



**In re the Estate of Karinga Njeru Kunyira (Deceased) (Civil Appeal E052 of 2022) [2024] KEHC 9650 (KLR) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9650 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E052 OF 2022  
LM NJUGUNA, J  
JULY 30, 2024**

**IN THE MATTER OF THE ESTATE OF KARINGA NJERU KUNYIRA (DECEASED)**

**BETWEEN**

**PETER NGARI KARINGA ..... APPELLANT**

**AND**

**JOSPHINE KANYIVA KARINGA ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. W. Ngumi PM in Siakago Succession Cause No. 39 of 2012 (formerly Embu HC Misc. Succession No. 131A/2012) delivered on 25th August 2021)*

**JUDGMENT**

1. The appellant filed a memorandum of appeal dated 14<sup>th</sup> October 2022 seeking the following orders:
  1. That the judgment in Siakago Succession Cause No. 39 of 2012 be set aside;
  2. That the appellant's mode of distribution as per the affidavit in support of the summons for confirmation of grant dated 13<sup>th</sup> May 2016 be adopted by this honourable court to distribute the estate of the deceased;
  3. That this appeal be allowed in entirety; and
  4. That the costs of this appeal and the lower court be awarded to the appellant.
2. The appeal is premised on the grounds that the learned trial magistrate erred in law and fact:
  1. When she distributed the estate of the deceased to strangers who are not dependants or beneficiaries of the deceased according to the *Law of Succession Act*;



2. When she distributed the estate of the deceased to the alleged purchasers without proof that they had bought the land from the deceased and that the deceased had obtained land control board consents to sell the land prior to his demise;
  3. By finding that the appellant's mode of distribution of the estate of the deceased did not reflect the true beneficiaries and going by the respondent's proposed mode of distribution which included strangers who ended up getting part of the estate against the law;
  4. By finding that the 1<sup>st</sup> protestor's mode of distribution had provided for all the beneficiaries and disregarded the appellant's proposed mode of distribution whereas the 1<sup>st</sup> respondent's proposed mode of distribution was not equitable as it gave the respondent a larger portion and the rest to strangers; and
  5. Disregarding the appellant's evidence and adopting the respondent's mode of distribution which was unfair and contrary to the provisions of the [Law of Succession Act](#) which guide on distribution in the case of polygamy.
3. A grant of letters of administration in the estate of the deceased was issued jointly to the appellant and the respondent on 12<sup>th</sup> October 2015. The appellant is a son of the deceased while the respondent is the wife of the deceased. In the summons for confirmation of the grant wherein the appellant proposed mode of distribution, he is to inherit all the properties of the deceased save for one which the respondent would inherit 2 acres, as follows:
1. Nthawa/Riandu/3472 to be shared as follows:
    - i. Josephine Kanyiva Karinga- to get 2 acres
    - ii. Peter Ngari Karinga to get the balance.
  2. Nthawa/Riandu/2758, 2759, 2760, 2757, 2756, 2755, 2754, 2753, 3422, 3843, 3471, 3842, 3309, 1265, 2759, 3550, 3551, 3547, 3546, 3550, 3472, 3548, 3549, 3545 and 3544 to be inherited by Peter Ngari Karinga
  3. Nthawa/Gitiburi/457 to be inherited by Peter Ngari Karinga
  4. Mbeti/Mavuria/1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871 to be inherited by Peter Ngari Karinga
4. The respondent filed an affidavit of protest in which she stated that the deceased had 4 wives and 9 children, some of whom are deceased. That some of the properties of the deceased were subdivided and sold to 3<sup>rd</sup> parties who ought to be named as beneficiaries in order for the title documents to pass to them. She proposed a different mode of distribution as follows:
1. Nthawa/Riandu/3551 (9.85Ha)
    - a. Josephine Kanyiva Karinga- 3.83Ha
    - b. Mary Muthoni Murerwa- 1.20Ha
    - c. Ann Muthoni Karinga- 1.20Ha
    - d. Rebecca Wanja Karinga- 1.20Ha
    - e. Pauline Muthoni Ngari- 1.20Ha
    - f. Margaret Wakere Karinga- 1.20Ha



2. Nthawa/Riandu/3547 (0.40Ha)
  - a. Rebecca Wanja Karinga Wholly
3. Nthawa/Riandu/3546 (0.40Ha)
  - a. Josephine Kanyiva Karinga Wholly
4. Nthawa/Riandu/3550 (0.81Ha)
  - a. Josephine Kanyiva Karinga Jointly
  - b. Jarevasio Ngari Ngunguru
5. Nthawa/Riandu/3472 (1.17Ha)
  - a. Jackson Njeru Nathan Wholly
6. Nthawa/Gituburi/957 (0.23Ha)
  - a. Josephine Kanyiva Karinga Wholly
7. Nthawa/Riandu/3548 (0.81Ha)
  - a. Njeru Dominic Wholly
8. Nthawa/Riandu/3549 (0.40Ha)
  - a. Albert Njue Njiru Wholly
9. Nthawa/Riandu/3545 (0.81Ha)
  - a. Josphat Njeru Ngari 0.405Ha
  - b. Jacob Njiru Ngiri 0.405Ha
10. Nthawa/Riandu/3544 (0.81Ha)
  - a. Gerald Ngari Mwendwa Wholly
11. Nthawa/Riandu/2753 (0.81Ha)
  - a. Silvia Wanja Njeru Wholly
12. Nthawa/Riandu/3309 (1.112Ha)
  - a. Virginia Ngari Njiru Wholly
13. Embu/Mavuria/1870 (10.60Ha)
  - a. Josephine Kanyiva Karinga- 2.0Ha
  - b. Peter Ngari Karinga- 2.0Ha
  - c. Njagi Ngari- 0.80Ha
  - d. Ann Muthoni- 1.20Ha
  - e. Lucy Karimi-1.60Ha in trust for herself, Erick Munene and Ann Karimi
  - f. David Njiru- 0.80Ha



- g. Francis Ita- 1.20Ha
- h. Francis Njeru Muranga- 1.00Ha
- 14. Embu/Mavuria/1868 (5.44Ha)
  - a. Francis Njeru Muranga- 0.60Ha
  - b. Muriuki Mucinde- 1.6Ha
  - c. Njuki Mucinde- 1.6Ha
  - d. Saleno Ngai- 0.8Ha
  - e. Mary Muthoni Murerwa- 0.84Ha
- 15. Embu/Mavuria/1863 (0.20Ha)
  - a. Silvia Wanja Njeru Wholly
- 5. Some of the purchasers of the deceased's properties moved the court to be enjoined in the suit as interested parties and their application was allowed. They, too, filed affidavits of protest against the appellant's proposed mode of distribution. These purchasers are; Gerald Ngari Mwendwa, Jacob Njiru, Dominic Njeru, Albert Njue Njiru, Jerevasio Ngari Ngungu and Josphat Njeru Ngari who also opposed the appellant's mode of distribution on the grounds that they had purchased some of the portions from the deceased but he had not yet transferred ownership to them. In total, there were 7 protestors.
- 6. The protests were heard by way of *viva voce* evidence. PW1 was the respondent who stated that she got married to the deceased in 1958 and had 7 children with him but most of them died. That the deceased had other wives and children before her. That the first wife was called Njoka Karinga and she had 2 children, the second wife was Tabitha Wanjira who had 1 child, the third wife was Lucia Mwinge who had 5 children. That all the other wives have since died and some of their children are still alive. She stated that the deceased sold some of the land to the named purchasers while another portion of the land was given to clansmen who have settled on it. That the deceased gave the appellant 4 parcels of land and they were all registered in his name. That her proposed mode of distribution includes all the children of the deceased and none of them has raised an issue with the proposed mode of distribution. On cross-examination, she stated that it was the deceased himself who sold the parcels of land to the purchasers. That when the appellant petitioned for the grant, he did not involve her but she came to find out from the court.
- 7. PW2 was Wilson Njue Nganga, nephew of the deceased, who stated that the deceased had 4 wives and children and that he had distributed his land to his children. That the appellant was given 4 parcels of land and he sold all of them before moving to Ciambungi. That he witnessed the deceased selling some of his land before he died. On cross-examination, he stated that by the time the deceased decided to sell the land, the appellant had already moved away from home.
- 8. PW3 was Ibrahim Njue Nyaga who stated that he purchased 25 acres from the deceased for Kshs.100,000/=. That when they transacted, the respondent was present to give her consent as the spouse of the deceased before the property was transferred. Upon cross-examination, he stated that he was a former colleague of the deceased and that the appellant once reported him to DCI for the land transaction but he was exonerated. PW4 was Pauline Muthoni Ngare who is a daughter of the deceased with the 1<sup>st</sup> wife. She stated that the deceased gave the appellant land prior to his death. That



- the deceased also sold part of his land. She stated that she supports the mode of distribution that was proposed by the respondent even though she does not know the parcels of land by name.
9. The interested parties also testified at the hearing. Gerald Ngari Mwendwa stated that he purchased a portion of parcel number Nthawa/Riandu/3544 from the deceased but he died before the transfer was effected even though the land had been surveyed and subdivided. That he has been occupying the land for a long time and he opposes the mode of distribution proposed by the appellant. That the appellant was not present when the deceased was selling the land to him. That after purchasing the land, the deceased allowed him to settle on it in 1998.
  10. Jacob Njiru Ngari stated that he bought parcel number Nthawa/Riandu/3545 from the deceased in 2005 but he died before transferring ownership. That the appellant and the respondent were aware that he had bought the land from the deceased. He stated that if the court should adopt the mode proposed by the appellant, he will be rendered homeless since he has settled on the land.
  11. Njeru Dominic stated that he bought parcel number Nthawa/Riandu/3548 from the deceased and the appellant and respondent knew about it. That the court should go by the mode of distribution proposed by the respondent in order to cater for his interests in the estate since the deceased did not transfer the title to him.
  12. Albert Njue, grandson of the deceased stated that the deceased gave him parcel number Nthawa/Riandu/3549 but he died before transferring ownership to him. That the appellant and the respondent knew about this. That the mode proposed by the appellant would be unfair to him since his interest in the estate will be left out.
  13. Josphat Njeru Ngari stated that he bought parcel number Nthawa/Riandu/3545 from the deceased in 1997 and he would like the administrator of the estate to transfer ownership to him. He produced the sale agreement and photographs of the developments on the land as evidence. Jerevasio Ngari Ngunguru also stated that the deceased sold 2 acres of land being Ntawa/Riandu/3550 to him while he was still alive. He urged that the administrators of the estate should transfer ownership to him because the deceased did not do so before he died.
  14. The appellant testified that the protestors claiming purchaser's interests in the land are strangers to him and he has since obtained an eviction order from court to remove them from the land. That the land belongs to the sons of the deceased. Upon cross-examination, he stated that his father initially had 9 wives but only 4 remained and had children with the deceased but he was the only surviving son. That when he saw the alleged purchasers building houses on the land, he moved to court for an eviction order. That if the deceased had sold land, he would have informed him, but in this case, he did not. That the deceased did not leave a will stating that he (the appellant) should inherit all the land but he has allocated himself all the land for the sake of posterity. He insisted that the land belongs to him since he is the one who filed the succession proceedings.
  15. The trial court, in its judgment, relied on the case of *Titus Muraguri Warothe & 2 Others v. Naomi Wanjiru Wachira*, Nyeri HC Succ. Cause No. 122 of 2002 where the court found the interests of purchasers under similar circumstances to be legitimate. The court included them in the distribution of the estate. The trial court proceeded to name all the children of the deceased and the purchasers as beneficiaries and confirmed the grant according to the mode of distribution proposed by the respondent, stating that it provides for all the beneficiaries.
  16. In this appeal, the court directed the parties to file their written submission and they both complied.
  17. The appellant submitted that for some of the alleged purchasers, the sale agreements did not indicate the property they were purchasing. That the agreement presented by Gerald Ngari discloses a balance



- of Kshs.36,000/= while Njeru Dominic owes Kshs.46,000/=. That the trial magistrate noted these inconsistencies but still allocated the land to the said purchasers. He stated that some of the purchasers bought land from the deceased for a very low price, for instance Jerevasio Ngari is proved to have paid only Kshs.7,500/= while Dominic Njeru only paid Kshs.4,000/=. That the sale agreements disclose different signatures of the deceased, a sign that the agreements were forged.
18. He submitted that the purchasers should approach the ELC for determination of their interests in the parcels they allegedly bought from the deceased. He relied on the case of *Matthew Njega Njogu & Another v. Rosemary Muthoni Njue* (2021) eKLR where the court relied on the case of *Alexander Mbaka v. Royford Muriuki Rauni & 7 Others* (2016) eKLR, where it was held that properties that should be distributed by the family court are only those that have already crystallized and not interests captured in sale agreements. He also relied on Rule 41(3) of the *Probate & Administration Rules* and the cases of *In Re Estate of Moses Wachira Kimotho (Deceased)* (2009) eKLR and *In Re Estate of Kinogu Mukiria (Deceased)* (2022) eKLR.
  19. It was his submission that the trial court erred in distributing the estate of the deceased to strangers who are clansmen of the deceased and who are not his proven dependants under section 29 of the *Law of Succession Act*. On this argument, he relied on the case of *In Re Estate of Joseph Koyabe Muktenyo (Deceased)* (2019) eKLR where the court held that beneficiaries can only be named where their interest in the estate is substantiated. He urged that the estate ought to be distributed according to section 40 of the *Law of Succession Act* since the deceased was polygamous.
  20. The respondent submitted that she was living with the deceased immediately prior to his death and that she knew his properties. That she is aware that some of the properties were subdivided and sold to 3<sup>rd</sup> parties, whom he granted vacant possession. That the appellant's argument that the sale agreements are forgeries is an afterthought since the issue was not raised before the trial court. She stated that the clan members are entitled to a part of the land since the land initially belonged to the clan and they were party to disputes arising from the said land.
  21. She relied on the case of *In Re Estate of Edward Lenjo Musamuli (Deceased)* (2021) eKLR. She submitted that the appellant intends to disinherit his siblings because they are married women. That this is discriminatory and should not happen. He urged the court to dismiss the appeal in its entirety.
  22. The issues for determination herein are:
    1. Whether the trial court erred in including the purchasers and clansmen in the distribution of the estate; and
    2. Whether the distribution was fair in the circumstances.
  23. Gerald Ngari Mwendwa, Jacob Njiru, Dominic Njeru, Jerevasio Ngari Ngungu and Josphat Njeru Ngari are alleged purchased of some of the properties belonging to the deceased while Albert Njue Njiru, who is a grandson of the deceased claimed that the deceased gave him land. All these people claim that the deceased gave them vacant possession of the land but he had not completed the process of passing title to them. They raised their interests through the protests and they testified in support of the respondent's case, producing their sale agreements with the deceased.
  24. The respondent stated that the deceased had sold the land to the named purchasers. In addition, she stated that the deceased was a member of the Kere clan and that some of the clansmen should benefit from his land. That all these purchasers and clansmen settled on the deceased's land long before he died. The appellant remained adamant in stating that the deceased did not sell any land that he is aware of and that the said purchasers and the Kere clansmen are strangers to the estate and they should not be



- regarded as beneficiaries in these proceedings. He stated that he is the only surviving son of the deceased and therefore the land should be registered in his name.
25. From a perusal of the record, the properties are all still in the name of the deceased and none of them was registered in the names of the purchasers. The respondent stated that the deceased entered into agreements for sale long before he began the process of subdividing the properties. All the purchasers testified that the deceased died before transferring the properties to them. These arguments raise the question as to whether the estate of the deceased can be definitively identified. It is the duty of the administrators to collect the properties of the deceased that should be distributed to the rightful beneficiaries.
26. Rule 41(3) of the [Probate and Administration Rules](#) refers to Sections 71(2) and 82 of the [Law of Succession Act](#) on the duties of personal representatives in regards to defining the estate for distribution, whether or not the question involves 3<sup>rd</sup> parties. It provides thus:
- “Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the [Civil Procedure Rules](#) and may thereupon, subject to the proviso to section 71 (2) of the [Act](#), proceed to confirm the grant.”
27. The purchasers have produced sale agreements and have narrated circumstances under which they purchased the portions they claim. In fact, the appellant submitted that it appears, from the sale agreements, that some of the properties were purchased but the full price was not paid. He submitted that some sale agreements did not disclose the properties that were on sale. In my view, these issues should be scrutinized and determined by the Environment and Land Court (ELC) which has the proper jurisdiction as stipulated under Article 162(2)(b) and Article 165(5)(b) of the [Constitution](#).
28. It is not uncommon to find issues that should be placed before the ELC arising within succession proceedings (see the cases of [In re Estate of Late M'kuura Mukindia \(Deceased\)](#) [2021] eKLR and [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR). However, when this happens, it is prudent that the ELC be moved to determine issues relating to private and community land and contracts, choses in action or other instruments granting any enforceable interests in land according to its jurisdiction provided for under Section 13(2)(d) of the [Environment and Land Court Act](#).
29. That is to say, the interests of the purchasers through private contracts/sale agreements and the rights of the clansmen through any claim in community land should be determined by the ELC. Once this is done, this court will be at liberty to distribute these contentious parcels of land, pursuant to the findings of the ELC. In the same breadth, it is my view that parcel numbers Nthawa/Riandu/2757,2758, 3843, 3842, 2754, 2755, 1265, 3422, 3471 and Embu/Mavuria/1862, 1864, 1865, 1866, 1869 &1871 which were supposedly sold to 3<sup>rd</sup> parties be placed before the ELC to determine validity of the sale agreements therein. Further, in light of Rule 41(3) of the [Probate and Administration Rules](#), all the claimants of the estate as clansmen should also raise their claim through the ELC before they can be considered as beneficiaries herein.
30. As to whether the estate of the deceased was fairly distributed, both parties departed from their divergent views and eventually testified on the common position that the deceased had 4 wives who had



children but the appellant is the only surviving son. This means that the proven estate of the deceased ought to be subdivided according to the number of houses as defined by section 3(1) of the [Law of Succession Act](#) thus:

“house” means a family unit comprising a wife, whether alive or dead at the date of the death of the husband and the children of that wife”.

31. The number of children in each house should be considered and the widow of each house as an additional unit. It does not matter whether the children of the deceased are male or female, all of them have equal rights under Article 27 of the [Constitution](#). Section 40 of the [Law of Succession Act](#) provides thus:
  - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
  - (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
32. The parties testified that the respondent is the only surviving wife of the deceased. However, the names of the other 3 wives are known and their children have been named. They are as follows:
  1. 1<sup>st</sup> House: 1<sup>st</sup> wife was Njoka Karinga (deceased) and she had 2 children namely Innocent Ireri Karinga (deceased) and Pauline Muthoni Ngari;
  2. 2<sup>nd</sup> House: 2<sup>nd</sup> wife was Tabithat Wanjira Karinga (deceased) and she had 1 child namely Silvia Wanja Njeru;
  3. 3<sup>rd</sup> House: 3<sup>rd</sup> wife was Lucia Mwingi Karinga (deceased) and she had 5 children namely the appellant, Virginia Ngari Njiru, Ann Muthoni Karinga, Rebecca Wanja Karinga and Margaret Wakere Karinga; and
  4. 4<sup>th</sup> House: 4<sup>th</sup> wife is the respondent who has 3 children namely Mary Muthoni Murerwa, John Njeru Karinga (deceased), who was survived by his wife Margaret Mbura and his children, Benjamin Muchiri, Joyce Wangari, Irene Wawira, Jackline Muthoni, Maurice Gitonga, Doris Wakio and Denis Macharia. She is also the mother of Peter Njagi Karinga (deceased), who was survived by his wife Lucy Karimi and children Erick Munene and Ann Mukami.
33. Therefore, the 1<sup>st</sup> house has 1 unit, the 2<sup>nd</sup> house has 1 unit, the 3<sup>rd</sup> house has 5 units while the 4<sup>th</sup> house has 4 units being the widow, her surviving child and the dependants of her 2 deceased children.
34. Given this court’s findings on the purchaser’s and clansmen’s interests, the proven estate of the deceased is to be distributed in accordance with section 40 of the [Law of Succession Act](#) as follows:
  1. Nthawa/Riandu/3551 (9.85Ha) to be held in equal shares by:
    - a. Pauline Muthoni Ngari
    - b. Silvia Wanja Njeru
    - c. Peter Ngari Karinga
    - d. Virginia Ngari Njiru
    - e. Ann Muthoni Karinga



- f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
2. Nthawa/Riandu/3547 (0.40Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
3. Nthawa/Riandu/3546 (0.40Ha) to be held in equal shares by:
- l. Pauline Muthoni Ngari
  - m. Silvia Wanja Njeru
  - n. Peter Ngari Karinga
  - o. Virginia Ngari Njiru
  - p. Ann Muthoni Karinga
  - q. Rebecca Wanja Karinga
  - r. Margaret Wakere Karinga
  - s. Josephine Kanyiva Karinga
  - t. Mary Muthoni Murerwa
  - u. Dependants of John Njeru Karinga (deceased)
  - v. Dependants of Peter Njagi Karinga (deceased)
4. Nthawa/Riandu/3472 (1.17Ha) to be held in equal shares by:



- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
5. Nthawa/Gituburi/957 (0.23Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
6. Nthawa/Riandu/2753 (0.81Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga



- h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
7. Nthawa/Riandu/3309 (1.112Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
8. Embu/Mavuria/1870 (10.60Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
9. Embu/Mavuria/1868 (5.44Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru



- c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
10. Embu/Mavuria/1863 (0.20Ha) to be held in equal shares by:
- a. Pauline Muthoni Ngari
  - b. Silvia Wanja Njeru
  - c. Peter Ngari Karinga
  - d. Virginia Ngari Njiru
  - e. Ann Muthoni Karinga
  - f. Rebecca Wanja Karinga
  - g. Margaret Wakere Karinga
  - h. Josephine Kanyiva Karinga
  - i. Mary Muthoni Murerwa
  - j. Dependants of John Njeru Karinga (deceased)
  - k. Dependants of Peter Njagi Karinga (deceased)
35. Therefore, the appeal partially succeeds. The following orders to issue:
1. The certificate of confirmation of grant issued on 25<sup>th</sup> August 2021 and amended on 08<sup>th</sup> December 2021 is hereby set aside;
  2. All orders subsequent to the said certificate of confirmation of grant are hereby set aside;
  3. A fresh certificate of confirmation of grant to be issued in the estate of the deceased distributing the estate according to paragraph 34 of this judgment;
  4. In light of Rule 41(3) of the *Probate and Administration Rules*, the administrators of the estate of the deceased shall file fresh summons for confirmation of grant once the dispute regarding parcel numbers Nthawa/Riandu/2757,2758, 3843, 3842, 2754, 2755, 1265, 3422 & 3471, 3550, 3548, 3549, 3545 & 3544 and Embu/Mavuria/1862, 1864, 1865, 1866, 1869 & 1871 is determined by the relevant court; and
  5. There shall be no order as to costs.



36. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 30<sup>TH</sup> DAY OF JULY, 2024.**

**L. NJUGUNA**

**JUDGE**

