



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Ngombe Wambiri – Deceased (Succession Cause  
1 of 2020) [2022] KEHC 12971 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 12971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 1 OF 2020**

**J WAKIAGA, J**

**SEPTEMBER 22, 2022**

**IN RE ESTATE OF NGOMBE WAMBIRI- DECEASED**

**BETWEEN**

**MARGARET NDUTA KIBE ..... 1<sup>ST</sup> PLAINTIFF**

**MARGARET MUKAMI WARUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WAMBIRI NGOMBE ..... 1<sup>ST</sup> DEFENDANT**

**REGINA WANGUI WAMBIRI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. When the history of this litigation will be written, it will turn out to be one where the parties have moved round and round to no avail on the issue of who between the litigants is entitled to the estate of the deceased, a matter which would have been resolved by the parties, had they not let their ego and a sense of entitlement get into their way.
2. This matter was first filed at the High Court of Kenya at Nairobi being Succession Cause No. 2820 OF 2002 in which Wambiri Ngombe sought for grant of letters of administration of the estate of Ngombe Wambiri and by a judgement, thereon dated October 8, 2019 Musyoka J made the following Orders  

“ 35.I am cognizant of the fact that this is an old case spanning close to sixteen years and that the parties are elderly and sickly. That being the case, I am inclined to make the following orders:

  - a. That the grant of letters of administration intestate issued to Wambiri Ngombe and Regina Wambui Wambiri on July 31, 2003 is hereby revoked.



- b. That I hereby appoint Wambiri Ngombe, Benson Kimani Wambiri and Margaret Nduta Kibe as administrators of the estate of the deceased and grant of letters of administration intestate shall issue to them accordingly.
  - c. That I direct the administrators, appointed in (b) above, or either of them to file an application for confirmation of their grant within the next thirty days, listing all children or survivors of the deceased or the beneficiaries of the estate and the mode of distribution thereof, but excluding Margaret Mukami Warui the 2<sup>nd</sup> applicant herein.
  - d. That whoever shall not agree with the proposals to be made in the application contemplated in(c) above shall be at liberty to file an affidavit or affidavits of protest.
  - e. That the matter shall be mentioned after 45 days for direction.
  - f. That as the estate comprises of assets situated exclusively within Murang'a County, this cause shall be transferred to the High Court at Murang'a for finalization.
  - g. That each party shall bear their own costs.
  - h. That any party aggrieved by the orders made herein shall be at liberty to move the Court of Appeal appropriately within twenty-eight days.
3. Based on the said order, Margaret Nduta Kibe the 3<sup>rd</sup> Administrator by an application dated 7<sup>th</sup> September 2020 applied for the confirmation of the grant and by an affidavit in support thereof deposed that the property which was in dispute was Location 11/ Gaitega/87 measuring 2.4 acres which she proposed to be shared equally between herself and Benson Kimani Wambiri.
  4. It was contended that all other children of the deceased had inherited different parcels of land known as Loc.11/Maragi/552 and Loc.11/ Muchungucha/442 from the deceased except her father Wangai Ngombe.
  5. On February 15, 2021 on Joseph Miako Wambiri filed an affidavit of protest to the proposed mode of distribution and filed a further affidavit on November 4, 2021 in which he deposed that the deceased had two wives namely Muthoni Ngombe and Wanjiku Ngombe and that both himself and the applicant came from the house of the 1<sup>st</sup> wife whereas Benson Kimani came from the house of the 2<sup>nd</sup> wife.
  6. It was his contention that the deceased had only one parcel of land Loc.11/ Gaitega/87 which he proposed to be distributed equally between himself the applicant and Benson Kimani Wambiri with each getting 0.8 acres.
  7. On November 3, 2021 Benson Kimani Wambiri filed an affidavit in support of the proposed mode of distribution by the applicant on the basis that it would safe guard the interest of the two houses.
  8. Directions were issued that the protest be heard by way of oral evidence and in support of the protest it was stated by the protestor that the deceased, had not distributed the subject property and that his father had his property which did not form part of the estate of the deceased as was the father of Benson Kimani who owned loc11/Maragi/552. It was his evidence that the subject property be distributed equally amongst the three.
  9. In cross examination he stated that since the land belonged to their grandfather, it should be divided equally into three, he stated that it was his mother who had obtained the letter of introduction from the chief and that the applicant had been married and that is why she had not been included in the list of the beneficiaries.



10. James Muiruri Wanjiru testified in support of the protestor and stated that he was a Senior Chief of the area.  
He stated that the applicant and the protestor shared a grandmother and that the suit property should be divided into two based on the two houses with the protestor and the applicant sharing equally the half share which belongs to their grandmother. He confirmed that the protestor was living on his father's land which was not part of the deceased estate.
11. Dusmas Nduati stated that the land in dispute belonged to the grandfather of the parties and stated that the land should be divided between the children.
12. On behalf of the applicant, the same testified that the deceased had bought land for the fathers of the protestor and the other Administrator and that is why the father of the protestor moved out of the suit property leaving only her mother on the subject land, it was her further evidence that they went to the Chief who held that each was to stay at their respective land and that her mother then remained in the subject property, in which she was buried.
13. In cross examination, she stated that the deceased land was subsequently subdivided in the presence of the father of the protestor and that she only reported to the headsman when the protestor threatened to kill her, it was her evidence that she would like the disputed property subdivided between her and Benson Kimani, who would take care of the interest of the House of Warui while she takes that of Wangui, since the protestor already had land from his father.
14. Benson Kimani Wambiri testified as DW2 and stated that he was a grandchild of the deceased and that his mother was initially an Administrator of the estate. He stated that the deceased had two wives who had an equal share of his estate, he therefore proposed that the subject property be subdivided into two, with the protestor and the applicant sharing the same portion which belongs to their grandmother. In cross examination he stated that he did not know the peace of land which the deceased bought, neither did he hear that he had bought land anywhere.
15. Dw3 Julius Wanjoi Wambiri, stated that he was a child of Wambiri Ngombe, he proposed that the subject property should be subdivided into two as had been agreed upon when they were before the chief. Dw4 Fecista Wamaitha Macharia stated that she was a child of Wambiri wa Muthoni and that it is her mother who took care of the mother of the applicant when she was sick and could not fend for herself. She proposed that the subject property be subdivided into two based on the two houses of their grandmothers. Beatrice Wanjiru Ruiru And Bernard Warui both testified and supported the subdivision of the property into two to be inherited by the houses of the two wives of the deceased respectively.
16. Benson Ngure Waweru testified on behalf of the protestor and stated that he was the chief of Mbiri Location, he confirmed that the deceased had two wives and that there was a time when the Elders subdivided the subject land into two, with Benson taking one part which he is currently occupying and that one part was only being utilized partly. It was his evidence that the land should be subdivided into two, with Nduta and the Protestor sharing that which belonged to the house of their grandmother Muthoni.
17. In cross examination, he stated that he had issued a letter of introduction based on the information that he had obtained from the sub chief and that since the deceased had two wives, the land should be subdivided into the two houses with each of the parties taking what belongs to their Grandmother's house.



## Determination

18. There is no dispute that the applicant and the respondent are all grandchildren of the deceased and that they all share equal when it comes to the distribution of the estate of the deceased.

The only disputed fact is whether the father of the protestor had been provided for by the deceased in his life time and as such is now not entitled to a share of the subject property and the burden of that proof was with the applicant.

19. At the close of the hearing of the protest the evidence tendered before the court did not support the applicant's contention that the protestor's father had been provided for by the deceased, on the contrary the evidence before the court confirmed that the protestor and the applicant shared the same grandmother and that they were both entitled in equal share to the distribution of the subject property.

20. Whereas the applicant had proposed that the property be subdivided into two measuring 1.2 acres to be shared between herself and Benson Kimani Wambiri and whereas the Protestor had proposed that the subject property be subdivided into three equal portions measuring 0.8 acres to be held by Margaret Nduta Kibe in trust for herself and her siblings, Joseph Maiko Wambiri (protestor) for himself and his siblings and Benson Kimani Wambiri in trust for himself and his siblings, the evidence for the court shows that the applicant and the protestor belong to the same grandmother and therefore should share the same portion.

21. I therefore allow the protest and order that the subject property be subdivided into three portions as follows:

A Benson Kimani Wambiri ..... 1.2 acres to be held in trust for himself and all the grandchildren from the house of Warui.

B Margaret Nduta Kibe ..... 0.6 acres to be held in trust for herself and her sibling.

C Joseph Maiko Wambiri ..... 0.6 acres to be held in trust for himself and his siblings.

22. This being a family dispute, each party shall bear their own cost and it is ordered.

**DATED SIGNED AND DELIVERED AT MURANG'A THIS 22nd DAY OF SEPTEMBER 2022**

**J. WAKIAGA JUDGE**

In the presence of:-

Court assistant: Carol Mutahi

