



**In re Estate of Reuben Walter Muvya Muiu (Deceased) (Succession Cause
294 of 2015) [2025] KEHC 7171 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 294 OF 2015**

MW MUIGAI, J

MAY 19, 2025

IN THE MATTER OF THE ESTATE OF REUBEN WALTER MUVYA MUIU (DECEASED)

IN THE MATTER OF

VICTORIA TATU MUIU 1ST ADMINISTRATOR

ROBERT MUNYAO MUIU 2ND ADMINISTRATOR

FLORENCE NDUKU MUIU 3RD ADMINISTRATOR

JUDGMENT

Pleadings

1. On 22/5/2015 Victoria Tatu Muiu and Robert Munya Muiu filed Petition for letters of Administration Intestate for Reuben Walter Muvya Muiu Alias Reuben Walter Muiu (deceased) who died on 9th September, 2008 per Death Certificate No. 381569 and he resided at Kithendu Sublocation.
2. A letter from the area Chief Jane Kisangai of Kithimani Location dated 15th December 2014 was filed confirming the deceased resided at Kithendu Sublocation. He was married to two wives and had children as follows:
 - a. Priscillah Nduku Mwanganci 1st Wife (Deceased)
 - b. Florence Nduku Muiu -Daughter
 - c. Joyce Robinica Mwikali -Daughter
 - d. Sheila Munyiva Muvya Muiu- Daughter
 - e. Victoria Tatu Muiu 2nd Wife
 - f. Prisca Mkafundi Muiu- Daughter
 - g. Immaculate Brenda Ngii - Daughter –



- h. Robert Munyao Muiiu - Son
- i. Edward Muli Muiiu – Son

The letter from County Land & Adjudication/Settlement Machakos County of 4/2//2015 attached to the Petition, listed the properties of the deceased Robert Muiu alias Reuben Walter Muiu as follows; Kithimani A Plot 3999,4000,4001,4002,4003,4004,4005,4006,4007,4008,4009,4010,4011,4012,4013,4014,4015,4016,4017,4018,4019,4020,4021,4022,4023,4024,4025,4026,4027,4028,4029,4030,4031,4032,4033,4034,4035,4036,4037,4038,4039,4040,4041,4042,4043,4044,4045,4046,4047,4048,4049,4050,4051,4052,4053,4054,4055,4056,4057,4058,4059,4060,4061,4062,4063,4064,4065,4066,4067,4068,4069,4070,4071,4072,4073,4074,4075,4076,4077,4078,4079,4080,4081,4082,4083,4084,4085,4086,4087,4088,4089,4090,4091,4092,4093,4094,4095,4096,4097,4098,4099,4100,4101,4102,4103,4104,4105,4106,4107,4108,4109,4110,4111,4112,4113,4114,4115,4116,4117,4118,4119,4120,4121,4122,4123,4124,4125,4126,4127,4128,4129,4130,4131,4132,4133,4134,4135,4136,4137,4138,4139,4140,4141,4142,4143,4144,4145,4146,4147,4148,4149,4150,4151,4152,4153,4154,4155,4156,4157,4158,4159,4160,4161,4162,4163,4164,4165,4166,4167,4168,4169,4170,4171,4172,4173,4174,4175,4176,4177,4178,4179,4180,4181,4182,4183,4184,4185,4186,4187,4188,4189,4190,4191,4192,4193,4194,4195,4196,4197,4198,4199,4200,4201,4202,4203,4204,4205,4206,4207,4208,4209,4210,4211,4212,4213,4214,4215,4216,4217,4218,4219,4220,4221,4222,4223,4224,4225,4226,4227,4228,4229,4230,4231,4232,4233,4234,4235,4236,4237,4238,4239,4240,4241,4242,4243,4244,4245,4246,4247,4248,4249,4250,4251,4252,4253,4254,4255,4256,4257,4258,4259,4260,4261,4262,4263,4264,4265,4266,4267,4268,4269,4270,4271,4272,4273,4274,4275,4276,4277,4278,4279,4280,4281,4282,4283,4284,4285,4286,4287,4288,4289,4290,4291,4292,4293,4294,4295,4296,4297,4298,4299,4300,4301,4302,4303,4304,4305,4306,4307,4308,4309,4310,4311,4312,4313,4314,4315,4316,4317,4318,4319,4320,4321,4322,4323,4324,4325,4326,4327,4328,4329,4330,4331,4332,4333,4334,4335,4336,4337,4338,4339,4340,4341,4342,4343,4344,4345,4346,4347,4348,4349,4350,4351,4352,4353,4354,4355,4356,4357,4358,4359,4360,4361,4362,4363,4364,4365,4366,4367,4368,4369,4370,4371,4372,4373,4374,4375,4376,4377,4378,4379,4380,4381,4382,4383,4384,4385,4386,4387,4388,4389,4390,4391,4392,4393,4394,4395,4396,4397,4398,4399,4400,4401,4402,4403,4404,4405,4406,4407,4408,4409,4410,4411,4412,4413,4414,4415,4416,4417,4418,4419,4420,4421,4422,4423,4424,4425,4426,4427,4428,4429,4430,4431,4432,4433,4434,4435,4436,4437,4438,4439,4440,4441,4442,4443,4444,4445,4446,4447,4448,4449,4450,4451,4452,4453,4454,4455,4456,4457,4458,4459,4460,4461,4462,4463,4464,4465,4466,4467,4468,4469,4470,4471,4472,4473,4474,4475,4476,4477,4478,4479,4480,4481,4482,4483,4484,4485,4486,4487,4488,4489,4490,4491,4492,4493,4494,4495,4496,4497,4498,4499,4500,4501,4502,4503,4504,4505,4506,4507,4508,4509,4510,4511,4512,4513,4514,4515,4516,4517,4518,4519,4520,4521,4522,4523,4524,4525,4526,4527,4528,4529,4530,4531,4532,4533,4534,4535,4536,4537,4538,4539,4540,4541,4542,4543,4544,4545,4546,4547,4548,4549,4550,4551,4552,4553,4554,4555,4556,4557,4558,4559,4560,4561,4562,4563,4564,4565,4566,4567,4568,4569,4570,4571,4572,4573,4574,4575,4576,4577,4578,4579,4580,4581,4582,4583,4584,4585,4586,4587,4588,4589,4590,4591,4592,4593,4594,4595,4596,4597,4598,4599,4600,4601,4602,4603,4604,4605,4606,4607,4608,4609,4610,4611,4612,4613,4614,4615,4616,4617,4618,4619,4620,4621,4622,4623,4624,4625,4626,4627,4628,4629,4630,4631,4632,4633,4634,4635,4636,4637,4638,4639,4640,4641,4642,4643,4644,4645,4646,4647,4648,4649,4650,4651,4652,4653,4654,4655,4656,4657,4658,4659,4660,4661,4662,4663,4664,4665,4666,4667,4668,4669,4670,4671,4672,4673,4674,4675,4676,4677,4678,4679,4680,4681,4682,4683,4684,4685,4686,4687,4688,4689,4690,4691,4692,4693,4694,4695,4696,4697,4698,4699,4700,4701,4702,4703,4704,4705,4706,4707,4708,4709,4710,4711,4712,4713,4714,4715,4716,4717,4718,4719,4720,4721,4722,4723,4724,4725,4726,4727,4728,4729,4730,4731,4732,4733,4734,4735,4736,4737,4738,4739,4740,4741,4742,4743,4744,4745,4746,4747,4748,4749,4750,4751,4752,4753,4754,4755,4756,4757,4758,4759,4760,4761,4762,4763,4764,4765,4766,4767,4768,4769,4770,4771,4772,4773,4774,4775,4776,4777,4778,4779,4780,4781,4782,4783,4784,4785,4786,4787,4788,4789,4790,4791,4792,4793,4794,4795,4796,4797,4798,4799,4800,4801,4802,4803,4804,4805,

3. The Gazette Notice dated 14/7/2015 was published.

The Grant of Letters of Administration Intestate was issued to Victoria Tatu Muiu, Robert Munyao Muiu and Florence Nduku Muiu on 7th December, 2015 by Hon. Edward Muriithi J.

Background

4. The 3rd Administrator, Florence Nduku Muiu filed Application on 3/1/2016 against the 1st & 2nd Co Administrators, Victoria Tatu Muiu & Robert Munyao Muiu on alleged grounds that they did not disclose all assets of the deceased and they left out Kithimani Adjudication Plot 182,406,1181,2893,2081,2895,20803920,4620,4621,40,4181,4182,4183,4184,4185,4186,4187,4188,4190,4191,4192,4193,4194,4195,4196, 4029,4030,3918,3919 & 3920
5. The Respondents 1st & 2nd Administrators, the land Registrar & Adjudication Officers were to be restrained, prohibited from transferring, leasing, subdividing, charging or otherwise disposing the properties of the deceased Kithimani A Plot 3999,4000,4001,4002,4003,4004,4005,4006,4007,4008,4009,4010,4011,4012,4013,4014,4015,4016,4017,4018,4019 [including those listed above]
6. The Respondent Administrators to render true Accounts of rent collected from deceased's assets without involving other beneficiaries' and to open joint account of all 3 Administrators to deposit rent payments
7. The Respondents 1st & 2nd Administrators Victoria Tatu Muiu, Robert Munyao Muiu filed Application on 11/7/2016 and sought orders on alleged grounds that 3rd Administrator Florence Nduku Muiu to be restrained from interfering and intermeddling with the real estate of the deceased person pending issuance of order confirming the grant.
8. Hon J D.K.Kemei on 27/7/2017 delivered Ruling that the 2 Applications would be determined by viva voce evidence, Parties were to file and serve Witness statements within 30 days and status quo would be maintained to the properties of the deceased until final determination of this Cause.
9. An Application was filed on 23/8/2018 by Milcah Kalondu Muiu & 7 Others (sisters of the deceased) led by Betty Nguli who deposed the Affidavit on allegation that the 1st Respondent was side-lining the 3rd Administrator and 1st Household seeking to distribute the estate of deceased contrary to the law and deceased's wishes and wished to be joined as interested parties' the Cause.
10. The Respondents Victoria Tatu Muiu, Robert Munyao Muiu objected to the Application of joining interested parties as the Law of Succession Act had no such provisions.
11. Hon J D.K.Kemei on 4/2/2019 delivered Ruling that the interested parties had no claim to the estate and as such would not be joined as 3rd Parties.



12. The Applications of 3/1/2016 & 11/7/2016 were heard on 30/7/2019 with only evidence of PW1 Florence Nduku Muiu who testified that her mother died from a fire in their home, their late father studied and lived in USA. They are 3 daughters of 1st house and 4 children in the 2nd House. After their father died a Will was produced and she filed an Objection on the basis the Will was signed by deceased through thumbprint and the Adjudicator did not sign and strangers were included to the Will. The Will was not witnessed. The 2 Administrators processed titles of the deceased's property after his death and strangers (one Mary W.Maina) acquired parcels of land from deceased's estate. She tried to resolve the matter amicably by calling a meeting and she was threatened never to visit the house again. She alleged the administrators sold several Plots and they had not accounted for the rent collected.
13. Ruling of 4/12/2019 by Hon J D.K. Kemei was to the effect that 1st & 2nd Administrators Victoria Tatu Muiu, Robert Munyao Muiu were to prepare and file Statements of Accounts of monies that came through their hands; give an inventory of the estate of the deceased since his death till the instant Ruling; any further rent collected from premises belonging to the deceased be deposited in a joint account to be opened in the names of 3 Administrators pending confirmation of grant; the 1st & 2nd Administrators, Land Registrar & Adjudication Officers are prohibited from transferring , leasing, subdividing, charging or otherwise disposing the property of the deceased Kithimani a Adjudication Plot[as listed above in the instant application] pending confirmation of grant and the Court found no gift has/had inter vivos has /had been established and temporary injunction is issued on the assets of the deceased against any person acting in authority pending confirmation of grant. The parties are/ were directed to file Summons for confirmation within 60 days thereof.
14. The Application of 6/3/2020 was filed by Raphael Mutisya Muia & 3rd Administrator filed Application of 12/2/2020 both seeking the Review of Ruling of 4/12/2019 on the basis that the Court did not consider evidence of proof of gift inter vivos. The Application was dismissed by Hon J D. K. Kemei vide Ruling of 21/10/2020 and the matter was to proceed and set down for Confirmation of Grant. The beneficiaries Florence Nduku Muiu & Sheila Munyiva Muia appeared and gave consents. The other beneficiaries did not appear nor consent.
15. This Court took over the matter on 23/11/2021 Robert Munyao Muiu stated that the Summons for Confirmation filed by Florence Muiu Co Administrator, they agreed with the List of Beneficiaries' and list of assets of the deceased's estate but they did not agree with/to the proposed mode of distribution of the estate of the deceased.
16. Robert Munyao Muiu informed the Court that the deceased during his lifetime subdivided Kithimani Property into 3 portions from Nos 3999-4031. His Stepsisters contested this fact and the matter was referred to DCI and the deceased's thumbprint was confirmed. He also said that the distribution of assets comprising of deceased's estate should not be distributed per house but each beneficiary as 1st house has 3 children of the deceased and 2nd house has 6 children of the deceased.
17. Mr.Muturi for 3rd Administrator told the Court, that this was not a matter for Court annexed mediation, there are Rulings of the Court on record and properties listed by Trial Judge for distribution some of the said properties were already sold. Secondly, after Rulings by Hon. D. K. Kemei J, Robert Munyao Muiu filed Notice of Appeal to the Court of Appeal but did not pursue the Appeal. Counsel asked the Court to deliver Ruling on Summons for Confirmation and/or distribution of the estate of the deceased.
18. The Court sought all Administrators attend Court and they were to file and serve Witness Statements so as to proceed with oral hearing.



Summons For Confirmation Of Grant

19. Summons for confirmation of grant was filed by the Petitioner on 21/11/2020 seeking the following orders.
1. That the letters of administration intestate made to the said Victoria Tatu Muiu, Robert Munyao Mulu and Florence Nduku Muiu in this matter on 10th day of November, 2015 be confirmed.
 2. That the cost of this application be costs in the cause based on grounds that:-
 1. That all efforts of mediation on how the estate of the Late Reuben Walter Muvya Muiu should be distributed have failed.
 2. That in compliance with the ruling of this court dated 21st October, 2020, the 3rd Administrator herein Florence Nduku Muiu seeks the intervention of this Honourable court in distributing the Estate.
20. Hearing Based On Filed Pleadings & Statements Supporting Affidavit By Florence Nduku Muiu
1. That her father had two families and she proposed that the Estate be distributed between the two families i.e the first family -Priscilla Mukulu Mwangangi (deceased) and her children and the second family i.e – Victoria Tatu Nduku and her children.
 2. That the beneficiaries of the Estate of my late father are as follows:-
 - a. Priscillan Nduku Mwanganci 1st Wife (Deceased)
 - b. Victoria Tatu Muiu 2nd Wife
 - c. Florence Nduku Muiu -Daughter
 - d. Joyce Robinica Mwikali -Daughter
 - e. Prisca Mkafundi Muiu- Daughter
 - f. Sheila Munyiva Muvya Muiu- Daughter
 - g. Immaculate Brenda Ngii - Daughter –
 - h. Robert Munyao Muiu - Son
 - i. Edward Muli Muiu - Son
 3. That the deceased owned the following properties.
 - A. Kithimani Adjudication Plots Nos. 4000, 4001, 4002, 4003, 4004, 4005, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4029, 4030 and 4031.
 - B. Parcel No. 40, 406, 182, 1181, 2080, 2893, 2081, 2895,, 2893, 2081,, 2898, 3917, 3918, 3919, 3920, -3999.
 - (C) Parcel No. 4181, 4182, 4183, 4184, 4184,4185, 4186,4187, 4188, 4189, 4190, 4191, 4192, 4193,4194, 4195, 4196, 4620, 4621.
 4. That the identification and shares of all persons beneficially entitled to the said estate have been ascertained and she proposed the same be determined as follows:-



- i. Parcel No. 40 which is a shop, she proposed the same be allocated to the 1st family children being Florence Muiu, Sheila Muiu and Joyce Muiu and the same be shared equally.
- ii. Parcel No. 406, farming land, she proposed that the land be subdivided in half amongst the children on the first family ie. Florence Muiu, represent first family and the children of the second family Victoria Tatu Muiu.
- iii. Parcel No. 3918 and 3920, she proposed that they be allocated to the children of the second family i.e Brenda Ngii, Edward Muli, Robert Muiu and Prisca Muiu.
- iv. Parcel No. 4620 and 4621 2705,1181,2893,2081 is where the family built the deceased a home; she proposed that the land to be registered in the names of Florence Muiu, and Victoria Muiu in trust for the family. This is family residence where her mother and father are buried.
- v. Parcel No. 3919, 3917, 2895 and 2080, she proposed that the land be subdivided in equal shares and be registered in the names of Florence Muiu, Sheila Muiu and Joyce Muiu (children of the first family).
- vi. Plot 4029, she proposed that the land be subdivided equally among the children of the first family ie. Florence Muiu, Sheila Muju and Joyce Muiu.
- vii. Plot No. 3918 and 3920, she proposed the land be subdivided equally among the children of the second family ie. Brenda Ngii, Edward Muli, Robert Muiu and Prisca Muiu.
- viii. Parcel No. 1181, this land has been further subdivided into the following plots Parcel no's 4181-4196. she proposed that half of the plots be registered in favour of the children of the first family Florence Muiu, Sheila Muiu and Joyce Muiu and the other half of the plots be registered in the names of Victoria Tatu Muiu (2nd wife) and her children being Brenda Ngii, Edward Muli, Robert Muiu and Prisca Muiu.
- ix) Plot No.3999-4013 15 the plots, she propose that the plot be subdivided and registered in the names of Florence Muiu, Sheila Muiu and Joyce Muiu
- x) Plots No. 4014-4031, 15 plots she proposed that the plots be registered in the names of the second family children Brenda Ngii, Robert Muiu Edward Muli, Prisca Muiu, and the same be registered in their names.

21. Supplementary Affidavit By Florence Nduku Muiu In Support Of Confirmation Of Grant Dated 21/11/2020

On 31st May, 2021 Florence Nduku Muiu filed a Supplementary affidavit and stated as follows

1. That she tried on various occasions to agree with the 2nd Family i.e. Victoria Tatu Muiu on the distribution of the Estate of their late dad but her efforts have been futile,
2. That she discussed with siblings i.e. Joyce Robinica Mwikali and Sheila Munyiva Muvya Muiu who consented and supported to the mode of distribution of the estate of our late father (Attached herein and marked as exhibit No. "FNM-1" is a copy of the consent of the mode of the distribution of the estate).



3. That she distributed the estate fairly and equally amongst the two families and she supported the said Grant to be confirmed.
4. That she made this affidavit in support of the Summons of Confirmation of Grant dated 21st November 2020.

Statement By Victoria Tatu Muiu

22. Victoria Tatu Muiu widow of the deceased one of the administrators of the Estate of Rueben Walter Muvya who became deceased on 8th September 2008 stated as follows:-

she was the legal wife of Rueben Walter Muiu, and they got married in 1967, a marriage that lasted for over 41 years (see attached appendix 1 marriage certificate). Rueben Walter Muiu was never married to Priscilla Mukulu Mwangangi, it was what is termed as "come we stay.

23. On marrying Rueben in 1967, she took responsibility of 3 infant children, who were abandoned by their biological mother in Machakos Country Bus. Florence was only 5 years old, she brought up these children as her own until they graduated from university, their biological mother was not present.
24. Rueben Walter Muiu and her were residing in the homestead, which they built together with the help of all the children. On his death, she buried her husband here in the compound, they were still married and never divorced.
25. Florence forgets that she is the widow of Rueben and that she brought her up infact she sustained major injury on her knee when she fell off the Land Rover on the way to visit Florence in boarding school, this same injury led to knee replacement surgery which took place in 2015.
26. In 2015 Florence came to Kithimani (note we buried our father in 2008) this visit was not for visiting the grave of their father rather she came to collect clothes, Brenda had bought for her from Dubai. On arriving Florence got very upset because Brenda had started building her house, Florence kept saying who gave Brenda permission to build?. This was the start of our problems, Florence is a very jealous person and always wanting to control her siblings.
27. With regard to this case, they started the process with the purpose of succession of property with her late husband name, they all thought it would be a simple direct process, unfortunately it become a major case with accusations of stealing and selling leading to total breakdown of the family unit.
28. She read the affidavit of Florence dated 1st December 2021 and strongly objected to the proposed distribution as it's unfair and leaning in favour of Florence. Florence has requested all the plots with a financial benefits to herself. Find below her objections;

1. Plot 3919

This plot was sold to my niece Felista Ngugi by my late husband Rueben Muiu deceased, therefore she have had no objection to have this plot registered to Felista Ngugi, am therefore in agreement with Florence regarding this plot.

2. Plot 2893 This plot was allocated by late husband (Rueben Muiu) to Florence Muiu his eldest daughter and she had no objection for the plot to be registered to her.

3. Plot 2080

This plot was allocated by her late husband to her youngest son Edward Mulli Muiu.

4. Plot 2705



This plot was allocated to the following beneficiaries
Elizabeth Ngii Muiu(Grandmother)Florence MuiuAfrican Inland ChurchBrenda Ngilu Muiu

The purpose of this plot was to build a church in memory of Elizabeth Ngii Muiu. This was done by husband, Rueben Muiu in memory of his mother. She had no objections to this all the wishes of her late husband

5. Plot 3919

This plot was allocated to Shella Muiu, Joyce Muiu and myself Victoria Muiu (widow) therefore proposal we proceed as per instructions of her late husband

6. Plot 3918 and 3920

These two plots were allocated to Robert Muiu as per my husband's instructions. Due to the need for school fees, Robert subdivided the plot and sold these plots for education purpose. She had no objections to this allocation, Robert is above the age of 18 therefore did not require my authorization to sell his plots. Since this plot has been sold already, she failed to see any fairness if Florence is proposing to allocate sold land to other children.

7. Plot 4620

This plot does not hold the homestead, it was allocated by deceased to Edward Muli Muiu as area to build his residential home. Florence's proposal will leave Edward with no place to build his residential home, she therefore objected to Florence's proposal. She proposed we following instructions of my late husband.

8. Parcel 406 (Shamba Mutauni)

This Shamba was allocated by my late husband to:

- a. Florence Mulu.
- b. Edward Muiu
- c. Victoria Muiu

All three have equal share of this Shamba, I prefer this distribution as it's fair. Florence is welcome to share her portion with Sheila and Joyce Muiu.

Plot 2081 and plot 2895

I have no objections to Florence proposal.

Plot 40

This plot for many years was and still on death of my husband a joint property belonging Muiu and Rueben Muiu. Based on Kenya common law on joint property whole ownership transferred to the remaining owner in this case Edward Muiu. I therefore oppose Florence's proposal to divide the property between herself and the rest of her sisters. On the death of my son late Edward agreed for me to continue collecting the little rent since I have no other income am old I suffer from High Blood Pressure, Diabetic and Arthritis and therefore in constant need of medication. This shop should be allocated to Edward Muiu.

Plot 4621



Since the death of my husband in 2008, Florence, Sheila and Joyce have never visited their father's grave, this was before the start of the case in 2015. We have never refused them to visit, in fact 2015 we were arranging memorial of my husband which Florence refused to attend stating Jehovah witness do not celebrate or remember dead people. We have never refused Florence to visit, we therefore fail to understand why Florence wants to be added to the homestead so as to visit her father's grave.

29. On the death of Florence's mother, her late husband refused for her to be buried in the homestead since they were not in good terms, she personally begged her husband to allow their mother to be buried here and he eventually agreed, but ask Florence where her mother's grave is she has no idea plus she and her sisters Sheila and Joyce Muiu have never visited the grave since 1996.
30. She is 77 years old, and resides in the homestead with her daughter Brenda Muiu, she takes care of her food, medication, doctor appointments, physiotherapy. She did not need Florence to be added to the homestead since her purpose is to take over the investment done by Brenda. Brenda has invested quite alot in the homestead building her home valued at 13 million, installing electricity building gates building pig and cow structures.
31. Florence called Brenda and tell her to invest in the homestead because I am her mother. Also, Brenda bought land with her in Kilifi giving her 3 million once the land was bought Florence added her husband and Edward Muiu with no authorization of Brenda, and then refused to give Brenda her title deed.
32. Before proceeding to court they tried many methods to settle this matter peacefully, they held meetings with clan tribal elders who ruled against Florence, they enlisted aunties to help with family meetings to no avail. In fact the aunties started helping pay for lawyers to Florence and even tried to be enjoined to the case, I personally called Florence to try and talk to her, she just told her "let's us meet in court" and banged the phone
33. She brought up all these children as her own there was no division among them, relatives especially aunties, sisters to her husband have caused this total breakdown of my family and I am looking to close this matter peacefully, so we can try to build up the family unit. Florence, Sheila and Joy Muiu are welcomed to come home at any time.
34. The purpose of this case was for us to proceed with succession of property which was left in the name of Rueben Muiu, unfortunately it became a case of accusations of stealing and selling of properties, yet Florence has never provided evidence if this. This case should focus on division of property and to be shared fairly and equally to all 7 children and myself as the legal wife, widow of Rueben Muiu:
35. Plot 1181 (known as Wuiyini)
This parcel consists of 16 plots of 40*100, commercial plots. Florence has proposed a distribution of 8 plots for herself and sisters another 8, I strongly disagree with this distribution as it's not equal fair. I agree with below proposal
 1. Joyce Muiu-Plot 4181 Plot 4182
 2. Florence Muiu-Plot 4183 Plot 4184
 3. Sheila Muiu-Plot 4185 Plot 4186
 4. Victoria Muiu-Plot 4187 Plot 4188
 5. Brenda Ngi Muiu-Plot 4189 Plat4190



6. Prisca Muiu-Plot 4191 Plat4192
 7. Robert Muiu-Plot 4193 Plat 4194
 8. Edward Muiu- Plot 4195 Plot 4196
36. Plots 3999-4031
1. Joyce Muiu-Plots 3999, 4000, 4001,4003
 2. Sheila Muiu-Plots 4004,4005,4006,4007
 3. Florence Muiu- Plots 4008, 4009,4010,4011
 4. Victoria Muiu- Plots 4012, 4013,4014/4015
 5. Brenda Muiu-Plots 4016/4017/4018,4019
 6. Prisca Muiu-Plots 4020/4021,4022,4023
 7. Edward Muiu-Plots 4024/4025/4026,4027
 8. Robert Muiu-Plots 4028,4029,4030,4031

Statement By Edward Mali Muia

37. Edward Mali Muia filed his statement and stated as follow:

He is the second and youngest son of the late Rueben Muiu. Being of sound mind, I have read and understood the affidavit written by Florence Muis dated 1st December 2021.

The strong objection with regard to this proposal as follows:-

My late father Rueben Muvya Muiu on his own free will bequeathed me the following properties and which title deeds were issued in my name:

1. Plot 4620- This is a residential plot which was allocated to him by my father and subsequently title deed was issued in my name.
 2. Plot 40-A commercial shop located at Kithimani town, this property was joint ownership property between him deceased even before his death, therefore according to Kenya law any joint ownership property on the death of one party, ownership is transferred to remaining party in case, ownership moved to me. The existing commercial shop is now wholly owned by me.
 3. Plot 2080-This plot was allocated to him individually by my late father, hence title deed reads Edward Muli Muiu
 4. Parcel 406-(Yatta Farrow) - This is an agricultural piece of land estimated 8 acres that is used for large scale commercial agriculture production. This land was allocated to himself Edward Muiu, Florence Muiu and my mother Victoria Muiu, all parties having equal shares. Yet in Florence's proposal she wants this assigned to herself and her sisters. I proposed we maintain the wish of our father to divide it into three equal shares. Florence can share her portion with her sisters Joyce Mwikali Muiu and Sheila Munyiva Muiu.
38. It is quite clear that Florence's proposal is not for the benefit of the family rather for her own benefit and commercial gain. Florence had proposed division of land for her own financial benefit by demanding for the plots of land that have a financial return an example is Plot 40, commercial shop. She also seems



to want all the properties for herself even though our late father left her most of the land, by demanding Plot 4620 clearly confirms that she would not have any residential land to even build himself a home. Florence accused them over the years calling them thieves yet she never proved once that any land was sold.

39. Before there was electricity, water and tarmac roads, Florence was never interested in any plots in Kithimani, Yatta. He called her to tell her that there were people fencing her land and she just said she does not want any land. He went to the DC in Kithimani and reported the land grabbers. The land was saved and to this day the land is still in Florence's name.
40. He strongly opposed to Florence's request to be added to the homestead, the homestead was left for Brenda and his mother, and only sisters who are not married or are divorced.
41. They built pig and dairy structures on that homestead parcel and the income from livestock sales helps sustain his elderly mother who is also diabetic. Florence is now married with her own home and children in Mtwapa cannot see why she wants to control the homestead. Florence also has many plots of land in the coast region of Kenya and she just wants to stifle others with her greed and thirst for land.
- He therefore strongly recommend that they adhere to the wishes of their late father and keep the properties as he had bequeathed to all his children and proceed with succession process for land still in the name of Rueben.

Statement By Robert Muiu

42. Robert Muiu one of the Estate of the administrators of the Estate of the late Rueben Walter Muiu who died on 9 September 2008 stated as follows:-
- As the first son of late Rueben Walter Muiu and being of sound mind and age, he read and understood the affidavit of Florence Muiu dated 1st December 2021. He objected as follows; .
- As one of the administrators of the estate, he gave a brief background they held meetings with clan elders and Florence.
43. These meetings were not successful because the elders did not rule in favour of Florence, hence she proceeded to court with accusations of stealing. Before his demise their late father Rueben Walter Muiu being of sound mind and of his own free will, visited the Lands Office in Kithimani Town where he gave his instructions of how wanted to distribute his estate amongst his 7 children and his legal wife.
44. These instructions known as " land proceeding" are attached in the file, unfortunately Florence refused to accept these wishes and claimed the document was fake. Due to these constant accusations and claims of forgery, this document had to be verified by Criminal Investigation Department Nairobi to confirm that the fingerprints appearing on the document belong to Rueben Walter Muiu, CID confirmed the fingerprints to be his therefore the document was not a forgery.
45. Robert Muiu therefore strongly objects to the affidavit proposal of Florence Muiu dated 1st December 2021 and strongly recommend the court to adhere to the wishes of my late father as instructed in the document known as " Land Proceeding Letter".
46. In the above mentioned letter, his father bequeathed him Plots 3918 and 3920. Hence when the titles came out in 2014/2015, these had my name Robert Munyao Muiu, land register documents will show me as the first owner of these plots.It is important for the court to note these title deeds were issued at 2 years before the start of this court case.



47. He was accused severally of stealing these plots and selling them. He is father of two daughters who undergoing education, in 2017. He had financial difficulties and daughter Victoria Tatu Muiu who was admitted in Kenyatta University required school fees (had no choice but to sell parts of my plots to raise money for the education of my daughter) He held on to the plots for more than 2 years before he sold them, therefore there was no intermeddling of any property belonging to Rueben Muiu. Florence over the years accused him of stealing however she never presented to this court any evidence of such and requested the court to ask her to refrain from calling him a thief.
48. The purpose of this case was for them to do succession of the land left in the name of Rebert Water Muiu and this land to be distributed fairly and equally amongst his seven children and his legal wife. We were all brought up together at one family unit there was no such thing as children of the first wife or second wife.

The land which should be distributed is as follows

Parcel 1181 (known as Wulyini)

49. This parcel consists of 16 plots of 40*100, commercial plots. Florence proposed distribution of 8 plots for herself .We feel this distribution would not be fair since in Victoria side we are 5, whilst in Florence side there are 3 people therefore getting more plots. He strongly opposed and the Court should note this is unfair distribution since we are 5 persons whilst Florence and her sisters are 3, therefore will get more plots.
50. He proposed distribution because it is fair and they all get equal shares
 1. Joyce Muiu-Plot 4181 Plot 4182
 2. Florence Muiu-Plot 4183 Plot 4184
 3. Sheila Muiu-Plot 4185 Plot 4186
 4. Victoria Muiu-Plot 4187 Plot 4188
 5. Brenda Ngi Muiu-Plot 4189 Plot 4190
 6. Prisca Muiu-Plot 4191 Plot 4192
 7. Robert Muiu-Plot 4193 Plot 4194
 8. Edward Muiu- Plot 4195 Plot 4196
 1. Plots 3999-4031
 1. Joyce Muiu-Plots 3999, 4000, 4001,4003
 2. Sheila Muiu-Plots 4004,4005,4006,4007
 3. Florence Muiu- Plots 4008, 4009,4010,4011
 4. Victoria Muiu- Plots 4012, 4013,4014/4015
 5. Brenda Muiu-Plots 4016/4017/4018,4019
 6. Prisca Muiu-Plots 4020/4021,4022,4023
 7. Edward Muia-Plots 4024/4025/4026,4027
 8. Robert Muiu-Plots 4028,4029,4030,4031



2. Plot 3917

This Plot belongs to Felista Ngugi and their late father gave these instructions, plot may be registered to Felista Ngugi

3. Plot 2893

This plot was allocated by our late father to Florence Muiu and he had no objections for the plot to be registered to Florence Muiu.

Plot 2080 This plot was allocated by our late father to Edward Muiu and he had no objections for the plot to be registered to Edward Muiu

4. Plot 2705

This plot was allocated to the following beneficiaries:

1. Elizabeth Ngii Muiu (Grandmother)
2. Florence Muiu
3. African Inland Church
4. Brenda Ngii Muiu

The purpose of this Plot was to build a church in memory of Elizabeth Ngii Muiu(our grandmother).

PLOT 3919

This plot was already allocated to Sheila Joyce Muiu and Victoria Muiu (widow of deceased) and he had no objection to this.

Plot 4620

This plot does not hold the homestead, it was allocated by our late father to Edward Muli Muiu and he had no objections to this.

PARCEL 406 Shamba MUTAUNI)

This was allocated by our late father to:

1. Florence Muiu
2. Edward Muiu
3. Victoria Muiu (widow)

All three have equal shares of this Shamba and I prefer this distribution at its fair. No objection to this.

PLOT 40

This plot for many years was and still is a joint property belonging to Muiu, based on Kenyan law of common law jointed property whole ownership is transferred to remaining owner in this case Edward Muiu, I have no objections to this property remaining with Edward Muiu.

Plot 4621



I strongly object to the proposal of Florence to be added to the homestead, since the death of our late father in 2008, Florence and her sisters have never visited their father's grave, this was even before the start of this case. He failed to understand why Florence was requesting to be added to the homestead to visit the grave. Florence is welcome to visit but now she is a married woman and she should leave the compound for Brenda and Victoria Muiu widow of deceased.

Statement By Brenda Muiu

50. On 19/4/ 2022 Brenda Muiu filed a statement and stated as follows:-

In 2015, Florence came to Kithimani (note we buried our father the grave of our father rather to collect clothes from me which I had bought from a trip to Dubai for operation of my mother. On arriving Florence got very upset because I had started building a residential home, Florence kept saying "who gave Brenda permission to build". This was the start of our problems, Florence is a very jealous person and always wanting to control her siblings.

51. All through the years, Florence always told her to invest in the homestead since my mother lives here. I see in her proposal of distribution Florence has gone for the land which has financial returns for her own benefit. She has requested the commercial plots, shop and the homestead.

52. With regard to this case, we started the process with purpose of succession of property with my father name; they all thought it would be a simple direct process, unfortunately it became a major case with accusations of stealing and selling land leading to total breakdown of the family unit.

53. She read the affidavit of Florence dated 1" December 2021 and strongly objected the proposed distribution as it's unfair and leaning in favour of Florence. Florence has requested all the plots with financial benefits to herself. I Propose;

1. Plot 3919

This plot was sold to Felista Ngugi by my late father Rueben Muiu, therefore she had no objection to have this plot registered to Felista Ngugi, am therefore in agreement with Florence regarding this plot.

2. Plot 2893

This plot was allocated by late father(Rueben Muiu) to Florence Muiu and she had no objections for the plot to be registered to Florence Muiu

3. Plot 2080

This plot was allocated by my late father to Edward Muiu and she had no objections for the plot to be registered or acknowledged as belonging to Edward Muiu. She objected to Florence's proposal since it's against the wishes of my father.

4. Plot 2705

This plot was allocated to the following beneficiaries.

Elizabeth Ngii Muiu (Grandmother) Florence Muiu African Inland Church Brenda Ngil Mulu

The purpose of this plot was to build a church in memory of Elizabeth Ngii Mulu. This was done by my father, Rueben Muiu in memory of his mother. She had no objections to this allocation, as it's the wishes of my late father.



5. Plot 3919
This plot was allocated to Sheila Muiu, Joyce Muiu and Victoria Muiu (widow of deceased). She proposed we proceed as per instructions of my late father
 6. Plot 3918 and 3920
These two plots were allocated to Robert Muiu as per her father's instructions. Due to the need for school fees, Robert subdivided the plot and sold these plots for education purpose. I have no objections to this allocation. Since this plot has been sold already, I fail to see any fairness if Florence is proposing to allocate sold land to other children.
 7. Plot 4620
This plot does not hold the homestead, it was allocated by her late father to area to build his residential home. Florence's proposal will leave Edward with the residential home, I therefore object to Florence's proposal. She proposed we follow instructions of my late father.
 8. Parcel 406 (Shamba Mutauni)
This Shamba was allocated by my late father to;
- Florence Muiu- Edward Muiu- Victoria Muiu
All three have equal share of this Shamba, She prefer this distribution as it's fair welcome to share her portion with Sheila and Joyce Muiu.
 9. Plot 2081 and plot 2895
She had objections to Florence proposal.
 10. Plot 40
This plot for many years was and still on death of our father as a joint property Muiu and Rueben Muiu. Based on Kenya common law on joint property wholly transferred to the remaining owner in this case Edward Muiu. I therefore oppose to divide the property between herself and the rest of her sisters. This plot belongs to Edward Muiu.
 11. Plot 4621
Since the death of her father in 2008, Florence, Sheila and Joyce have never visited their father's grave, this was before the start of the case in 2015. We have never refused them to visit, in fact 2015 we were arranging memorial of my father which Florence refused to attend stating Jehovah witness do not celebrate or remember dead people. We have never refused Florence to visit, we therefore fail to understand why Florence wants to be added to the homestead so as to visit her father's grave.
54. She have invested quite a lot of money in the homestead, this includes installing electricity, building her residential home valued at Ksh 13 million building gates, building pig and cow structures.
- I also do not trust to share anything with Florence. She bought 6 acres of land with her in Kilifi back in 2009, I sent her Ksh 13 million shillings while she worked in Dubai, gave her power of attorney which she abused by buying the land then adding people who did not contribute any money like her husband and her brother Edward Muiu. On her return to Kenya she asked for title deed of her share, she refused to give it to her claiming we bought the land as a family today she has refused with the title deed



55. She lives peacefully with my mother and they do not need stress from Florence. The purpose of the case for us to proceed with succession of property which was name of Rueben Muiu. This case should focus on division of Land to be shared fairly and equally to all 7 children and the legal wife.

12. PLOT 1181 (known as Wulyini) This parcel consists of 16 plots of 40*100, commercial plots. Florence has proposed a distribution of 8 plots for herself and sisters another 8, I strongly disagree with this distribution as it's not equal nor fair. below is her proposal:-

1. Joyce Muiu--Plot 4181, 4182
2. Florence Muiu-- Plot 4183,4184
3. Sheila Muiu-Plot 4185,4186
4. Victoria Muiu--Plot 4187,4188
5. Brenda Muiu-Plot 4189, 4190
6. Prisca Muiu-Plot 4191, 4192
7. Robert Muiu-Plot 4193, 4194
8. Edward Muiu-Plot 4195, 419

Plots 3999-4031

These are the roadside plots left by in the name of Rueben Muiu and I agree to below distribution which is fair;

1. Joyce Muiu-- Plots 3999 4000,4001,4003
2. Sheila Muiu-4004,4005,4006,4007
3. Florence Mulu-4008,4009,4010,4011
4. Victoria Muiu-4012,4013,4014,4015
5. Brenda Muiu-4016,4017,4018,4019
6. Prisca Muiu-4020,4021,4022,4023
7. Edward Mulu-4024,4025,4026,4027
8. Robert Mulu-4028,4029,4030,4031

Affidavit By Robert Muiu

56. On 6th September, 2021 Robert Muiu filed a replying affidavit and stated as follows:

That they met as a family and deliberated on the issues touching the administration of the estate of the deceased.

That when we met as a family, held a meeting, we came up with an exhaustive and conclusive distribution schedule which catered for and covered every beneficiary of the estate up to including Florence herself (Annexed here to is a copy of the distribution schedule marked RM-1).

57. He urged this court to adopt the said distribution schedule as drawn and proceed to confirm the grant letters of administration.



Analysis & Determination

58. This Court considered the protracted litigation, characterized by content of pleadings filed, Oral Hearing based on Witness statements filed by parties as protests to summons for confirmation of grant and written submissions. I find the matter issues for determination are;

Is the deceased's estate testate with a valid Will or intestate?

Are there inter vivos gifts made by the deceased to beneficiaries during his lifetime ?

What is most appropriate fair and just mode of distribution of the estate?

59. Is the deceased's estate testate with a valid Will or intestate?

Section 5 -11 of [Law of Succession Act](#) prescribe the formation of a Will by testator and validity of the Will.

Against the legal provisions no Valid Will of the deceased was presented to this Court. The Petition filed on 22/5/2015 was/is for grant letters of Administration intestate and not for Grant of Probate with Will annexed. The grant issued after gazettelement on 7/12/2015 was for letters of administration intestate to Victoria Tatu Muiu Robert Munyao Muiu & Florence Nduku Muiu later on included vide Consent signed by Advocates of both parties.

60. Through out proceedings, the family members contested a certain letter dated 5/7/1994 presented to Court as a Will and the thumbprint the deceased was presented to CID was subjected to DCI for verification. Thereafter, it was found the said letter was not witnessed as a legal requirement and it is a valid of the Deceased.

Are there inter vivos gifts made by the deceased to beneficiaries during his lifetime ?

61. Each of the beneficiaries, witnesses claim that the deceased made gifts to certain beneficiaries and 3rd Parties but the beneficiaries who filed Protests in form of Affidavits and Witness Statements and testified were at variance in their evidence as to who was bequeathed what, when and how by the deceased during his lifetime. The only evidence is that the deceased visited the Lands Office in Kithimani but no document statement was produced or made on the deceased's wishes.
62. I took the liberty to outline verbatim each party's view of proposed mode of distribution for consideration during the hearing of Summons for Confirmation of Grant and Protests filed by beneficiaries, so as to confirm the real dispute.
63. Of importance, the issue of gifts inter vivos was canvassed before Hon. D.K.Kemei J while presiding over the matter and vide Ruling of 4/2/2019 there was no evidence of intervivos gift.
64. In the case of Re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR, the court stated as follows:

“In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa).

65. Section 31 of the [Law of Succession Act](#) provides as follows with respect to gifts made in contemplation of death:

A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if—



- (a) the person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and
- (b) a person gives movable property (which includes any debt secured upon movable or immovable property) which he could otherwise dispose of by will; and
- (c) there is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and...

For Gifts Inter Vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”(Emphasis added)

66. Hon G.V Odunga JA’s Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1 provides thus:

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in *Re Fry Deceased* {1946} CH 312 *Rose: and Trustee Company Ltd v Rose* {1949} CL 78 *Re: Rose v Inland Revenue Commissioners* {1952} CH 499 *Pennington v Walve* {2002} 1 WLR 2075 *Maledo v Beatrice Stround* {1922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See *Shell’s Equity* 29ED Page 122 paragraph 3)”

67. In addition, Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.

68. In this case, the objector’s allegation remains an allegation as there is no evidence that the gift inter vivos was completed. There is no evidence before the court that;



- a. There was a deed of an instrument in writing
or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts
 - b. There was a registered transfer,
 - c. or if the land is not registered it must be in writing or by a declaration of trust in writing.
69. The letter of 5/7/1994 has been the subject of controversy whether it was by the deceased in good mental and physical health and more particularly the deceased's thumb print whereas he was as a well-educated man in Kenya UK & USA and served in the Defence Forces could knowingly and willingly place thumbprint when he usually signed himself his signature
70. Hon. D. K. Kemei J held that as at 4/12/2019, when the Ruling was delivered, the Respondents did not speak of gift inter vivos on the basis of the said letter nor was cogent evidence to this effect presented. As per Order 5 of the Ruling the Judge stated,
- Having found that no gift inter vivos has been established a temporary injunction order be and is hereby issued against the Respondents from dealing intermeddling with assets of the deceased
71. During the hearing, during testimony of Robert Munyao Muiu, apart from oral testimony of properties given to him by the deceased and upon being granted opportunity to provide documentary evidence of the same to signify gift intervivos and produced titles, searches and allotment letters, no evidence of the deceased bequeathing the said properties to him or any other beneficiary even from oral evidence by parties, elders, clan members, siblings, larger family members etc. was addressed except that the deceased visited Kithimani Lands Office and gave instructions on him to distribute his properties.
72. Brenda Muiu & Florence Muiu also testified and each gave different versions on the inter vivos gifts by the deceased to beneficiaries but again no proof was availed to the court to prove one way or the other on the said gifts.
73. In the absence of proof of inter vivos gifts all assets that comprise of the estate of deceased are available for distribution on the following condition; where the property one has settled and made permanent developments that portion shall be taken into account as the distribution is done to the beneficiaries portion; where one has sold Plots that shall be regarded as part of the sellers share in distribution and so on and so forth, the Court cannot undo what has already been done but to move forward and aid distribution of deceased's estate as fairly and justly as possible. The collection of rent shall continue as per Ruling of 4/12/2019 until distribution of estate is completed.
74. I find no proof of inter vivos gift made by the deceased to any /some /all beneficiaries

Distribution Of Deceased's Estate In A Polygamous Family

75. According to Section 3 (1) of the [Law of Succession Act](#) Cap 160 laws of Kenya (LSA), estate; means the free property of a deceased person.
76. With regard to distribution of the estate of the deceased's estate in a polygamous family ;according to Section 40 (1) of LSA,

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.

- (2)) The distribution of the personal and household effects and the residue of the intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

77. In The Matter Of Re Estate Of Benson Ndirangu Mathenge(deceased) Nakuru HCSC NO. 231 OF 1998,

The deceased was survived by his two widows and their children. The first widow had four children, while the second widow had six children. The court stated that the first house was comprised of five units while second had seven units. The two houses of the deceased combined and looked at in terms of units made up twelve units. The court distributed the estate to the children and the widows treating each as a unit. The land available for distribution was forty acres, which was divided by the court into twelve units. Out of the twelve units, five were given to the first widow and her four children, while the remaining seven units went to the second widow and her six children.

78. The Court in Re Estate Of John Musambayi Katumanga – Deceased [2014] eKLR

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is ‘equally’ as opposed to ‘equitably’. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

In The Matter Of The Estate Of Zablon Komingoi Mateget Succession Cause No.220 of 2014

79. In the absence of agreement between the parties on the mode of distribution of the estate, the law requires that the estate of the deceased, who was polygamous, be distributed in accordance with section 40 of the Succession Act which provides as follows:

The evidence of Robert Munyao Muiu testified that Plots 4002, 4029, 4030, 3917, 3918, 3919 & 3920, 4620 & 4621 are/were not available for distribution as the deceased had already distributed them.

80. Robert Munyao Muiu also stated that Stephen Ngugi Maina was allocated 4029, Luke Mutiso was allocated 4030. 3918 & 3920 were allocated to him and he subdivided and sold partly for school fees. He conceded that he was given properties but the title documents were processed after deceased's demise. The Adjudication Record of Parcel 3920 & 3918 were in the names of Robert Munyao Muiu.
81. The County Land Registrar Nancy Mireri produced documents similar to those by Robert Munyao Muiu but none of the documents produced had /have the deceased's signature nor signed by any witness(s) and that the property originally was owned by their grandfather.
82. The Protestors complained and objected to the proposed mode of distribution on the following grounds;



- a. That Florence Muiu seems to have allocated herself more Plots and that have higher financial value; 2705 2893 1181(4183 & 4184) 4008, 4009, 4010 & 4011 182
 - b. The mode of distribution proposed properties shared equally as per each house which should not be by each house as 1st house has 3 persons and 2nd House 6 persons which would not be fair equal distribution of the estate
 - c. The homestead should not be registered in all parties names as the deceased's widow is alive
83. The 3rd Administrator on the other hand stated as follows justifying the Summons for Confirmation;
- a. The 3 persons of the 1st house signed consents to the mode of distribution
 - b. The Respondents claim that they and unknown 3rd Parties were bequeathed property by deceased which to her is not true as evidence was not adduced to prove the same.
 - c. The Respondents proceeded to subdivide and dispose of assets that comprise of deceased's estate without knowledge consent of other beneficiaries and confirmation of grant

Disposition:

84. The Court shall in light of competing and contested versions by beneficiaries of proposed mode of distribution of the deceased's estate apply the law and distribute the estate of the deceased as follows;
- The estate shall be distributed according to Section 40 LSA each house and collectively each person is 1 unit in total the estate shall be distributed to 8 units 7 children and surviving spouse.
85. Secondly, this Court has no advantage of physically confirming the parcels of land on the ground, nature, acreage development, proximity to amenities and value of the land. Therefore, what this Court determines shall be subject to distribution in the presence of 1 Surveyor, County Surveyor Machakos County who shall consult ALL Parties and to visit the said properties in the presence of ALL Parties, Beneficiaries, Administrators, their respective Advocates or Parties' Representatives, Machakos County Police incharge to assign /instruct nearest Police Station/Post Officer to provide security and map out equal/equitable distribution of the estate of the deceased.
86. Thirdly, there are properties that the beneficiaries seem to agree on and they have built consensus on; Victoria Muiu, Prisca Muiu, Edward Muli Muiu, Robert Muiu, Brenda Muiu, Florence Muiu(some of the Properties) with Joyce & Sheila Muiu by their Statements or Affidavits seem to agree on;
- a. Plot 3917- Plot was sold by deceased to Felista Ngugi- She is Creditor to deceased's estate.
 - b. Plot 2893- was allocated to Florence Muiu by deceased
 - c. Plot 2020 -was allocated to Edward Muiu by Deceased
 - d. Plot 2705- was allocated to Elizabeth Ngii Muiu(deceased's late mother) Florence Muiu Brenda Muiu and African Inland Church – to build a Church
 - e. Plot 3919- Sheila Muiu, Joyce Muiu & Victoria Muiu
 - f. Plot 4620- Edward Muiu
 - g. Plot 406- Florence Muiu, Edward Muiu & Victoria Muiu
 - h. Plot 40 – Jointly registered in Reuben Muiu (Deceased)& Edward Muiu (deceased)



87. If beneficiaries agree to the above allotments to them by the deceased then so are the allotments to Robert Muiru of the 2 Plots that he sold to pay school fees for his daughter. Plots 3918 & 3920.
88. The matrimonial home on Plot 4621 shall remain as is registered, as occupied by the surviving widow of the deceased as life interest all children confirm they grew up in this home and any, some or ALL of them may visit and also visit the graveyard where the deceased and 1st house widow and others are buried. It shall remain under the surviving spouse's and widow of deceased's name. The children of the 1st house shall have equal access to the home and graveyard.
89. The following properties excluding the above where the family has consensus shall be distributed equally/equitably to 7 units and surviving spouse/beneficiaries upon/after visit to/by Surveyor and share the Surveyor's costs.

These properties are subject to surveyors visit proposed distribution possible valuation

Adjudication Plots

3999,4000,4001,4002,4003,4004,4005,4006,4007,4008,4009,4010,4011,4012,4013,4014,4015,4016,4017,4018,4019

Adjudication Plot 182,406,1181,2893,2081,2895,2080,3920,

4620,4621,40,4181,4182,4183,4184,4185,4186,

4187,4188,4190,4191,4192,4193,4194,4195,4196,

4029,4030,3918,3919 & 3920

Kithimani

A

Plot

3999,4000,4001,4002,4003,4004,4005,4006,4007,4008,4009,4010,4011,4012,4013,4014,4015,4016,4017,4018,4019
Kithimani/5702, 5703, 5704, 5743, 5744, 5745, 5746, 5747, 5748, 5749, 5750, 5751, 5737, 5738, 5739,
5740, 5741, 5742, 6437 & 6438

90. The distribution/division shall consider each beneficiary's permanent structure (s) on any part of the land which shall not be demolished but the portion shall be considered in the overall portions of each beneficiary's part of distribution of deceased's estate.
91. The distribution/division shall also consider any parcel/portion of land sold, developed, occupied as part of beneficiary's share in the overall distribution of deceased's estate of the beneficiary's portion.
92. Thereafter the surveyor shall file an Amended Summons for Confirmation and present before Presiding Judge Machakos High Court No 1 with written Consents of beneficiaries or comments/objections for determination by the Court.
93. The proprietary interests/parts of the deceased either sold or allegedly given to 3rd parties not beneficiary can only be heard determined and confirmed by the Environment and Land Court established under Article 162(2) of *the Constitution*, 2010 and jurisdiction of the Environment and Land Court is provided for under Section 13 of the *Environment and Land Court Act*

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS HIGH COURT ON 19/5/2025 VIRTUALLY/PHYSICALLY

M.W.MUIGAI

JUDGE

