

KENYA / JUDGMENT

In re Estate of Mwalyo alias Simon Kimeu Mwalyo (Deceased) [2026] KEHC 9709 (KLR)

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COURT

High Court

BEFORE

EN Maina

CASE / FILE NUMBER

Succession Cause 729 of 2010

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In re Estate of Mwalyo alias Simon Kimeu Mwalyo (Deceased) (Succession Cause 729 of 2010)
[2026] KEHC 9709 (KLR) (25 June 2026) (Judgment)

Neutral citation:

[2026] KEHC 9709 (KLR)

Republic of Kenya

In the High Court at Machakos

Succession Cause 729 of 2010

EN Maina, J

June 25, 2026

IN THE MATTER OF THE ESTATE OF SIMION KIMEU MWALYO ALIAS SIMON KIMEU MWALYO
(DECEASED)

Between

Peter Ngumbi Mwalyo

Petitioner

and

Jackson Kyalo Kimeu

Protestor

Judgment

1.The deceased to whose estate these proceedings relate is Simion Kimeu Mwalyo alias Simon Kimeu Mwalyo, who died on 20th July 2007 domiciled in Itetani in Machakos.

2.According to the documents filed in court, the deceased died intestate and was survived by the following:

Esther Ngumbi Simon – widow

Peter Ngumbi Mwalyo – son

Pius Kamami Kimeu – son

Nthiwa Simion Kimeu – son

Nzomo Simion Kimeu – son

Meshack Kitonga Kimeu – son

Phillip Makau Kimeu – son

Jackson Kyalo Kimeu – son

Michael Mwalyo Kimeu – son

3.The assets of the estate said to be the free estate of the deceased were indicated to be:

LR No. Mbooni/Itetani/151

LR No. Mbooni/Itetani/1344

LR No. Kalama/Nziuni/Plot 118

Mbooni Ranching Co-operative society shares (member No. 810)

4.It was said that the deceased had another parcel of land LR Mbooni/Itetani/159 which he had, in his lifetime, subdivided and distributed to his sons.

5.On 27th July 2011, this court appointed two of the deceased's sons Peter Ngumbi Mwalyo (1st Administrator) and Jackson Kyalo Kimeu (2nd Administrator) as the administrators of the estate and directed them to file summons for confirmation within six months.

6.Sometimes in the year 2015, an objection to the grant was filed by one Sammy Masaku Kilonzo, a grandson of one Mwata Mwinza Nthenge who had laid claim to LR No. Kalama/Nziuni/118. The objector opposed the inclusion of that property in the list of the free property of the deceased. That objection was however dismissed by this court, Kemei J, for reason that the Objector had no capacity to file it since he did not have a grant of representation in respect of his deceased grandfather. Kemei J, however held that the objector could file a protest once the summons for confirmation was filed.

7.Apparently the administrators could not agree on the mode of distribution because it is the 1st Administrator who on 15th December 2019 who filed the summons for confirmation. The 2nd Administrator being opposed filed a protest which culminated in these proceedings.

8.The protest was heard by way of viva voce evidence and the proceedings were recorded partly by my predecessors who by reason of transfer could not conclude the case, and partly by myself. In the summons the 1st Administrator included the parcels arising from the subdivision of LR Mbooni/Itetani/159 which their father had distributed to them in their lifetime and which therefore do not form the free estate of the deceased. He had also allocated two properties LR No. Mbooni/Itetani/1344 and LR Kalama/Nziuni/118 to himself which was vehemently objected to by the 2nd Administrator/Protestor. Thereafter the introduced one Alice Kakunya to the proceedings and contended that she was their step sister by the first wife of the deceased and hence a beneficiary of the estate. He contended that LR No. Mbooni/Itetani/1344 should be devolved to her. Again the Protestor vehemently opposed this and together with their mother Esther denied that the deceased had any other wife other than herself.

9.Both sides called witnesses in support of their positions. At the hearing the 2nd Administrator/Protestor maintained that the deceased had no other survivor other than their mother and themselves. He denied that the deceased had another wife by the name Tabitha Nduume who is said to be the mother of Alice Kakunya. He contended that he had never seen them and contended that if at all Tabitha Nduume was a wife of the deceased, then she would not have been buried in Shimba Hills as she was. He also disputed the 1st Administrator's claim to a bigger portion of the estate and more especially to LR No. Kalama/Nziuni/118 which the 1st Administrator lays claim to on grounds that he helped his father to educate the Protestor and his other brothers and also because he contributed to the purchase of LR Mbooni/Itetani/159 which was later apportioned to them by their father.

10.In the course of the proceedings, the dispute between the parties was referred to the Court Annexed Mediation whereupon it was agreed that LR No. Mbooni/Itetani/157 would delve to Michael Mwalyo Kimeu and the shares in Mbooni Ranching Co-operative Society would be transferred to their mother Esther Mwelu Simon. It was then left to this court to determine who would inherit LR Number Kalama/Nziuni/118 and LR No. Mbooni/Itetani/1344. As I have stated the 1st Administrator has proposed that LR No. Kalama/Nziuni/118 should go to himself for the reason enumerated above. The Protestor on the other hand has opposed that and proposed that the property should be inherited by their mother Esther Mwelu Simon and their brother Peter Ngumbi in equal shares. His reason is that they reside on that land and that Peter Ngumbi deserves to be rewarded for taking care of their mother. As for LR Mbooni/Itetani/1344 which the 1st Administrator proposes should be inherited by Alice Kakunya Wambua, the Protestor proposes it should also go to their mother stating that Alice Kakunya Wambua is a stranger to the estate.

11.The Administrators having reached an agreement in regard to two of the properties the only properties in contention are two.

12. Upon the closure of the cases by the parties, their Counsel summed up their cases by way of written submissions. The 1st Administrator was represented by the firm of Nzei & Company Advocates while the 2nd Administrator/Protestor was represented by Mulwa & Mulwa Advocates.

13. Learned Counsel for the 2nd Administrator/Protestor submitted that no evidence was adduced to prove that Alice Wambua was a child of the deceased and hence a beneficiary of his estate; that the 1st Administrator did not also adduce evidence as to why he should get half of LR Kalama/Nziuni/118; that the mode of distribution proposed by the 1st Administrator is unjust, unfair and unequitable and hence should be rejected. Counsel placed reliance on the case of Joseph Ogentoto v Martha Ogentoto & 2 others (Petition No. 11 of 2020 where it was stated: "The Court also discussed the concept of equality and fairness by holding that fairness depends on the circumstances of the case"

14. Counsel urged this court to take into consideration the 2nd Administrator/Protestor's proposed mode of distribution and find it fair and just and distribute the estate as prayed. Counsel also urged this court to award the costs of the protest to the 2nd Administrator/protestor.

15. For his part, learned Counsel for the 1st Administrator, reiterated that Alice was a daughter of the deceased and so should inherit the land where her mother lived with the deceased. Counsel submitted that that was the parcel on which the deceased was buried and that it is vacant. Counsel contended that their mother does not reside there and that there was evidence from the witnesses that no one resides on that property. Counsel also submitted that the 1st Administrator had adduced credible evidence that he catered for the education of his siblings; that he proved that he was in gainful employment at the time and hence in a position to educate his siblings and further that he contributed to the purchase of property LR No. Mbooni/Itetani/159 yet he was given the smallest portion of that property and so he is entitled to inherit LR No. Kalama/Nziuni/118. Counsel urged this court to find in favour of the 1st Administrator and hence distribute the estate as proposed by himself.

16. The following issues arise for determination: i. Whether Alice Mwikali is a beneficiary of this estate; ii. Who should inherit the contested properties and if 1st Administrator is entitled to a bigger proportion of the estate.

Analysis and determination

17. Having carefully considered the summons for confirmation, the protest, the evidence adduced by the parties which includes documentary evidence, the rival submissions and the law, my findings are as follows:

Issue (i): Whether Alice Mwikali Wambua alias Alice Kakunya Wambua is a beneficiary of this estate

18. It is evident that the family of the deceased was split in regard to this issue. Whereas the 2nd Administrator/Protestor, their mother and one brother vehemently denied that the deceased had another wife, the 1st Administrator was emphatic and called three witnesses who all testified that

before the deceased married the mother of the parties in these proceedings, he had another wife namely Tabitha Nduume. The Administrator testified that he could recall that the said Tabitha Nduume (deceased), used to reside on LR Mbooni/Itetani/159 with the deceased before she moved to Shimba Hills to live with her daughter Alice. He testified that he even attended Tabitha's burial in Shimba Hills and stated that the reason she was buried there was because it was expensive to transport her remains home for burial. He also stated that it was to the deceased herein, that dowry was paid for Alice when she got married. He emphasized that he was the first born in Esther Mwelu's household and that Alice is their step sister and hence entitled to a share of the estate. The three witnesses for the 1st Administrator also claimed to have been privy to the union between the deceased herein and Tabitha and stated that Alice was an issue from that union.

19. It is instructive that whereas the 1st Administrator is a biological son of Esther Mwelu, who vowed not to have known Tabitha, and who would be adversely affected by a share going to a "stranger", he chose to stand in solidarity with Alice. Unlike the mere denial of the 2nd Administrator/protestor, his mother and one brother, the evidence of the 1st Administrator was supported by three independent witnesses who struck this court as being credible. They do not, after all, have anything to gain by a share of the estate going to Alice. These are witnesses born before the Protestor and I believed their evidence that they knew Tabitha and that she was the wife of the deceased. It is my finding that this issue was proved on a balance of probabilities and I do so find. The 1st Administrator has proved that Alice is a beneficiary of the estate.

Issue (ii) How should the two contested properties be distributed and whether the 1st Administrator should get a bigger proportion of the estate.

20. On this issue, it is my finding that there is no evidence that the deceased intended the 1st Administrator to become a joint proprietor of LR No. Mbooni/Itetani/159 with him. If indeed that was his intention, then he (the deceased), would not have subdivided the land and bequeathed it to all his sons in almost equal shares. Indeed had the alleged contribution of 1000/- by the 1st Administrator been intended for the deceased to give him half the land, then he would not have ended with the smallest portion as he alleges. It was, and still is not unusual for parents to require their older children to educate their younger siblings and also assist them (parents) financially. That the deceased required the 1st Administrator to educate his siblings and to give him money when he was buying land was the deceased's legitimate expectation as a parent and it does not in my view entitle 1st Administrator to a bigger share of the estate.

21. On how the two properties ought to be distributed, it is my finding that Alice Kakunya Wambua, who as I have found is a daughter of the deceased having been left out in the distribution by their father, should inherit LR No. Mbooni/Itetani/1344. As for Kalama/Nziuni/118, the same should go to Esther Mwelu Simon, who is the mother of the 1st Administrator and the 2nd Administrator/Protestor, in whole, her son Peter Ngumbi having been given his own land by the deceased.

22.The upshot is that the properties which form the free estate of the deceased, as he had transferred the others in his lifetime, shall be distributed as follows:-a.LR No. Mbooni/Itetani/151 – Michael Mwalyo Kimeub.Shares in Mbooni Ranching Co-operative Society Limited (share No. 810) – Esther Mwelu Simon.c.LR No. Mbooni/Itetani/1344 – Alice Mwikali Wambua alias Alice Kakunya Wambua.d.Kalama/Nziuni/118 – Esther Mwelu Simon.I do so find.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 25TH DAY OF JUNE, 2026.E. N. MAINAJUDGEIn the presence of:Mr. Kilonzi for Nzei for 1st PetitionerMs Kioko for 2nd Petitioner/ProtestorCatherine - Court Assistant/Interpreter

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