



**In re Estate of Sawe Maina (Deceased) (Succession Cause
350 of 2015) [2024] KEHC 4071 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4071 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 350 OF 2015
RN NYAKUNDI, J
APRIL 25, 2024
IN THE MATTER OF THE ESTATE OF SAWE MAINA (DECEASED)**

BETWEEN

**SUSAN CHEPTEPKENY 1ST APPLICANT
LEAH CHESANG CHERONO 2ND APPLICANT
SARAH JEPKOECH SAWE 3RD APPLICANT
REBECCA JEMELI SINGOEI 4TH APPLICANT
JAELE CHEMESUNDE MAINA 5TH APPLICANT
BEATRICE CHEPNGETICH MUTUNG 6TH APPLICANT

AND
GILBERT KIPLIMO MAINA RESPONDENT**

RULING

1. By a Notice of Motion dated 12/2/2024, the Applicants seek the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to issue Certificate of Confirmation as per the ruling delivered on 18/12/2023.
 3. That the Respondent herein be restrained from selling any portion of LR No. 8518/5 (I.R No. 182905)
 4. That the County Surveyor Uasin Gishu County be and is hereby appointed to survey, mark and place beacons to the resultant parcels of land as per the Certificate of Confirmation of Grant issued.



5. That the OCS Tarakwa Police Station do provide security to the Applicants as they execute the Court order.
6. That costs of this application be provide for.
2. The application is premised on the grounds therein and is further supported by the affidavit sworn by Susan Cheptekeny Maina, the 1st Applicant on 12/2/2024.
3. She deposed that she is the 2nd Administrator of the estate herein and also a beneficiary of the deceased's estate from the 2nd House, that on 19/4/2023 this Honourable Court delivered its judgement with respect to their late father's estate and after delivery of the said judgment they sought an order for review on the basis that the parties herein had agreed and filed a consent to that effect, despite of the Advocate for the Objector/Respondent declining to sign the same. She further deposed that the said application was allowed on the basis that 99% of the parties had agreed and that member of the 1st House have issues with said ruling and 99% of the members in the 2nd House equally have no issue with said ruling and the only person who has an issue with ruling is the Respondent whom she maintained that has already been given 37 acres of the subject land while the rest of them take 9.75 acres. According to the Applicants, there is absolutely no reason why the Respondent should have more than his allotted portion as they are all children of the 2nd House who should ideally get equal shares. The Applicants allege that the Respondent has also employed hooligans to attack them from ploughing their land and thus are calling for security as they get their respective portions. According to the Applicants, it is only fair that an injunction be issued against the Respondent, a Certificate of Confirmation of Grant be issued and an order that the County Surveyor do survey the property and mark its boundaries.

Determination

4. From onset, I must mention that litigation must always come to an end and with that said it is only right each of the deceased's beneficiaries gets to enjoy their respective shares in the estate herein.
5. In this matter it is not in dispute that the deceased was a polygamous man having married two wives and had children from the both houses. This Court on 19/4/2023 rendered its judgment with respect to the estate herein and after which parties herein filed an application seeking to view the said judgment on the basis that it was based on a gift *inter-vivos* (written Will) of the deceased where the estate was to be divided equally between the two houses. The Applicants aggrieved by the said judgment agreed on an equitable mode of distribution thus prompting them to seek a review on mode of distribution of the estate herein.
6. I must mention for record purposes that this matter has since been determined and such the only thing that is remaining is for parties to be allocated their respective shares of the estate. From the pleadings on record it evident that all parties save for the Respondent are in agreement on how the estate herein should be distributed. From the copy of consent there is no doubt that all members of the 1st House concur with the proposed mode of distribution. The only dispute seems to be with 2nd House where the Respondent in my view seems to be keen on getting the lion's share of the portion allocated to the said household.
7. I need not remind the Respondent that the provisions of Section 40 in fact envision a scenario where each of the members of a particular house get an equal share of what is denoted to the said house. Be as it may from my perusal of the consent before Court it rather evident that the Respondent yet still seems to be the biggest beneficiary of the said portion and as such should not be heard to complain. Further, from a cursory perusal on the pleadings on record, it is clear that the Respondent herein is the only male offspring in the second house. With that said Court is also alive to the provisions of Article 27 of



the Constitution 2010 provides that every person is equal in the eyes of the law and before the law; and the Article goes further to state that there should be no discrimination on any ground including gender which encompasses marital status; the Constitution does not allow discriminatory rules and customs in matters of personal law, including inheritance. There ought to be no classification into categories of male, female, married or unmarried; there ought to be no discrimination against the male or female children of a deceased person; nor discrimination between the married daughters and unmarried daughters of a deceased person. The Court in Eliseus Mbura M'ithara v Harriet Ciambaka & Another [2012] eKLR to demonstrate the level of non-discrimination that is required in the distribution of a deceased person's estate as follows:

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.

the Constitution under Art. 27 of the Constitution states *inter-alia*:

1. Equally includes the full and equal enjoyment of all rights and fundamental freedoms
 2. Woman and men have the right to equal treatment including the right to equal opportunities in political economic, cultural and social spheres.
 3. The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, region, conscience belief, culture, dress, language or birth
8. It is in this context under Art. 2(5) of the Constitution Kenya subscribes to and International and Regional Instruments which enjoins our legal system to apply the provisions without reservations. Take for example and Africa Charter of Human and People's Rights which the country ratified 1992 speaks of a covenant of elimination of every discrimination against women and also ensure the protections of the rights of the human and the child which includes inheritance rights. In consonant with the provisions of the Constitution, the law of succession Act in Section 35,37 & 38 cater for children and makes no distinction between sons and daughters. Consequently, when determining inheritance's rights, the court should bear in mind that there is no discrimination of bias against any of the heirs whether of female or male gender. The letter and spirit of the law of Succession Act drawing this foundation from the Constitution is to the effect that each child male or female is entitled to share the estate of the intestate equally. The other consideration is all on the doctrine of equity and equality. I hold the view that the guidelines *In the Matter of the Estate of Kamau Mwangi (deceased)* Nairobi High Court Succession Cause Number 1579 of 1994. (Osiemo J)

A married daughter should be satisfied with whatever share she gets from the estate of her deceased father). The applicant, a married daughter of the deceased sought a review of a confirmation of the grant, on the grounds that not all the parties interested in the estate had consented to the confirmation and that the applicant was given a share which was smaller than that given to the sons. The respondent argued that a married daughter was not entitled to a share equal to that of the sons. The court held the share to the applicant being a married daughter, we sufficient share.



In the Matter of Estate of Mary Wanjiru Thairu (Deceased) Nairobi High Court Succession Cause Number 1403 of 2002 (Ajwang J)

Under Section 38 of the *Law of Succession Act*, all the children of the deceased including daughters, are entitled equally to the estate of their deceased parent. The daughters, if they are not interested in the estate, should file a disclaimer or remuneration of their rights to the estate)

9. For the reasons and principles set out above and for equity to be achieved it is my considered view that the mode of distribution that does commend itself to the circumstances of this cause and which I hereby order is as set out below:



No.	Description of Property	Name	Share
1.	LR No. 8515/5 (IR No. 1402/18)	Dependants from House "A"	
		Esther Jepsongok Too	22 Acres
		Isaac Kipkorir Maina	25 Acres
		Paul Kipkosgei Maina	25 Acres
		Emily Jepkemei Maina	12 Acres
		Mary Jerotich Tangut	5 Acres
		Monicah Jelagat Sawe	5 Acres
		Ruth Sheila Rotich	5 Acres
		Pius Chirchir (Purchaser)	4 Acres
		Gilbert Kipsang Purchaser	8 Acres
		Kapkoi Primary School	0.5 Acres
		Dependants From House "B"	
		Leah Chesang Cherono	9.75 Acres
		Sarah Jepkoech Sawe	9.75 Acres
		Rebeccah Jemeli Singoei	9.75 Acres
		Susan Jeptepkeny Maina	9.75 Acres
		Jael Chemesunde Maina	9.75 Acres



		Gilbert Kiplimo Maina	37.5 Acres
		Beatrice Chepngetich Mutung	12 Acres
		Ian Kipkorir Lagat(for himself and in trust for Niole Jerop Lagat) in equal shares	9.75Acres
		Jonathan Birech	2 Acres
		Sarah Serem	2 Acres
		Kapkoi Primary School	0.5 Acres
		Legalfees to be paid out of the estate of the deceased	1.9 Acres
2.	Compensation Money From Ketraco(Kshs. 759,900/=)	Esther Jepsongok Too	Kshs.40,600/=
		Isaac Kipkorir Maina	Kshs.40,600/=
		Paul Kipkosgei Maina	Kshs.40,600/=
		Emily Jepkemei Maina	Kshs. 40,600/=
		Mary Jerotich Tangut	Kshs. 40,600/=
		Monicah Jelagat Sawe	Kshs. 40,600/=
		Ruth Sheila Rotich	Kshs. 50,660/=
		Leah Chesang Cheronno	Kshs. 50,660/=
		Sarah Jepkoech Sawe	Kshs. 50,660/=



		Rebeccah Jemeli Singoei	Kshs. 50,660/=
		Susan Jeptepkeny Maina	Kshs. 50,660/=
		Jael Chemesunde Maina	Kshs. 50,660/=
		Gilbert Kiplimo Maina	Kshs. 50,660/=
		Beatrice Chepngetich Mutung	Kshs. 120, 660/=
		Ian Kipkorir Lagat(for himself and in trust for Niole Jerop Lagat) in equal shares	Kshs. 50,660/=

10. In the end, I hereby order follows:

- i. The estate of the late Sawe Mainashall be distributed as hereunder;



No.	Description of Property	Name	Share
1.	LR No. 8515/5 (IR No. 1402/18)	Dependants From House "A"	
		Esther Jepsongok Too	22 Acres
		Isaac Kipkorir Maina	25 Acres
		Paul Kipkosgei Maina	25 Acres
		Emily Jepkemei Maina	12 Acres
		Mary Jerotich Tangut	5 Acres
		Monicah Jelagat Sawe	5 Acres
		Ruth Sheila Rotich	5 Acres
		Pius Chirchir (purchaser)	4 Acres
		Gilbert Kipsang Purchaser	8 Acres
		Kapkoi Primary School	0.5 Acres
		Dependants from House "B"	
		Leah Chesang Cherono	9.75 Acres
		Sarah Jepkoech Sawe	9.75 Acres
		Rebecca Jemeli Singoei	9.75 Acres



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		Jael Chemesunde Maina	9.75 Acres
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		Emily Jepkemei Maina	Kshs. 40,600/=
		Mary Jerotich Tangut	Kshs. 40,600/=
		Monicah Jelagat Sawe	Kshs. 40,600/=



	Ruth Sheila Rotich	Kshs. 50,660/=
	Leah Chesang Cherono	Kshs. 50,660/=
	Sarah Jepkoech Sawe	Kshs. 50,660/=
	Rebeccah Jemeli SingoeI	Kshs. 50,660/=
	Susan Jeptepkeny Maina	Kshs. 50,660/=
	Jael Chemesunde Maina	Kshs. 50,660/=
	Gilbert Kiplimo Maina	Kshs. 50,660/=
	Beatrice Chepngetich Mutung	Kshs. 120, 660/=
	Ian Kipkorir Lagat(for himself and in trust for Nirole Jerop Lagat) in equal shares	Kshs.50,660/=

- ii. The Objector/Respondent Gilbert Kiplimo Maina be and is hereby restrained from selling any portion of LR No. 8518/5 (IR No. 182905) until and as when all beneficiaries have received their respective shares.
- iii. The County Surveyor Uasin Gishu County is hereby ordered to survey LR No. 8518/5 (IR No. 182905) in accordance with the mode of distribution herein above.
- iv. I order that the OCS Tarakwa Police Station do provide security during the survey exercise.
- v. This being a family matter each party shall bear its owns costs.

11. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 25TH DAY OF APRIL 2024

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R. NYAKUNDI

JUDGE

In the Presence of:

Chebii & Co. Advocates



