



REPUBLIC OF KENYA



In re Estate of the Late Hezekiah Macharia Kiruki alias Hezekiah Macharia (Succession Cause E003 of 2024) [2024] KEHC 16156 (KLR) (Family) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
SUCCESSION CAUSE E003 OF 2024
CM KARIUKI, J
DECEMBER 20, 2024**

BETWEEN

**ANNE WANJIKU WARUI 1ST PETITIONER
JOHN THUO MACHARIA 2ND PETITIONER
ELIZABETH NJERI KAMAU 3RD PETITIONER**

AND

RUTH WAIRIMU MACHARIA PROTESTOR

RULING

1. The petitioners herein filed summons for rectification of grant and confirmation of rectified grant dated 28th January 2023. The summons was supported by the affidavit of even date sworn by the petitioners herein. It was asserted that the deceased was a polygamous man with three wives and therefore three houses made as follows:-
2. 1st House
 - i. John Thuo Macharia – son
 - ii. Margaret Njeri Macharia - daughter
 - iii. Esther Wambui – daughter
- 2nd House
 - iv. Elizabeth Njeri Kamau - daughter
 - v. George Thuo Macharia -son



- vi. Alice Nyambura Macharia -deceased -daughter
- vii. Lucy Wangui – Deceased - daughter
- viii. Susan Wanjiku Macharia – deceased - daughter
- ix. Ruth Wairimu Macharia - daughter

3rd House

- x. Ann Wanjiku Warui - wife
- xi. David Warui Macharia – son

It was stated that the deceased children of the deceased left behind the following persons:-

- xii. Alice Nyambura Macharia left behind:-
- xiii. Hezekiah Macharia Kiruki
- xiv. Lucy Wangui left behind:-
- xv. Julius Kariuki Muchiri
- xvi. Martha Wanjiku Muchiri
- xvii. Mary Wambui Muchiri
- xviii. Susan Wanjiku Macharia left behind:-
- xix. Dennis Matere Gathuru
- xx. Fidelis Wairimu Gathuru

It was deponed that the estate if the deceased comprised the following properties:-

- xxi. Nyandarua/Silanga/63
- xxii. Subukia/Subukia Block 6/338 (Nguba)
- xxiii. Subukia/Subukia Block 6/339 (Nguba)
- xxiv. Subukia/Subukia Block 6/132 (Nguba)
- xxv. Subukia/Subukia Block 6/133 (Nguba)
- xxvi. Subukia/Subukia Block 6/134 (Nguba)
- xxvii. Subukia/Subukia Block 6/135 (Nguba)
- xxviii. Subukia/Subukia Block 6/136 (Nguba)
- xxix. Subukia/Subukia Block 6/137 (Nguba)
- xxx. Subukia/Subukia Block 6/138 (Nguba)
- xxxi. Subukia/Subukia Block 6/167 (Nguba)
- xxxii. Subukia/Subukia Block 6/192 (Nguba)



- xxxiii. Subukia/Subukia Block 6/191 (Nguba)
- xxxiv. Subukia/Subukia Block 6/70 (Nguba)
- xxxv. Subukia/Subukia Block 11/26 (Gituamba)
- xxxvi. Bahati/Engashura/Block 4/43 (Matete)
- xxxvii. L.R No. 3777/279/34 (Olkalou)
- xxxviii. L.R No. 7338/3 (Olkalou)
- xxxix. L.R No. 21720/1 (3771/279/38) (Olkalou)
- xl. KCB Bank shares – 35,489
- xli. Safaricom shares – 8,500
- xlii. Kengen shares – 3,309
- xliii. Carbacid shares
- xliv. Postal Corporation shares

3. It was asserted that the identification and shares of persons beneficially entitled to the said estate have been ascertained and determined as follows:-

- I. Nyandarua/Silanga/63
- II. Elizabeth Njeri Kamau – 2.8 acres
- III. George Thuo Macharia – 2.8 acres
- IV. Ruth Wairimu Macharia – 2.8 acres
- V. Hezekiah Macharia Kiruki – 2.8 acres
- VI. Julius Kariuki Muchiri }
- VII. Martha Wanjiku Muchiri }
- VIII. Mary Wambui Muchiri }– 2.8 acres
- IX. Dennis Matere Gathuru }
- X. Fidelis Wairimu Gathuru }– 2.8 acres
- XI. Nyandarua/Silanga/63
- XII. John Thuo Macharia }
- XIII. Margaret Njeri Macharia } 17 acres
- XIV. Esther Wambui Macharia }
- XV. Subukia/Subukia Block 6/338 (Nguba).
- XVI. Subukia/Subukia Block 6/339 (Nguba).
- XVII. Subukia/Subukia Block 6/138 (Nguba).
- XVIII. Anne Wanjiku Warui



- XIX. Subukia/Subukia Block 6/132 (Nguba)
- XX. George Thuo Macharia
- XXI. Subukia/Subukia Block 6/133 (Nguba).
- XXII. Elizabeth Njeri Kamau
- XXIII. Subukia/Subukia Block 6/134 (Nguba).
- XXIV. Martha Wanjiku Muchiri }
- XXV. Julius Kariuki Muchiri }
- XXVI. Mary Wambui Muchiri }-jointly
- XXVII. Subukia/Subukia Block 6/135 (Nguba).
- XXVIII. Dennis Matere Gathuru }
- XXIX. Fidelis Wairimu Gathuru } jointly
- XXX. Subukia/Subukia Block 6/136 (Nguba).
- XXXI. Hezekiah Macharia Kiruki
- XXXII. Subukia/Subukia Block 6/137 (Nguba).
- XXXIII. David Warui Macharia
- XXXIV. Subukia/Subukia Block 6/191 (Nguba)
- XXXV. Ruth Wairimu Macharia
- XXXVI. Subukia/Subukia Block 6/192 (Nguba).
- XXXVII. Margaret Njeri Macharia
- XXXVIII. Subukia/Subukia Block 6/167 (Nguba).
- XXXIX. John Thuo Macharia- ½ Acre.
- XL. Margaret Njeri Macharia- ½ Acre
- XLI. Esther Wambui Macharia – ½ Acre
- XLII. George Thuo Macharia – ½ Acre
- XLIII. Elizabeth Njeri Kamau- ½ Acre
- XLIV. Ruth Wairimu Macharia- ½ Acre
- XLV. Hezekiah Macharia Kiruki- ½ Acre
- XLVI. Martha Wanjiku Muchiri }
- XLVII. Julius Kariuki Muchiri }
- XLVIII. Mary Wambui Muchiri }-½ Acre Jointly
- XLIX. Dennis Matere Gathuru }



- L. Fidelis Wairimu Gathuru }-½ Acre Jointly
- LI. Anne Wanjiku Warui- Widow- ½ Acre
- LII. David Warui Macharia-½ Acre
- LIII. Subukia/Subukia Block 6/70 (Nguba).
- LIV. Esther Wambui Macharia
- LV. Subukia/Subukia Block 11/26 (Gituamba).
- LVI. Margaret Njeri Macharia-5 Acres
- LVII. John Thuo Macharia-1 Acre
- LVIII. Elizabeth Njeri Kamau-1 Acre
- LIX. Esther Wambui Macharia-1 Acre
- LX. Ruth Wairimu Macharia- ½ Acre
- LXI. Dennis Matere Gathuru}
- LXII. Fidelis Wairimu Gathuru } ½ Acre Jointly
- LXIII. Bahati/Engarusha/Block 4/43 (Matete)
- LXIV. John Thuo Macharia
- LXV. LR 3777/279/34 (Ol Kalou)
- LXVI. John Thuo Macharia- Absolutely
- LXVII. LR 7338/3 (Ol Kalou)
- LXVIII.Elizabeth Njeri Kamau
- LXIX. Hezekiah Macharia Kiruki
- LXX. Dennis Matere Gathuru
- LXXI. George Thuo Macharia
- LXXII. (In equal share)
- LXXIII.L.R No 21720/1(3771/279/38) Ol Kalou
- LXXIV.Margaret Njeri Macharia
- LXXV. Ruth Wairimu Macharia
- LXXVI.Esther Wambui Macharia
- LXXVIMartha Wanjiku Muchiri
- LXXVII(In equal share)
- LXXIX.KCB Bank shares-35,489.
- LXXX.Safaricom shares-8,500



LXXXIKengen shares -3,309

LXXXICarbacid shares

LXXXIIBostal Corporation shares

LXXXIKuth Wairimu Macharia (as trustee for all beneficiaries)

Proposed Distribution by Protestor

4. The protestor filed her proposed mode of distribution dated 15th September 2024. It was deponed that in the application made by the Administrators John Thuo Macharia, Ann Wanjiku Warui and Elizabeth Njeri Kamau the mode of distribution of the Estate is unfair and ignores the provisions of the Law of Succession of intestate estate of a deceased person in Kenya. It was argued that the said Administrators have dishonestly allocated the majority of the estate to themselves to the detriment of the other beneficiaries.
5. The protestor asserted that Nyahururu Resident Magistrate Court issued orders on 23 May 2023 which necessitated updating the proposal to reflect the orders including the submitted valuation report. That all monies which were not accounted and distributed equally to the beneficiaries by the widow Ann Warui, and Hezekiah Macharia Kiruki have been deducted from their share of the properties.

The protestors proposal was as follows:-

6. That one acre from the property described as Nyandarua /Silanga/63 is reserved for family house. This is the family home of the Late Hezekiah Macharia Kiruki at Olkalou which is expected to remain as the family home on behalf of all the beneficiaries.
7. The property named Subukia/Subukia/Block 6/338 consists of the family home in Subukia. This is the matrimonial home the late Hezekiah Macharia shared with the widow. The house has been allocated to the widow to continue living there.
8. The widow had expressed her wish to be allocated properties in Subukia only. The allocation of the properties to David Warui is regarded for the purpose of this succession proceedings as joint property for him and his mother Ann Warui.
9. In the property Subukia/Subukia 6/11/26 (Gituamba) is 2,079 Acres reserved for the dam in the property.
10. The constructions in the property Subukia /Subukia 6/11/26 (Gituamba) is the property of Margret Njeri Macharia.



13. Nyandarua/ Silanga/63	36 acres	John Thuo Macharia	4 acres
Margaret Njeri Macharia	4 acres		
Esther Wambui	4 acres		
Elizabeth Njeri Kamau	4 acres		
George Thuo Macharia	4 acres		
Alice Nyambura Macharia	4 acres		
Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri	4 acres		
Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru	4 acres		
Ruth Wairimu Macharia	1 acre		
All beneficiaries jointly	1 acre including the family house		
23. Subukia/Subukia Block 6/132 (Nguba)	0.1604ha	George Thuo Macharia	Whole
24. Subukia/Subukia Block 6/133 (Nguba)	0.490ha	John Thuo Macharia	Whole
25. Subukia/Subukia Block 6/134 (Nguba)	0.480ha	Margaret Njeri Macharia	Whole



26. Subukia/Subukia Block 6/135 (Nguba)	0.480ha	Esther Wambui	Whole
27. Subukia/Subukia Block 6/136 (Nguba)	0.480ha	Alice Nyambura Macharia	Whole
28. Subukia/Subukia Block 6/137 (Nguba)	0.4804ha	Elizabeth Njeri Kamau	Whole
29. Subukia/Subukia Block 6/138 (Nguba)	0.480ha	Ruth Wairimu Macharia	Whole
30. Subukia/Subukia Block 6/191 (Nguba)	0.460ha	Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri	Whole
31. Subukia/Subukia Block 6/193 (Nguba)	0.460ha	Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru	Whole
32. Subukia/Subukia Block 6/70(Nguba)	0.0600ha	Ann Warui/David Warui	Whole
33. Subukia/Subukia Block 6/338 (Nguba)	0.1900ha	Ann Warui/David Warui	Whole
35. Land Ref No. 3777/279/34 Olkalou	Margaret Njeri Macharia Esther Wambui	In equal shares	
36. Land Ref No. 7338/3 Nyandarua	Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri Alice Nyambura Macharia	In equal shares	



37. Land Ref No. 21720/1 (3771/279/38) Olkalou	Elizabeth Kamau George Macharia	Njeri Thuo	In equal shares
38. Subukia/Subukia Block 6/339 (Nguba)	0.1654ha	Ruth Macharia Susan Macharia (deceased) represented by Dennis Gathuru & Fidelis Wairimu Gathuru	In equal shares
39. Subukia/Subukia Block 6/167 (Nguba)	2.160ha (5,22 acres)	John Thuo Macharia	½ acre
Margaret Macharia	Njeri	½ acre	
Esther Wambui		½ acre	
Elizabeth Kamau 43. Alice Nyambura Macharia	Njeri	½ acre	
Lucy Wangui Muchiri (deceased) represented by Martha Muchiri, Julius Kariuki Muchiri and Mary Muchiri		Wanjiku Julius Wambui	½ acre
Susan Macharia (deceased) represented by Dennis Gathuru & Fidelis Wairimu Gathuru		Wanjiku Matere Fidelis	½ acre
Ruth Macharia		Wairimu	½ acre



Ann Warui/David Warui	½ acre		
George Thuo Macharia	½ acre		
49. Subukia/Subukia Block 6/11/26 (Gituamba)	5.7ha 14.079 acres	Margaret Njeri Macharia	2 acres
John Thuo Macharia	1 acre		
Esther Wambui	1 acre		
Elizabeth Njeri Kamau	1 acre		
Alice Nyambura Macharia	1 acre		
Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri	1 acre		
Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru	1 acre		
Ruth Wairimu Macharia	1 acre		
Ann Warui/David Warui	2 acres		
George Thuo Macharia	1 acre		
Reserved for the dam in the property	2.079 acres		



60. Bahati/ Engarusha/Block 4/43 (Matete)	0.0450ha	Ruth Wairimu Macharia	Whole
61. Ordinary Shares	Absa Bank	Ann Warui	
Kenya Airways	John Thuo Macharia		
Carbacid, Kengen	Margaret Njeri Macharia	In equal shares	
Kcb, Equity	Elizabeth Njeri Kamau		
Safaricom	66. Ruth Wairimu Macharia	67. In equal shares	
70. Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru			
74. Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri			
76. Unclaimed dividends	Ann Warui John Thuo Macharia Ruth Wairimu Macharia Elizabeth Njeri Kamau Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru Lucy Wangui Muchiri (deceased)	In equal shares	



	represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri	
77. Cash at bank	All beneficiaries	In equal shares
78. Cash at bank from joint account	Ann Warui/David Warui Margaret Njeri Macharia John Thuo Macharia Esther Wambui Elizabeth Njeri Kamau Alice Nyambura Macharia Susan Wanjiku Macharia (deceased) represented by Dennis Matere Gathuru & Fidelis Wairimu Gathuru Lucy Wangui Muchiri (deceased) represented by Martha Wanjiku Muchiri, Julius Kariuki Muchiri and Mary Wambui Muchiri Ruth Wairimu Macharia	Balance in equal shares

Objector's Submissions

11. It was stated that the deceased had three wives, two of whom are now deceased, leaving behind 14 beneficiaries. The beneficiaries are listed as follows:-
- I. John Thuo Macharia
 - II. Margaret Njeri Macharia
 - III. Esther Wambui



- IV. Elizabeth Njeri Kamau
 - V. George Thuo Macharia
 - VI. Alice Nyambura Macharia
 - VII. Dennis Matere Gathuru
 - VIII. Fidelis Wairimu Gathuru
 - IX. Ruth Wairimu Macharia
 - X. Martha Wanjiku Muchiri
 - XI. Julius Kariuki Muchiri
 - XII. Mary Wambui Muchiri
 - XIII. Ann Warui
 - XIV. David Warui
12. Further, the estate of the deceased comprises the following properties:-
- i. Nyandarua/Silanga/63 (36 acres)
 - ii. Subukia/Subukia Block 6/132, 133, 134, 135, 136, 137, 138, 167, 191, 192, 70, 338, 339 (Guba)
 - iii. L.R No. 3777/279/34 (Olkalou)
 - iv. L.R No. 7338/3 (Nyandarua)
 - v. L.R No. 21720/1 (3771/279/38) (Olkalou)
 - vi. Subukia/Subukia Block 6/11/26 [Gituamba]
 - vii. Bahati/Engashura/Block 4/43 (Matete)
 - viii. Ordinary shares at Absa Bank Ltd, Kenya Airways Ltd, Carbacid Ltd, Kengen Ltd, KCB Bank Ltd, Equity Bank Ltd, Safaricom Ltd, Eveready East Africa Ltd
 - ix. Unclaimed dividends
 - x. Cash in the bank
13. The objector enumerated her proof and mode of distribution which in many ways is agreeable that their father's widow gets the house in Subukia and in Subukia/Subukia Block 6/11 whose share is reserved for a dam. They however rely entirely on the objector's affidavit as facts.
14. It was submitted that the beneficiaries are unable to agree on the sharing of the estate. Consequently, the distribution of the estate should be governed by the provisions of the Law of Succession Act. Reliance was placed on Section 38 of the Law of Succession Act. It was contended that the principle of equality should be applied in the distribution of the deceased's estate. Every beneficiary should receive an equal share in each and every property listed above.
15. The Objector prayed that this honourable court be pleased to:-
16. Order the equal distribution of all the assets among all the beneficiaries.



17. Direct that every beneficiary receives an equal share in each and every property comprising the estate.
18. The objector prayed that this court upholds the provisions of the *Law of Succession Act* and grant the orders sought herein for the fair and equitable distribution of the deceased's estate.
19. It was stated that the objector's contention is, since the estate has been formerly identified and there is no dispute as to what constitutes the estate of the deceased, the same should be distributed equally among all the beneficiaries considering there is no dispute as to whom is and who is not the beneficiary. Reliance was placed on *Justus Thiora Kiugu & 4 Others vs Joyie Nkatha Kiungu & Another (2015) eKLR*
20. It was submitted that where a property cannot be sub-divided the same can be sold and proceeds distributed among the beneficiaries.

Analysis and Determination

21. Having considered the petitioners summons, the protest herein and the respective proposed modes of distribution for the deceased's estate, the main issues for determination herein is which mode of distribution is fair?
22. It is not disputed that the beneficiaries of the estate are as follows:-
 - I. John Thuo Macharia
 - II. Margaret Njeri Macharia
 - III. Esther Wambui
 - IV. Elizabeth Njeri Kamau
 - V. George Thuo Macharia
 - VI. Alice Nyambura Macharia -deceased
 - VII. Lucy Wangui – Deceased
 - VIII. Susan Wanjiku Macharia – deceased
 - IX. Ruth Wairimu Macharia
 - X. Ann Wanjiku Warui
 - XI. David Warui Macharia
23. It is also undisputed that the deceased children left behind the following representatives:-
24. Alice Nyambura Macharia left behind:-
 - I. Hezekiah Macharia Kiruki
 - II. Lucy Wangui left behind:-
 - III. Julius Kariuki Muchiri
 - IV. Martha Wanjiku Muchiri
 - V. Mary Wambui Muchiri
 - VI. Susan Wanjiku Macharia left behind:-



- VII. Dennis Matere Gathuru
- VIII. Fidelis Wairimu Gathuru
25. The deceased's assets were identified as follows:-
- I. Nyandarua/Silanga/63
 - II. Subukia/Subukia Block 6/338 (Nguba)
 - III. Subukia/Subukia Block 6/339 (Nguba)
 - IV. Subukia/Subukia Block 6/132 (Nguba)
 - V. Subukia/Subukia Block 6/133 (Nguba)
 - VI. Subukia/Subukia Block 6/134 (Nguba)
 - VII. Subukia/Subukia Block 6/135 (Nguba)
 - VIII. Subukia/Subukia Block 6/136 (Nguba)
 - IX. Subukia/Subukia Block 6/137 (Nguba)
 - X. Subukia/Subukia Block 6/138 (Nguba)
 - XI. Subukia/Subukia Block 6/167 (Nguba)
 - XII. Subukia/Subukia Block 6/192 (Nguba)
 - XIII. Subukia/Subukia Block 6/191 (Nguba)
 - XIV. Subukia/Subukia Block 6/70 (Nguba)
 - XV. Subukia/Subukia Block 11/26 (Gituamba)
 - XVI. Bahati/Engashura/Block 4/43 (Matete)
 - XVII. L.R No. 3777/279/34 (Olkalou)
 - XVIII. L.R No. 7338/3 (Olkalou)
 - XIX. L.R No. 21720/1 (3771/279/38) (Olkalou)
 - XX. KCB Bank shares
 - XXI. Safaricom shares
 - XXII. Kengen shares
 - XXIII. Carbacid shares
 - XXIV. Postal Corporation shares
 - XXV. Cash in bank
26. Section 40 of the *Law of Succession Act* provides that:-
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.
27. Having analyzed both the petitioners and protestors mode of distribution, it is my considered opinion that the protestor's proposal comes close to the equitable distribution envisioned under Section 40 of the *Law of Succession Act*. However, it is my view and finding that ;
 - i. The shares in different institutions, unclaimed dividends and cash at bank shall be shared among all the beneficiaries in equal shares.
 - ii. That the estate of the deceased will be distributed in accordance with the proposed mode of distribution of the petitioners save that the shares held in different institutions, unclaimed dividends and cash at bank shall be shared among all the beneficiaries in equal shares.

DATED AND DELIVERED AT NYANDARUA THIS 20TH DAY OF DECEMBER 2024.

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CHARLES KARIUKI

JUDGE

