

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO. 238 OF 2001**

**IN THE MATTER OF THE ESTATE OF STEPHEN KEMEI ASSIS (DECEASED)**

CHRISTINA JEPTIONY KEMEI.....PETITIONER

VERSUS

MONICA KEMEI.....OBJECTOR-2<sup>ND</sup> ADMINISTRATOR

AND

CHARLES KIPKEMBOI KEMEI.....1<sup>ST</sup> ADMINISTRATOR

**RULING**

1. I delivered a Judgment in this matter on 24/11/2024 in which I declared the Petitioner to be a “*wife*” and/or “*widow*” of the deceased in this matter. I therefore declared the Petitioner and the Objector to be co-wives and, as such, to be the two widows of the deceased, both thus entitled to inherit from the estate as beneficiaries, together with their children with the deceased. Having so declared, and the identification of the beneficiaries having now been laid to rest, I am now called upon to identify the properties that form the estate, and to then determine the appropriate mode of distribution thereof amongst the beneficiaries.
2. In the Judgment, the declarations and orders I made were as follows:

**“Final Orders**

*“41. In the end, I rule and order as follows:*

- i) I make a declaration that the Petitioner, **Christine Jeptiony Kemei**, was a wife to the deceased, **Stephen Kemei Assis**, and was therefore a co-wife to the Objector, **Monica Kemei**. The Petitioner and the Objector are therefore declared to be the two widows of the deceased.*
- ii) I make a further declaration that the two houses (the Petitioner’s and the Objector’s, respectively) are equally entitled to apply for the Grant of Letters of Administration Intestate over the estate of the deceased.*
- iii) The Court shall consequently appoint two joint Administrators and for purposes thereof, each of the two houses shall, **within a period of twenty-one***

(21) days from the date hereof, nominate one person to be appointed a co-Administrator.

iv) Once the issue of appointment of the 2 co-Administrators is concluded, directions shall be given on determination of the distribution of the estate.

v) Costs shall be in the Cause.”

3. In the same Ruling, I recounted the background of this matter as follows:

“2. The background of the matter is that the deceased, **Stephen Kemei Asis**, died on 9/11/1993 at the age of 63 years old. He left behind the property known as **Nandi/Kiminda/308** whose inheritance is evidently the motivation behind this long-standing Succession battle. The dispute has been litigated in different Courts for almost 30 years now and both the Petitioner and the Objector are now in their 80-90s in terms of age, sickly and visibly tired.

3. From the record, I gather that the parties herein had initially allegedly jointly applied for Grant of Probate of Letters of Administration over the estate of the deceased in **Kapsabet Senior Resident Magistrate’s Court Succession Cause No. 20 of 1997**. The Objector later disowned the said Succession Cause and filed her own Cause in this Court, namely, **Eldoret High Court Succession Cause No. 32 of 1997** in which a Grant of Letters of Administration was issued to her on 7/12/1998. The Grant was later confirmed on 4/03/1999 and the entire property, **Nandi/Kiminda/308** allocated to the Objector as the sole beneficiary. The Grant was however later revoked on 17/11/1999 by **Hon. Nambuye J (as she then was)**. Subsequently, the said **Kapsabet Senior Resident Magistrate’s Court Succession Cause No. 20 of 1997** was, on account of issues of pecuniary jurisdiction, coupled with disagreements between the parties, subsequently transferred to this Court and assigned the present case number, namely, **Eldoret High Court Succession Cause No. 238 of 2001**.

4. Pursuant to the said transfer and upon a consent later recorded, I also gather that the Petitioner was allowed to withdraw the earlier Petition and filed a fresh one on 27/05/2004, through **Messrs Birech Ruto & Co. Advocates**. In the fresh Petition, the Petitioner, claiming as a widow, listed 12 persons (including herself and the Objector as the 2 widows), as the survivors of the deceased. However, by

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*the Objection filed on 29/07/2004 through Messrs Annasi Momany & Co. Advocates, the Objector challenged the Petition and also filed a Cross-Petition of her own. The Objector's grounds for raising the challenge were that she was the only surviving widow of the deceased and that the Petitioner was not a widow and thus not entitled to the Grant and neither was she a beneficiary.*

*5. The record is not so clear but it appears that at some point, the earlier Objection dated 29/07/2004 was withdrawn by consent and replaced with a fresh one filed on 15/07/2011, together with a fresh Cross-Petition. The grounds cited were similar to those raised earlier and it is this Objection that is now the subject hereof and which proceeded for **viva voce** trial.”*

4. In accordance with the above orders, the Petitioner presented the name of the said **Charles Kipkemboi Kemei**, her son, for appointment as Administrator, whom I promptly appointed. The Objector, on her part, however inexplicably kept on delaying in presenting a name. and when it became apparent that she had no intention of co-operating, I *suo moto* appointed her to be the co-Administrator. I then gave the parties leave to file Summons for Confirmation of Grant, and present their respective proposed modes of distribution.
  5. Pursuant thereto, the Petitioner's house, through the 1<sup>st</sup> Administrator, filed the Summons for Confirmation of Grant dated 1/04/2025. The same is filed through **Messrs Bitok & Sambu Advocates**. The Objector, on her part, now acting in person after dropping **Messrs Anassi Momanyi & Co.** as her Advocates, filed the Summons for Revocation of Grant dated 16/04/2025 seeking annulment of the Grant dated 18/02/2025. Upon hearing the parties, I directed that I would determine the two respective Summons together, in this one Ruling.
  6. The Summons for Confirmation of Grant is supported by the Affidavit sworn by the 1<sup>st</sup> Administrator, who deponed that the Petitioner's house (1<sup>st</sup> wife) comprises of 6 children, while the Objector's house comprised of 7 children but 2 have since passed on thus leaving 5 alive. He then proposed that the parcel of land **Nandi/Kiminda/308**, the only asset forming the estate of the deceased, be shared equally between the 2 houses.
  7. In the Summons for Revocation of Grant, the Objector, by way of her Supporting Affidavit, deponed that she is the one entitled to inherit the parcel of land **Nandi/Kiminda/303**, which she is in occupation of. She then introduced 4 new/fresh
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properties, not earlier disclosed, which she described as comprising the ancestral land, and proposed that the Petitioner and her children be allocated these 4 fresh properties for the reason that they have been residing thereon. She named these fresh properties as **Nandi/Kongoro/345**, **Nandi/Kongoro/486**, **Nandi/Kongoro/564**, and **Nandi/Kongoro/633**. She also raised other issues such as that the statutory period of 6 months has not lapsed since the Grant was given on 18/02/2025, that there is an Appeal pending against the Judgment delivered on 29/11/2024, and that there are no consents signed by beneficiaries. She also alluded that some of the said fresh properties have since been fraudulently transferred to third parties by the Petitioner and her children. She then attached copies of various search reports, and other land ownership documents relating to these fresh properties.

8. In his Replying Affidavit sworn on 1/10/2025 in opposition to the Summons for Revocation of the Grant, the Petitioner pointed out that the appointment of the two co-Administrators was in accordance with the Judgment delivered in this matter, and was delivered in the presence of both parties. He then highlighted the Objector's failure to cooperate by ignoring to present a name of the proposed co-Administrator from her house as had been directed by the Court, and which non-operation then forced the Court to *suo motu* appoint the Objector as a co-Administrator. He thus urged that the Objector had not presented any justifiable grounds for seeking revocation of the Grant. He also observed that this matter has been in Court for the last 25 years and asserted that there is need for the litigation to come to an end. He then contended that the Objector is enjoying substantial portion of the estate to the Petitioner's detriment and that her intention is to maintain the *status quo* as the Petitioner's house continues to languish in poverty.
9. The Objector then filed the Supplementary Affidavit sworn on 27/10/2025 in which she merely repeated the matters she had deponed in the Supporting Affidavit, including reiterating that the said fresh properties have since been fraudulently transferred to third parties by the Petitioner and her children.
10. The 1<sup>st</sup> Administrator also filed the Supplementary Affidavit which she swore on 10/11/2025. He pointed out that the parcel of land **Nandi/Kongoro/486** does not belong to the deceased but to one **Stanley Kipkoech Too**, and stated that the Objector is aware that the same was sold and is thus not available for distribution. He also pointed out that the rest of the properties are all registered in the name of one **James Bruce Kemei**, and urged that, they, too, are therefore not available for distribution.

11. The parties then filed written Submissions. The Objector's Submissions is dated 27/10/2025, while the Petitioner's is dated 10/11/2025.

### **Objectors' Submissions**

12. In her Submissions, the Objector, perhaps due to being a layperson, and thus not being conversant with rules of procedure, irregularly introduced new factual matters, not deponed in her Affidavits. By these fresh facts, she attempted to give the Court a historical background of the life and times of the deceased and the Objector, how they acquired or inherited respective parcels of land, and how the deceased managed the parcels of land. She, basically, attempted to allude that the deceased was the owner of the fresh properties being ancestral land, or was entitled to portions thereof, but which are registered in the name of his brothers. She also attempted to explain, in the Submissions, why she proposes that the Petitioner and her children be allocated those fresh properties, and that she (Objector) be left with **Nandi/Kimindi/308**. She also irregularly attached copies of "supporting documents" to the Submissions as "evidence", and also cited several provisions of law and attempted to apply them to the irregularly introduced "evidence". Needless to state, these are totally new matters that rules of procedure bar the Court from considering at this belated stage, particularly when introduced by way of written Submissions. They are also clearly matters that are fit for *viva voce* trial and perhaps, only verifiable after cross-examination, being contested matters of fact. With legal representation, the Objector, probably, would have presented her case in a procedurally permissible manner. I therefore decline to consider the new facts or "evidence" not earlier deponed in any of the Affidavits.

### **Petitioner's Submissions**

13. Regarding the fresh properties introduced by the Petitioner, **Mr. Sambu**, Counsel for the Petitioner, in attempting to refute the factual arguments introduced in the Objector's Submissions, too, fell into the same temptation of also responding by introducing his own new factual explanations, not earlier deponed in the Affidavits. I would have expected **Mr. Sambu**, unlike the Objector who, being a layperson, may be excused for falling into the error, to know better. I will not therefore also consider the portion of **Mr. Sambu's** Submissions containing such new factual "evidence". Be that as it may, Counsel however correctly pointed out that from the supporting documents exhibited to the respective Affidavits, none of the fresh parcels of land is registered in the name of the deceased, and

that all are registered in the names of third parties. He submitted that the Objector ought to therefore first file suits at the **Environment and Lands Court (ELC)** where she should seek orders that the parcels of land be declared to be ancestral land, and for the interest of the deceased to be determined therein. He urged that the Objector cannot purport to renounce an interest that is not even in existence in the first place. He thus asserted that the only property that is ripe for distribution in this matter is the said **Nandi/Kiminda/308**. He cited **Section 40** of the **Law of Succession Act** in respect to the manner of distributing an estate in a polygamous family, and submitted that since the deceased left an equal number of children in the two houses, the said parcel of land should be equally shared, and in accordance with **Section 35**, the same should first devolve to the two widows at 3.5 Hectares each. Regarding the Summons for revocation of the Grant, Counsel observed that the main reason why the Objector seeks such revocation is that she was not made aware of the appointment. He submitted that the Application does not meet the requirements of **Section 76** of the **Law of Succession Act** since the appointment was made in compliance with the Judgment rendered herein, and that since the Objector was represented by an Advocate, she was at all times aware of the need to supply a proposed name from her house to the Court for appointment as a co-Administrator, which she failed to do.

#### **Determination**

14. The issues for determination in this matter are evidently the following:

- i) **Whether the Grant issued herein should be revoked.**
- ii) **What is/are the property/properties forming the estate of the deceased?**
- iii) **How should the estate be then distributed?**

15. Regarding the first issue, revocation of Grants is governed by **Section 76** of the **Law of Succession Act**. The provision was aptly dissected by **W. Musyoka J**, in the case of **Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR**, in which he stated as follows:

**“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made Eldoret High Court Succession Cause No. 238 of 2001**

a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

16. In this case, I have already stated that in my Ruling delivered 24/11/2024, having observed that no Grant of Letters of Administration had been issued over the estate up to that date, not even gazettelement of the Petition, and having found that both houses (the Petitioner’s and the Objector’s) are equally entitled to apply for the Grant, I ruled that the Court would consequently appoint 2 joint Administrators. For that purpose, I directed that the two houses do, within 21 days, each nominate one member to be appointed a co-Administrator, and that once such appointment is concluded, the Court would then proceed to distribute the estate. I stated further that pursuant thereto, the Petitioner promptly presented the name of the said **Charles Kipkemboi Kemei**, for appointment as co-Administrator, whom I promptly appointed, but the Objector, on her part, continued to deliberately delay in presenting a name. As stated further, when it became apparent that the Objector had no intention of complying with the order, I *suo moto* appointed her as a co-Administrator. Under these circumstances, it is clear that the issue of revocation of the Grant under the reasons recognized under **Section 76** of the **Law of Succession Act**, including the argument that that there are no consents signed by beneficiaries, does not at all arise.

17. As correctly observed by **Mr. Sambu**, the reason why the Objector seeks revocation of the Grant is that she was not made aware of the appointment of the Administrators. As Counsel

correctly pointed out, the Application does not meet the requirements of **Section 76** since the appointment was made in accordance with the directions given in the Judgment rendered on 24/11/2024, which directions the Objector chose to defy by refusing to supply the name of her proposed co-Administrator. The prayer for revocation of the Grant is therefore baseless, and is accordingly declined.

**18.** On the issue of identification of the properties forming the estate, the only property not disputed as forming part of the estate is **Nandi/ Kongiro/308**, in respect to which the Petitioner has exhibited the Search Report dated 6/10/2025 confirming such ownership. The Objector has however introduced 4 fresh properties which she claims to belong to the deceased, but which, she alleges, were fraudulently transferred by the Petitioner’s house to third parties. She then listed these fresh properties as **Nandi/Kongoro/345**, **Nandi/Kongoro/486**, **Nandi/Kongoro/564**, and **Nandi/Kongoro/633**. As again correctly submitted by **Mr. Sambu**, from the Search Reports exhibited, none of these fresh parcels of land is registered in the name of the deceased, but in the names of the following persons as at the dates when the Search Reports were procured:

<b>1.</b>	<b>Nandi/Kongoro/345</b>	<b>James Bruce Kemei</b>	<b>Registered as owner since 1977 (Search Report issued in 1999)</b>
<b>2.</b>	<b>Nandi/Kongoro/486</b>	<b>Kibor arap Chepkwony</b>	<b>Registered as owner since 1977 (Search Report issued in 2007)</b>
		<b>Stanley Kipkoech Too</b>	<b>Registered as owner since 1997 (Search Report issued in 2025)</b>
<b>3.</b>	<b>Nandi/Kongoro/564</b>	<b>Christine Jeptiony (Petitioner) and James Bruce Kemei</b>	<b>Registered as owners since 1977 (Search Report issued in 1999)</b>

**19.** I have however not come across any Search Report relating to ownership of **Nandi/Kongoro/633**.

**20.** As also correctly submitted by **Mr. Sambu**, the properties being in the names of third parties, and registration of such third parties having been done almost 50 years ago in 1977, during which date the deceased was himself still alive, the Objector’s recourse, if any, is to first file suits at the **Environment and Lands Court (ELC)** to seek recovery of the parcels of land from the third parties. Only should the **ELC** agree to revert the parcels of land to

the estate of the deceased may this Court then assume jurisdiction to distribute the same amongst the beneficiaries herein.

21. On the need to seek recourse from the **ELC**, I cite the following holding made by **Musyoka, J** in **Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR**:

**“26. It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.**

**Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. ....”**

22. The above statement reinforces the position that in accordance with the principle of separation of jurisdiction between respective Courts, **Article 162(b)** of the **Constitution of Kenya** donates to the **ELC** the sole mandate and jurisdiction to determine questions relating to ownership of land. Where, as herein, a title deed was already issued to a third party, and such third party has not been joined as a party to the Succession Cause, the **ELC** is generally the proper forum to canvass an application for cancellation or revocation of such title, not the Probate Court. The issues of the alleged fresh properties, as raised by the Objector, are therefore matters that fall squarely within the province of the **ELC**, not this High Court sitting as a Probate Court.

23. In any event, the Objector has not even made any effort to demonstrate that the properties at any time belonged to the deceased before they were transferred to the third parties. The

Court has not therefore been supplied with have any material linking the deceased to ownership of the fresh properties in any way.

24. Under the above circumstances, I find that only the parcel of land **Nandi/Korongo/308** has been proved to belong to the deceased, and is thus the only property ripe for distribution in this Cause.
25. Regarding distribution intestate of the estate, which comprises of a polygamous family with 2 widows (houses), **Section 40** of the **Law of Succession Act** provides as follows:

**“(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 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”.**

26. **Section 40** is therefore the applicable law where there is no agreement amongst beneficiaries on distribution of the estate. **J.K. Karanja J**, in the case of **In re Estate of Michael George Tendwa Said (Deceased) [2020] eKLR**, then stated as follows:

**“any proposed mode of distribution ought to be compatible with and in accordance with the provision thereby leaving no room for distribution based on the whim of the holder of the grant or his/her sentimental feelings”**

27. In respect to the principle of **“equality”** in distribution as mentioned in **Section 40** above, the Court of Appeal, in the case of **Stephen Gitonga M’murithi –v- Faith Ngira Murithi [2015] eKLR**, observed as follows:

**“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.**

**Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each house hold of a polygamous deceased. Applying the above principles ..... it is our finding that the learned trial Judge fell into an error**

**when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the Law of Succession Act by discriminating against the married daughters of the deceased...”**

- 28.** It is generally agreed that where a matter is contentious and the beneficiaries have not reached a consent, the Court is bound to apply the above statutory provisions. In other words, the Court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. It is however also agreed that a Court has some level of limited residuary discretion within the statutory provisions to make adjustment to the share of each house or of a beneficiary. (see the case of **Re Estate of Chesimbili Sindani (Deceased) [2021] eKLR**).
- 29.** In this case, **Section 40** being the applicable law in respect to the manner of distributing the estate of a deceased in a polygamous family and the deceased having left an almost equal number of children in the two houses, the parcel of land, **Nandi/Kimindi/308**, should be equally shared. Since from the copy of the Green Card, the parcel of land is indicated to measure approximately 7.0 Hectares, in accordance with the provisions of **Section 35** above, the same should first devolve to the two widows at 3.5 Hectares each.
- 30.** Regarding the issue raised by the Objector that the statutory period of 6 months had not lapsed by the time that the Grant was issued on 18/02/2025, as aforesaid, it is this Court that in its Judgment dated 24/11/2024, directed the Administrators to file the Summons for Confirmation of Grant. The issue of the 6 months' timeline does not therefore arise. In any event, it is not in dispute that this matter has been in the Court corridors for almost 30 years now since when it was first filed in 1997 at the Magistrate's Court at Kapsabet. Considering that both the Objector and the Petitioner are now possibly in their 90s in age, the Objector has even not explained what prejudice she will suffer if the Court now moves to conclude the dispute once and for all.
- 31.** The other issue raised by the Objector that this Court should not as yet hear the Summons for Confirmation because the Objector intends to Appeal against the Judgment delivered on 24/11/2024, that, too, is another baseless argument since there is no order issued by any Court staying execution of the Judgment pending Appeal.
- 32.** It is therefore clear that all the above attempts by the Objector to stall the distribution of the estate, and to thus perpetuate this litigation are mere delaying tactics. To this extent, the

submission by **Mr. Sambu** that that the Objector is enjoying a substantial portion of the estate to the Petitioner's detriment, and that her intention is to maintain the *status quo* as the Petitioner's house continues to languish in poverty seems justified. The Objector's general conduct throughout this matter, particularly her continuous deliberate efforts to delay conclusion of the dispute herein portrays her, despite her advanced age, as lacking *bona fides*.

**Final Orders**

33. In the end, the I rule and order as follows:

- i) The Objector's prayer for revocation of the Grant issued herein, dated 18/02/2025 is hereby declined.
- ii) The only property proved or demonstrated to form the estate of the deceased in this Cause is the parcel of land known as **Nandi/Kiminda/308**.
- iii) For purposes of distribution of the estate, the parcel of land **Nandi/Kiminda/308** indicated to measure 7 Hectares shall be shared equally between the two houses at 3.5 Hectares each.
- iv) Since neither of the two houses has presented a schedule of the mode of intra-house distribution of their portion within their houses, in accordance with the provisions of **Section 35** of the **Law of Succession Act**, the respective 3.5 Hectares equal portions shall at this stage, be first registered in the respective names of the two widows, **to hold for themselves, and also in trust for their respective children**, as follows:

<b>Nandi/Kiminda/308</b>	<b>Portion</b>
<b>Christina Jeptiony Kemei (Petitioner)</b>	<b>3.5 Hectares</b>
<b>Monica Kemei (Objector)</b>	<b>3.5 Hectares</b>

- v) This being a family matter, I opt to direct that each party bear his/her own costs of these proceedings, as I hereby order.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2026**

.....  
**WANANDA JOHN R. ANURO**

**JUDGE**

**Delivered in the presence of:**

**Objector (Monica Kemei) acting in person**

**Mr. Sambu for the Petitioner**

**Court Assistant: Brian Kimathi**