



REPUBLIC OF KENYA



In re Estate of Andagal Adolwa (Deceased) (Succession Cause E113 of 2008) [2025] KEHC 12019 (KLR) (13 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E113 OF 2008
RN NYAKUNDI, J
AUGUST 13, 2025
IN THE MATTER OF THE ESTATE OF ANDAGAL ADOLWA (DECEASED)
IN THE MATTER OF
JOSEPH VYONYA ANDAKALU OBJECTOR**

RULING

1. Vide this court's ruling dated 15th July, 2025, the court set aside a dismissal order issued on 15th April, 2024 dismissing the suit for want of prosecution. Rodah Ikonga Andakalu and Reuben Mwanje were directed to file a detailed consent on how best section 38 & 40 of the *Law of Succession Act* can be accommodated to ensure fairness, equity and proportionate transmission of inheritance rights.
2. One Joseph Vyonya Andakalu swore an affidavit on 31st July, 2025 in which he stated as follows:
 - a. That I am male adult of sound mind and one of the beneficiaries of the estate of the deceased given authority by the fellow beneficiaries Rhoda Ikonanga Andakala, Ainela Adolwa and Bevila Agneta Misango through Moses Igala – (deceased) to swear this on their behalf and myself.
 - b. That the assets of the state of the deceased consisted of an agricultural farm particularly known as Bindura settlement scheme Plot No. 66 measuring approximately 6 acres.
 - c. That the deceased had two wives namely Elizabeth Mwenywa – 1st wife and Rhodah Ikonanga – 2nd wife.
 - d. That the first wife of the deceased Elizabeth Mwenywa had 12 children while the 2nd wife had 10 children.
 - e. That before the demise of our father which estate relates had subdivided his property Bindura Settlement scheme plot No. 66 consisting of 6 acres equally among his two wives who had respectively settled with their children.



- f. That before the demise of the deceased he had not transferred the aforesaid land but the two families further subdivided to their respective children each holding ½ an acre.
- g. That currently my siblings had sold their respective portions to our neighbour one Jacob Korir Sugut.
- h. That Ainea Adolwa, Moses Igala – (deceased) through his wife Bevila Agnetta Misango and myself our shares consisting ½ acres each remains intact.
- i. That Ainea Adolwa, Moses Igala – (deceased) through his wife Bevila Afnetta Misango and myself were not aware of the filing of the succession cause herein.
- j. That due to the illegal actions by other beneficiaries by secretly filing this cause they had illegal motives in relating to the distribution of the estate as we did not sign any probate and administration forms.
- k. That it was until 23rd July, 2025, when I was informed that I am required in court from my sister one Tafurotha Masista through her phone 0716204193.
- l. That on the 23rd July, 2025, upon arrival in Eldoret Court I met strange surveyors who directed me to sign transfer documents when I declined.
- m. That I have been advised by my advocates which advise I believe to be true that as long as we are recognized as bonafide beneficiary and a fair and equitable distribution and transmission of the same to use we shall not raise an objection.
- n. That we have information which we believe could be true that our shares could have been illegally sold to Jacob Korir Sugut which action we shall move to make appropriate objection and revocation of Grant as per section 76(a-e) of the *Law of Succession Act*.

Analysis and determination

3. The fundamental duty of the Probate Court, as established in *Re Estate of Julius Ndubi Javan (Deceased) (2018) eKLR*, is clear and unambiguous:

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues on the ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which prima facie valid should be determined before confirmation.”

5. This court is mandated to distribute only the net estate of the deceased as it existed at the time of death. The estate property must be properly identified and quantified before any distribution can be made to the rightful beneficiaries. In the present case, serious questions have been raised regarding the current status and composition of the estate property.
6. The objector’s affidavit raises prima facie valid concerns that call for investigation before this court can fulfill its statutory duty. Specifically, the allegations that portions of the estate have been sold to one Jacob Korir Sugut during the pendency of succession proceedings, if proven true, would fundamentally alter what constitutes the distributable estate.
7. Rule 41(3) of the Probate and Administration Rules mandates that claims which are prima facie valid should be determined before confirmation. The objector’s claims regarding illegal sales and his



exclusion from the succession proceedings appear to meet this threshold and cannot be dismissed without proper investigation.

8. Given the issues raised surrounding the current status of the estate property and the conflicting claims regarding beneficial ownership, this court finds it necessary to call for evidence to establish the true position. The court cannot discharge its primary duty of distributing the estate to rightful beneficiaries without first ascertaining what property remains available for distribution.
9. Given the issues raised surrounding the current status of the estate property and the conflicting claims regarding beneficial ownership, and pending the formal filing of the objection, this court finds it necessary to call for additional evidential material to establish the true position.
10. In the circumstances, this court directs that a trial within a trial be conducted to establish the following critical issues:
 - a. The current physical occupation and legal status of all portions of Bindura Settlement Scheme Plot No. 66;
 - b. Which beneficiaries, if any, have disposed of their purported shares and to whom;
 - c. Whether the objector and other excluded beneficiaries were indeed allocated shares during the deceased's lifetime;
 - d. The validity of any alleged transfers to Jacob Korir Sugut or other third parties.
11. To facilitate this inquiry, the Court hereby orders that:
 - a. All beneficiaries of the estate shall be served with notice and required to appear before this court on 16th September, 2025;
 - b. A qualified surveyor shall be appointed to conduct a comprehensive survey and file a detailed report on the current occupation, subdivision, and utilization of the entire Bindura Settlement Scheme Plot No. 66;
 - c. The surveyor's report shall specifically identify all current occupants, the extent of their occupation, and any structures or developments on the land;
12. It is only upon establishment of these pertinent issues can this court make a definitive determination of what constitutes the remaining estate available for distribution. The current record is insufficient to enable this court to discharge its fundamental duty of ensuring equitable distribution of the deceased's estate among all rightful beneficiaries.
13. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13TH DAY OF AUGUST 2025

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R. NYAKUNDI

JUDGE

