



In re Estate of Francis Muiri Ngacha alias Hudson Muiri Ngacha (Deceased) (Probate & Administration 72 of 2019) [2022] KEHC 15737 (KLR) (24 November 2022) (Judgment)

Neutral citation: [2022] KEHC 15737 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 72 OF 2019
FN MUCHEMI, J
NOVEMBER 24, 2022
IN THE MATTER OF THE ESTATE OF FRANCIS MUIRI NGACHA
ALIAS HUDSON MUIRI NGACHA (DECEASED)**

BETWEEN

DAVID KARIUKI MUIRI APPLICANT

AND

SARAH WAMBUI MUIRI 1ST PROTESTOR

STEPHEN IRUNGU MUIRI 2ND PROTESTOR

ELLEN WAMBUI MUIRI 3RD PROTESTOR

JOHN NGACHA MUIRI 4TH PROTESTOR

JUDGMENT

1. The deceased herein died on the 27th June 2013 and was survived by his widow Sarah Wambui Muiri and ten (10) children. On 18th July 2016, the Petitioner/Applicant David Kariuki Muiri, beneficiary filed a citation against the widow and all other children of the deceased. Thereafter, the widow came on board and cited the first born son of the deceased John Ngacha Muiru to join her and other beneficiaries who were earlier cited by the applicant.
2. On 12/10/2016, the court made the following orders as a result of several applications filed by the parties:-
 - a. That an account be opened in the names Sarah Wambui Muiri, David Kariuki Muiri and Stephen Irungu Muiri where the monies of the estate of deceased was to be preserved.
 - b. That the said three beneficiaries be appointed as co-administrators of the estate subject to gazettelement of the cause.



3. This cause was gazetted on 3rd February 2017 thus confirming the appointment of Sarah Wambui Muiri, David Kariuki Muiri and Stephen Irungu Muiri as the administrators of the estate of the deceased.
4. The Petitioner /2nd administrator David Kariuki Muiri filed summons for confirmation of grant dated 31st August 2018 while the 1st administrator Sarah Wambui Muiri filed her Summons for Confirmation dated 26th August 2018. These two applications differed greatly in the modes of distribution as presented by the parties. John Ngacha a beneficiary and first born son of the deceased filed his replying affidavit to the two summonses for confirmation whereas he also gave his input in the distribution of the estate by way of protest dated on 09/07/2019. The 3rd Administrator Stephen Irungu Muiri supported the mode of distribution of his mother the 1st protestor.
5. Directions were taken in this case that the summons dated 31/08/2018 be treated as the Summons for Confirmation whereas the Summons dated 26/11/2018 and the protest dated 09/07/2019 be treated as the Protests and that the said Protests be disposed of by way of written submissions. It was noted that at the time directions were taken, the 1st protestor had already filed her submissions on distribution. It is noted that no submissions were received from the Petitioner/Applicant who was represented by Gitonga Muthee & Co.
6. The firm of Muthigani & Co. Advocates represented the 1st Administrator/1st protestor, while that of Magua Mbatha & Co. represented Ellen Wambui Muiri one of the beneficiaries. It is noted that the counsel of Ellen filed a notice of appointment but did not file a protest. It was later indicated by the counsel that Ellen supported the mode of distribution of the 1st protestor. The 2nd Administrator was represented by the firm of Gitonga Muthee & Co. Advocates whereas the 4th protestor John Ngacha Muiru appeared in person.

The 1st protestor's case

7. It is the evidence of the 1st protestor that the estate comprises of mainly land whereby tea and coffee are grown. The said agricultural ventures were run by the deceased before he died assisted by the 3rd Administrator. Upon the demise of the deceased the said farms are currently managed by the 2nd protestor. The 1st Protestor contends that the court in distributing the estate ought to take into consideration the farming activities on the respective land parcels, their sizes and locations to equitably provide for each beneficiary. The 1st Protestor said that she disagrees with the mode of distribution proposed by the Applicant as the same is not equitable and some of the properties listed by him as assets of the deceased are registered in the names of some of the beneficiaries.
8. The 1st protestor listed the following parcels as belonging to the following beneficiaries:-
L.R. Konyu/Gakuyu/279 – Sarah Wambui Muiru
L.R. Kiine/Thigirichi/529-Charles Kamau Muiri
L.R. Kiine/Thigirichi/530-Martin Kabui Muiri
However in a further affidavit sworn on 11th November 2022 the 1st protestor gave particulars of other parcels registered in her name as follows:-
 1. Loc. 15/Kangure/88 - 2.59 ha
 2. Konyu/Gakuyu/279 - 3.60 ha
9. The 1st protest listed the following properties as belonging to the deceased



Tea Holdings

L.R. NO.	ACREAGE	APPROXIMATE NO OF TEA BUSHES
MUTIRA/KAGUYU/811	5.58	17,600
MUTIRA/KAGUYU/801	5.68	22,000
MWERUA/MUKURE/9	11.05	35,500
MWERUA/MUKURE/708	5.78	19,200
MWERUA/MUKURE/356	9.59	30,000
KIINE/KIANGAI/92	5.70	19,000
IRIANI/KAGUYU	6.0	10,500 Coffee Holdings



L.R NO.	ACREAGE	APPROXIMATE NO. OF COFFEE TREES
KIINE/THIGIRICHI/1054	2.99	3,000
KIINE/THIGIRICHI/467	7.96	10,000
KIINE/THIGIRICHI/468	7.96	10,000
KIINE/THIGIRICHI/994	2.99	3,000
KIINE/THIGIRICHI/993	2.72	2,800
KIINE/THIGIRICHI/499	5.68	6,200
KIINE/THIGIRICHI/480	5.68	6,200
KIINE/THIGIRICHI/481	5.68	6,000
KIINE/THIGIRICHI/1015	2.69	2,800
KIINE/THIGIRICHI/1016	2.99	2,900
KIINE/THIGIRICHI/1783	1.56	1,400
KIINE/THIGIRICHI/1259	2.24	1,900
KIINE/THIGIRICHI/1569	1.00	300
KIINE/THIGIRICHI/1287	1.00	300
GATURI/KANGURE/126	3.19	4,000
KARATINA TOWN BLOCK 1/239	Family residence cum commercial property	
KARATINA TOWN BLOCK 11/178	Undeveloped commercial plot	
KASARANI PLOTS (2)		

Monies in the following bank accounts:-

- a. Co-operative Bank A/c No. 01109059439600
- b. Barclays Bank Current A/c No. 2111847
- c. Barclays Bank A/c No. 2112592
- d. CDSC Accounts



- e. Nyeri Teacher's Sacco
 - f. Mathira Farmers Sacco
 - g. KTDA Shares Ndimba Factory
 - h. Kenya Planters Co-operative Union Account No. AJ 0928
10. The 1st Protestor argues that the farming enterprise cannot be sustained if the land parcels are distributed to individual beneficiaries as proposed by the Applicant. The 1st Protestor proposes that the beneficiaries hold the said properties jointly through a holding limited liability company where all the beneficiaries would be equal shareholders. Additionally, the 1st Protestor proposes to isolate several properties comprising the estate of the deceased representing one eleventh (1/11) of the net value of the estate for the exclusive use of the Applicant but subject to the life interest of the 1st protestor. In that regard, it is proposed that the Applicant/2nd Administrator ought to be allocated L.R. KIINE/KANGAI/9, which measures 5.7 acres and holds 19,000 tea bushes. It is stated that the rest of the family is in agreement except the Applicant himself and John Ngacha Muiro. In the alternative, the 1st protestor proposes that the Applicant's share be determined monetarily and the other beneficiaries do compensate him.
11. The 1st Protestor further states that it would not be equitable or practical for L.R. KIINE/THIGIRICHI/467 to be allocated to any beneficiary as proposed by the Applicant for the reason that the economic and strategic value of all other parcels of land whereby coffee is grown would be diminished. This is due to the fact that the coffee pulping and processing machines are fixed on the said land.

The 4th Protestor's case

12. The 2nd protestor stated that L.R. KONYU/GAKUYU/279 and GATURI/KANGURE/808 are ancestral land and were earlier registered in the name of the deceased but were later transferred to the 1st Protestor for the purpose of standing as a surety in a court case for the 2nd Protestor. The 1st protestor was meant to return the ownership of the land to the deceased but she refused to do so. It is thus argued that these two parcels of land ought to be included in the estate for distribution.
13. It is the 4th Protestor's case that the sons take precedence in succeeding their father's estate over the daughters and since he is the first born of the deceased, he is entitled to Land Parcels No. KONYU/GAKUYU/279 and GATURI/KANGURE/808, the ancestral land, MWERUA/MUKURE/356 and Karatina Town Plot BI/239. He also states that in the alternative, the ancestral land be divided amongst him, the Applicant and the 3rd Administrator as the sons of deceased who reside in Kenya. He further states that according to Kikuyu customary law only the male children ought to inherit from the deceased's estate and thus the married female children are not entitled to inherit from the estate.
14. The 4th Protestor states that he is opposed to the 1st protestor's proposal of holding onto the estate of the deceased to be communally held by all the beneficiaries in equal shares. He proposes that the estate of the deceased be distributed to the beneficiaries as per his proposal. Being the first born son, the 4th Protestor reiterates that he is entitled to take the ancestral land of the deceased L.R Nos Konyu/Gakuyu/279 and Gaturi/Kangure/808.



The Petitioners/Applicant's Case

15. According to the Applicant, the estate ought to be distributed to all the beneficiaries individually to hold particular parcels of land as listed below and all the monies in the bank to be shared equally among all the parties herein.
- a. MUTIRA/KAGUYU/811 Gladwell Wanjiru Mucheru and Stephen Irungu
 - b. MUTIRA/KAGUYU/801 Jane Wanjiru Muiri and Charles Kamau Muiri
 - c. MWERUA/MUKURE/708 Stephen Irungu Muiri
 - d. MWERUA/MUKURE/9 Sarah Wambui Muiri and Martin Kabui Muiri
 - e. MWERUA/MUKURE/356 David Kariuki Muiri
 - f. KIINE/KIANGAI/92 Charles Kamau Muiri and Jane Wanjiru Muiri
 - g. KIINE/THIGIRICHI/480 Gladwell Wanjiru Mucheru
 - h. KIINE/THIGIRICHI/993 Gladwell Wanjiru Mucheru
 - i. KIINE/THIGIRICHI/467 David Kariuki Muiri
 - j. KIINE/THIGIRICHI/468 John Ngacha Muiri, Anne Wanjiku Muiri and Jane Wanjiru Muiri
 - k. KIINE/THIGIRICHI/1054 Anne Wanjiku Muiri
 - l. KIINE/THIGIRICHI/530 Martin Kabui Muiri
 - m. KIINE/THIGIRICHI/994 Rose Wanjugu Muiri
 - n. KIINE/THIGIRICHI/499 Ellen Wambui Muiri
 - o. KIINE/THIGIRICHI/529 Charles Kamau Muiri
 - p. KIINE/THIGIRICHI/481 Jane Wanjiru Muiri
 - q. KIINE/THIGIRICHI/1015 John Ngacha Muiri
 - r. KIINE/THIGIRICHI/1016 Jane Wanjiru Muiri and Charles Kamau Muiri
 - s. KIINE/THIGIRICHI/1783 Jane Wanjiru Muiri
 - t. KIINE/THIGIRICHI/1259 Stephen Irungu Muiri
 - u. KIINE/THIGIRICHI/1569 Charles Kamau Muiri
 - v. KIINE/THIGIRICHI/1287 Martin Kabui Muiri
 - w. GATURI/KANGURE/808 David Kariuki Muiri, Anne Wanjiku Muiri and Charles Kamau Muiri
 - x. GATURA/KANGURE/1269 Stephen Irungu Muiri and Ellen Wambui Muiri
 - y. IRIANI/KAGUYU/280 Sarah Wambui Muiri
 - z. KONYU/GAKUYU/279 Sarah Wambui Muiri



- aa) KARATINA BLOCK 1/1239 Sarah Wambui Muiri, John Ngacha and Jane Wanjiru Muiri
 - ab) RAGATI BLOCK II/178 David Kariuki Muiri and Anne Wanjiku Muiri
16. The applicant lists the assets of the deceased which are similar as the ones listed by the 1st and 4th Protestors. However, the Applicant adds the following parcels to his list:-
- a. GATURI/KANGURE/808 – 2.59 Ha
 - b. GATURA/KANGURE/1269 – 2.59 Ha
 - c. KONYU/GAKUYU/279 – 3.6 Ha
 - d. RAGATI BLOCK II/178

The 1st Protestors' Submissions

17. The 1st protestor reiterated what she had deponed in her affidavit and further submit the estate of the deceased ought to be distributed according to Section 35 of the Law of Succession Act. The protestors further rely on the cases of In the Matter of the Estate of M'Ikiugu M'Mwirichia Civil Appeal No. 30 of 2014; Tan Katungi vs Margarethe Thorning Katungi & Another [2014] eKLR; Re Estate of Doris Wanjiku John Mwigaruri alias Doris Wanjiku and In the Estate of Jolly Jimmy Githieya and submit that the 1st protestor ought to be given a life interest over all the assets of the deceased since the beneficiaries are not in agreement as to how the estate ought to be distributed. The protestors further submit that the children are entitled to equal shares in the estate. As such, the protestors contend that the estate be awarded entirely to the 1st protestor for her life and the residue of the estate be shared equally by all the ten children of the deceased.

The 3rd Protestor's Submissions

18. The 3rd protestor's submissions support the contentions of the 1st protestors' submissions. He equally submits that the entire estate ought to devolve to the 1st protestor to have a life interest in the whole residue of the net intestate estate. The 3rd protestor further submits that the life interest in the whole residue of the net intestate shall determine upon the remarriage or demise of the 1st protestor. To support her contentions, the 3rd protestor relies on the cases of Re Estate of John Musambayi Katumanga [2014] eKLR; Re Estate of Mihunyo Gitimu [2017] eKLR; Caroline Njoki Muchiri vs Jane Njeri Muchiri & Another [2015] eKLR and In Re Estate of Bernard Njonjo Rubia [2017] eKLR.

Issues for determination

19. The main issues for determination are:
- a. Identification of the beneficiaries of the estate.
 - b. Identification of the assets.
 - c. The mode of distribution of the estate

Identification of the assets

20. According to the parties, the available properties are as listed in their evidence in the foregoing paragraphs. The 4th Protestor lists KONYU/GAKUYU/279 and GATURI/KANGURE/808 as ancestral land arguing that although the said properties are registered in the names of the 1st protestor,



they ought to be distributed in the deceased's estate. However the 2nd protestor did not adduce evidence to prove his allegations that the said two properties are ancestral land and that one of them was registered in the name of the 1st protestor temporarily to revert to the deceased upon fulfilling the said purpose. The 1st protestor has annexed official searches in respect of the two properties which she is listed as the registered owner. The said two parcels of land have no encumbrances or any registered interest in favour of the deceased. In my considered view that the two properties do not form part of the estate of the deceased.

21. The 1st protestor also stated in her affidavit that Land Parcel No KIINE/THIGIRICHI/529(2.30Ha) belongs to one of the beneficiaries Charles Kamau Muiri and land Parcel No. KIINE/THIGIRICHI/530 (2.30 Ha) to one Martin Kabue Muiri another beneficiary. The 1st protestor annexed two certificates of official search to support her contention. No evidence was tendered by the 2nd protestor as to demonstrate how the said parcels were acquired by the two beneficiaries.
22. Consequently I find that the said properties LR Kiine/Thigirichi/529 and LR Kiine/Thigirichi/530 do not form part of the estate of the deceased. It is not denied that the deceased bequeathed the said parcels to his two sons Charles Kamau and Martin Kabue Muiri during his lifetime. As such, the provisions of Section 42 of the Act are applicable in that the said properties will be taken into account in the distribution.
23. Having considered the evidence of the parties, I find that it has been established that the following properties belonged to the deceased and are available for distribution in the estate:-

A. PARCELS OF LAND

- a. MUTIRA/KAGUYU/811
- b. MUTIRA/KAGUYU/801
- c. MWERUA/MUKURE/9
- d. MWERUA/MUKURE/708
- e. MWERUA/MUKURE/356
- f. KIINE/KIANGAI/92
- g. IRIANI/KAGUYU/278
- h. KIINE/THIGIRICHI/1054
- i. KIINE/THIGIRICHI/467
- j. KIINE/THIGIRICHI/468
- k. KIINE/THIGIRICHI/994
- l. KIINE/THIGIRICHI/993
- m. KIINE/THIGIRICHI/499
- n. KIINE/THIGIRICHI/481
- o. KIINE/THIGIRICHI/480
- p. KIINE/THIGIRICHI/1015
- q. KIINE/THIGIRICHI/1016



- r. KIINE/THIGIRICHI/1783
- s. KIINE/THIGIRICHI/1569
- t. KIINE/THIGIRICHI/1287
- u. GATURI/KANGURE/1269
- v. KASARANI TWO (2) PLOTS
- w. KARATINA TOWN/BLOCK 1/239
- x. KARATINA TOWN/BLOCK 1/178
- y. TIGITHI COMPANY LTD – 2 PLOTS
- z. GATURI /KANGURE/808

B. SHARES AND BANK ACCOUNTS

- i. STANDARD CHARTERED BANK SHARES
- ii. NIC BANK SHARES
- iii. KENYA COMMERCIALBANK SHARES
- iv. NATIONAL BANK SHARES
- v. SAFARICOM SHARES (500)
- vi. KENYA AIRWAYS SHARES(500)
- vii. KENGEN SHES (812)
- viii. NYERI TEACHERS INVESTMENTS CO. LTD SHARES
- ix. KTDA SHARES (NM 029, NM 003,NM008, NU 021,NU 011,NU 005)
- x. KCB A/C NO. 217721102
- xi. CO-OPERATIVE BANK A/C NO. 01109059439600
- xii. BARCLAYS BANK A/C NO. 2112592
- xiii. BARCLAYS BANK A/C NO. 2111847

24. The law governing distribution of property in an intestate estate where the deceased has left one spouse surviving and children or child is Section 35 of the *Law of Succession Act* which provides:-

(1)Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:-

- a. The personal and household effects of the deceased absolutely; and
- b. A life interest in the whole residue of the net intestate estate;

25. The 1st and 3rd protestors urge the court to give life interest the 1st protestor (widow) over all the properties of the deceased arguing that the estate is a vast one that includes twenty-seven (27) parcels of land and several town plots. It is further stated that the deceased had shares in several companies and bank accounts in various commercial and other banks.



26. In urging the Court to distribute the estate in accordance with Section 35(1) of the Act the 1st protestor relied on the case of Re: Estate of M’Kiugu Mwirichia, deceased Nyeri Civil Appeal No. 30 of 2014 where the court of Appeal gave the widow aged 90 years life interest over eleven (11) parcels of land which were to devolve to the children of the deceased upon her death or re-marriage.
27. The 3rd protestor relied on several cases whereas the court distributed the estate under Section 35(1) of the Act as follows:-
 Re Estate of John Musambayi Katumanga(deceased) (2014)eKLR
 Re Estate of Caroline Njoki Muchiri Vs Jane Njeri & Another (2015)eKLR
 Re Estate of Bernard Njonjo Rubia, Deceased (2017) eKLR.
28. In this cause, the record speaks for itself in regard to the animosity between the parties who have been filing multiple applications in respect of the management of the income of the estate from the coffee and tea farms as well as the dividends of shares and other investments. The court appointed the 1st and 3rd protestors and the Applicant as administrators of the estate on 12th October 2016 and directed them to open a bank account in their joint names where the income from the farms and other investments would be deposited and subsequently accounted for. Five (5) years down the line, the account has not been opened and this failure has led to filing of several applications by the administrators separately in an attempt to have names of some of them removed and others added to the signatories for the reason that the three administrators failed to agree on how to implement the court order. This demonstrates the fact that the administrators cannot work together in the management of the estate.
29. The 4th Protestor filed an affidavit in which he described his siblings including the married and unmarried daughters in very unkind language that borders on vulgar print. He further deposes that his mother now aged 83 years favours some children as against others. In my considered view, the situation prevailing in the family of the deceased is one of hostility among the siblings on one hand and between their mother the 1st protestor and the Applicant and the 4th Protestor on the other hand. This is factor of disharmony in the family ought to be taken into account in distributing the estate.
30. The 4th protestor proposes that the male children of the deceased take precedence over the female children under Kikuyu customary law and that the married female children are not entitled to inherit from the estate.
31. 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.”



32. Prior to 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.”

33. Under the law, a son will not take priority over a daughter simply because he is male. All male and female siblings are equal before the law and are entitled to equal protection. In that regard, the mode of distribution proposed by the 4th Protestor is unconstitutional, contrary to the *Law of Succession Act* and absolutely unacceptable in this age and time. In my view, the mode of distribution by the 4th Protestor is also unfair and untenable as well as discriminatory. Both male and female children of the deceased are entitled to equal shares of the deceased’s estate.
34. Section 38 of the *Law of Succession Act* enshrines the principle of equitable distribution of the net intestate estate to the surviving children of the deceased irrespective of gender or marital status. *The Constitution* of Kenya which is the Superior Law of the land outlaws discrimination on grounds of gender as is evident in several decisions of the Court of Appeal and of other Superior courts.
35. The issue that arises is whether giving the 1st protestor life interest in all the tangible assets of the deceased will be in the interests of justice and fairness to all the beneficiaries. Section 35 was enacted to protect the widow who may be in most cases aged and vulnerable and in want of income to maintain herself after the departure of her husband who may have been taking care of her during his lifetime. These are concerns that the court must take into consideration in the distribution of the estate. The interests of the children must be considered to avoid a situation where they are not left in abject poverty during the lifetime of the widow in her enjoyment of the life interest.
36. Since the time the case of Re-estate of M[”]Ikiugu M[”]Mwirichia was decided in 2015 new jurisprudence has come into play that gives courts direction on the application of Section 35 of the Act. The court of Appeal in Civil Appeal No. 3 of 2015 was dealing with the issue of life interest. The appellant challenged the judgement of the High Court where a widow had been given an absolute interest in the deceased’s estate instead of life interest. The court held:-

“As for the issue of the widow having been given an outright tangible shareholding in the net estate of the deceased as opposed to a life interest, we find nothing in Section 40 of the *Law of Succession Act* that can prevent a court of law from looking at the peculiar circumstances of each case and then determine whether to apply strictly the rule of life interest or tamper with it in the interest of justice to all the affected parties. In the circumstance of this case, having found that the principle in Section 38 was the appropriate applicable principle, ordering life interest would have occasioned injustice to all the dependants as opting for such individual interests of all the other beneficiaries thereby making it impossible for all the beneficiaries to enjoy freely the resulting benefits from the deceased’s estate. We find it was prudent for



the learned judge to accord a direct unencumbered benefit to the widow Naomi as opposed to life interest.

37. In view of the foregoing Court of Appeal decision that is binding on this court, I am of the considered view that Section 35 is not cast on stone and that depending on the circumstances of each case, the court must not strictly apply the said provisions in the event that injustice and lack of fairness may be occasioned to some of the beneficiaries. In this cause, it is my considered view that justice requires to be administered to all the beneficiaries in the distribution of the estate considering the prevailing circumstances. As such, I do not find the mode of distribution proposed by the 1st and 3rd protestor reasonable. If adopted, justice and fairness to the beneficiaries will not be administered herein.
38. The Applicant in his mode of distribution tends to favour himself by proposing that he be bequeathed L.R Kiine/Thirigichi/467 which is said to be the most highly valued and profitable farm while the lesser income generating farms go to the other beneficiaries. The said farm has 10,000 coffee stems, coffee pulping machines, drying beds, stores and offices by its description, this an asset of high value despite the fact that no valuation report was availed. In my view, it is the aged widow who needs more income to maintain herself more than her children who are still energetic and can fend for themselves.
39. The 1st protestor argued that the estate of the deceased should not be distributed to the beneficiaries in that by doing so, it will be impossible to sustain the coffee and tea farming. Her proposal was that the income generating farms be kept under her custody to be assisted by the 3rd administrator to run the enterprises. It was further stated that her proposal was the wish of the deceased. The Applicant and the 4th Protestor want the estate distributed to the beneficiaries for each of them to manage their respective assets for their own benefit. However, the 1st Protestor did not tender any evidence to show the alleged wishes of the deceased. This mode of distribution is likely to place the children of the deceased some of whom are aged over Fifty (50) years at a disadvantage both socially and economically and accelerate the already frosty relations in the family.
40. As I had stated earlier, this is a family that can hardly work together in running the family enterprises and sharing or investing the income derived from the said assets. The 1st and 3rd Protestors have been managing the said farms since the deceased died in 2013 but have failed to account for the income generated from therein for a period of eight (8) years. The rest of the beneficiaries have expressed their dissatisfaction with the current management of the assets that has not benefited majority of the beneficiaries. In my considered view, the proposal of the 1st Protestor is not sustainable in the prevailing family circumstances.
41. In my considered view, the estate of the deceased ought to be distributed among the beneficiaries in accordance with the law to ensure that justice and fairness is administered to all of them.
42. In the absence of valuation reports, the court will be guided by the evidence of the parties on the estimated value and the potential of each asset. The sizes of the parcels of land and plots as well as their locations will also be taken into account. It is important to note that the law of succession in distribution of the deceased's estate seeks to achieve equity but not equality.
43. In the distribution, the court will be guided as much as possible by the provisions of the [Law of Succession Act](#) and [the Constitution](#) as well as the interests of justice of all the beneficiaries.
44. Having considered the foregoing issues, I hereby distribute the estate as follows:-
 1. Sarah Wambui Muiiri
 - i. Kiine/Thigirichi/467 7.96 acres



- ii. Mutira Kaguyu/811 5.58 acres
 - iii. Kiine/Thigirichi/1287 1.00 acre
 - iv. Karatina Town Block 1/239 0.0282ha
 - v. Kiine/Thigirichi/994 2.99 acres
2. John Ngacha Muiri
- i. Kiine/Thigirichi/468 7.96 acres
 - ii. Mwerua/Mukure/9 9.59 acres ½ share
 - iii. Kiine/Thigirichi/1569 1.00 acre
 - iv. First Kasarani plot ½ share
3. David Kariuki Muiri
- i. Kiine/Thigirichi/481 5.68 acres
 - ii. Mwerua Mukure/9 9.59 acres ½ share
 - iii. Kiine/Thigirichi/993 2.72 acres
 - iv. First Kasarani plot ½ share
4. Stephen Irungu Muiru
- i. Kiine/Thigirichi/499 5.68 acres
 - ii. Mwerua/Mukure 126 3.19 acres
 - iii. Mwerua/Mukure/356 9.59 acres ½ share
 - v. Karatina town/B II/178
5. Gladys Wanjiru Mucheru
- i. Gaturi/Kangure/126 3.19 acres
 - ii. Mwerua/Mukure/356 9.59 acres ½ share
 - iii. Kiine/Thigirichi/481 5.68 acres
 - iv. Loc. 15/Kangure/1269 1.29 ha
6. Anne Wanjiku Muiri
- i. Kiine/Thigirichi/499 5.68 acres
 - ii. Mwerua/Mukure/708 5.68 acres
 - iii. Kiine Thigirichi/1054 2.99 acres
 - iv. First Tigithi plot ½ share
7. Jane Wanjiru Muiri
- i. Kiine/Thigirichi/480 5.68 acres



- ii. Mwerua/Mukure/708 5.78 acres ½ share
 - iii. Kiine/Thigirichi/1783 1.56 acres
 - iv. First Tigithi plot ½ share
8. Rose Wanjugu Muiru
- i. Kiine/Thigirichi/529 6.00 acres
 - ii. Mwerua/Mukure/708 5.78 acres – ½ share
 - iii. Kiini/Thigirichi/1783 1.56 acres
 - iv. Second Tigithi plot ½ share
9. Ellen Wambui Muiri
- i. Kiini/Thigirichi/481 5.68 acres
 - ii. Kiini/Thigirichi/1015 2.69 acres
 - iii. Kiini /Kiangai/92 5.70 acres
 - iv. Second Tigithi plot ½ share
10. Charles Kamau Muiri
- i. Kiini/Thigirichi/1016 2.99 acres
 - ii. Mutira/Kaguyu/801 5.68 acres ½ share
 - iii. Second Kasarani plot ½ share
11. Martin Kabui Muiri
- i. Iriaini/Kaguyu/278 2.89 ha
 - ii. Mutira Kaguyu/801 5.68 acres ½ share
 - iii. Second Kasarani plot ½ share

The following shares and cash at bank be shared equally between all the beneficiaries:-

- 1. Standard bank shares
- 2. NIC bank shares
- 3. KCB Bank shares
- 4. National Bank shares
- 5. Safaricom shares (500)
- 6. Kenya airways shares
- 7. Kengen shares (812)
- 8. Nyeri Teachers Investment Co. Ltd. shares
- 9. KTDA Shares
- 10. GM coffee management service



11. KCB Account No. 217721102
12. Co-operative Bank Account
13. Barclays Bank accounts

Certificate of grant to issue.

DATED AND SIGNED AT NYERI THIS 24TH DAY OF NOVEMBER, 2022.

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 24TH DAY OF NOVEMBER, 2022

