the trial Court ought to have allocated the real properties per households in order for the parties to continue living in unity. He maintained that the 4th and 5th houses were well settled and were not entitled to any share from the land parcels North Malakisi/East Sasuri/587 and South Malakisi/North Kulisiru/13, and that the 5th widow had confirmed to the Court that she did not need a share of the estate of the deceased.



8. On the commercial plot at Sirisia market and EABL shares he submitted that the same be shared equally amongst all the houses.
9. According to the Respondents, on 12th February 2022, a family meeting was held and it was agreed that the estate of the deceased be distributed as follows:
 - i. North Malakisi/East Sasuri/587 measuring 11.0 Acres
 - Maria Mutenyo-0.79 Acres.
 - Robert Wangusi-0.86 Acres.
 - Humphrey Solongwa-0.86 Acres.
 - Family of the late Ruben Nato-0.79 Acres.
 - Family of the late Richard Situma-0.79 Acres.
 - Joseph Solongwa-0.79 Acres.
 - Justus Kiara-0.79 Acres.
 - Jane Chesewesi-0.86 Acres.
 - Margret Naliaka--0.79 Acres.
 - Family of the late Mary Nabachenje-0.79 Acres
 - Rosemary Nabachanje--0.79 Acres.
 - Family of the late Alice Nabachanje-1.18 Acres
 - ii. South Malakisi/North Kulisiru/13 measuring 6.6 Ha
 - Emmah Khisa-0.79 Acres.
 - Roseline Namalwa-0.79 Acres.
 - Nathan Kiara-0.86 Acres.
 - Family of the late Johnstone Tambinini-0.86 Acres.
 - Family of the late Morgan Peter Wamukota-0.86 Acres.
 - Family of the late Francis Kilongi-0.86 Acres.
 - Family of the late Maurice Murunga--0.79 Acres.
 - Wycliffe Wangusi-0.79 Acres.
 - Albert Kilongi-0.79 Acres.
 - Evans Kiara-0.79 Acres.
 - Justus Murunga-0.79 Acres.
 - Family of the late Alfred Wangusi-0.79 Acres.
 - Pauline Naliaka-0.86 Acres.
 - Jescah Nabifwo-0.86 Acres.
 - Dorothy Nekesa0.86 Acres.
 - Rosemary Nasimiyu-0.79 Acres.



Susan Nakhungu-0.79 Acres.

Judith Nafula-0.79 Acres.

Agnes Nekesa-0.79 Acres.

Sarah Chesewesi-1.18 Acres

iii. Commercial Plot No. 3 at Sirisia Market Centre

Delila Nabuyumbu (deceased)-Kshs. 233, 500/=.

Maria Mutenyo-Kshs. 233, 250/=.

Emmah Khisa-Kshs. 231,250/=.

Racheal Mukaliza (deceased) Kshs. 50,000/=.

Roseline Namalwa-Kshs. 161,750/=.

iv. 264 Ordinary shares at East Africa Breweries Limited

Jessica Nekesa Mafura on behalf of the 1st house of Delila Nabuyumbu (deceased)- 52.8 shares.

Margaret Lusike Mafura on behalf of the 2nd house of the widow namely Maria Mutenyo-52.8 shares.

Justus Murunga Mafura on behalf of the 3rd house of the widow Emmah Khisa-52.8 shares.

Sarah Everlyne Mafura on behalf of the 4th house of the widow namely Racheal Mukuliza-52.8 shares.

Justus Kiara Mafura on behalf of the 5th house of the widow Roseline Namalwa-52.8 shares.

10. Also, prior to his demise, the deceased herein, called a meeting which was duly attended by his immediate family members as well as: Julius Mulongo Kaikai, Samuel Nato Kaikai and the late Bineah Wangusi wherein he discussed how he wished his estate to be distributed and the services of a surveyor were immediately procured. The sons of the deceased who were present in the meeting included: Justus Kiara Mafura, Justus Murunga Mafura, Joseph Solongwa Mafura and Nathan Kiara Mafura.
11. The Respondents alleged that with the consent of all the beneficiaries to the estate of the deceased the land parcel known as Commercial Plot No. 3 at Sirisia Market Centre was sold and the proceeds were shared out equally amongst all the 5 houses.
12. Respondent submitted that the distribution of the deceased person's estate should factor in the composition of the houses as some houses have more beneficiaries than others and they urged the trial Court to factor in the number of units per family so as to ensure equity and equality.
13. Subsequently, the Parties could not agree on the mode of distribution of the estate of the deceased. The trial Court directed the parties to attend Court annexed mediation and they were able to reach a partial settlement wherein it was agreed that:
 - a. All the children of the deceased should inherit part of his estate.
 - b. All the female children enlisted as children of the deceased should be given land on the deceased's estate.
 - c. Land Parcels North Malakisi/East Sasuri/587 measuring 11.0 Acres and South Malakisi/ North Kulisiru/13 measuring 16.5 Acres are to be distributed



- d. The trial Court should proceed to distribute the estate of the deceased accordingly.
14. The trial Court established that the parties failed to reach a consensus on the mode of distribution. Parties proceeded to file their mode of distribution vide their written submissions.
15. The trial court placed reliance on the cases of Re Estate of Chesimbili Sindani (Deceased) (2021) eKLR, Re Estate of John Musambayi Katumanga (Deceased) (2014) eKLR and the provisions under Section 40 of the [Law of Succession Act](#), and held that each child of the deceased constituted a unit and surviving widow constituted an additional independent unit, and that the estate of the deceased ought to be equally divided amongst the units. The trial Court confirmed that the 5th wife, Roselyne Namalwa Wafula was not interested in receiving any share from the estate of the deceased.
16. The trial Court proceeded to distribute the estate of the deceased as follows:
North Malakisi/East Sasuri/587 measuring 11.0 Acres
To be distributed equally at 0.35 Acres to the following:
- i. Emmah Khisa.
 - ii. Nathan Kiara Mafura.
 - iii. Robert Wangusi Mafura.
 - iv. Johnstone Tambinini Mafura (next of kin).
 - v. Peter Morgan Wamukota Mafura (next of kin).
 - vi. Jane Chesewesi Mafura.
 - vii. Pauline Naliaka Mafura alias Linet Naliaka Mafura.
 - viii. Humphrey Solongwa Mafura.
 - ix. Francis Kilongi Mafura (next of kin).
 - x. Ruben Nato Mafura (next of kin).
 - xi. Jesca Nekesa Mafura.
 - xii. Dorothy Nekesa Mafura.
 - xiii. Richard Situma Mafura.
 - xiv. Joseph Solongwe Mafura.
 - xv. Maurice Murunga Mafura (next of kin).
 - xvi. Albert Kilong'I Mafura.
 - xvii. Margaret Lusike Naliaka Mafura.
 - xviii. Wycliffe Wangusi Mafura.
 - xix. Evans Kiara Mafura.
 - xx. Mary Nabachenje Mafura (next of kin).
 - xxi. Rosemary Nasimiyu Mafura.
 - xxii. Justus Murunga Mafura.



- xxiii. Susana Nakhungu Mafura.
 - xxiv. Judith Nafula Mafura.
 - xxv. Agnes Nekesa Mafura.
 - xxvi. Alice Nabachenje Mafura (next of kin).
 - xxvii. Sarah Evangeline Chesiwesi Mafura.
 - xxviii. Justus Kiara Mafura.
 - xxix. Alfred Wangusi Mafura (next of kin).
 - xxx. Rosemary Nabachenje Mafura.
 - xxxi. Moureen Chesiwesi Mafura.
- South Malakisi/North Kulisiru/13 measuring 16.5 Acres
To be equally distributed at 1.90 Acres to the following:
- i. Emmah Khisa.
 - ii. Nathan Kiara Mafura.
 - iii. Robert Wangusi Mafura.
 - iv. Johnstone Tambinini Mafura (next of kin).
 - v. Peter Morgan Wamukota Mafura (next of kin).
 - vi. Jane Chesevesi Mafura.
 - vii. Pauline Naliaka Mafura alias Linet Naliaka Mafura.
 - viii. Humphrey Solongwa Mafura.
 - ix. Francis Kilongi Mafura (next of kin).
 - x. Ruben Nato Mafura (next of kin).
 - xi. Jesca Nekesa Mafura.
 - xii. Dorothy Nekesa Mafura.
 - xiii. Richard Situma Mafura.
 - xiv. Joseph Solongwe Mafura.
 - xv. Maurice Murunga Mafura (next of kin).
 - xvi. Albert Kilong'I Mafura.
 - xvii. Margaret Lusike Naliaka Mafura.
 - xviii. Wycliffe Wangusi Mafura.
 - xix. Evans Kiara Mafura.
 - xx. Mary Nabachenje Mafura (next of kin).



- xxi. Rosemary Nasimiyu Mafura.
- xxii. Justus Murunga Mafura.
- xxiii. Susana Nakhungu Mafura.
- xxiv. Judith Nafula Mafura.
- xxv. Agnes Nekesa Mafura.
- xxvi. Alice Nabachenje Mafura (next of kin).
- xxvii. Sarah Evangeline Chesiwesi Mafura.
- xxviii. Justus Kiara Mafura.
- xxix. Alfred Wangusi Mafura (next of kin).
- xxx. Rosemary Nabachenje Mafura.
- xxxi. Moureen Chesiwesi Mafura.

Commercial Plot No. 3 at Sirisia Market Centre

The trial Court did not make any determination on this as the same was already sold and the proceeds shared among the beneficiaries.

264 Ordinary shares at East Africa Breweries Limited

The trial Court ordered that the same be shared equally among the five (5) houses with each house getting 52.8 shares.

D. Appeal

- 17. Aggrieved by the decision of the trial Court on the distribution of the estate of the deceased, the Appellant herein preferred this appeal seeking to set aside the trial Court's decision and urging this Court to adopt his own mode of distribution as proposed in his written submission.
- 18. Vide Court directions, this Court directed the parties to canvass the appeal by way of written submissions. Both parties complied with the Court directives.

E. Analysis And Determination

- 19. It is trite practice that when beneficiaries fail to reach a consensus on the mode of distribution of the estate of the deceased, it is left to the Court to apply the laid down law and principle of succession to arrive at a fair and just distribution in the circumstances of the case.
- 20. I have considered the rival submissions of the parties, and the authorities relied on, and the relevant provisions of the law cited and the only issue for determination is what is the lawful distribution of the estate of the deceased.
- 21. This inheritance is by descent. The claims of descent and all existing models and rules are set forth in the *law of Succession Act* covering both real and personal property.
- 22. The deceased died on 13th August 2007. The deceased died intestate after the Act came into force on 1st July, 1981. It follows that under Section 2(1) of the *Law of Succession Act* the law applicable to the distribution of his estate is the *Law of Succession Act* and specifically section 40 hereof provides:



- (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.
23. Courts have a special duty to ensure equitable distribution of property in Polygamous units. In re Estate of Kaga Kimaru Gathua (Deceased) (Succession Cause 42 of 2015) [2024] KEHC 2750 (KLR), the Court held as follows;
- “In re Late Morogo A Mugun (Deceased) [2019] eKLR and the case of Douglas Njuguna Muigai v John Bosco Maina Kariuki & Another the court noted the absurdity of a blind application of this provision of law and held that:
- (17)it is therefore evident, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”
24. Courts have a duty to exercise discretion judiciously after looking at all factors and must ensure an equitable and fair distribution of the estate. This rule was restated by the Court of Appeal in *Scolastica Ndululu Suva v Agnes Nthenya Suva* [2019] eKLR, where the Court held as follows;
- “Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that, the discretion must be exercised judicially on sound legal and factual basis....It is therefore evident, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”
25. Upon my re-evaluation of the trial Court’s record, it’s decision and upon considering the written submission of the parties herein I come to the conclusion the estate of the deceased was equitably and fairly distributed and I do not fault the trial court in any way as it considered the fact that the deceased herein had 5 wives and four (4) children born out of wedlock.

F. Conclusion

26. In the end, I find that the mode of distribution as ordered by the trial Court was equitable and fair. The same is upheld. The Appeal is dismissed.
27. Given that this is a family matter I order that each party shall bear it’s own costs.

It is so ordered.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 29TH DAY OF JANUARY 2026.

MWANAISHA.S. SHARIFF

JUDGE

