



**In re Estate of Joshua Munyi (Deceased) (Succession Cause
543 of 2002) [2024] KEHC 10508 (KLR) (27 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10508 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 543 OF 2002
LM NJUGUNA, J
AUGUST 27, 2024
IN THE MATTER OF THE ESTATE OF JOSHUA MUNYI
(DECEASED)**

BETWEEN

KIRIGI NJERU NJOKA PETITIONER

AND

SEPHETH JOSHUA 1ST PROTESTOR

ANDREW MUCHIRI MUNYI 2ND PROTESTOR

RULING

1. Through a ruling delivered on 29th September 2021, this court ordered that a grant issue to the respondent herein. Consequently, she filed summons dated 14th February 2022 seeking confirmation of grant. The application is supported by an affidavit in which the respondent proposed that the whole of parcel number Kyeni/Kigumo/1592 bequeath to her.
2. The 2nd protestor filed a replying affidavit dated 01st August 2022 and an affidavit of protest dated 11th April 2023 whose contents are identical, stating that the summons for confirmation was filed outside the window of 21 days allowed by the court in its ruling delivered on 29th September 2021. That the summons was also not served upon the beneficiaries thus she denied them a chance to participate in the proceedings. It was his case that the land should be share amongst all the beneficiaries of the estate and not just herself.
3. During hearing of the protest, the court took *viva voce* evidence.
4. PW1 was the 2nd protestor who stated that he wished to rely on the contents of his affidavit of protest. He proposed that the land be distributed equally amongst all the children of the deceased. On cross-examination, he stated that the deceased gave land to the respondent's deceased husband and his family



- has been living on it for 10 years and before the deceased died. That he was also given land but he later moved out after the deceased gave him another portion. That the deceased was also residing on the suit land and his only sister who is alive lives with her husband. That neither his brother the late Philip Kilonzo nor his children live on the land.
5. DW1 was the petitioner/respondent who stated that she proposes that the land be given to her in place of her late husband. That the 2nd protestor does not live on the land since he had already received land from the deceased. That before his death, the deceased gave her husband the land they now reside on and that the deceased lived with them before he died. That the deceased was buried on the suit land and that Philip Kilonzo lives in Ukambani on another piece of land. On cross-examination, she stated that she listed 3 of the 5 children of the deceased as beneficiaries of the estate. She did not produce any documents for the land and she does not know the parcel numbers for the land parcel given by the deceased to the 2nd protestor. She stated that the deceased gave her husband another piece of land because he took care of him when he got sick. That the protestors have never stayed on the land.
 6. The court directed the parties to file their written submissions but only the 2nd protestor complied.
 7. It was the 2nd protestor's submission that the 1st protestor passed away before the protest was heard. That the deceased was survived by the following beneficiaries:
 - a. Timothy Mutua (deceased but has children);
 - b. David Kaminda (deceased and was survived by the respondent);
 - c. Sepheth Joshua (deceased);
 - d. Andrew Muchiri Munyi;
 - e. Philip Kilonzo (deceased but has children);
 - f. Salome Kanini (deceased);
 - g. Rael Ndunge (deceased);
 - h. Betty Muthanje; and
 - i. Martha Mumo
 8. It was his argument that the respondent should not be allowed to inherit all the land by herself because she is the second wife of his brother and that the legitimate children of the deceased risk being disinherited. He submitted that the land should be divided amongst the children of the deceased in accordance with section 38 of the [Law of Succession Act](#).
 9. The issue for determination is how the estate should be distributed.
 10. The estate of the deceased comprises of parcel number Kyeni/Kigumo/1592 which was re-established through the ruling of this court delivered on 29th September 2021. In the summons for confirmation, the petitioner named herself as the only beneficiary of the estate of the deceased. However, the protestors argued that the deceased had several children, some of whom are now deceased but were survived by children.
 11. The list of beneficiaries as stated by the 2nd protestor has not been contested except to the extent that the petitioner said that the children of the deceased do not reside on the said land. In her testimony, DW1, the petitioner stated that she omitted the names of some of the beneficiaries. In the absence



of a spouse(s) of the deceased, distribution of this estate shall be guided by section 38 of the Law of Succession Act which provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

12. That being the case, the court finds merit in the protest and the same is hereby allowed. The following orders to issue:

1. The estate of the deceased is to be distributed as follows:

Parcel number Kyeni/Kigumo/1592 to be distributed in equal shares amongst the following:

- i. Timothy Mutua (deceased but has children);
- ii. David Kaminda (deceased and was survived by the respondent);
- iii. Sepheth Joshua (deceased)
- iv. Andrew Muchiri Munyi
- v. Philip Kilonzo (deceased but has children);
- vi. Salome Kanini (deceased);
- vii. Rael Ndunge (deceased);
- viii. Betty Muthanje; and
- ix. Martha Mumo

2. The portion of the estate that is due to deceased beneficiaries shall be held by their respective estates through the duly appointed administrators; and

3. There shall be orders as to costs.

13. It is so ordered.

Delivered, dated and signed at Embu this 27th day of August, 2024.

L. NJUGUNA

JUDGE

