



REPUBLIC OF KENYA



**In re Estate of Andrea Chebo Maiyo (Deceased) (Probate & Administration
281 of 2006) [2025] KEHC 12332 (KLR) (2 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 281 OF 2006
RN NYAKUNDI, J
SEPTEMBER 2, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE ANDREA CHEBO MAIYO (DECEASED)

BETWEEN

PERIS MAIYO PETITIONER

AND

DINAH METO OBJECTOR

RULING

1. The matter herein relates to the estate of the late Andrea Chebo Maiyo who died on 18th June, 1999 leaving the following beneficiaries as per the Petition for Grant of Letters of Administration lodged by Peres Kobiloi Maiyo on 19th October, 2006:
 - a. Peres Kobiloi Maiyo – Widow
 - b. Leah Chepsut – Daughter (Married)
 - c. Musa Kiprono – Son (married)
 - d. Kipkorir Kimaiyo – son (married)
 - e. Tabitha Mwangi – daughter (married)
 - f. Jane Matinykwony – (daughter)
 - g. Agnes Maiyo – daughter
 - h. Prisca Jepkemei – Daughter
 - i. Everlyne Maiyo – daughter
 - j. Gorreti Jelagat – daughter



- k. Joyce Jematia – daughter
 - l. Walter Kipchumba Maiyo – son
 - m. Dinah Jepkoech – daughter.
2. The petitioner further indicated that the available assets for distribution were Kipsomba comprising of 90 acres valued at Kshs. 180,000,000/=.
 3. The Objector lodged an objection urging the court to dismiss the said petition for reasons that the petitioner failed to disclose that the deceased was married to two wives namely: Naomi Talai Maiyo (now deceased) and Peris Kobiloi Maiyo. That the petitioner failed to disclose that when Naomi Talai Maiyo died in 1978, she was survived by nine adult children namely: John Maiyo, Leah Chepsat, Musa Kiprono Kimaiyo, Tabitha Mwangi, Jane Martinykwony, Agnes Maiyo, Henry Kipkosgei Maiyo (deceased) and Dinah Jepkoech Maiyo.
 4. That the Petitioner Peris Kobiloi Maiyo further failed to disclose that she is the mother of the following adult children, namely: Prisca Jepkemei, Everlyne Maiyo, Goretti Jelagat, Joyce Jematia and Walter Kipchumba.
 5. According to the objector, on 18th December, 1997 Henry Kipkosgei Maiyo and her celebrated their marriage in the District Commissioner’s office, Eldoret and were blessed with six children namely: Damaris Chepchumba, Alice Chepkurui, Winnie Chepngeno, Charles Kipchirchir, Dennis Kiprop and Gilbert Kiptanui. That upon the death of Henry Kipkosgei Maiyo on 19th March, 2002, she petitioned for a Grant of Letters of Administration Intestate to administer his estate vide Eldoret High Court Succession Cause No. 160 of 2007 and was duly issued with the said Grant on the 11th of February, 2008.
 6. In answer to the objector’s petition by way of cross application, the petitioner stated that the deceased had two wives and hence left behind the following beneficiaries surviving him:
 1. 1st House
 - a. Naomi Talai Maiyo (widow) deceased.
 - b. Musa Kiprono (son) deceased
 - c. Henry Kipkorir Kimaiyo (son) deceased.
 - d. Tabitha Mwangi, 56 years old (daughter) married.
 - e. Jane Matinykwony 53 years old (daughter) married.
 - f. Agnes Maiyo 51 years old (daughter) single.
 - g. Henry Maiyo (son) deceased.
 - h. Dinah Jepkoech (daughter) single
 2. 2nd House
 - i. Peris Kobiloi Maiyo 53 years old (widow).
 - j. Prisca Jepkemei 26 years old (daughter)
 - k. Everlyne Maiyo 25 years old (daughter).



- l. Gorreti Jelagat 23 years old (daughter).
 - m. Walter Kipchumba (son).
7. She stated that the petition/objection in Eldoret High Court Probate Case No. 281 of 2006 herein is defective for reasons that the objector herein is a stranger as she is the daughter in-law to the deceased, and hence she has no locus standi over the estate of the deceased. She later brought in a Will seeking a declaration that the estate herein is testate but the same was invalidated by this court vide its ruling dated 10th June, 2024.
 8. What is pending before this court is a determination on the distribution of the estate of the deceased Andrea Chebos Maiyo.
 9. The objector/Applicant herein Dinah Meto filed an affidavit dated 5th May 2025 in protest and the new mode of distribution in which she averred as follows;
 1. That the late Andrea Chebos Maiyo (hereinafter referred to as "the Deceased") died on 18th June 1999.
 2. That the Deceased was survived by the following beneficiaries:
 - A. From Naomi Talai (deceased) – 1st house:
 - i. John Kipng'etich (Deceased)
 - ii. Leah Chepsat
 - iii. Musa Kiprono (Deceased)
 - iv. Aaron Kipkorir (Deceased)
 - v. Tabiha Mwangi (Deceased)
 - vi. Jane Mating'wony
 - vii. Agnes Chepkemboi
 - viii. Henry Kipkosgei (Deceased – who was my husband)
 - ix. Dinah Chepkoech (myself)
 - B. From Peris Maiyo – the Petitioner herein:
 - i. Prisca Chepkemei
 - ii. Everlyne Chemutai
 - iii. Koreti Gladys Chelagat
 - iv. Loise Chematic
 - v. Walter Kipchumba
 3. That the Deceased bequeathed his estate and stipulated that his property should be distributed as follows:
 - a. John Kipng'etich had 2 wives, namely Elizabeth Ng'etich and Ann Ng'etich with children, and the deceased had settled him as follows:45.0 Acres in Kipsaina which John Kipng'etich sold and settled his 2 wives/houses as follows;The 1st house/wife



being Elizabeth Ng'etich with children settled in 9.0 Acres at Metkei in the deceased land and 2.5 acres at Rongai being the land bought using the proceeds of the land sold at Kipsaina. The 2nd House/wife being Ann Ng'etich with children settled in 10.0 acres of the deceased land at Tarakwa

- b. Musa Kiprono was given 80 acres of that parcel of land in Waitaluk, Maili Saba in Trans Nzoia County at Mitoni Mitatu Estate for him and his family.
 - c. Aaron Kipkorir considering that the Deceased had educated him and had gone up to the United States of America, he was given; 45 acres at Cherang'any (Sinoko area).
 - d. Agnes Chepkemboi was given 2.0 Acres from the parcel of land at Kipsombe.
 - e. Henry Kipkosgei was given 43.0 acres of that parcel of land in Kipsombe where I currently reside, plough, plant maize, harvest crops, keep cattle and was the matrimonial home for the late Henry Kipkosgei and myself.
 - f. Dinah Chepkoech took 10 Acres in Waitaluk, Maili Saba in Trans Nzoia County at Mitoni Mitatu instead of 2.0 acres from Kipsombe farm as given to her by Musa Kiprono.
 - g. The 2nd House of Peris Maiyo (the Petitioner herein) and her household were given 43 acres at Kipsombe, where she resides with her children.
 - h. AIC Church, Kipsombe was given 1.0 acre.
4. That I hold the Grant of Letters of Administration Intestate for the estate of my late husband, Henry Kipkosgei, processed vide Eldoret High Court P&A No. 160 of 2007.
 5. That the remaining estate to be distributed is the Kipsombe Farm which measures 89.0 Acres, which I propose to be shared as follows:
 - a. Dinah Meto (myself): for the estate of Henry Kipkosgei- 43.0 Acres
 - b. Peris Maiyo: 43.0 acres
 - c. Agnes Chepkemboi: 2.0 acres
 - d. AIC Church: 1.0 acre
 6. That in the circumstances, it is only prudent, fair and in the best interests of justice that the mode of distribution presented above be adopted.

Applicant's Submissions on mode of distribution

10. The Applicant filed submissions dated 8th May 2025 in support of the Affidavit of protest through her learned Counsel Mr. Kiboi Tuwai. Counsel submitted that the Objector/Applicant herein has since duly obtained the Grant of Letters of Administration Intestate of her late husband the late Henry Kipkosgei vide Eldoret High Court P&A No. 160 of 2007 hence she is the legal representative of the estate of Henry Kipkosgei whose estate is entitled to benefit from the intestate estate. Counsel also submitted that sometime in 2006, the Petitioner/Respondent secretly, fraudulently and maliciously instituted the instant succession proceedings without involving, informing and obtaining the requisite consent of all the Deceased's bona fide beneficiaries including the Objector/Applicant who is the widow of Henry Kipkosgei. Counsel added that the Petitioner/Respondent instituted the instant succession proceedings through:



- a. Fraudulent misrepresentation of material facts, such as claiming and/or presenting herself as the Deceased's only beneficiary;
 - b. Failing to reveal crucial material facts such as failing to reveal that the Objector/Applicant and her children were beneficiaries of the Deceased;
 - c. Failing to disclose the full list of properties of the Deceased's estate.
11. The learned counsel also submitted that the Petitioner/Respondent also produced the Chief's Letter's dated which was incomplete in terms of failing to capture the full list of beneficiaries of the Deceased's estate and specifically excluded the Objector/Applicant and that at all material terms the Petitioner/Respondent has always persistently harassed the Objector/Applicant and would routinely issue threats of physical violence, hurl insults and actually perpetrate physical beatings and this prompted the Objector/Applicant to report the matter to the police.
 12. It was also submitted that sometimes in the year 2007, the Objector/Applicant learnt disturbing news that the Petitioner/Respondent had commenced succession proceedings, and therefore she instructed an Advocate to pursue the court file, and who discovered that the Petitioner/Respondent had secretly commenced the instant proceedings over the Deceased's estate in February 2006. Counsel also submitted that this prompted the Objector/Applicant to apply for and obtained Grant of Letters of Administration intestate of her late husband, the late Henry Kipkosgei's estate and was able to produce the Chief Letters recognizing her as a bonafide beneficiary.
 13. The Learned Counsel submitted that a dispute arose in 2023 when the Petitioner/Respondent unjustly prevented the Objector/Applicant from developing, farming, and harvesting on the said land and that in blatant violation of her rights, the Petitioner has allowed strangers and/or unknown people to graze and lease the land, to my detriment. It was submitted that this has made the Applicant to be unjustly deprived of the use of the land for two years, causing hardship to her family.
 14. The Applicant's Counsel further submitted that she is entitled to a share of the estate under intestacy law as the widow of Henry Kipkosgei, who was a direct son of the Deceased and was already allocated 43 acres by the deceased and that the Petitioner (Peris Maiyo) had illegally deprived the Objector of use of the land for two years and introduced third parties, which was unjust and unlawful. Reference was made to Section 40 of the *Law of Succession Act* (Cap. 160) which provides: "Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house but also adding any wife surviving him as an additional unit to the number of children."
 15. The Court was urged to apply the principles in: *Re Estate of G K K (Deceased)* [2017] eKLR, where Musyoka J. held: "The primary function of a probate court is distribution of the estate of a dead person... Upon grant of representation being made, the administrators... are given the first six months to ascertain the estate... gather and collect the estate and finally to preserve the same pending distribution." *Stephen Gitonga Murithi v Faith Murithi* [2015] eKLR, where the Court of Appeal held: "The Appellant's complaint against the above mode of distribution is that it failed to take into account the clear principles of law enshrined in section 38 of the *Law of Succession Act*... Our finding is 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... by discriminating against the married daughters of the deceased."
 16. The counsel moreover submitted that the deceased's intended distribution of land, as reflected in the record and past conduct, supports her claim. It was the Counsel's final submissions that the Court:



recognize the Objector's rightful share of the estate; reinstate her access and use of the land and restrain the Petitioner from alienating or interfering with the Objector's portion.

17. The Petitioner/Respondent herein Peris Maiyo filed a Replying Affidavit dated 2nd July 2025 in response to the proposed mode of distribution where she averred as follows:
- a. That I am the Administratrix/Petitioner of the Estate of the late Andrea Chebos Maiyo.
 - b. That the deceased had two houses – House A or 1 Naomi Talai [deceased] and House B or 2 Peris Maiyo.
 - c. That paragraph 4(a) 4(f) of the affidavit was dealt with at the preliminaries as the court made a determination on the purported will and the distribution of those property was done during the lifetime of the deceased and are not subject of this succession cause.
 - d. That the only property available for distribution is the Kipsombe that consist of 91 acres which Chepkemoi was given 2.0 acres and the church 1 acre.
 - e. That the 1st house [A] house which the Objector belongs to has 43 acres which elders and the beneficiaries of that house distributed as follows: -
 1. Aron Kimaiyo 10 Acres
 2. Leah Cheptoo 1 Acre
 3. Jane Mating'kwony 1 Acre
 4. Late Rosemary Mwangi 1 Acre
 5. Agnes Maiyo 7 Acres
 6. Henry Kosgei – late (Objector) 25 Acres
 7. Dina Maiyo 7 Acres
 - f. That the Objector wants all the land allocated (distributed to the 1st house and not to share with her other beneficiaries is beyond anyone's compensation.
 - g. That I belong to the 2nd House or House B where the beneficiaries are yet to agree on the distribution and have asked the court to use the law to distribute for them as per the document annexed to our application dated 21st August 2024 which we asked the Court to allow as it was made after a lot of negotiation and consideration by the elders and supported later by the further affidavits sworn on the 7th February 2025 by myself and the beneficiaries of 1st House, 2nd household beneficiaries sworn on 10th February 2025 and Agnes Maiyo for the 1st House.
 - h. That it is now official that the Objector can legally represent her husband Henry Kosgey but this does not elevate her to a position held by his husband Henry Kosgey who was the son of the 1st House.

Analysis and Determination

18. Having carefully considered the competing modes of distribution proposed by both parties and examined their respective submissions, this court must now fulfill its statutory obligation to ensure the proper and lawful distribution of the deceased's estate among all legitimate beneficiaries in accordance with the provisions of the *Law of Succession Act*.



19. The deceased died intestate and as such the administration of his estate is governed by the provisions of the Law of Succession Act. In his lifetime, the deceased had two (2) wives. Section 40(1) of the Law of Succession Act provides for distribution of the estate of a polygamous deceased's person as follows:

“40(1) where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

20. In *Mary Rono vs Jane Rono & another*, [2005] eKLR, Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased's estate but that the discretion must be exercised judicially on sound legal and factual basis. In the same judgment, Omollo JA stated the position more clearly as follows:

“My understanding of that section is that while the net intestate estate is to be distributed according to houses each house being treated as a unit, yet the judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that they must be equality between houses they would have been no need to provide in the section that the number of children in each house be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work injustice particularly in the case of a young child who is still to be maintained, educated and generally seen through life. If such a child whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

21. In *RE The estate of Lenonka ole Ntutu – deceased* [2008] eKLR, Rawal, J, (as she then was), held that daughters of a deceased were entitled to inherit a share from their father's estate just like the sons, and in *Re Estate of Solomon Ngatia Kariuki – deceased* [2008] eKLR, Makhandia J. (as he then was) stated: -

“The law of Succession Act does not discriminate between the female and male children married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of customary law. Like most other customary laws in this country they are always biased against women and they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”

22. A similar position was taken by Hon. Lesiit, J. in *Eliseus Mbura M'Thara vs. Harriet Ciambaka and Another* [2012] eKLR, thus:

“The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The Law



of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.”

23. Finally, Hon. Kimaru, J. in *Peter Karumbi Keingati & 4 Others vs. Dr. Ann Nyokabi Nguithi* [2014] eKLR likewise held thus:

“...The decision by a daughter or a son to get married has no bearing at all to whether or not such a son or daughter is entitled to inherit the property that comprise the estate of their deceased parents...This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which have a tendency of once in a while rearing its ugly head to be forever buried. This ghost has long cast its shadow in our legal system despite numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for these discriminative cultural practices against women to be buried in history.”

24. The principles established in the foregoing authorities provide clear roadmap on how this court should approach the distribution of the deceased's estate, constituting of two households. The fundamental question that needs an answer is whether to apply the statutory provisions of Section 40 of the Law of Succession Act or to honor the alleged lifetime allocations claimed by the objector.

25. The objector's claim for 43 acres as Henry Kipkosgei's exclusive allocation contradicts the equal distribution principle established in the authorities cited above. In *Re Estate of Kimitei Cherop (Deceased)* [2021] KEHC 8480 (KLR), the court specifically addressed the argument that some houses would be disadvantaged, stating:

“Thus, in the application of Section 40(1) of the Law of Succession Act, it is to be expected that some houses in a polygamous setting would receive more than the other houses, depending on the number of the units under consideration.”

26. Regarding the objector's argument about lifetime distributions by the deceased, this court notes that the question of a Will was determined and the said Will was invalidated vide the court's ruling dated 10th June, 2024 which largely spoke on the lifetime distributions. The evidence supports the finding that the remaining estate available for distribution is the Kipsombe farm measuring 89 acres (after deducting the 2 acres for Agnes Chepkemoi and 1 acre for the church as already allocated).

27. Applying Section 40(1) of the Law of Succession Act to the established facts, this court identifies the beneficiaries as follows:

A. From Naomi Talai (deceased) – 1st house:

- i. John Kipng'etich (Deceased)
- ii. Leah Chepsat
- iii. Musa Kiprono (Deceased)
- iv. Aaron Kipkorir (Deceased)
- v. Tabiha Mwangi (Deceased)
- vi. Jane Mating'wony



- vii. Agnes Chepkemboi
- viii. Henry Kipkosgei (Deceased – Objector’s husband)

B. From Peris Maiyo – the Petitioner herein:

- vi. Prisca Chepkemei
- vii. Everlyne Chemutai
- viii. Koreti Gladys Chelagat
- ix. Loise Chematic
- x. Walter Kipchumba

Total beneficiary units: 15

28. Applying the unit-based distribution model established in Section 40(1) of the *Law of Succession Act*, the first house, comprising nine beneficiaries, is entitled to a proportionally larger share of the estate corresponding to their greater number of units. The second house, consisting of six units including the surviving widow, receives a correspondingly smaller but equitable portion. This distribution ensures that the estate is allocated fairly based on the number of beneficiaries in each house, with the first house receiving approximately 53 acres and the second house receiving approximately 36 acres of the eighty-nine-acre estate.
29. Within the first house, the 53.27 acres must be distributed equally among the 9 beneficiaries, giving each beneficiary (including Henry Kipkosgei’s estate represented by Dinah Meto) 5.92 acres. This court categorically rejects Dinah Meto’s claim for 43 acres as it would constitute approximately 48% of the entire estate accruing to just one of fifteen total beneficiaries.
30. The court further acknowledges the practical reality highlighted in Peris Maiyo’s response that the first house beneficiaries have already attempted their own internal distribution among the 43 acres allocated to that house. While this demonstrates family initiative in resolving inheritance matters, such arrangements must be brought before this court for verification and approval to ensure they comply with legal requirements and protect all beneficiaries’ rights.
31. In the end, this court finds that:
- a. The estate of Andrea Chebo Maiyo comprising Kipsombe farm (89 acres after church and Agnes allocations) be distributed according to Section 40 of the *Law of Succession Act*;
 - b. The 1st house (9 beneficiaries including estates of deceased children) shall receive 53.27 acres to be shared equally among them;
 - c. The 2nd house (Peris Maiyo and her 5 children) shall receive 35.73 acres to be shared equally among them;
 - d. Dinah Meto, representing Henry Kipkosgei’s estate, is entitled to 5.92 acres as Henry’s equal share within the first house;
 - e. Any subsequent agreements among first house beneficiaries regarding internal redistribution may be presented to this court for verification and approval;
 - f. The administrators shall facilitate the subdivision and allocation of the respective portions within six months of this order.



32. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2ND DAY OF SEPTEMBER, 2025

.....

R. NYAKUNDI

JUDGE

