



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 349 OF 2001

IN THE MATTER OF THE ESTATE OF PAUL NJANE NJENGI alias
PAULO GITAU NJENGI (DECEASED)

SAMUEL NJENGI NJANE..... 1ST ADMINISTRATOR
MARY NYAKIO NJANE.....2ND ADMINISTRATOR

VERSUS

JANE WANGARI NJANE1ST OBJECTOR
PETER NJUGUNA NJANE.....2ND OBJECTOR
ANN WANJIKU NJANE.....3RD OBJECTOR
SAMSON KARIUKI NJANE.....4TH OBJECTOR
ELIZABETH NJERI NJANE.....5TH OBJECTOR
JOYCE WAMBUI NJANE.....6TH OBJECTOR

RULING

1. The deceased herein died interstate on 5th July, 2000 and was survived by two houses.
2. A consent order was adopted in Court on **28th February 2020**, providing that the **first house**, represented by **Samuel Njengi Njane**, would receive **32%** of the estate, while the **second house**,

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3. Pursuant to the consent, a grant of letters of administration intestate was issued to **Martha Wairimu Njane** and **Mary Nyakio Njane** on 25th January 2021. Following the death of Martha the Grant was re-issued to **Mary Nyakio Njane** and **Samuel Njengi Njane** on 6th November, 2022.
4. A valuation was conducted by Apple Cross Valuers following the Order of 22nd October, 2024 and as per the report dated 10th March, 2025 the deceased properties were identified and valued as follows:-
 - a) LR No. 9604/1 Molo valued at Kshs. 230,000,00
 - b) Plot No. 12 Turi Township valued at Kshs. 3,000,000
 - c) LR. No. Mau Summit/Molo Block 1/354 (Mutirithia) valued at Kshs. 6,000,000
 - d) LR. No. 533/43/II - Molo Town valued at Kshs. 44,000,000
 - e) LR. No. 533/55/II - Molo Town valued at Kshs. 19,000,000
5. It is noted that **LR No. 9604/1 Molo** is pending before **ELC Case No. 137 of 2015**.
6. Subsequently, by Summons dated 14th August 2025, the 1st Administrator sought confirmation of the grant. The Summons was supported by the Affidavit of **Samuel Njengi Njane**, together with a proposed mode of distribution annexed thereto.

7. As per the proposal of the 1st Administrator, the distribution was suggested as follows:
- a) PLOT NO 31 TURI I1. SAMUEL NJENGI NJANE - valued at 3,000,000/=
 - b) MAU SUMMIT MOLO BLOCK 1/354- SAMUEL NJENGI NJANE valued at 6,000,000/=
 - c) LR NO 533/55/11- SAMUEL NJENGI NJANE valued at 19,000,000/=
 - d) LR NO 533/43/11- MARY NYAKIO NJANE valued at 44,000,000/=
8. The 1st Administrator further contended that the above distribution was fair and reasonable, noting that the 2nd Administrator had collected all the rent from August 2000 up to date valued at Kshs 19,400,000.
9. In Protest, the Objectors by and Affidavit sworn on 12th October, 2025 by **Samson Kariuku Njane**, opposed the Proposed Distribution stating the same was unfair, the 1st Administrator had concealed some properties and illegally benefitted from selling estate property by failing to disclose the proceeds.
10. The Objectors proposed the following mode of distribution:

PROPERTY	VALUATION	PROPOSED DISTRIBUTION
Plot No. 31 TURI	3,000,000	1 st House 32% 2 nd House

		68%
Mau Summit Molo Block 1/354	6,000,000	1 st House 32% 2 nd House 68%
LR. No. 533/55/11	19,000,000	1 st House 32% 2 nd House 68%
LR. No. 533/43/11	44,000,000	1 st House 32% 2 nd House 68%
LR. No. 9604/1-MOLO	28,986,301	1 st House 32% (less 23 acres already sold) 2 nd House 68%

11. The Objectors added that with the first house having disposed off 23 acres out of the total 73.88 hectares in LR. No. 9604/1- MOLO they have partially benefitted from the estate and made the following proposals in terms of finances: -

LIST OF PROPERTIES	WHO TO INHERIT	AMOUNT
1. LR NO. 9604/1MOLO	SAMUEL NJENGI NJANE	28,986,301/-
2. PLOT NO. 31 TURI:	MARY NYAKIO NJANE	3,000,000/-
3. MAU SUMMIT BLOCK 1/354:	MARY NYAKIO NJANE	6,000,000/-
4. LR NO. 533/43/11:	MARY NYAKIO NJANE	44,000,000/-
5. LR NO. 533/55/11:	a) SAMUEL NJENGI NJANE-to get 3,329,315/- b) MARY NYAKIO NJANE- to get 15,670,685/-	19,000,000/-
TOTAL		100,986,301

Objector's Submissions

12. That the Administrator's proposed mode of distribution offends **Sections 26, 27 and 28** of the **Law of Succession Act** and

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- Article 27** of the **Constitution** by introducing an unequal and discriminatory allocation of the estate without consent of all beneficiaries and without any lawful basis. That it elevates the interests of certain beneficiaries over others of equal priority.
13. Further, it is submitted that some assets forming part of the deceased's estate were omitted from both the valuation report relied upon by the 1st Administrator and his proposed mode of distribution as such rendering it incomplete and misleading.
 14. It is submitted that the proposed mode of distribution is contrary to the confirmed grant issued on 25th January 2021 and does not reflect the true position of the estate or the agreement reached between the two houses.
 15. Reliance was placed *In Re Estate of Ndolo (Deceased) [2021] eKLR*, where the Court found that concealment or selective disclosure empowers the Court to reject a proposed mode of distribution and craft an equitable alternative. Also, *In Re Estate of George M'Ngarithi M'Miriti (Deceased) [2017] eKLR* the Court emphasized that distribution must be equitable and anchored in evidence.
 16. It is argued that the omission to properly account for and equitably distribute the estate property renders the 1st Administrator's proposed mode of inconsistent with the administrator's statutory duty.

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17. The objectors submits that failure to disclose known properties, rental proceeds, or other material estate assets, the proper exercise requires the Court to decline confirmation, to order a full and verified inventory and account, and direct redistribution of the estate under Section 76 of the Law of Succession Act.
18. The Objector relied on *re Estate of Kipsoi Cheramgoi (Deceased)* [2024] KEHC 15382 (KLR), where an allegation of forged consent to rectify a grant was upheld upon forensic evidence leading to vacation of the confirmation. *In re Estate of Patrick Lemeiruko Ole Marangura*, the Court held that a grant obtained by concealment of material facts was liable to revocation. Counsel also cited *In Re Estate of Gitau Mbugua (Deceased)* [2020] eKLR, where it is submitted that the Court declined to confirm a grant where valuation omitted known estate assets and appeared selectively tailored.
19. The Objector also submitted that the 1st house, through its representative **Samuel Njengi Njane**, previously and unilaterally disposed of a portion of the estate, namely L.R No. 9604/1 – MOLO contrary to **Section 45** of the **Law of Succession Act** and without the knowledge, consent or participation of the 2nd house despite a Court order existing barring/restraining any dealings in the said land.
20. That the 1st Administrator's proposal does not include the proceeds from the said illegal sale as they have not been disclosed, accounted for or distributed in violation of **Section 83(e) and (h)** of

Ruling In re Estate of the late Paul Gitau Njengi (Deceased) P & A No. 349 of 2001 the Act which mandates administrators to render a full and accurate inventory and account of the estate.

21. It is however conceded, that while it is not disputed that **L.R No. 9604/1 – MOLO is the** subject of **ELC No. 137 of 2015**, it remains an undisposed asset of the deceased's estate and must therefore be included in the distribution schedule for completeness.
22. Reliance was placed In Re Estate of Mwaura Mutungi (Deceased) **[2017] eKLR, Re Estate of M'Marete (Deceased) [2018] eKLR,** and **Re Estate of Naftali Mutua (Deceased) [2016] eKLR,** to submit that the 23 acres which the 1st Administrator has admitted to having sold, it is submitted that this property be considered when determining the respective entitlements of the beneficiaries, notwithstanding the ongoing litigation.
23. It is argued that at the time of the deceased's passing, several of his children were minors and still in school and with no alternative source of support, the 2nd Administrator applied rental proceeds from the estate to cover their tuition and living expenses to ensure that dependants are provided for particularly minors. That the 1st Administrator's attempt to fault the 2nd house for using rental income for the children's upkeep is misguided as such expenditure was both lawful and necessary to safeguard the welfare of the deceased's dependants.
24. It is submitted that the Objectors' proposed mode of distribution is equitable and consistent to the confirmed grant issued on 25th January 2021, which prescribed a clear and binding distribution

Ruling In re Estate of the late Paul Gitau Njengi (Deceased) P & A No. 349 of 2001 ratio of 32% to the 1st house and 68% to the 2nd house and as per the consent order dated 28th February 2020.

Analysis and Determination

25. In this matter, the Court observes that the sharing ratio of the estate has already been conclusively determined. Each faction has since presented its proposed mode of distribution with each claiming to have factored in the agreed formula.
26. The only question left for determination is therefore rather which proposed mode of distribution aligns with the consent order and the grant issued on 25th January, 2021.
27. In considering the competing proposals, it is important to first address the status of the properties forming part of the estate. It is not in dispute that **L.R No. 9604/1 – MOLO** is the subject of ongoing litigation in **ELC No. 137 of 2015**.
28. Prudence dictates that a probate Court ought to refrain from distributing assets subject to ongoing dispute before any Court until the dispute is resolved. This was the position held by Ogolla J. in *re Estate of Riyaz Tajdin Rahemtulla Dhanji (Deceased)* [2025] KEHC 16408 (KLR).
29. Therefore, this Court cannot proceed to distribute this property while it remains under active litigation. To purport to issue any orders touching on its distribution at this stage would risk conflicting with the jurisdiction of the Environment and Land Court.

30. The other properties forming part of the estate that are not encumbered remain free for distribution. The Court shall therefore proceed to consider the competing proposals in respect of these properties.
31. The properties available for distribution are valued at approximately Kshs. 72 million with the agreed ratio of 32:68 translating to Kshs. 23,400,000 for the 1st house and Kshs. 48,960,000 for the 2nd house.
32. However, the 1st Administrator's proposed mode of distribution departs from this agreed ratio by exceeding it by Kshs. 4,600,000 while the Objectors' proposal improperly includes property that cannot be distributed by this Court for reasons already enumerated.
33. Notably, both parties are in consensus regarding the distribution of **LR NO 533/43/11** to Mary Nyakio Njane (1st House) valued at Kshs. 44,000,000.
34. Having considered the proposals on the distribution of the estate that have been placed before me, I am disposed to distribute the estate of the deceased as follows
35. By allocating LR No. 533/43/II entirely to the 2nd house, that house already receives Kshs. 44,000,000 leaving a balance of Kshs. 4,960,000 to reach its full entitlement. This balance can be drawn from LR No. 533/55/II (valued at Kshs. 19,000,000). The

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36. In order to give effect to the agreed ratio of 32:68 the resulting distribution is as below

Property	Value (Kshs.)	1st House (Samuel Njengi Njane)	2nd House (Mary Nyakio Njane)
Plot No. 31 Turi Township	3,000,000	Whole	Nil
Mau Summit/Molo Block 1/354	3,000,000	Whole	Nil
LR No. 533/43/II – Molo Town	44,000,000	Nil	Whole
LR No. 533/55/II – Molo Town	19,000,000	14,040,000	4,960,000
Totals	72,000,000	23,040,000 (32%)	48,960,000 (68%)

37. Consequently, the Court shall defer distribution of **LR No. 9604/1 – Molo** until the final determination of the pending matter, upon which the administrators shall move this Court for appropriate orders to effect distribution in accordance with the agreed ratio should the property revert to the estate.

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38. This being a family matter, each party shall bear its own costs

Dated, Delivered and Signed at Nakuru

On this 16th Day of April, 2026

MOHOCHI S. M.

JUDGE