

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 12 OF 2018**  
**IN THE MATTER OF THE ESTATE OF DAVID MUNUVE**  
**NTHIWA (DECEASED)**

**MICHAEL MUTINDA MUNUVE ..... 1<sup>ST</sup>**  
**PROTESTOR**

**BONIFACE MUSYOKA MUNUVE ..... 2<sup>ND</sup>**  
**PROTESTOR**

**AND**

**SERAH MWIKALI KIOKO.....**  
**RESPONDENT**

**RULING**

1. David Munuve Nthiwa died on 2<sup>nd</sup> June 2012. He died intestate. On 28<sup>th</sup> September 2021, a grant of letters of administration intestate was issued to Michael Mutinda Munuve and Serah Mwikali Kioko (hereinafter referred to as administrators). In the petition, the following persons were identified as dependants of the deceased's estate: -
- a. Ruth Nduku Nzioka
  - b. Serah Mwaikali Kioko
  - c. Michael Mutinda Munuve
  - d. Jayne Mumbua Munube
  - e. Boniface Musyoka Munuve
  - f. Agnes Nthenya Munuve
  - g. Erick Maingi Munuve

h. Nahum Ndinda Munube

2. A letter dated 6<sup>th</sup> November 2012 written by the Chief of Isinga location, Mr. Bethwell M. King'ele was annexed to the petition and corroborated the list of dependants disclosed by the administrators.
3. Subsequently, on 22<sup>nd</sup> September 2022, the administrators filed the summons for confirmation of the grant dated 20<sup>th</sup> September 2022. In the said summons, all the beneficiaries were listed. However, only Ruth Nduku Nzioka and Erick Maingi Munuve executed consents to the proposed mode of distribution.
4. The estate property was proposed to be distributed as follows; -
  1. *Title Number 1625 measuring approximately 0.274ha to be shared equally by Nahum N. Munube and Michael M. Munuve.*
  2. *Title Number 1626 measuring approximately 0.274ha to be shared equally by Erick M. Munube and Serah M. Kioko.*
  3. *Title Number 1627 measuring approximately 0.274ha to be shared equally by Boniface M. Munube and Rulth N. Nzioka.*
  4. *Title Number 1628 measuring approximately 0.300ha to be shared equally by Agnes N. Munube and Jayne M. Munuve.*
  5. *Title Number 1624 measuring approximately 2.187ha to be shared equally by all the 8 dependants.*

6. *Title Number Ndalani Ndalani Block 1/238 to be shared equally by all the 8 dependants.*
7. *Title Number Ndalani Ndalani Block 1/979 to be shared equally by all the 8 dependants.*
8. *Title Number Ndalani Ndalani Block 1/978 to be shared between 150x300 equally to all daughters and Boniface Musyoka Munuve to get the remaining portion.*
9. *Title Number Ndalani Ndalani Block 1/962 to be shared between 150x300 to Jayne Mumbua Munube and Erick Maingi Munuve to get the remaining portion.*
10. *Title Number Ndalani Ndalani Block 1/963 to be shared between 150x300 equally among all daughters and Michael Mutinda Munuve to get the remaining portion.*
11. *Title Number Ndalani Ndalani Block 1/694 to be shared equally by Micahel Mutinda Munuve, Erick Maingi Munuve and Boniface Musyoka Munuve.*
12. *Title Number Ndalani Ndalani Block 1/1517 measuring approximately 27x100 to be shared by Boniface Musyoka Munuve (30x27ft), Erick Maingi Munuve (30x27ft), Michael Mutinda Munuve (30x27ft) and drainage (10x27ft the drainage portion to be equally divided among the foregoing three beneficiaries; Boniface, Erick and Michael).*
13. *Title Number Ndalani Block 1 for Agnes Nthenya Munuve.*
14. *Title Number Matetani/Mbondoni/Kawaani to be shared among Michael Mutinda Munuve (7*

- portions/trenches), Erick Maingi Munuve (5 portions) and Boniface Musyoka Munuve (5 portions)
15. Title Number Itwikuni/Mbondoni to be shared equally to Erick Maingi Munuve and Boniface Musyoka Munuve.
  16. Title Kangundo/Matetani 2087 measuring approximately 1.0ha according to the set boundaries to be shared among Michael Mutinda Munuve, Erick Maingi Munuve and Boniface Musyoka Munuve.
  17. Synathi plot to be shared equally to Michael Mutinda Munuve and Boniface Musyoka Munuve.
  18. Title Number Matungule Kyaume Plot No. 169 for Erick Maingi Munuve.
  19. Title Number Matungule Kyaume Plot No. 6A for Erick Maingi Munuve.
  20. Title Number Ndalani Mavoloni Block 1/864 measuring approximately 2.15ha to be shared as one half to Boniface Musyoka Munuve and the other half equally between Agnes Munuve and Jayne Mumbua Munuve.
  21. Title Number Ndalani Mavoloni Block 1/872 measuring approximately 2.169ha to be shared equally between Erick Maingi Munuve and Michael Mutinda Munuve.
  22. KCB shares to be equally divided to Erick Maingi Munuve and Michael Mutinda Munuve.
  23. Title Number Kondo Sheet No. 3 Block 1/964 Yatta area to be shared equally to all 8 dependants.

5. When the summons for confirmation of grant came up for hearing, the protestors herein filed an affidavit of protest sworn on 25<sup>th</sup> May 2023 by the 1<sup>st</sup> Protestor who is also one of the administrators. The 1<sup>st</sup> protestor opposes the criteria of the distribution of the estate.
6. In response to the protest, the Respondent filed a replying affidavit sworn on 14<sup>th</sup> July 2023. She averred that the 1<sup>st</sup> Protestor's objection to the proposed mode of distribution was informed by patriarchal beliefs namely, that men beneficiaries should receive a larger share of the estate than female beneficiaries.
7. She further deponed that the 1<sup>st</sup> protestor declined to execute the consent to the confirmation because the proposed distribution did not align with his view that the sons of the deceased were entitled to a greater share than the daughters.
8. The respondent maintained that Ndalani Block 1 rightfully forms part and parcel of the estate of the deceased; She further alleged that the Syanthi Plot was sold irregularly and illegally by Michael Mutinda Munuve and Boniface Musyoka Munuve without involving the other beneficiaries after the death of the deceased, and that the two ought therefore to bear responsibility for having benefitted from the proceeds of the sale at the detriment of the other beneficiaries.
9. She contended that property Matungulu Kyaume Plot No. 6A was allocated to Eric Maingi Munuve in accordance with the

wishes of the deceased and that Michael Mutinda Munuve has been in illegal occupation of the said property.

10. Prior to the hearing of the protest, the matter was referred to mediation. As a result, a partial settlement agreement was reached and duly recorded and filed on 8<sup>th</sup> November 2024.

The terms of the partial settlement were as follows;

- a. NDALANI/NDALANI BLOCK 1/1626 measuring 0.274 to be equally sub-divided between Serah Mwikali Kioko and Eric Mwaingi Munuve.
- b. NDALANI/NDALANI BLOCK 1/1626 measuring 28ft x 100ft to be sub-divided equally between Boniface Musyoka Munuve (30ft x 28ft), Eric Maingi Munuve (30ft x 28ft), Michael Mutinda Munuve (30ft x 28ft) and Drainage System (10ft x 28ft be subdivided among the three beneficially equally).
- c. Land Title Number ITWIKUNI/MBONDONI to be sub-divided equally between Boniface Musyoka Munuve and Eric Maingi Munuve.
- d. Land Title Number MATETANI/MBONDONI/KAAWANI to be sub-divided between Michael Mutinda Munuve (7 benches), Boniface Musyoka Munuve (5 benches) and Eric Maingi Munuve (5 benches).
- e. KAYATTA PLOT measuring 0.5 ha and KAYATTA SHARES be wholly given to Eric Maingi Munuve.
- f. KCB Shares be divided equally among all beneficiaries.

- g. Land Title Number NDALANI/NDALANI BLOCK 1/694 measuring 5.0 acres be sub-divided equally between Michael Mutinda Munuve, Boniface Musyoka Munuve and Eric Maingi Munuve.
- h. Land Title Number NDALANI/NDALANI BLOCK 1/872 measuring 2.169ha be sub-divided equally between Michael Mutinda Munuve and Eric Maingi Munuve.
- i. Distribution of the following properties was referred back to the court for determination;
- a) NDALANI/NDALANI BLOCK 1/625- measuring 0.274ha
  - b) NDALANI/NDALANI BLOCK 1/627- measuring 0.274ha
  - c) NDALANI/NDALANI BLOCK 1/628- measuring 0.300ha
  - d) NDALANI/NDALANI BLOCK 1/239
  - e) NDALANI/NDALANI BLOCK 1/238- measuring 3.240ha
  - f) NDALANI/NDALANI BLOCK 1/1624- measuring 2.187ha
  - g) NDALANI/NDALANI BLOCK 1/962- measuring 3.280ha
  - h) NDALANI/NDALANI BLOCK 1/963- measuring 3.320ha
  - i) NDALANI/NDALANI BLOCK 1/978- measuring 3.340ha

- j) NDALANI/NDALANI BLOCK 1/979- measuring 5.280ha
- k) KANGUNDO/MATETANI/2087- measuring 1.0ha
- l) PLOT TALA 6A- measuring 15ft x 100ft
- m) PLOT TALA 169-measuring 45ft x 100ft
- n) KONDO SHEET No. 3 BLOCK 1/964
- o) NDALANI/MAVOLONI BLOCK 1/864- measuring 5acres

11. The protest was canvassed through viva voce evidence on 18<sup>th</sup> September 2025 and 10<sup>th</sup> November 2025.
12. The 1<sup>st</sup> Protestor, Michael Mutinda Munuve testified that he is a farmer and businessman. He adopted his witness statement dated 1<sup>st</sup> August 2025 and produced the list and bundle of documents of even date. He stated that he generally had no objection to the proposed distribution save for the document marked as MKN5 which he described as a record of the deceased's wishes on distribution of the estate. He contended that the translated version of the document was inaccurate, noting that the original was written in the Kamba language.
13. He further testified that although the parties participated in mediation, they did not reach agreement on all issues. As an administrator of the estate, he maintained that the distribution ought to be guided by the deceased's wishes as expressed in the year 2005.

14. Upon cross-examination, he confirmed that he was aware that Embakasi Ranch Certificate No. 2379, comprising Plot Nos. L41 and L42 had been sold and that he received a portion of the proceeds from the sale. He conceded that he had not produced documentary evidence to demonstrate that certain properties formed part of the deceased's estate. He reiterated that the deceased had distributed his estate in accordance with the document marked MKN5. He confirmed that Plot No. 6A is registered in the name of the deceased, David Munuve Nthiwa and stated that he did not receive the letter dated 7<sup>th</sup> May 2012 contained in the Respondent's bundle of documents. He maintained that according to the deceased's wishes, he was entitled to Plot No. 6A.
15. On the proposed distribution, he suggested that Plot No. 238 be shared among all family members with a portion thereof allocated exclusively to the sons in accordance with the deceased's wishes. He stated that Ndalani/Ndalani Block 1/239 had been subdivided into five parcels, namely Nos. 1624, 1625, 1626, 1627, and 1628, and asserted that parcel No. 1624 was not intended to be a family property.
16. He acknowledged that Eric Maingi Munuve and Serah Mwikali Kioko had agreed to share Ndalani Block 1/1626 equally. He further stated that he ought to receive a larger share than his sister, as this was in accordance with the deceased's instructions. When questioned about Ndalani Block 1, he stated that he was not aware of the property.

However, he agreed that Ndalani/Ndalani Block 1/238, Block 1/239, and Block 1/979 ought to be distributed equally among all eight beneficiaries.

17. Upon re-examination, he testified that Plot No. 6A was originally one part of a single parcel that was later subdivided into Plot Nos. 6A and 6B. He stated that he purchased Plot No. 6B from his grandfather, while Plot No. 6A was given to his father on the understanding that it would ultimately devolve to him. He maintained that he is therefore in possession of both Plot Nos. 6A and 6B. He further stated that the daughters had already received parcels of land within Block 1/239 and that all the children had been allocated portions of the estate. It was his firm position that the distribution should not be equal.
18. The 2<sup>nd</sup> protestor, Boniface Musyoka Munuve, adopted his witness statement dated 1<sup>st</sup> August 2025. He testified that he resides in Kathumani on Title No. Ndalani/Ndalani Block 1/239 which has since been subdivided into four units. He stated that he is currently unemployed, having lost his eyesight.
19. He further testified that he placed a caution on property situate in Kithimani after four of his sisters and brother visited the land accompanied by a surveyor. He stated that he did so in order to prevent interference with the property and added that these actions were undertaken without informing the administrator of the estate. He also alleged that he was

assaulted by his sister and brother, following which he reported the matter to the police.

20. Upon cross-examination, the 2<sup>nd</sup> protestor testified that the administrator ought to account for the sale of proceeds of the Embakasi property. He stated that although he identified the buyer, he only received 60% of the proceeds and was unaware of how the balance was distributed. He further testified that Ndalani/Ndalani Block 1/1627 was allocated jointly to himself and Ruth Nduku Nzioka, with Ruth receiving a portion measuring 40 by 100 feet and the remainder allocated to him, in accordance with the deceased's wishes.
21. He maintained that Ndalani/Ndalani Block 1/239 belonged to the entire family, while Block 1/238 did not. He stated that he was unaware when the subdivisions of the properties were undertaken. He denied ever engaging in a physical altercation with Jane and reiterated that the deceased had clearly set out how his estate was to be distributed.
22. Upon re-examination, he testified that the deceased suffered from leukemia, which, in his opinion, affected his mental state. He stated that he previously lived on Plot No. 6A but was asked to vacate the property on the basis that it allegedly belonged to Michael Mutinda Munuve. He further testified that although the properties were not distributed equally, each beneficiary had received at least one plot and a portion of land. He confirmed that he is currently settled on a portion of the deceased's land.

23. The Respondent adopted her witness statement dated 15<sup>th</sup> September 2025 together with the documents attached thereto. She testified that Embakasi Ranch Certificate No. 2379 was sold with the consent of all the beneficiaries. She stated that one of her brothers identified the purchaser, after which the property was sold and the proceeds shared among them.
24. With regard to the properties referred to as Kayatta, Kitale shares, East African Community shares, and Kwa Ndongia shares, the respondent testified that she was unaware of their existence or location and that no evidence had been availed to demonstrate that such properties belonged to the deceased. She further testified that her proposed mode of distribution was consistent with the wishes of the deceased and urged the court to uphold it as reflective of the intention of the owner of the property.
25. Upon cross-examination, she stated that she had acted prudently in executing her father's instructions. She confirmed that she had sold some assets and developed portions of the estate. She maintained that all the properties remain registered in the name of the deceased and further stated that no beneficiary had encroached upon the portion allocated to another.
26. When referred to paragraphs 3 and 4 of her witness statements, wherein she averred that the deceased had expressed a preference for her appointment as administrator

and that Michael Mutinda Munuve should not be appointed as the head of the family, she confirmed the veracity of those averments. With respect to the letter dated 16th September 2021, she testified that it was authored by her elder sister, Ruth, who is not an administrator of the estate.

27. She further testified that the deceased was of sound mind at all material times. She stated that Ndalani Block 1/625, 626, 627, and 628 are family properties and that the daughters were to share the same in accordance with the will. She added that the daughters have clearly defined portions within parcels 625, 626, 627, and 628 and are fully aware of their respective shares.
28. She further testified that the daughters were allocated a portion of Plot No. 6A, which had been developed by their grandfather and is currently occupied by Michael Mutinda Munuve. She maintained that no beneficiary had been disinherited, asserting that each beneficiary received a share of the estate. She further stated that she had developed her portion and that the income derived therefrom accrues to her, although the land remains registered in the deceased's name.
29. Upon re-examination, she testified that Ndalani/Ndalani Block 1/625, 626, 627, and 628 are family properties in which all beneficiaries have an interest. She stated that while some beneficiaries had developed their portions others had sold theirs. She testified that she developed her share in 2013 whereupon she constructed commercial premises.

30. She explained that the mode of subdivision indicated by the deceased was illustrative rather than exact, as the deceased had drawn blocks and allocated beneficiaries to each portion, with the intention of equitable allocation rather than measurement-based division. She further testified that at the time the deceased revised his will, he was mentally sound.
31. She maintained that the will does not provide for unequal distribution between sons and daughters, but rather envisages equal sharing. She nevertheless stated that with respect of the Ruai property, the deceased had allocated 60% to the sons and 40% to the daughters. She added that Michael Mutinda Munuve and Boniface Musyoka Munuve had sold their respective portions in Ndalani.
32. Thereafter, parties filed written submissions. The protestor's submissions are dated 2<sup>nd</sup> December 2025 while the Respondent's submissions are dated 12<sup>th</sup> February 2026.

### **Protestor's Submissions**

33. The Protestors commenced their submissions with an overview of the background, portraying the deceased as a deliberate, fair minded and forward thinking individual. They contended that during his lifetime, around the year 2005, the deceased undertook a comprehensive distribution of his estate to all eight of his adult children, sons and daughters alike well before his demise on 2<sup>nd</sup> June 2012. According to the protestors, this distribution, was both orally

communicated and reduced into writing and carried out in the presences of the deceased's wife and each beneficiary was clearly shown their respective share. They argue that this conduct demonstrates the deceased's organizational nature as well as his progressive view on gender equality at a time when inheritance practices were predominantly male dominated.

34. The protestors submit that following the deceased's death, his advocate convened a meeting of all beneficiaries during which the deceased's written wishes were read out, and the beneficiaries were urged to respect and adhere to those wished. They allege however, that the Respondent, Serah Mwikali Kioko, subsequently acted unilaterally by obtaining signatures under unclear circumstances and petitioning for letters of administration in Kangundo Succession Cause No. 9 of 2013 in which she was appointed the sole administrator. Upon obtaining the grant in February 2014, she is accused of intermeddling with the estate, misrepresenting facts, altering the deceased's wishes and excluding certain assets from the estate inventory.

35. This according to the Protestors necessitated an application for revocation of the grant, resulting in the issuance of a fresh grant in this cause, which appointed additional administrators. Despite this, intervention, disputes persisted particularly when the Respondent filed a proposed mode of distribution in September 2022 which the Protestor

contend substantially departed from the deceased's original wishes.

36. The Protestors further allege that the Respondent exploited the deceased's deteriorating mental condition occasioned by acute leukaemia between 2009 and 2012 to influence subsequent changes to the distribution of the estate in her favour. They challenge the authenticity and probative value of the later documents relied by the Respondent, asserting that they were never disclosed to the deceased's advocate and only emerged after his death. They maintain that efforts at mediation failed due to the Respondent insistence on a distribution perceived to be skewed in her favour. They also reject assertions that their opposition is grounded in gender bias, emphasizing that the original distribution provided for all beneficiaries including daughters.

37. With regard to the evidence, the Protestors rely on the testimony of the 1st Protestor, who described the deceased's illness and affirmed that the initial distribution was jointly undertaken by both parents. He produced the deceased's written wishes and maintained that all beneficiaries were included. The 2<sup>nd</sup> Protestor, on his part, testified about a violent incident allegedly involving persons aligned with the Respondent, which resulted in serious injuries and loss of sight. He urged the court to expedite resolution of the matter so that he could access resources for his medical treatment. The protestor further submit that the Respondent conceded

during her testimony that the deceased's mental state had deteriorated during his illness and admitted to selling estate property, developing parts of it and collecting rental income of approximately Kshs. 20,000 per month for personal benefit since 2015.

38. The Protestors identify several undisputed facts: that the initial distribution occurred in 2005 while the deceased's wife was alive; that the deceased's mental capacity was impaired in his later years; that all beneficiaries are adults and largely settled; that the estate has been subjected to significant intermeddled; that the Respondent has been collecting income from the estate property; and that one administrator is in possession of and use of a contested property in Tala. They further note that parties reached a partial agreement with respect to the distribution of certain assets.

39. From these, the protestors framed the issues for determination as follows; whether the deceased distribute his estate during his lifetime and if so, the nature and intention of that distribution; whether such distribution was fair, equitable and final?, whether the court should adopt the protestors' proposed mode of distribution in preference to that of the Respondents; whether the protestors have established a prima facie case; the appropriate orders to be made concerning the estate and the issue of costs.

40. The protestors rely on Section 42 of the Law of Succession Act to argue that lifetime gifts and settlements must be taken

into account and respected during distribution. They submit that the deceased's intentions were final, and are evidenced by his written instructions, involvement of legal counsel and the beneficiaries' long standing occupation and use of their respective portions. They contend that the original distribution was fair, equitable and non-discriminatory, as all beneficiaries including daughters received shares. They reject the Respondent's claim that the dispute stems from gender bias, asserting instead that it arises from attempts to alter the agreed distribution for personal gain.

41. In urging the court to adopt their proposed mode of distribution, the Protestors emphasize several factors: the advanced age and settled status of beneficiaries, which would render redistribution disruptive; the deteriorating health of the 2<sup>nd</sup> Protestor; the Respondent's admitted intermeddling and personal benefit from the estate assets; prior accepted distribution patterns such as a 60:40 ratio in a previous sale; and the long-standing occupation and development of allocated parcels. They submit that equitable, not equal, distribution should guide the Court and that the deceased's original wishes best achieve this.

42. The Protestors further submit that the estate has been unlawfully interfered with through unauthorized sales, leases, and developments largely under the Respondent's watch. They rely on the case of **Benson Mutuma Muriungi versus C.E.O Kenya Police Sacco & Another [2016] eKLR** and

**Re Estate of M'Ngarithi M' Miriti [2017] eKLR** to underscore the definition and consequences of intermeddling including its criminal sanctions under Section 45 of the Law of Succession Act. They urge the court to compel accountability including restitution or adjustment of shares for those who have benefited unlawfully.

43. On whether a prima facie case has been established, the Protestors place reliance on the case of **Mrao Limited versus First American Bank of Kenya Limited & 2 others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR)**, contending that they have demonstrated their entitlement as beneficiaries, proven the existence and fairness of the original distribution, and shown infringement of their rights through the Respondent's actions. They submit that judicial intervention is warranted and urge the Court to bring finality to a dispute that has persisted for nearly a decade by adopting their proposed mode of distribution, which they argue aligns with the deceased's original intentions. They stress the need to protect their interests, prevent further intermeddling, and ensure justice. On costs, they invoke Section 27 of the Civil Procedure Act and request that costs be awarded in their favour.

44. In conclusion, the Protestors characterize the dispute as one driven not by exclusion or discrimination, but by alleged manipulation and self-interest on the part of the Respondent and her faction. They accuse the Respondent of acting in bad

faith, intermeddling with the estate, and undermining family harmony. They urge the Court to recognize the settled occupation of beneficiaries, penalize unlawful dealings, and uphold the deceased's wishes as the fairest basis for distribution, thereby bringing closure to the family and enabling beneficiaries some of whom are in urgent need to move forward.

### **Respondent's submissions**

45. The Respondent's submissions are made in opposition to the Protestors' Affidavit of Protest sworn on 25<sup>th</sup> May 2023, which challenged the confirmation of grant sought through the summons dated 20<sup>th</sup> September 2022. The Respondent submits that the Protestors' objections were fourfold: first, that the property listed as Ndalani Block 1 at item No. 13 was unknown to the protestors; second, that Syanthi Plot listed as No. 17 had already been sold by the deceased during his lifetime; third, that the 1st Protestor opposed the allocation of Plot No. 6A (item 19) to Eric Maingi Munuve claiming entitlement based on long occupation; and fourth, that several properties—namely Kayatta, Kitale shares, East Africa Community shares, Embakasi Ranch Certificate No. 2379 (Plots L41 and 42), and Kwa Ndongia shares from Kilalani Farmers had been omitted from the proposed distribution.
46. From those objections, the Respondent identified four issues for determination that is; whether Ndalani Block 1

listed at No. 13 in the Respondent's mode of distribution forms part of the deceased's estate. whether Syanthi Plot listed as No. 17 was disposed of by the deceased during his lifetime; and whether Plot No. 6A ought to be allocated to the 1<sup>st</sup> Protestor solely on the basis long occupation, to the exclusion of other beneficiaries.

47. On the question of whether Ndalani Block 1 (item 13) forms part of the estate, the Respondent submits that the property exists and is located in Kahawani. She avers that it is currently occupied by Agnes Nthenya Munuve, who has resided there for over five years with the knowledge of all beneficiaries. On that basis, the respondent maintains that the property forms part of the deceased estate.

48. Regarding Syanthi Plot No. 17, the Respondent disputes the Protestors' claim that it was sold by the deceased, during his lifetime. Instead she contends it was sold by the Protestors themselves after the deceased's death, and shared the proceeds among themselves. She submits that, in the circumstance, equity demand that the property be allocated to the Protestors, as they already benefited from its sale and allocating it to other beneficiaries would result in injustice.

49. Turning to Plot No. 6A, the respondent argues that long occupation, alone does not confer proprietary right. She submits that the doctrine of adverse possession is inapplicable, as the occupation was neither peaceful nor uncontested. In support of this position, she relies on a letter

dated 7<sup>th</sup> May 2012 from Priscillar Kioko & Associates Advocates on behalf of the deceased, demanding that the 1<sup>st</sup> Protestor vacate Plot No. 6A at Tala Market. The Respondents further, relies on the deceased's written wishes contained at (pages 8-41 of the Protestors' bundle dated 1<sup>st</sup> August 2025), which she submits clearly demonstrate the deceased intention that Eric Maingi Munuve inherit the said plot. Consequently, the court is urged to reject the 1<sup>st</sup> Protestor's claim founded solely on occupation.

50. With respect to the alleged omitted properties, the Respondent submits that Embakasi Ranch Certificate No. 2379 (Plots L41 and 42) had been sold and the proceeds distributed among all beneficiaries, a fact acknowledged by both parties in testimony. As regards Kayatta, Kitale shares, East Africa Community shares, and Kwa Ndongia shares from Kilalani Farmers, the Respondent maintains that no evidence has been tendered to prove their existence or ownership by the deceased. She submits that should the Court find that such properties do exist, they may appropriately be allocated to the Protestors.

51. In conclusion, the Respondent urges the Court to take cognizance of the fact that the estate has already been partially settled through a mediation agreement. She highlights areas of consensus, including the agreed equal sharing of Ndalani/Ndalani Block 1/1626 between Serah Mwikali Kioko and Eric Maingi Munuve, as well as the

agreement on the distribution of Ndalani/Ndalani Block 1/1625, 1627, and 1628. She identifies the central dispute as the Protestors' alleged attempt to allocate smaller shares to daughters than to the sons, which she characterizes as unconstitutional.

52. To support this position, the Respondent relies on **Re Estate of Monica Wamaitha Kihara (Deceased) (Probate & Administration 805 of 1994) [2025] KEHC 16423 (KLR) (Family) (14 November 2025) (Judgment)** where the court affirmed that daughters are entitled to inherit on an equal footing with sons. She further relies on **Re Estate of Michael Rutto (Deceased) KEHC 2498 (KLR) (21 February 2025) (Judgment)** where the Court emphasized its duty to ensure equitable distribution and to guard against discrimination on the basis of gender or land registration.

53. The Respondent additionally criticizes the Protestors' proposed distribution of Ndalani/Ndalani Block 1/1624 which allegedly seek to exclude daughters entirely. She submits that such exclusion is unjustifiable and violates Article 27 of the Constitution of Kenya, which guarantees equality and freedom from discrimination. She urges the Court to construe the deceased's reference to "family" in his written wishes as inclusive of both sons and daughters.

54. In conclusion, the Respondent prays that the Court dismiss the Protestors' affidavit of protest dated 25<sup>th</sup> May 2023 and proceed to confirm the grant in accordance with the summons

dated 20<sup>th</sup> September 2022, pursuant to Section 71(1) and (2) of the Law of Succession Act (Cap 160).

### **Analysis and Determination**

55. I have carefully considered the summons for confirmation of grant herein and the affidavit in support. I have also considered the affidavit of protest, the reply thereto, the *viva voce* evidence adduced by the parties and the rival written submissions. The following issues arise for determination:-

- a) Whether the deceased distributed his estate during his lifetime and if so, the legal effect of such distribution;**
- b) Whether the estate has been subjected to intermeddling and the legal consequences;**
- c) What constitutes the free property of the deceased available for distribution and the appropriate mode of distribution;**
- d) Whether the protest against confirmation of grant is meritorious.**

56. On the first issue, the Protestors' case is anchored on the assertion that the deceased, during his lifetime, sometime around the year 2005, distributed his estate among all his beneficiaries in the presence of his wife, and that this distribution was both oral and reduced into writing. They rely on Section 42 of the Law of Succession Act and urge the court to respect and uphold the deceased's wishes as final and

binding. They further urged that the deceased's mental capacity deteriorated between 2009 and 2012 due to illness and that any purported alteration of his wishes is unreliable.

57. The Respondent, while not disputing that the deceased expressed wishes regarding distribution, maintains that the operative wishes are those reflected in the documents produced before court, which in her view, demonstrate an intention of equal distribution among all beneficiaries irrespective of gender. She further disputes the contention that the deceased lacked mental capacity and asserts that he was of sound mind when he made the relevant decisions.

58. Under the current Law of Succession Act, where a deceased dies intestate, distribution is governed primarily by Part V of the Act. However, Section 42 recognizes gifts made *inter vivos* and requires that such gifts be taken into account during distribution. Section 42 provides that;

**42. Previous benefits to be brought into account**

**Where—**

**(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or**

**(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35,**

**that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.**

59. The critical question, therefore is whether the alleged distribution in 2005 constituted completed gifts *inter vivos* or merely expressed intentions. From the evidence, it is not disputed that beneficiaries were shown portions and some took possession and developed them. However, there is no evidence of formal transfer or registration, or conveyance of title in favour of the beneficiaries. Consequently, while the deceased's actions and writings are relevant indicators of intention they do not amount to a complete placement of ownership. They must therefore be treated as guiding factors rather than binding distributions.
60. On the issue of mental capacity, although there is evidence that the deceased suffered from illness in his later years, no medical or expert evidence has been placed before this court to demonstrate that he lacked testamentary capacity at the material time. This court is therefore unable to invalidate the deceased later expressions of his wishes on that basis alone. I accordingly find that while the deceased did express intentions regarding distribution during his lifetime, such intention must be taken into account under Section 42 but are not conclusive and must be applied harmoniously with the statutory framework governing intestate succession.

61. As to whether the estate has been subjected to intermeddling, the protestors allege extensive intermeddling with the estate particularly by the Respondent, including sale of property, development of land and collection of rental income for personal benefit. Notably during her testimony, the Respondent, admitted that she developed part of the estate given to her and has been collecting income therefrom. There is also uncontroverted evidence that certain properties such as Embakasi Ranch plots were sold and proceeds shared among some beneficiaries.
62. Section 45 of the Law of Succession Act expressly prohibits intermeddling with the free property of a deceased person before confirmation of grant. The authorities cited, including **Benson Mutuma Muriungi vs C.E.O Kenya Police Sacco & Another [2016] eKLR** and **Re Estate of M’Ngarithi M’Miriti [2017] eKLR** affirm that acts such as sale, leasing, or development of estate property without lawful authority constitute intermeddling.
63. In the present case, while a grant of representation, had been issued, there is no evidence that the impugned dealings were carried out pursuant to a confirmed grant or with the informed consent of all beneficiaries. I therefore find that the estate was indeed subjected to intermeddling. The legal consequence is that such acts cannot be sanctioned by the court, and appropriate adjustments must be made during

distribution to prevent unjust benefits from unauthorized dealings.

64. As to what constitutes the free property of the deceased and appropriate mode of distribution, the Protestors alleged omission of certain assets including Kayatta, Kitale shares, East African Community shares and Kwa Ndongia shares while the Respondent maintained that these assets were never proved to exist. Both parties, however, confirmed that Embakasi Ranch plots had already been sold and proceeds distributed. The burden of proof lies on the party asserting the existence of an asset. In the absence of documentary evidence or credible evidence, this Court cannot include the disputed assets in the estate.

65. Consequently, I find that Embakasi Ranch properties are no longer available for distribution having been disposed of and that the other alleged assets have not been proved to form part of the estate. As regards Syanthi Plot, the evidence establish that it was disposed of by the Protestors themselves. Equity therefore demands that the value or benefit thereof be brought into account in determining their respective shares.

66. The fourth issue, whether the protest against confirmation of grant has merit, is central to this dispute as it concerns the appropriate mode of distribution. The Protestors advocate an arrangement grounded on the deceased's alleged lifetime wishes and emphasize equitable rather than equal distribution. They also rely on occupation and development of

specific parcels as a basis for allocation. The Respondent on the other hand, contends that the estate must be distributed equally among all beneficiaries and that any attempt to allocate lesser shares to daughters is unconstitutional.

67. The law is explicit. Section 38 of the Law of Succession Act provides that where an intestate is survived by children only, the net estate shall be equally divided among them. This position has been reinforced by court in **In Re Estate of Monica Wamaitha Kihara (Deceased) [2019] KEHC 3095 (KLR)** where the court affirmed that daughters are entitled to inherit equally with sons and that discrimination on the basis of gender violates Article 27 of the Constitution.

68. This court acknowledges that distribution need not always be mathematically equal where special circumstances exist but such departure must not result in gender-based discrimination. The testimony of the 1<sup>st</sup> Protestor revealed a preference for sons receiving larger shares a position that cannot be reconciled with constitutional principles. At the same time, the court must remain alive to practical realities including long standing occupation and substantial developments on specific parcels. It would be both unjust and disruptive to remove beneficiaries who have settled on specific parcels for many years.

69. With regard to Plot No. 6A, the documentary evidence including the correspondence from the deceased's advocates and the deceased's written wishes, supports the Respondent's

position that the property was intended for Erick Maingi Munuve. The 1st Protestor's occupation, thereof, having been expressly contested, cannot confer ownership. I therefore find that Plot No. 6A should devolve to Erick Maingi Munuve.

70. Finally, in determining whether the Protestors have established sufficient grounds to warrant the dismissal of the summons for confirmation of grant, the Court is guided by Section 71 of the Law of Succession Act. The role of the court at confirmation stage is to ascertain the rightful beneficiaries and determine their respective shares in accordance with the law equity and evidence on record.

71. While the Protestors have raised legitimate concerns regarding intermeddling and certain inaccuracies in the proposed mode of distribution, their overarching approach to distribution particularly the suggestion that sons should receive larger shares than daughters, is not supported by law. Their reliance on the deceased's alleged lifetime distribution while relevant, cannot override clear statutory and constitutional provisions governing intestate succession. I therefore find that the protest partially succeeds only to the extent that the court must take into account prior benefits received by certain beneficiaries and address instances of intermeddling. The protest fails, however, in so far as it seeks to impose a distribution model that is discriminatory or otherwise unlawful distribution model.

72. Accordingly, this Court shall only proceed to confirm the grant subject to appropriate modifications to ensure that:
- i. all beneficiaries receive equal entitlement in accordance with the law;
  - ii. any benefits previously received including proceeds from disposed properties are taken into account
  - iii. properties are as far as practicable, allocated in a manner that respects existing occupation and developments; and
  - iv. any proven intermeddling shall be factored into the final distribution so as to achieve equity among the beneficiaries.
73. First, this court hereby adopts, in its entirety, the mediation settlement agreement dated 8th November 2024 as forming part of the confirmed grant. The properties distributed under the said agreement are no longer contested and shall devolve strictly in accordance with the terms agreed upon by the parties. For avoidance of doubt, the distribution of the following properties is hereby confirmed as settled and final:
- (a) Ndalani/Ndalani Block 1/1626;
  - (b) The subdivided portions under Ndalani/Ndalani Block 1/1517;
  - (c) Itwikuni/Mbondoni;
  - (d) Matetani/Mbondoni/Kawaani;
  - (e) Kayatta Plot and Kayatta Shares;
  - (f) KCB Shares (to be shared equally among all beneficiaries);
  - (g) Ndalani/Ndalani Block 1/694;
  - (h) Ndalani/Ndalani Block 1/872.

These shall not be reopened or varied by this court.

74. Secondly, with regard to properties that were disposed of prior to confirmation of grant, including Embakasi Ranch Certificate No. 2379 (Plots L41 and L42) and Syanthi Plot, the court finds that they no longer constitute the free property of the deceased available for distribution. The evidence shows however, that certain beneficiaries, particularly the Protestors, benefitted from the proceeds of sale of some of these properties. In line with Section 42 of the Law of Succession Act, such benefits must be brought into account. Accordingly, the Court directs as follows:

(a) The proceeds from Embakasi Ranch property, having been shared among all beneficiaries, are deemed to have been accounted for and shall not be subject to further adjustment;

(b) The proceeds from Syanthi Plot, having been received by the 1<sup>st</sup> and 2<sup>nd</sup> Protestors shall be taken into account in equalizing their respective shares in the remaining estate.

75. Thirdly, this Court now turns to the properties that remained unresolved and were referred back to Court following mediation. These constitute the residual estate and include: Ndalani/Ndalani Block 1/1624, 1625, 1627, 1628, 238, 239, 962, 963, 978, 979; Kangundo/Matetani/2087; Tala Plot No. 6A; Tala Plot No. 169; Kondo Sheet No. 3 Block 1/964; and Ndalani/Mavoloni Block 1/864.

76. In distributing the residual estate, I am guided by Section 38 of the Law of Succession Act which mandates equal

distribution among children of the deceased and Article 27 of the Constitution which prohibits discrimination on the basis of gender. While the Protestors' urge the court to adopt an equitable rather than an equal distribution informed by the deceased's alleged lifetime arrangements, such arrangements cannot override express statutory and constitutional provisions, particularly where their application would result in unequal treatment of beneficiaries on the basis of gender.

77. That said, the court must also be alive to the practical realities on the ground including long standing occupation and developments undertaken by various beneficiaries over the years. To ensure substantive justice and avoid unnecessary disruptions, it is appropriate, as far as practicable, to allocate to beneficiaries the portions they currently occupy or have substantially developed, subject always to the overarching requirement of equality and necessary adjustments.

78. Accordingly, I direct that the residual estate shall be distributed equally among all the eight (8) beneficiaries, that is, Ruth Nduku Nzioka, Serah Mwikali Kioko, Michael Mutinda Munuve, Jayne Mumbua Munube, Boniface Musyoka Munuve, Agnes Nthenya Munuve, Erick Maingi Munuve and Nahum Ndinda Munube, subject to the following adjustments:  
(a) Any beneficiary who has already benefited from sale proceeds of a property shall have such benefit taken into account in the final allocation;

(b) Where a beneficiary is in occupation of a specific parcel, such occupation may be considered in allocating that parcel/portion to them, provided that the overall distribution remains equal;

(c) Any imbalance arising from prior benefit shall be compensated through allocation of other properties within the estate.

79. To give effect to the foregoing and to ensure a lawful, transparent and equitable distribution of the estate, the administrators are hereby directed to within sixty (60) days from the date hereof to prepare, file and serve upon all beneficiaries a reconciled schedule of distribution which shall reflect :

(i) The properties distributed under the mediation settlement agreement;

(ii) account for all prior benefits received by any beneficiary, including proceeds from disposed properties; and

(iii) propose an equal distribution of the residual estate among all the eight (8) beneficiaries, subject only to permissible adjustments based on occupation, developments and prior benefits.

80. Upon filing, the reconciled schedule shall be subjected to scrutiny by the Court. Where the court is satisfied that the schedule accords with this ruling and no objection is raised by any party within a period to be directed by the court, the schedule shall be adopted as the final mode of distribution

and the grant confirmed accordingly. In the event of any objection or non-compliance with the terms herein, the court shall proceed to determine and allocate the remaining properties on the basis of the material on record, without further reference to the parties.

81. For the avoidance of doubt, the distribution of properties settled through the mediation agreement is hereby approved and adopted and shall form part of the final certificate of confirmation of grant. However, with respect to the residual estate, confirmation of the grant is hereby deferred pending the filing, consideration and approval of the reconciled schedule of distribution as directed above.

82. Accordingly, the summons for confirmation of grant filed on 20<sup>th</sup> September 2022 is partially allowed to the extent of the properties resolved through mediation and is otherwise held in abeyance pending final determination and approval of the distribution of the remaining estate in accordance with this ruling.

Orders accordingly.

Dated, signed and delivered at Machakos this 7<sup>th</sup> day of May, 2026

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Protestor

.....Respondent

Selina Court Assistant

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