



In re Estate of Javan Okeno Namoyi alias Javan Okeno (Deceased) (Succession Cause 256 of 2016) [2025] KEHC 15814 (KLR) (4 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 256 OF 2016
S MBUNGI, J
NOVEMBER 4, 2025
IN THE MATTER OF THE ESTATE OF JAVAN OKENO
NAMOYI ALIAS JAVAN OKENO (DECEASED)**

BETWEEN

CLIFTON AYIETA OKENO 1ST PETITIONER

COLLINS WABWERA OKENO 2ND PETITIONER

AND

JOSHIA ALUKAKA OKENO 1ST RESPONDENT

GLADYS KEYA OKENO 2ND RESPONDENT

JUDGMENT

1. This cause refers to the estate of Javan Okeno Namoyi, Alias Javan Okeno, who died intestate on 7th April 1988 at Wambulishe, Kakamega. His son Norman Wabwera Okeno listed Kisa/Wambulishe /677, measuring 0.81 Ha, as his estate and was issued with the grant of letters of administration. On 12th May,2017, Norman Wabwera Okeno was granted a certificate confirming the grant where he was allocated the whole estate of the deceased, being L.P. No. Kisa/Wambulishe/677.
2. The 1st and 2nd objectors, upon discovering that the grant was confirmed, filed a summons for revocation of the grant dated 23rd April 2019, stating that their brother, Norman Wabwera, fraudulently applied for the grant and was issued with the whole estate of the deceased, with the exclusion of his siblings, who are also beneficiaries.
3. They aver that the deceased left behind two parcels of land, being L.R. No. Kisa Wambulishe/677 and 699, for which they attached copies of the official search and upon being granted the confirmed grant, subdivided the land into two, being LR. No. Kisa/wambulishe 2232 and 2233, which he later transferred to his two sons, Clifton Keya Okeno and Collins Wabwera Okeno, who are the 1st and



the 2nd petitioners, and that the administrator failed to include his sister, the 2nd objector, in the administration of the estate.

4. She prayed that the grant be revoked and that the titles issued to the 1st and 2nd petitioner be reverted to the name of the deceased, and the original title being Kisa/Wambulishe/677, and that the land title L.R. No. Kisa/Wambulishe /699, which had been left out as part of the deceased estate be included in the list of assets.
5. On 8th February,2021, the court revoked the letters of administration issued on 6th September 2016, as well as the certificate of confirmed grant, nullified, and all the titles that had been issued in relation to the estate of the deceased and the parties were directed to mediation.
6. On 4th October 2021, a fresh grant of letters of administration was issued to Edith Sarah Ariko Amoni, Sospeter Charles Aringo Okeno and Joshua Alukaka Okeno. Upon deliberation, the administrators filed a new claim seeking confirmation of the grant dated 22nd October 2021, listing the deceased children as follows;
 - a. Lydia Achaya Chanzu- daughter(deceased)
 - b. Okeno Alukaka Joshua-son
 - c. Norman Wabwera Okeno-son
 - d. Gladys Keya Okeno-Daughter
 - e. Habili Namoyi Okeno-son
 - f. Sospeter Charles Okeno-son
 - g. Julius Okutoyi Okeno-son
 - h. Aggrey Mukabane Okeno-son
 - i. Leah Nyende Okeni- daughter
 - j. Edith Sara Asiko Amoni- Daughter.
7. They identified the deceased estate, which comprised Land Parcel No. Kisa/Wambulishe/677 and Land Parcel No. Kisa /Wambulishe/699 and proposed the following mode of distribution;
 - a. Okeno Alukaka Joshua- 0.56 Ha
 - b. Sospeter Charles A. Okeno- 0.46 Ha
 - c. Habili Namoyi Okeni-0.46 Ha
 - d. Julius Okutoyi Okeno- 0.46 Ha
 - e. Aggrey Mukabane Okeno-0.46 Ha
 - f. Leah Nyende Okeno- 0.20 Ha
8. For the land parcel No. Kisa/Wambulishe/677 be divided as follows;
 - a. Norman Wabwera Okeno- 0.41 Ha
 - b. Gladys Keya Okeno - 0.40 Ha
 - c. Edith Sara Asiko Amoni



9. The protestor, Norman Wabwera Okeno filed an affidavit of protest against the mode of distribution claiming that his sister, Gladys Keya Okeno resided with him in the land parcel Kisa/Wambulishe/677 since she is of unsound mind and under his custody while the other beneficiaries resided in Kisa/Wambulishe/669 and does not object to their mode of distribution about that parcel of land as it was already bequeathed to the 2nd house by the deceased.
10. He avers with respect to the land parcel of LR. No Kisa/Wambulishe/677, which he bequeathed to the first family, Edith Sara Asiko belonged to the second family, and they should be given her share from Kisa/Wambulishe/669.
11. The protestor Norman Wabwera Okeno, unfortunately passed away on 30th March 2022, and his two sons, Clifton Ayieta Okeno and Collins Wabwera Okeno, applied to be substituted as the protestors in place of their deceased father.
12. They then filed an affidavit of protest against the application for confirmation of the grant dated 22nd October 2021, stating that they currently resided in the land Parcel No. Kisa/ Wambulishe/677 together with their aunt Gladys Keya Okeno, while their uncle, Joshua Alukaka and others reside in Kisa/Wambulishe/669 as was established by the surveyor's report dated 7th November 2023.
13. They assert that their grandfather had already apportioned his two families their portion of land and that their grandmother resided in Kisa/Wambulishe/677 with her children, Norman Wabwera Okeno, Lydia Chanzu Okeno-deceased and Gladys Keya Okeno while his uncles were to build their houses in Kisa/Wambulishe/699 with their siblings Sospeter, Habil Namoyi, Julius Okutoyi, Aggrey Mukabane, Edith Sara Asiko Amoni and Leah Nyende who already resided in land Parcel Kisa/ Wambulishe/669 with their late mother Noel Omukunda Okeno.
14. They contend that according to the customary law, their father, who was the lastborn born, was to reside and inherit their homestead where his parents were buried. They aver that before the court ordered the cancellation of their titles, they had made some development in the land and had already established permanent structures.
15. They further stated that Edith Sarah Asiko, who had been given a share of the land parcel Kisa/Wambulishe/677, did not belong to the first house but the second family, which the second family through Joshua Alukaka Okeno, try to take advantage of the situation to their detriment.
16. In reply to their protest, the 1st objector filed an application dated 25th June 2025 claimed that the protest lacks merit and ought to be dismissed with costs claiming it is a waste of the court's time and pray that the proposed of distribution was in accordance to their discussion as the petitioner's father had already had his grant revoked as he had allocated himself the whole estate and claim that the court should allow and confirm the grant according to their mode of distribution.
17. They aver that their deceased father approached court through fraudulent means and initially meant to defraud the other beneficiaries and that the deceased took the part that belonged to his sister, Gladys and locked her out of the distribution and stated that all the deceased children ought to be treated equally and denied the allegations that he intends to inherit his son in the land that should be his sisters.
18. The objector is in support of the summons for confirmation of the grant dated 22/10/2021, where they provided for the share of the late Habil Namoyi Okeno and he reservation of his share be held in trust for his children by his widow. He makes the following proposed mode of distribution;

Land Parcel Kisa/Wambulishe/677 (2.48 acres)

- a. Joshua Alukaka Okeno – 1.24 acres



- b. The estate of the late Norman Wabwera Okeno is to be registered in the name of the petitioners- 1.24 acres.

Land parcel No. Kisa Wambulishe/669 (6.79 acres)

- a. Aggrey Mukabane Okeno- 1.0 acres
 - b. Julius Okutoyi Okeno- 1.0 acres
 - c. The estate of Habil Okeno- 1.0 acres
 - d. Sospeter Charles Aringo- 1.0 acres
 - e. Gladys Keya Okeno-0.93 acres
 - f. Edith Sarah Asiko- 0.93 acres
 - g. Leah Nyende Okeno- 0.93 acres
19. They pray that the affidavit of protest be dismissed for lack of merit and the counter proposal be admitted, stating that it is justified and a fair manner of sharing the estate of the deceased.

Analysis and determination

20. From the pleadings and submissions, the following are the main issues for determination:
- a. Whether the protest by the petitioners has merit;
 - b. Whether the proposed mode of distribution by the objectors accords with the law and principles of intestate succession; and
 - c. What orders are just in the circumstances.
21. A brief background is that the deceased was a polygamous man, having married two wives. The first house was Flora Inzofu Okeno(wife) whose children were Lydia Achaya Chanzu (deceased), Norman Wabwera Okeno (deceased), Gladys Keya Okeno (alive, allegedly of unsound mind), and the Second House Noel Omukunda Okeno(wife) (deceased), Sospeter Charles Okeno, Habili Namoyi Okeno (deceased), Julius Okutoyi Okeno, Aggrey Mukabane Okeno, Leah Nyende Okeno, Joshua Okeno and Edith Sara Asiko Amoni
22. A fresh grant of administration was issued on 4th October 2021 to Edith Sara Asiko Amoni, Sospeter Charles Okeno, and Joshua Alukaka Okeno as joint administrators. After a grant had been issued to Norman Wabwera Okeno (the father of protestor's herein) was revoked on the 8th February, 2021 and tittle deeds in his name ordered cancelled.
23. The said Norman Wabwera Okeno passed on and he was substituted by the Protestors.
24. The Protestors filed a protest against the mode of distribution proposed by the administrators saying that their deceased grandfather had distributed his land before his death and that their father as the last born was to inherit Land parcel Kisa/Wambulishe/677 (2.48 Acres) according to Luhya Customary Law.
25. The Protestors further submitted that their father's mother Flora Inzofu Okeno was their grandfathers first wife and during the lifetime of the deceased she resided on Land Parcel Kisa/Wambulishe/677 with her children who are Norman Wabwera Okeno , Lydia Chanzu Okeno-deceased, Gladys Keya Okeno, and Joshua Alukaka Okeno.



26. The protestors further avers that the uncle (Joshua Alukaka Okeno) who comes from the 1st house, my grandfather verbally directed he build his house in Kisa/Wambulishe/699 together with Sospeter, Habil Namoyi, Julius Okutoyi, Aggrey Mukabana, Edith Sara Asiko Amoni and Leah Nyende who were already residing on Kisa/Wambulishe/669 with the late mother Noel Omukunda Okeno and considering the land was larger than Kisa/Wambulishe/677 therefore the court should not disturb the apportionment of the land made by their deceased grandfather.
27. The administrators proposed that the estate of Javan Okeno Momanyi alias Javan Okeno should be divided and shared equally amongst the beneficiaries who are children as proposed in the replying affidavit dated 25th June, 2025, at paragraph 26, and reflected in their signed amended consent on the sharing proposal dated 25th June, 2025.
28. Since the parties have failed to agree on the mode of sharing, the court now has to apply the law.
29. It is not disputed that the deceased was a polygamous man therefore Section 38 and 40 of the Succession Act applies.
 1. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
Where intestate was polygamous
 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
 2. 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.
30. It is also not disputed that there is no spouse of the deceased who is surviving.
31. It is also not disputed that the deceased had 10 children, some alive some deceased. Those who are deceased left children.
32. The Protestors assertion that the estate should be shared among the two houses and as apportioned by their grandfather cannot stand for there is no evidence that their grandfather had shared his land as per protestors statement. Further customs which require that an estate of a deceased person be shared among the houses cannot override a clear statement of the law.
33. The Supreme Court in Succession Cause No. 3 of 2015, In re Estate of James Ngengi Muigai (Deceased) [2020] eKLR reaffirmed “Section 40(2) is not a mere guideline. It is a mandatory formula for polygamous intestate succession. Customary claims of ‘house ownership’ of land are subordinate unless proved by documentary or credible oral evidence of inter vivos apportionment ratified by the deceased.”
34. In Rono v Rono & Another [2005] eKLR, Court of Appeal at Eldoret (O’Kubasu, Waki & Onyango Otieno JJ. A), where the Court held:

“What Section 40 provides is that the net intestate estate should first be divided among the houses according to the number of children in each house, taking into account the surviving wives as additional units. Equality in inheritance does not mean equal shares to



each individual where the deceased was polygamous; equality is achieved when each house receives its rightful proportionate share.”

35. In re Estate of Solomon Ngatia Kariuki (Deceased) [2020] eKLR, Mativo J. (as he then was) emphasized that:

“The law under Section 40 is intended to avoid discrimination between the houses and to ensure equity by treating each house as a unit. Any distribution that disregards the houses offends the clear statutory intention of the Legislature.
36. The deceased left two parcels of land Land Parcel Kisa/Wambulishe/677 (2.48 acres) and Land parcel No. Kisa Wambulishe/669 (6.79 acres) so in total acreage in 9.27 Acres.
37. The first house had 4 children (units) and the 2nd house had 6 children (Units).
38. Therefore, in line with provisions of sections 38 and 40 of the Succession Act, the deceased estate should first be shared among the two houses ratio of 4 shares and 6 shares. First house getting 4 shares and second house getting 6 shares (shares represent the number of children per house).
39. After the above children in each house should shall get an equal share of the share allocated to the respective houses.
40. For avoidance of doubt, since there is no surviving spouse, the estate shall be shared equally among the children of the deceased. The share of a deceased child shall be inherited by the deceased’s child/ Children.
41. The sharing shall be done in a way that no one is displaced where he has put his or her home.
42. Therefore, in a nutshell the protest fails, it is dismissed.
43. This being a matter involving family members, each party shall bear its own costs of the cause.
44. Right of Appeal 30 days.
45. This file is closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 4TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

Mr Mondia for the Protestors present online.

Administrators present in person.

Mr. Mondia - one administrator died.

