



**In re Estate of M’Mugabi Kathara alias Mugambi Kathara (Deceased) (Succession Cause 157 of 2001) [2022] KEHC 12696 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 12696 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 157 OF 2001**

**TW CHERERE, J**

**JUNE 30, 2022**

**IN THE MATTER OF THE ESTATE OF M’MUGAMBI  
KATHARA ALIAS MUGAMBI KATHARA (DECEASED)**

**BETWEEN**

**REGINA MUONJA M’KAURA ..... PROTESTOR**

**AND**

**M’MARETE M’MUGAMBI ..... RESPONDENT**

**AND**

**KIRIGIA MUONJA ..... INTERESTED PARTY**

**RULING**

**Background**

1. M’Mugambi Kathara alias Mugambi Kathara (Deceased) died on 20<sup>th</sup> October, 1990. Deceased’s estate comprised in of LR. Abothuguchi/kithirune/20 And Lr Abothuguchi/kithirune/746.
2. Subsequently, Petitioner introduced the 1<sup>st</sup> Protestor and her children Joy Kawira Marete, Mary Kanya Marete, Faith Gacheri Marete, Elizabeth Karabu Marete (Minors) and Lucy Nkirote Marete as beneficiaries to the estate. Deceased’s daughter Tabitha Nkirote Kirigia w/o Kirigia Muonja was subsequently enjoined as an interested party and was substituted with her husband after she died. Subsequent confirmations distributing the estate were set aside following successful applications by the 1<sup>st</sup> Protestor and the interested party.
3. By consent of the parties dated 10<sup>th</sup> February, 2021, the Petitioner was directed to apply for confirmation of the grant an order which he complied with.



## Summons

4. By summons for confirmation dated 12<sup>th</sup> May, 2021 supported by an affidavit sworn on 11<sup>th</sup> April, 2021, Petitioner proposed to distribute deceased's estate as follows:

LR. Abothuguchi/kithirune/20

1. Japhet Gituma Marete (Grandson) 1.00 acre
2. Patrick Kirimi Marete (Grandson) 1.00 acre
3. Johnson Kimathi Marete (Grandson) 1.00 acre
4. Gedion Mbaya Marete (Grandson) 1.00 acre
5. Patrick Kithinji Marete (Grandson) 1.00 acre
6. Geoffrey Murithi Marete (Grandson) 1.00 acre
7. Samuel Majau M'Thuranira (Purchaser) 1.00 acre
8. Francis Kirimi M'Rimberia (Purchaser) 0.60 acre
9. M'Marete Mugambi & Kirigia Muonja 1 acre jointly

LR Abothuguchi/kithirune/746.

Francis Kirimi M'Rimberia

5. Protestors opposed the proposed mode of distribution by her affidavit of protest filed on 14<sup>th</sup> June, 2021 mainly on the ground that she was married to the Petitioner and that Petitioner was making an attempt to disinherit her and her children Faith Gacheri Marete and Elizabeth Karabu Marete.
6. On the other hand, Lucy Nkirote Marete and Mary Kanyua Marete by their affidavit of protest filed on 15<sup>th</sup> February, 2021 contended that the Protestor and her children were not beneficiaries of deceased's estate. The protests were heard by way of viva voce evidence.

## Petitioner's case

7. Petitioner testified that all his siblings were deceased and one was survived by her husband the Interested Party herein. He proposed to distribute the estate to himself, his 6 sons and two purchasers who had allegedly bought land from the deceased. He denied that he was married to the Protestor and that they were blessed with two children. He however conceded that he had by a consent filed on 04<sup>th</sup> December, 2012 proposed to distribute part of the estate to the Protestor and her children. He also conceded filing an affidavit sworn on 23<sup>rd</sup> November, 2015 in support of an application in which he sought an order to remove the name of the Protestor and her children from the list of beneficiaries on the ground that Petitioner had abandoned their matrimonial home. Upon further cross-examination by Protestor's advocate, he conceded that he had cohabited with the Protestor as husband and wife.

## Protestor's case

8. Protestor stated that she was Petitioner's wife but that he had chased her out of the matrimonial home. She stated she supported the distribution contained in the certificate of confirmation of grant dated 11<sup>th</sup> December, 2012 in which Petitioner proposed to distribute 1.8 acres of to jointly to him and her to hold in trust for their daughters Joy Kawira Marete, Mary Kanya Marete, Faith Gacheri Marete, Elizabeth Karabu Marete and Lucy Nkirote Marete but that Petitioner changed his mind and now



proposes to disinherit her and their 6 daughters after she opposed the sale of the joint share. Protestor proposed to distribute the estate as follows:

LR. Abothuguchi/kithirune/20

1. Japhet Gituma Marete (Grandson) 1.257 acres
2. Patrick Kirihi Marete (Grandson) 1.257 acres
3. Johnson Kimathi Marete (Grandson) 1.257 acres
4. Gedion Mbaya Marete (Grandson) 1.257 acres
5. Patrick Kithinji Marete (Grandson) 1.257 acres
6. Geoffrey Murithi Marete (Grandson) 1.257 acres
7. M'Marete Mugambi & Regina Mukombiti M'kaura 1.257 acres jointly in trust for Joy Kawira Marete, Mary Kanya Marete, Faith Gacheri Marete, Elizabeth Karabu Marete and Lucy Nkirote Marete

LR Abothuguchi/kithirune/746.

M'Marete Mugambi

### **Analysis and Determination**

9. I have considered the evidence on record and submissions for the Protestors and the Interested Party. The gravamen of this Protest revolves around distribution deceased's estate comprising of LR. Abothuguchi/kithirune/20 and LR Abothuguchi/kithirune/746.
10. At the time of filing this cause, Petitioner indicated that deceased was survived by the following:
  1. Ziporah Muthoni widow
  2. Alice Nkou M'Mugambi widow
  3. M'Marete Mugambi son
4. Agnes Rigiri Daughter
  5. Tabitha Nkirote Daughter
  6. Evangeline Mwendwa Daughter
  7. Doris Karoki Daughter
  8. Mwari Mugambi Daughter
11. There's evidence that the widows are deceased. Tabitha Nkirote who is also deceased is represented in this cause by her spouse, the Interested Party herein. Petitioner's other siblings have not laid a claim to deceased's estate.
12. Certificates of birth of the Protestors daughters two daughters Faith Gacheri M'Marete and Elizabeth Karambu M'Marete who were born on 26<sup>th</sup> June, 1992 and 03<sup>rd</sup> October, 1995 respectively and



Petitioner is indicated as their father. The law relating to registration of births is to be found under Section 12 of the [Registration of Births and Deaths Act](#) which provides: -

“No person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as he may require that the father and mother were married according to law or, in accordance with some recognized custom.”

13. In the absence of evidence that the certificates of birth were not lawfully issued as provided for in the Act, Petitioner’s contention that he is not the father of Petitioner’s daughters lacks merit.
14. By his affidavit sworn 23<sup>rd</sup> November, 2015 and in his evidence before this court, Petitioner conceded that he was married to the Protestor but that they were separated. He had previously proposed to distribute the estate to her but changed his mind and now proposes to disinherit her and their 6 daughters.
15. Other than the Petitioner’s two daughters, Petitioner has other 9 other children namely:
  1. Japhet Gituma Marete
  2. Patrick Kiriimi Marete
  3. Johnson Kimathi Marete
  4. Gedion Mbaya Marete
  5. Patrick Kithinji Marete
  6. Geoffrey Murithi Marete
  7. Joy Kawira Marete
  8. Mary Kanya Marete
  9. Lucy Nkirote Marete
16. Before I delve into the issue of how the estate ought to be distributed, I find it necessary to address the issue of inheritance by grandchildren. [In Re estate of Veronica Njoki Wakagoto \(Deceased\)](#) [2013] eKLR, the court stated as follows:

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st 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.”
17. The case at hand is however an exception for the reason that the Petitioner’s affidavit sworn on 11<sup>th</sup> April, 2021 in support of summons for confirmation dated 12<sup>th</sup> May, 2021 has proposed to distribute deceased’s estate to the deceased’s grandsons. What I find mindboggling however is that he has excluded his 6 daughters who are deceased’s grandchildren without giving an explanation for such a proposal.



18. Today, it will be pretentious for any person to say or act ignorantly of the fact that discrimination of any person on the basis of gender or status is prohibited under *the Constitution* of Kenya, 2010, because; other than the existence of abundantly clear provisions of *the Constitution*, the chain of judicial decisions on discrimination on the basis of gender or status are equally clear. See *Rono v Rono & Another*, 2008 1 KLR (G & F) page 803; *Douglas Njuguna Muigai v John Bosco Maina Kariuki & another* [2014] eKLR; *Mwongera Mugambi Rinturi & another v Josphine Kaarika & 2 others* [2015] eKLR; *Stephen Gitonga M'murithi v Faith Ngira Murithi* [2015] eKLR and *Joyce Kabiti M' Turumbu v David M' Ntiritu Kiambi* [2016] eKLR).
19. The foregoing is even more disturbing for the reason that the exclusion of the granddaughters has as revealed by the evidence herein been is made purposely with the aim of excluding the Protestor from getting a share of deceased's estate.
20. Having said that, I find and hold that none of the deceased's grandchildren ranks in a higher level in priority to the others notwithstanding their sex or gender and Petitioner's attempt to excluded his daughters is rejected. I therefore find that M'Marete M'Mugambi, Regina Mukombiti M'Kaura, Japhet Gituma Marete, Patrick Kirimi Marete, Johnson Kimathi Marete, Gedion Mbaya Marete, Patrick Kithinji Marete, Geoffrey Murithi Marete, Joy Kawira Marete, Mary Kanya Marete, Faith Gacheri Marete, Elizabeth Karabu Marete and Lucy Nkirote Marete are all beneficiaries to deceased's estate.
21. Kirigia Muonja who is a widower of one of the daughters of the deceased is similarly a beneficiary.
22. Petitioner describes Samuel Majau M'Thuranira and Francis Kirimi M'Rimberia as creditors and proposes to distribute part of deceased's estate to them but failed to tender any evidence to prove that they had either bought land from the deceased or been bequeathed part of the estate by the deceased. I therefore find that they are not beneficiaries of deceased's estate.
23. From the foregoing, this court makes the following orders:
  - 1) Matter is referred to a Court Annexed Mediator to assist the parties to identify the respective shares of each beneficiary identified in this ruling
  - 2) Mention before the Deputy Registrar of this court on 27<sup>th</sup> July, 2022 to confirm appointment of the mediator

**DATED AT MERU THIS 30<sup>TH</sup> DAY OF JUNE 2022**

**T. W. CHERERE**

**JUDGE**

**Court assistant - Morris Kinoti**

**For Petitioners - Mr. Muriira for Mwenda, Mwarania, Akalu & Co. Advocates**

**For Protestor - Mr. Gitonga for Basilio Gitonga, Muriithi & Associates**

**For Interested Party - Ms. Kimotho for Gichunge Muthuri & Co. Advocates**

