



**Gakuru & 4 others v Muiruri (Succession Cause 724 of 1989)  
[2025] KEHC 305 (KLR) (Family) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 724 OF 1989**

**HK CHEMITEI, J**

**JANUARY 23, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE EDITH WANJA MUIRURI (DECEASED)**

**BETWEEN**

**MARY WAMBUI GAKURU ..... 1<sup>ST</sup> APPLICANT**  
**ELIZABETH NGOIRI KAGOIYA ..... 2<sup>ND</sup> APPLICANT**  
**SUSAN WANJIRU GATHOGO ..... 3<sup>RD</sup> APPLICANT**  
**GRACE MWIHAKI MUCHIRU ..... 4<sup>TH</sup> APPLICANT**  
**JOHN MUIRURI GACHECA ..... 5<sup>TH</sup> APPLICANT**

**AND**

**MARY NYAMBURA MUIRURI ..... RESPONDENT**

**JUDGMENT**

1. The deceased herein Edith Wanja Muiruri passed away on 17<sup>th</sup> May 1985. The late Geoffrey Gatheca Muiruri filed for letters of administration on 17<sup>th</sup> April 1989 which were granted to him.
2. The Applicants challenged the said grant and this court (Muchelule J) as he then was, revoked the same on 24<sup>th</sup> January 2022 and issued fresh grant to Mary Wambui Gakuru, Elizabeth Ngoiri Kagoiya and John Muiruri Gatheca.
3. The new administrators filed an application dated 5<sup>th</sup> April 2022 seeking to have the grant dated 24<sup>th</sup> January 2022 be confirmed. They went ahead and proposed that the two properties namely Kabete/ Nyathuna/105 and 2775 be sold and the proceeds be shared out equally.



4. The Respondent vehemently opposed the same vide her affidavits on record dated 29<sup>th</sup> November 2022 and 29<sup>th</sup> August 2024.
5. When the matter came up for directions the court had initially directed that the same be heard by way of oral evidence but after hearing the parties off record it became apparent that the matter could be disposed by way of written submissions.
6. The parties were directed to file the same which they have complied.
7. The submissions by the Applicant is dated 7<sup>th</sup> October 2024 and those by the Respondent are dated 29<sup>th</sup> August 2024.
8. It is the Applicant's case that the estate ought to be shared equally between the deceased children without any regard to any other consideration for the simple reason that by the time she died in 1985 customary law was not applicable in her estate since the Act had been enacted in 1981.
9. They relied on the provisions of Section 41 and 42 of *cap 160* and further Article 27 of the *Constitution* regarding the fact that there should not be any discrimination in whatever manner when sharing out the estate of a deceased person.
10. They also cited *Justus Kiugu & 4 Others v Joyce Kiugu & Another* 2015 eKLR.
11. It was also their submissions that the two properties be sold and the proceeds be shared out equally with the Respondent getting less having benefitted from the compensation from roads ministry.
12. On her part the Respondent submitted that her late husband who was the only son to the deceased had developed land parcel number Kabete/Nyathuna/105 where her late mother had entrusted to him since the rest of her siblings who were girls had long been married. She submitted that they stayed and did extensive developments thereon and it only became problematic when her husband passed away.
13. That the other parcel namely Kabete/Nyathuna/2775 was left by the deceased to her daughters the Applicants herein including her grandson John Gatheca whose mother had not been married. The deceased was of the view that in the event that any of the daughters comes back from her matrimonial home then they could settle in No. 2775.
14. She submitted that evidence of this was clear since her late husband had the now revoked grant transmitted No. 105 to her and himself leaving out number 2775 to her siblings and the grandson. This was to her the real wishes of the deceased.
15. Further, John Gatheca had gone on to work and develop part of parcel number 2775 and therefore she ought to inherit parcel number 105 since that was the wish of the deceased and further that under the Kikuyu customary law which was patrilineal it was appropriate that the same be honored.
16. The Respondent relied among others on *Mwaniki & 7 Others v Mukita & 2 Others* succession cause no 386 of 2000.
17. It was the Respondent's case therefore that land parcel Kabete/Nyathuna/105 be inherited by her and her children and number 2775 by the rest of the deceased children.

#### **Analysis and Determination.**

18. The issues herein having gone through the proceedings is not difficult to appreciate. The parties have no problem with each other in terms of their identity. The only beneficiary who is not directly related



to the deceased is John Gatheca who is the deceased grandson. The rest are the daughters and daughter in laws.

19. The assets left behind are the two parcels of land which again they are not in dispute.
20. At the same time, I find that the Respondent and her late husband, the only son to the deceased did develop the land while the deceased was alive and thereafter. The Applicants, the deceased daughters in particular were all married except the mother to John who has since passed away.
21. It is also evident that the said John Gatheca stayed and developed parcel number 2775 without let and hinderance from her grandmother or her uncle or the aunties. His affidavit on record states as much.
22. In view however of the provisions of Section 29 of *Cap 160* all the beneficiaries whether male or female have the right of inheriting the estate. No doubt it is the Respondent and her husband who stayed and developed parcel number 105 and I do not think that was disputed by the Applicants who they are all married and staying in their various homes.
23. The court is of the view that although there is nothing to stop equal sharing of the estate herein consideration has to be given to the real contribution by various beneficiaries to the estate. In other words, whereas the Applicants were away in their married homes, the Respondent and her late husband invariably took care of the homestead and I reckon their deceased mother as well. These cannot be wished away.
24. There was also some allegation that the Respondent was paid some compensation by the Ministry of Roads when the road network was being developed in that area. There was no evidence to back up this and it therefore remains an allegation.
25. Taking the above position and applying the principles of equity namely that sometimes in succession matters it is not possible to be scientifically or mathematical accurate based on many factors in estates I find that the estate be divided and the grant be and is hereby confirmed as hereunder:-
  - (a) Land parcel number Kabete/Nyathuna/105 measuring 3.7 acres or thereabouts and
  - (b) Land parcel number Kabete/Nyathuna/2775 measuring 2.3 acres or thereabouts to be divided as follows;
    - (i) Mary Nyambura Muiruri 2 acres out of Kabete/Nyathuna/105.
    - (ii) John Gatheca 1 acre out of Kabete/Nyathuna/2775.
    - (iii) The balance out of the two-above parcel of lands to be divided equally between the estate of Mary Wambui Gakuru, Estate of Joyce Wakanyi, Elizabeth Ngoiri Kagoiya, Susan Wanjiru Gathogo and Grace Mwhaki Muchiru.
    - (iv) The subdivision exercise ought to take into consideration any capital development by the parties and or the deceased.
    - (v) Being a family matter each party shall bear its respective costs.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 23<sup>RD</sup> DAY OF JANUARY 2025.**

**H K CHEMITEI**

**JUDGE**

