



REPUBLIC OF KENYA



**In re Estate of Muguro Njeru (Deceased) (Succession Cause  
71 of 1997) [2023] KEHC 20904 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20904 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 71 OF 1997  
FN MUCHEMI, J  
JULY 27, 2023**

**BETWEEN**

**CHARLES MUGURO GAKURU ..... 1<sup>ST</sup> PROTESTOR**

**CHARITY NJERI NDIRANGU ..... 2<sup>ND</sup> PROTESTOR**

**AND**

**JOSEPH JOHN GICHUKI MUGURO ..... 1<sup>ST</sup> APPLICANT**

**JAMES NJERU MUGURO ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**Introduction**

1. This is a judgement on the protest dated September 19, 2019 against the mode of distribution proposed by the petitioner in the Summons for confirmation of grant dated August 7, 2019. The protest was disposed of by way of written submissions.

**The Protestors' Case**

2. The 1<sup>st</sup> protestor states that the deceased was survived by the following beneficiaries:-
  - a. Joseph John Gichuki Muguro – son
  - b. James Njeru Muguro – son
  - c. Charity Njeri Ndirangu – daughter
  - d. Grace Nyakarura Njeru – daughter in law
  - e. Mary Wanjiku Nderitu – daughter in law
  - f. Charles Muguro Gakuru – grandson



- g. Joseph Muthanga Gakuru – grandson.
3. It was further stated that 1<sup>st</sup> protestor’s mother, Mary Wanjiru Ndimu was a daughter of the deceased and she passed away on September 15, 1979. The 1<sup>st</sup> protestor said that his mother was unmarried and had two children as follows:-
- a. Charles Muguro Gakuru
  - b. Joseph Muthanga Gakuru
- Before his mother died, the family was living on the deceased’s land, L.R No. Aguthi/Gatitu/488. After the demise of his mother, the protestor states that he and his brother were taken up by the deceased and his grandmother Esther Karungari Muguro and lived with them on the said piece of land. The protestor further said that his late mother was buried on the same parcel of land. The protestor therefore argues that being a grandson of the deceased, he is entitled to a share of the estate of the deceased by getting the share of his deceased mother.
4. The 1<sup>st</sup> protestor states that his brother Joseph Muthanga and himself were left out during the distribution of the estate as evident in the summons for confirmation of grant filed by the administrators. He proposes that the estate be shared as follows:-
- a. Title Number Aguthi/Gaki/999 to be shared equally between Grace Nyakarura Njeru and Mary Wanjiku Nderitu
  - b. Title Number Aguthi/Gatitu/488 to be shared equally among Joseph John Gichuki Muguro, James Njeru Muguro, Charity Njeri Ndirangu and Charles Muguro.
  - c. Plot No. 310 Nyahururu to be shared equally among Joseph John Gichuki Muguro, James Njeru Muguro, Charity Njeri Ndirangu, Charles Muguro, Grace Nyakarura and Mary Wanjiku Nderitu.
5. The 2<sup>nd</sup> protestor avers that she is a daughter of the deceased and adopted the list of the 1<sup>st</sup> protestor for the survivors of the deceased. It was further averred that the 2<sup>nd</sup> protestor’s sister, one Mary Wanjiru Ndimu died on September 15, 1979 and that she was survived by Charles Muguro Gakuru, 1<sup>st</sup> protestor and Joseph Muthanga Gakuru.
6. The petitioners who are the administrators herein state that the deceased was survived by the following:-
- a. Joseph John Gichuki Muguro – son
  - b. James Njeru Muguro – son
  - c. Charity Njeri Ndirangu- daughter
  - d. Grace Nyakarura Njeru – daughter in law
  - e. Mary Wanjiku Nderitu – daughter in law
7. The administrators propose that the estate be distributed as follows:-
- a. LR No. Aguthi/Gaki/999 to be shared equally among Grace Nyakarura Njeru and Mary Wanjiku Nderitu
  - b. LR No Aguthi/Gatitu/488 to be shared equally among Joseph John Gichuki Muguro and James Njeru Muguro



- c. Plot No. 310 Nyahururu to be shared equally among Joseph John Gichuki Muguro, James Njeru Muguro, Grace Nyakarura Njeru and Mary Wanjiku Nderitu.
8. Parties hereby disposed of the summons for confirmation by way of written submissions.

### **The Protestors' Submissions**

9. The 1<sup>st</sup> protestor submitted that he is a grandson of the deceased and he is not entitled to inherit directly from the estate of the deceased but through his mother, Mary Wanjiru Ndimu who is a child of the deceased. To support his contentions, he relies on the cases of *Re Estate of Imoli Lubatse Paul (Deceased)* [2021] eKLR, *Re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR and *Cleopa Amutala Namayi vs Judith Were* [2015] eKLR.
10. The 2<sup>nd</sup> protestor relies on Section 38 of the *Law of Succession Act* and submits that the deceased herein died and was survived by three children, two sons and a daughter. As a daughter she is therefore entitled to inherit from the deceased's estate. The 2<sup>nd</sup> protestor further relies on the cases of *Stephen Gitonga M'murithi vs Faith Ngira Murithi* (2015) eKLR and *Re Estate of Solomon Ngatia Kariuki (Deceased)* (2008) eKLR and submits that for the purposes of law of succession, the children of the deceased are equal, irrespective of gender or marital status. The 2<sup>nd</sup> protestor submits that the administrators left her out as a beneficiary in the distribution of the estate despite listing her as a surviving child of the deceased. She further submits that she is a sister of the administrators and should not be left out in the distribution of assets because doing so would amount to discrimination contrary to Article 27 of the *Constitution*. The 2<sup>nd</sup> protestor further relies on the cases of *Douglas Njuguna Muigai vs John Bosco Maina Kariuki & Another* [2014] eKLR and *Re Estate of Jackson M'Mukindia Maranya (Deceased)* [2018] eKLR to support her submissions.

### **The Petitioners' Submissions**

11. The petitioner reiterated their averments in their affidavit and submitted that prior to the death of the deceased, the two families had already settled into their respective parcels of land, with Esther Karungari Muguro and her two sons John Gichuki Muguro and James Njeru Muguro occupying land parcel number Aguthi/Gatitu/488 whereas the second house of Rose Wangui Muguro and her two sons Joseph Njeru Muguro and Samson Gachura occupying land parcel number Aguthi/Gaki/999.
12. The petitioners further submit that the 2<sup>nd</sup> protestor is not entitled to inherit any parcel of land from the estate of the deceased as she got married in 1961 even before the deceased began living on the suit land. As such, they argue that she has never been in occupation or utilization of the suit land forming part of the estate of the deceased to date. The petitioners argue that the deceased left them and their mother in occupation and utilization of the suit land and thus the same ought to be maintained. Moreover, the petitioners submit that the 2<sup>nd</sup> protestor prior to the filing of the succession proceedings had given consent that she was not interested in her father's inheritance as she was already married. The petitioners thus state that they have not discriminated the 2<sup>nd</sup> protestor on the basis of her gender but they are only following the wishes of the deceased who had already settled the children in their respective parcels of land prior to his demise.
13. The petitioners further submit that the 1<sup>st</sup> protestor is not entitled to inherit from the deceased's estate as his mother, Mary Wanjiru Ndimu, who died on 19<sup>th</sup> September 1979 preceded the deceased to whom this estate relates to. Further, the petitioners argue that the 1<sup>st</sup> protestor and his brother relocated to their biological father's place during the lifetime of the deceased and thus they ought to inherit from their father's estate. As such, the petitioners submit that the protestors have not proved their case to warrant the protest being allowed.



## Issue for determination

14. The main issue for determination is whether the protest has merit.
15. The law governing distribution of property in an intestate estate where the deceased has left children but no spouse is Section 38 of the [Law of Succession Act](#) which provides:-

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.
16. Section 38 of the [Law of Succession Act](#) enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married or unmarried.
17. The Court of Appeal in [Peter Karumbi Keingati & 4 Others vs Dr. Ann Nyokabi Gotha & 4 Others](#) Nairobi Civil Appeal No. 235 of 2014 [2015]eKLR held:-

“ Article 27 of the [Constitution](#) guarantees for the equality of all before the law and the right to equal protection and the benefit of the law. The Article further proscribes discrimination on grounds including race, sex and marital status. These Articles (27 & 45(3)- parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and dissolution of the marriage) bind the court when applying Section 35 of the [Law of Succession Act](#) to ensure that all beneficiaries are treated equally though that may not mean, for purposes of distribution of an estate, a surgical precision in sharing of the assets of the estate.”
18. Even before the promulgation of the [Constitution](#) in 2010, Makhandia J (as he then was) in [Re Estate of Solomon Ngatia Kariuki \(Deceased\)](#) (2008) eKLR made a very strong statement on the issue of discrimination against daughters generally in succession matters and he said:-

“ The [Law of Succession Act](#) does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to state a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu customary law. Like most other customary laws in this country, they are always biased against women and indeed, they tend to bar married daughters from inheriting their father’s estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because they are likely to enjoy inheritance of their husband’s side of the family.”

## Analysis and Determination

19. It is noted that the petitioners who are sons of the deceased do not dispute that the 2<sup>nd</sup> protestor is a daughter of the deceased while the 1<sup>st</sup> protestor and his brother Joseph Muthanga Gakuru are children of the late Mary Wanjiru Ndimu, a daughter of the deceased. The reasons given by the petitioners for not including the protestors in this cause as beneficiaries differ in each of two categories. As for the 1<sup>st</sup> protestor, the petitioner’s state that the deceased had already settled the beneficiaries on their parcels of land and that the protestors were not among them. It was further argued that the 1<sup>st</sup> protestor and his brother Joseph relocated to their father’s place after the death of their mother and as such ought to



inherit from their father. For the 2<sup>nd</sup> protestor it was said she predeceased the deceased herein and has no right to inherit from him. Further that she got married in 1961 before the deceased occupied L.R No. Aguthi/Gaki/488. In other words, the 2<sup>nd</sup> protestor being a married daughter should not inherit from her father.

20. It is important to state that the law does not bar grandchildren from inheriting their deceased parents. Grand children may not inherit directly but the share of their parents in a deceased's estate must be bequeathed to them. There is no law that gives brothers priority over grandchildren. It was held in the case of *Re Estate of Wabome Njoki Wakagoto* [2013]eKLR:-

A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parents' share in the estate of the grandparents. This was stated in *Re Estate of Wabome Njoki Wakagoto* (2013) eKLR where it was held:-

Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

21. The law is clear that grandchildren can inherit the estate of their grandparents through their parents. In the case of *Re Estate of Florence Mukami Kinyua (Deceased)* (2018) eKLR Matheka J stated:-

A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parents' share in the estate of the grandparents. This was stated in *Re Estate of Wabome Njoki Wakagoto* (2013) eKLR where it was held:-

Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

22. At that time the mother of the 1<sup>st</sup> protestor was buried, she was living at the home of the deceased with her children. It is not in dispute that the mother of the protestor was buried on the land of the deceased L.R Aguthi/Gaki/488 and that her children continued to stay with the deceased in his home on the same land. The protestor submitted that the 1<sup>st</sup> protestor and his brother relocated to their father's home but adduced no evidence to that effect. In my considered view, the 1<sup>st</sup> protestor and his brother Joseph Muthanga are entitled to take the share of their late mother.



23. It is not in dispute that the 2<sup>nd</sup> protestor is a daughter of the deceased. The law treats all children of the deceased equally whether married or not

“ Article 27 of the Constitution guarantees for the equality of all before the law and the right to equal protection and the benefit of the law. The Article further proscribes discrimination on grounds including race, sex and marital status. These Articles (27 & 45(3)- parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and dissolution of the marriage) bind the court when applying Section 35 of the Law of Succession Act to ensure that all beneficiaries are treated equally though that may not mean, for purposes of distribution of an estate, a surgical precision in sharing of the assets of the estate.”

24. It is trite law that a son will not have priority over a daughter of the deceased simply because he is male; all male and female siblings are equal before the law and are entitled to equal protection of the law. In that regard, all the children of the deceased shall be regarded as equal before the law. On perusal of the administrators’ mode of distribution, I have noted that although they listed the 2<sup>nd</sup> protestor as a surviving child of the deceased, they left her out as a beneficiary during distribution. As such, it is my considered view that the administrators’ mode of distribution is discriminatory and should not be considered.

25. It is the position of the law that the 2<sup>nd</sup> protestor whether married or not, has a right to inherit the deceased’s estate alongside the petitioners and other beneficiaries, and I so hold.

26. I have perused the file and noted that two of the deceased’s sons named in the petition have since died and their interests are now represented by their widows Grace Nyakarura Njeru and Mary Wanjiku Nderitu. The beneficiaries of the estate are therefore identified as follows:-

- a. Joseph John Gichuki -son
- b. James Njeru Muguro -son
- c. Charity Nderi Ndirangu -daughter
- d. Grace Nyakarurua Njeru -daughter-in-law
- e. Mary Wanjiku Nderitu -daughter-in-law
- f. Charles Muguro Gakuru -grandson
- g. Joseph Muthanga Gakuru -grandson

27. The assets of the deceased are identified as follows:-

- a. Aguthi/Gaki/999
- b. Aguthi/Gatitu/488
- c. Plot No. 310 Nyahururu

28. It is my finding that the protest has merit and is hereby allowed in the following terms:-

- (A) Aguthi/Gaki/999
  - a. Grace Nyakarura Njeru
  - b. Wanjiku Nderitu



(B) Aguthi/Gatitu/488

- a. Joseph John Gichuki Muguro
- b. James Njeru Muguro
- c. Charity Njeri Ndirangu
- d.
  - (i) Charles Muguro Gakuru &
  - (ii) Joseph Muthanga Gakuru

(C) Plot No. 310 Nyahururu

- a. Joseph John Gichuki Muguro
- b. James Njeru Muguro
- c. Charity Njeri Ndirangu
- d. Charles Muguro Gakuru In equal shares
- e. Nyakarura Njeru
- f. Mary Wanjiku Nderitu
- g.
  - (i) Charles Muguro Gakuru&
  - (ii) Joseph Muthanga Gakuru

29. It is noted that Charles Muguro Gakuru and his brother Joseph Muthanga Gakuru will inherit the single share of their deceased mother together but equally. This applies to Aguthi/Gatitu/488 and Plot No 310 Nyahururu.

30. Certificate of grant to issue.

31. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 27<sup>TH</sup> DAY OF JULY, 2023.**

**F. MUCHEMI**

**JUDGE**

**Judgement delivered through video link this 27<sup>th</sup> day of July 2023**

HC SUCCESSION CAUSE NO. 71 OF 1997	PAGE 0
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