



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Gerishon Kamau Kirima (Deceased) (Succession Cause
1298 of 2011) [2025] KEHC 2557 (KLR) (Family) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1298 OF 2011
PM NYAUNDI, J
FEBRUARY 21, 2025
IN THE MATTER OF THE ESTATE OF GERISHON KIRIMA (DECEASED)**

JUDGMENT

Introduction

1. This judgment relates to two applications; The first is Summons for Confirmation dated 23rd May 2017 presented by Anne Wangari Kirima, the Co-Administrator herein. It is presented pursuant to Section 71 of the *Law of Succession Act* and rules 40(1) of the Probate and Administration Rules. The Summons is supported by Affidavit of Anne Wangari Kirima sworn on even date.
2. The 2nd Application is dated 20th June 2017 presented under Section 26 of the *Law of Succession Act* by Catherine Wanjiru Aura in which she seeks to be recognised as a dependant and have the following properties transferred to her as gifts inter vivos-
 1. Portion marked D measuring 0.6100 Ha curved out of Land Reference Number 13763 and 13764
 2. Plot No. 4 Measuring 0.2023 Ha on LR No. 79/1 Kiambu
 3. The deceased herein, Gerishon Kamau Kirima died on 21st December 2010. On 6th June 2013 following a protracted hearing the Court annulled two wills referred to as the Kahari and London wills and determined that the deceased had died intestate. On 30th October 2013, Teresia Wairimu Kirima and Anne Wangari Kirima were appointed as Joint administrators of his estate.

Summary of Pleadings

4. The Applicant avers that the Beneficiaries of the Estate are agreed upon the beneficiaries vide consent order issued by the Court on 30th October 2013. The beneficiaries of the Estate as per that consent order are: -



1. Teresia Wairimu Kirima
 2. Alice Njeri Kirima
 3. The Family of Fredrick Kamau Kirima (Deceased)
 4. The Family of Samuel Ndei Kirima (Deceased)
 5. The Estate of Elizabeth Wanjiku Kirima (Deceased)
 6. Stephen Kamau Kirima
 7. Irene Njeri Kirima
 8. Wanjau Kirima
 9. The Estate of the Late Agnes Waruguru Kirima (Deceased)
 10. Maria Njeri Kirima
 11. Anne Wangari Kirima
 12. Jane Kirima
 13. Ruth Wanja Kirima
 14. Margaret Wanjiru Kirima
 15. Susan Wangari Kirima
5. The said consent order further provided that reasonable provision would be made for Grace Warwathia Kamau, (mother of Irene Njeri Kirima and Stephen Kamau Kirima) at the time of distribution of the Estate to cater for her living expenses for her life time.
6. The properties of the Estate are enumerated as hereunder: -
1. Property in Murang'a:
 1. Loc.9/Kiruri/1075(6.24acres);
 2. Loc.9/Kiruri/T.175(0.1285acres);
 3. Loc.9/ Kiruri /T.178(0.056acres);
 4. Loc.9/ Kiruri /T.180(0.1285acres);
 5. Loc.9/ Kiruri /T.181(0.13acres);
 6. Loc.9/ Kiruri /T.179(0.31 acres);
 7. Loc.9/ Kiruri /468(17acres);
 8. Loc.9/ Kiruri /516(10.4acres);
 9. Loc.9 /Kiruri /1074 (3 acres);
 10. Loc.9/ Kiruri /1082(1acre);
 11. Loc.9/ Kiruri /728/1(0.1acres);
 12. Loc.9/ Kiruri /860(12.503acres);



13. Loc.9/ Kiruri /830(6acres);
14. Loc.9/ Kiruri /127(3.2 acres),
2. Nairobi property:
 1. L. R No. 209/5570, along Luthuli Avenue;
 2. Kirima Market Flats LR 209/5640;
 3. LR 209/2490/47- Ngara area;
 4. LR 209/2490/29- Ngara Area
 5. Nairobi, LR No. 209/9960-Kaloleni Estate;
 6. LR 209/6574-Jericho Market;
 7. LR No. 209/12305-Likoni Lane;
 8. LR No. 5/ 27 Kabasarian Close
 9. Kajiado/Kisaju/103;
 10. LR No. 209/232/4- Tukika;
 11. LR No. 209/2490/28-Old Ngara;
 12. LR No. 209/ 6020- Ofafa Maringo
 13. LR No. 209/4844/63- Mbotela Estate;
 14. LR No.209/4401/513,514,521,522- Hamza- Makadara
 15. LR No. 209/4401/192- Makadara
 16. LR No. 336/39 (Part) Makadara
 17. LR No. 209/11092/16-City Park.
3. Properties in Kiambu
 1. LR NO. 79/1
4. Property in the names of the deceased and others:
 1. LR No. 209/1386- Duruma House (registered in the name of the deceased, John Waweru Kirima and Fredrick Kamau Kirima);
 2. LR No. 209/4348- Kirima House (registered in the name of the deceased, John Waweru Kirima and Fredrick Kamau Kirima);
 3. LR 209/2389/165-Pangani (registered in the name of the deceased, John Waweru Kirima and Fredrick Kamau Kirima),);
 4. LR 6825/2 – Njiru (472.5 acres) (registered in the name of the deceased and John Gerishon Kirima);
 5. LR 5908/8-Njiru (registered in the name of the deceased and John Gerishon Kirima).



6. LR 7741/125 – Kitusuru Estate (registered in the name of the deceased, Fredrick Kamau and Samuel Ndei Kirima).
5. Shares listed in private Companies:
 1. Kenda Investments Limited -Deceased's shares 4627
 2. Wangu Investments Ltd – Deceased's shares 5140
6. Shares Listed in Public Companies
 1. East African Breweries Limited -204570 shares
 2. Firestone/ Sameer Africa Limited 900 shares
 3. Kakuzi Limited 33000 shares
 4. Kenya Airways Limited 1000 shares
 5. NIC BANK Ltd 3,770 shares
 6. Housing Finance Company Limited 8000 shares
 7. Kenya Commercial Bank Limited 12,400 shares
 8. Kenya Power & Limited Co. Limited 63099 Shares
 9. National Bank of Kenya Limited 2,500 shares
 10. Centum Investment Company Limited 62, 411 shares
 11. Unilever Tea Kenya Limited 286 shares (taken out of the Nairobi Securities Exchange)
7. Bank Accounts held in the Name of the deceased
 1. Estate of Gerishon Kamau Kirima, Commercial Bank of Africa Limited, Wabera Branch Account No. 6793310018
 2. Estate of Gerishon Kamau Kirima (Expense A/C), Commercial Bank of Africa Limited, Wabera Branch Account No. 7024710017
 3. Gerishon Kamau Kirima, Commercial Bank of Africa Limited, Account No. 0151578004
 4. Kenya Commercial Bank, Moi Avenue Branch; Account No. 229746379
 5. Kenya Commercial Bank, University Way Branch; Account No. 271640452
 6. CFC Stanbic, Kimathi Branch; Account No: 000223018
 7. Barclays Bank of Kenya Limited, Harambee Avenue Branch; Account No. 031094988
 8. Diamond Trust Bank Limited; Parklands Branch
 9. Paramount Bank, Formerly at Amani Plaza, 3rd Parklands Avenue
8. Motor Vehicles
 1. Cars/ Vans
 2. KAK 519 F



3. KAK 001C
 4. KAH 001 E
 5. KAL 001N
 6. KTN 857
 7. KUR 175
 8. KAP 040 P
 9. KVN 144
 10. KNB 737
 11. KAG 759Q
 12. KZE 001
 13. Lorries and Trucks
 14. KAW 001 D
 15. KAM 370 V
 16. KVL 002
 17. KAJ 022P
 18. KBN 901N
 19. KAV 120 Z
9. The Applicant also included the following assets which she considered ought to be included in the estate of the deceased
1. Pending Compensation owed to the Estate in respect of parcels of land compulsorily acquired from the Estate-
 - a. LR No. 209/11415
 - b. LR. No. 336/39 (with respect to 7.36 acres)
 2. Properties Fraudulently transferred
 - a. LR No. 13763 (formerly 7106/2)
 - b. LR No. 13764 (formerly 7106/2)
 - c. LR No. 13765 (formerly 7106/2)
 - d. LR No. 13766 (formerly) 7106/2)

All these parcels of land are registered in the name of Kirima & Sons Limited.
 3. Properties situated within Embakasi within Nairobi
 - a. LR No. 7106/2/16
 - b. LR No. 7106/2/17



- c. LR No. 7106/2/18
 - d. LR No. 7106/2/19
The Estate of Samuel Ndei Kirima and Rachel Wachuka to account.
 - e. Machinery and Moveable Assets Situated in Tumaini Estate
 - i. Rollers
 - ii. Trucks
 - iii. Building Machinery
 - iv. Building Equipment
 - v. Materials
4. Misappropriated funds used in Cash or to buy property
- a. CFC Stanbic Bank (Fixed Deposit Account) estimated at Kshs 20,980,425.39/=
 - b. Barclays Bank of Kenya Account No. 8388510- Account was in name of the deceased, Signatory was Samuel Ndei Kirima (deceased) amount Approximately Kshs 7, 000, 000/=
 - c. Funds Collected into Chapis General Investments Limited from Block B Tumaini Estate, Samuel Ndei Kirima (Deceased and his wife collected rental income from the property and banked in an account they controlled.
 - d. Properties in the name of
 - 1. Chapis General Investments Limited
 - 2. Happy Shelter Limited

Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and purchased the assets.
 - e. Development in Kitengela. Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and secured the property and developed thereon.
 - f. Donholm flats. Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and secured the property and developed thereon.
 - g. Chapis Apartments. Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and secured the property and developed thereon.
 - h. Umoja House No. K227 Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and transferred the property and developed thereon.
 - i. Dandora Development Samuel Ndei Kirima (deceased) and his wife collected rental income from the assets of the deceased and transferred the property and developed thereon.



7. On distribution the Applicant makes the following proposals. She avers that part of the estate has been partially distributed with

1. Each of the beneficiaries having received cash payments in respect of legal fees, school fees, medical and Christmas bonus pursuant to various court orders.
2. The shares listed at the Nairobi Stock Exchange to be distributed equally among the beneficiaries pursuant to Court order of 16th December 2013. The 286 shares in Unilever Tea Kenya Limited to be distributed equally among all the beneficiaries in equal shares and the balance of indivisible shares to be sold and the proceeds be distributed equally among the beneficiaries.
3. Land Reference No. 336/ 39- Kariobangi (of the 20 acres only 12.64 is available to be shared equally among the beneficiaries).

It is proposed that each of the following beneficiaries be allocated 0.7 acres (with 2 acres set aside to cater for roads and other public amenities-

1. Teresia Wairimu Kirima
 2. Alice Njeri Kirima
 3. The Family of Fredrick Kamau Kirima (Deceased)
 4. The Family of Samuel Ndei Kirima (Deceased)
 5. The Estate of Elizabeth Wanjiku Kirima (Deceased)
 6. Stephen Kamau Kirima
 7. Irene Njeri Kirima
 8. Wanjau Kirima
 9. The Estate of the Late Agnes Waruguru Kirima (Deceased)
 10. Maria Njeri Kirima
 11. Anne Wangari Kirima
 12. Jane Kirima
 13. Ruth Wanja Kirima
 14. Margaret Wanjiru Kirima
 15. Susan Wangari Kirima
4. LR Kajiado/ Kisaju/ 103 Totaling 39.536 acres. It is proposed to distribute 2.4 acres to each of the beneficiaries as per order of 30th October 2013, provision having been made for road and other amenities.
 5. Land reference No. 6825/2- Njiru measuring 472.5 acres. 236.25 to be shared equally among the beneficiaries with each beneficiary being allocated 14 acres, provision having been made for roads and other amenities
 6. Land Reference No. 6825/2 Njiru balance of 236. 25 to Wanjau Kirima
 7. Land reference No. 5908/8 measuring 506.4 acres to Wanjau Kirima



8. The Administrator makes the following proposal with regard to the rest of the estate
9. Loc.9/Kiruri/1075(6.24acres);
 - 2.499 to Wanjau Kirima and the balance to be held in trust by Wanjau Kirima for the entire family and retained as Family burial ground and house
 - b. Loc.9/Kiruri/T.175(0.1285acres)
Wanjau Kirima
10. Loc.9/ Kiruri /T.178(0.056acres)
Wanjau Kirima
 - c. Loc.9/ Kiruri /T.180(0.1285acres)
Wanjau Kirima
 - d. Loc.9/ Kiruri /T.181(0.13acres)
Wanjau Kirima
 - e. Loc.9/ Kiruri /T.179(0.31 acres)
Wanjau Kirima
 - f. Loc.9/ Kiruri /468 (17acres)
 1. Wanjau Kirima 12 acres
 2. Anne Wangari Kirima 1 acre
 3. Maria Njeri Kirima 1 acre
 4. Ruth Wanja Kirima 1 acre
 5. Jane Kirima 1 acre
 6. Susan Wangari Kirima 1 acre
 - g. Loc.9/ Kiruri /516 (10.4acres)
 1. 4 acres Stephen Kamau Kirima
 2. 1 Acre Alice Njeri Kirima
 3. 2 ¼ acres Estate of Fredrick Kamau Kirima
 4. 2 ¼ acres Estate of Samuel Ndei Kirima
 5. 1 acre Irene Njeri Kirima
 - h. Loc.9/ Kiruri /728/1(0.1acres);
Susan Wangari Kirima
 - i. Loc.9 /Kiruri /1074 (3 acres);
She proposes that the Estate relinquishes the asset to Peter Kuria Kirima.



- j. The Following assets are not available for distribution for the reasons indicated alongside as
 - i. Loc.9/ Kiruri /1082(1acre)- awaiting transfer from Irene Njeri Richu
 - ii. Loc.9/ Kiruri /728/1(0.1acres)- has pending litigation
 - iii. Loc.9/ Kiruri /860(12.503acres); - has pending litigation
 - iv. Loc.9/ Kiruri /830 (6acres); - has pending litigation
 - v. Loc.9/ Kiruri /127 (3.2 acres), - has pending litigation
- k. LR No. 5/27 Kabasarian (1.27 acres in equal shares to
 - 1. Jane Kirima
 - 2. Maria Njeri Kirima
- l. LR No. 209/12305 Likoni Lane (0.297 acres) in equal shares to
 - 1. Ruth Wanja Kirima
 - 2. Susan Wangari Kirima
- m. Nairobi, LR No. 209/9960-Kaloleni Estate (0.312 acres)
Margaret Wanjiru Kirima
- n. LR No. 209/2490/28- Ngara
Margaret Wanjiru Kirima
- o. LR No. 209/2490/29- Ngara
Jane Kirima
- p. LR 209/2490/47- Ngara area in equal shares
 - 1. Susan Kirima
 - 2. Ruth Wanja Kirima
- q. L.R. No. 209/1836 DURUMA in equal shares to
 - 1. Wanjau Kirima
 - 2. Fredrick Kamau Kirima
 - 3. Ruth Wanja Kirima
- r. LR No. 209/4348- Kirima House, Moktar Daddah
 - 1. 1/5th share to John Waweru Kirima
 - 2. 1/5th share to Fredrick Kamau Kirima
 - 3. 3/5th share to Ruth Wanja Kirima
- s. LR 209/2389/165-Pangani in equal shares to
 - 1. John Waweru Kirima



2. Fredrick Kamau Kirima
3. Anne Wangari Kirima
- t. LR No. 209/232/4- Tukika
Susan Wangari Kirima
- u. LR No. 209/5570- Luthuli
Irene Njeri Kirima
- v. LR. No 7785/40 Runda
Estate of Samuel Ndei Kirima
- w. LR No. 7785/43 Runda jointly to
 1. Estate of Fredrick Kamau Kirima
 2. Teresia Wairimu Kirima
- x. LR No. 307, Runda
Anne Wangari Kirima
- y. LR NO. 209/6057- Mbotela
Anne Wangari Kirima
- z. LR No. 11415 Kitisuru
Jane Kirima
- ab. LR. No. 209/2763/27 Gikomba Jointly in equal shares to
 1. Stephen Kamau Kirima
 2. Estate of Fredrick Kamau Kirima
 3. Estate of Samuel Ndei Kirima
- ac. LR No. 13765 (7.391 acres) and LR No. 13766
Block A & B to the following in Equal shares
 1. Maria Njeri Kirima
 2. Jane Kirima
 3. Margaret Wanjiru Kirima
 4. Susan Wangari Kirima
 5. Ruth Wanja Kirima
 Block C in equal shares to the following beneficiaries
 1. Irene Njeri Kirima
 2. Stephen Kamau Kirima
 Block D



Wanjau Kirima
Undeveloped Land on LR No. 13765/13766
Plot A Wanjau Kirima
Plot B in equal shares to
Irene Njeri Kirima
Stephen Kamau Kirima
Maria Njeri Kirima
Jane Kirima
Ruth Wanja Kirima
Margaret Wanjiru Kirima
Anne Wangari Kirima
Susan Wangari Kirima

- ad. LR No. 13763 And LR No. 13764
Wanjau Kirima
- ae. LR No. 209/4844/63 Mbotela
Jane Kirima
- af. LR NO. 209/ 6574 Jericho
Irene Njeri Kirima
- ag. LR NO 209/ 5640 Ngara in equal shares to
1. Maria Njeri Kirima
 2. Anne Wangari Kirima
- ah. LR No. 2019/11092/16 City Park
Irene Njeri Kirima
- ai. LR No. 209/11092/14 City Park
Stephen Kamau Karama
- aj. LR. No. 209/11092/15 City Park
Estate of Fredrick Kamau Kirima and The Estate of Samuel Ndei Kirima
- ak. LR No. 209/ 4401/ 513 & 514 Makadara
Anne Wangari Kirima
- al. LR No. 209/ 4401/ 521 & 522 Makadara
Susan Wangari Kirima
- am. Kitisuru NSSF Block 101/222 jointly in equal shares
1. Estate of Fredrick Kamau Kirima



2. Estate of Samuel Ndei Kirima
- an. LR NO. 7741/125 Kitisuru in equal shares to
1. Teresia Wairimu Kirima
 2. Alice Njeri Kirima
- ao. KITISURU NSSF House
Stephen Kamau Kirima
- ap. LR. No. 3734/ 264 Convent Drive- Lavington
1. Stephen Kamau Kirima
 2. Samuel Ndei Kirima
 3. Fredrick Kamau Kirima
- aq. LR No. 79/ 1 Kiambu (60 acres) in equal shares to
1. Maria Njeri Kirima
 2. Jane Kirima
 3. Ruth Wanja Kirima
 4. Susan Wangari Kirima
 5. Anne Wangari Kirima
 6. Margaret Wanjiru Kirima
 7. Wanjau Kirima
- ar. Maragua Farm
Estate of Samuel Ndei Kirima
- at. Timau Farm (30 acres)
Estate of Stephen Kamau Kirima (sic)
- au. It is proposed to share all the funds in the bank accounts equally
- av. Monies from government compensation – it is proposed to share this money equally once it is paid to the estate.
- aw. Shares Listed in private companies
- i. Kenda Investments Limited- shares held by the deceased to be shared equally to the following
Maria Njeri Kirima
Anne Wangari Kirima
Jane Kirima
Ruth Wanja Kirima
Margaret Wanjiru Kirima



Susan Wangari Kirima

The following shares which were gifted inter vivos should be considered-

1. Estate of Samuel Ndei Kirima 250 Shares
 2. Estate of Fredrick Kamau Kirima 250 Shares
 3. Teresia Wairimu Kirima 100 Shares
 4. Susan Wangari Kirima 7 Shares
 5. Anne Wangari Kirima 15 Shares
- ii. Wangu Investments Limited
- All shares held by the deceased to be distributed equally among the beneficiaries taking into account the gifted shares, so as to have equal shares
1. Teresia Wairimu Kirima 800 shares
 2. Fredrick Kamau Kirima 1000 shares
 3. Samuel Ndei Kirima 1000 shares
- ax. It is proposed to distribute the motor vehicles as follows
1. KAK 519 F Wanjau Kirima
 2. KAK 001C Maria Njeri Kirima
 3. KAH 001 E Teresia Wairimu Kirima
 4. KAL 001N Alice Njeri Kirima
 5. KAW 001 D Wanjau Kirima
 6. KAM 370 V Wanjau Kirima
 7. On provision for Grace Warwathia Kamau, she proposes that a lump sum payment of Kshs 5, 000, 000 be made to her to cater for her living expenses for her life time.
 8. She avers that in her proposed mode of distribution she has taken into account intermeddling of the estate by some of the beneficiaries and also the intervivos gift made.
 9. The particulars of intermeddling are set out in the report of the Administrator Anne Wangari Kirima dated 1st September 2015. The Applicant avers that the following persons have intermeddled with the estate of the deceased and have benefited from the same at the expense of the estate.
 - i. LR No. 5/ 27 Alice Kirima and Rachel Wachuka
 - ii. LR No. 209/6020 Ofafa, Rachel Wachuka and Catherine Njeri
 - iii. LR No. 209/ 2490/ 28 Catherine Njeri
 - iv. LR No. 209/ 6823/3 Kaloleni Catherine Njeri



- v. LR No 209/ 2788/3 belonging to Kirima Trust by Stephen Kirima
 - vi. LR No. 209/21/5-6 Amani belonging to Kirima Trust by Stephen Kirima
 - vii. LR No. 209/ 49/2 Mugumo Teresia Kirima
 - viii. LR No. 7106/2 Tumaini Teresia Kirima
 - ix. LR No. 7106/2 Face me Teresia Kirima
 - x. LR No. 7106/2 Embakasi Teresia Kirima
 - xi. LR No. 5908/8 and LR No. 6825/2 Njiru Teresia Kirima
- The Administrator further avers that the following assets are estate assets that were allegedly transferred to family members
- a. LR No. 3734/ 264 Lavington
 - b. LR No. 209/ 2763/ 27 Gikomba
 - c. LR No. 209/ 6057 Mbotela
 - d. LR No. 7785/ 40 Runda
 - e. LR 7785/ 43 Runda

8. The following are the Gift with vivos which according to the administrator should be considered in distributing the estate:

- 1. LR No. 7785/40 – Runda Nairobi (initially registered in the names of Fredrick Kamau and Samuel Ndei Kirima and later transferred to Samuel Ndei Kirima as a wedding gift);
- 2. LR 7285/307 – Old Runda (was originally registered in name of the deceased and transferred to Anne Wangari Kirima in 1998);
- 3. 7785/43 – Runda (registered in the name of Teresia Wairimu Kirima and Fredrick Kamau Kirima);
- 4. Gikomba – LR 209/2763/27 (initially registered in the name of the deceased in 1971 but transferred as gift in 1978 to Stephen Kamau, Fredrick Kamau and Samuel Nderi);
- 5. LR 209/6057 – Mbotela Commercial/residential (originally in the name of the deceased but transferred to Anne Wangari Kirima as gift in 1998);)
- 6. LR 3734/264 – Lavington (registered in the names of Stephen, Fredrick and Samuel);
- 7. LR 209/11092/14 – City Park Crescent, Parklands (registered in name of Stephen Kamau Kirima);
- 8. LR 209/11092/15 – City Park (Registered in the names of Fredrick Kamau and Samuel Nderi);
- 9. LR 209/11415 – Kitisuru bonding Northern by-pass (gifted to Jane Kirima as wedding present);
- 10. Block 101/222 Kitisuru (was purchased by the deceased on behalf of Samuel Nderi Kirima and Fredrick Kamau Kirima). the property was purchased from NSSF. The deceased paid deposit



on their behalf and continued paying mortgage. She asked the court that the beneficiaries be asked to account for this property;

11. The Maragua farm (was purchased by the estate on behalf of Samuel Nderi, when the deceased was not feeling well then). She asked the estate of Samuel Nderi to account for it;
 12. Farm at Thika – 30 acres (It was purchased for Stephen Kamau Kirima by the deceased). she asked the estate of Samuel Kamau Kirima to account for it;
9. The Administrator is categorical that the following assets belong to the Kirima Trust and are therefore not available for distribution.
1. Mugumo LR No. 209/49/2,
 2. Kirima Market LR 209/5639,
 3. Highridge LR No. 209/21/ 5 & 6
 4. Tuthu LR No. 209/2788/3
 5. 4th Parklands Avenue L.R. No. 209/2152/2
 6. Gymkhana L.R. No. 209/ 1584/ 1
 7. Kirima Market LR No.209/5637
 8. Dagoretti/Riruta/395
 9. Kibera Market LR No 62/ 776
 10. The Administrator lists the following as the liabilities to be provided for prior to distribution-
 1. First Force Security Kshs 4, 071, 378.68
 2. Senaca Limited Kshs 3, 824, 253. 00
 3. Kenya Revenue Authority to be advised
 4. Land rates to be advised
 5. Legal fees to be advised
 6. Refund for Kiambu Fencing Kshs 4.9 million
 7. Clifford Foster Accounting Fees Kshs 300,000
 8. She has also presented affidavit of Harrison Davis Muthura sworn on 14th June 2017 in support of his claim for Kshs 886,383.54 in relation to repairs to the house at Kabasarian.
11. The Co Administrator and some beneficiaries filed affidavits in Protest. In her affidavit Rachel Ndei states that LR No. Runda LR 7785/ 40 was given to them as a wedding gift and therefore is not part of the estate of the deceased. Further Gikomba LR 209/2763/27 was gifted to Stephen Kamau Kirima, the Late Fredrick Kirima and the late Samuel Ndei Kirima as ‘a reward for good stewardship’. Further she avers that Convent Drive LR 3734/264 does not comprise part the estate of the deceased as it was purchased directly by Stephen Kirima, Samuel Ndei Kirima and Fredrick Kamau Kirima.



12. Likewise, she avers that City Park LR 209/ 11092 /15 and Kitisuru Block 101/222 do not comprise the estate. She further states that the shares in Kenda Investments Limited and Wangu Investments Limited were direct purchases by the deceased and not gifts as alleged.
13. She contends that it is not true that they diverted estate money to purchase properties as alleged. She depones that her deceased husband collected rent from Block B Tumaini Estate with the consent of the deceased during his life time. She asserts that she was not consulted by the Administrator. In addition, she contends that the assets registered under Kirima Trust should be included for distribution. She has enumerated the assets under paragraph 14 of her affidavit. She has also sworn supplementary affidavit on 22nd November in which she reiterates the averments in her protest.
14. Jane Kirima and Margaret Wairimu (both daughters to the deceased) swore a joint affidavit of protest on 19th June 2017. They are agreed on list of beneficiaries of the estate as per consent order dated 30th October 2013. They do not agree that the Legal fees by the Administrator should be paid by the Estate. They aver that LR 209/ 6020 should be included as an asset of the estate and LR 209/11415 should be excluded as it was acquired by the government.
15. They do not agree with the mode of distribution and urge that the estate should be distributed equally among all the 15 beneficiaries. They challenge the assets included as gifts and ask the Administrator to prove the same. They challenge the transfer of properties to Kirima & Sons Ltd, charging that the same was fraudulent. They have made proposals on how the Trust should be managed, with Jane Kirima proposing that she be nominated as a Trustee and Margaret Wanjiru proposing that the assets be distributed equally among the beneficiaries so that each beneficiary creates their own trust.
16. They agree that Kiambu LR 79/1 should be distributed to the children of Agnes Waruguru Kirima (deceased) and that Jane Kirima be allocated that parcel of land as she is currently using it as a prayer centre.
17. With regards to the shares, they state that the same should be distributed to the Beneficiaries in accordance with the Order of 16th December 2014. With regard to Kajiado and Kariobangi, it is proposed that the same be distributed as per partial confirmation order distributing the same equally among the beneficiaries.
18. They aver that the Co- Administrator have not been depositing the rent from the Tumaini property into the Estate account and that this benefit should be taken into account in distributing the estate. In addition to Teresia Wairimu they allege that Alice Kirima, Stephen Kirima, the Family of Fred and Sam are intermeddling with the estate and that the benefit that they have enjoyed should be considered in distribution.
19. It is contended that the Administrators are diverting rental income from Safaricom and Access Kenya.
20. They further aver that money received for the parcels of land that were compulsorily acquired should be divided equally among the beneficiaries when it is paid.
21. On distribution it is proposed that each beneficiary should be allocated a home to share with their families. The deponents also contend that the Administrators have not effectively carried out their responsibilities and that their allowance should be reduced to Kshs 50000
22. Vide affidavit sworn on 27th June 2017, Catherine Njeri Kirima also opposes the Summons. She denies allegations of misappropriation made against her husband, Fredrick Kamau Kirima (Deceased). She states assets belonging to her husband's estate have been wrongly included herein, these include



1. LOC 9/ Karuri /468 which was offered by the deceased to her late husband and his brother Samuel Ndei Kirima (deceased).
 2. LR NO. 209/1836 (owned jointly by estate of the deceased and Fredrick Kamau Kuria (deceased) and John Waweru Kirima
 3. LR No. 209/4348 (Kirima House) the deceased, John Waweru Kirima and Fredrick Kamau Kirima (deceased)
 4. LR No. 209/2389/165 (Pangani) the deceased, John Waweru Kirima and Fredrick Kamau Kirima (Deceased)
23. She denies that the following were gifts inter vivos and avers that they were acquired independent of the deceased
1. LR No. 7785/ 43 (Runda) registered in the name of her deceased husband and Teresia Wairimu Kirima
 2. LR No. 3734/ 264 (Convent Drive), registered in the name of her deceased husband Stephen Kamau Kirima and Fredrick Kamau Kirima
 3. LR No 2019/ 11092/14 (City Park) states this property is jointly owned by Fredrick Kamau Kirima and Samuel Ndei Kirima. (both deceased)
 4. LR No. Block 101/222 (Kitisuru NSSF) property jointly owned by Samuel Kamau Kirima and Fredrick Kamau Kirima (both deceased)
 5. She also avers that the shares owned by the deceased husband in Kenda Investments and Wangu Investments were purchased by him and not a gift as alleged.
24. Alice Njeri Kirima has sworn affidavit of protest on 28th June 2017. She challenges the mode of distribution as proposed in the Summons of Confirmation as in her view it has failed to consider the number of members of each household and further the schedule has failed to provide the true value of the properties of the Estate.
25. She has enumerated the properties that should be included in the estate of the deceased, under paragraph 7 of her affidavit. Liabilities are –
1. Kenya Revenue Authority
 2. Commissioner of Land in respect to Land rent
 3. Rates to Nairobi City County
 4. Fees to Mulekyo & Co. Advocate
26. She proposes that compensation from the government for Kariobangi and Kitusuru be set aside to cater for the estate liabilities and the balance after settlement to be shared equally among the beneficiaries.
27. On distribution she proposes that Kiambu 79/1 be divided in the manner set out in the manner set out at paragraph 8 to all the beneficiaries.
28. She further proposes that a trust be set up with respect to the Estates of Frederick Kamau Kirima and Sam Ndei Kirima for their shares to be directed and managed for the benefit of the children.
29. She excludes the properties under paragraph 11 and gives reasons and proposes that the distribution be deferred until conclusion of the Court cases.



30. With regard to Loc. 9 / Kiruri/1075, Loc. 9/ Kiruri 516 and Loc. 9/ Kiruri /468 she proposes that since these are ancestral lands, the same should pass to Wanjau Kirima, Stephen Kirima and Fredrick Kirima and Samuel Ndei in accordance with the wishes of the deceased.
31. With regards to LR 13763 and 13764 she proposes that it be distributed in accordance with letter signed by the deceased and addressed to Kahai & Kiai Advocates dated 14th May 2007, which provides for the following
1. Portion A measuring 0.6550 Ha to Samuel Ndei Kirima
 2. Portion B measuring 0.6550 Ha to Austin Kamau Machira
 3. Portion C measuring 0.6550 Ha to Teresia Wairimu Kirima
 4. Portion D measuring 0.6100 Ha to Caroline Wanjiru Aura
 5. Portion E measuring 0.6550 Ha to Stephen Kamau Kirima
 6. Portion F Measuring 0.450 Ha John Muthui Kamau
 7. and that this allocation be accommodated in the 40 % share in Kirima & Sons Limited.
32. She contends that LR 209/ 4844/16 and LR 209/ 4844/48 although registered in the name of Agnes Waruguru (deceased) belong to the deceased. She proposes that the land remain in her name. She however contends that she cannot get a share of the deceased's estate as she pre-deceased him and was not a dependant at the time of her death.
33. She also avers that LR NO. 209/ 11414 and LR No. 336 were acquired by the government and the family is awaiting compensation. Her proposal for distribution of the motor vehicles and machinery is set out in paragraph 18 of her affidavit. She has made a proposal that the shares in Kenda and Wangu Investments Limited be shared equally among the beneficiaries.
34. She proposes that the individuals get the following assets
1. Maria
LR 209/21/5 & 6 Amani
LR 209/ 4401/513,514,521 and 522 Hamza
79/1 Kiambu
LOC 9/ Kiruri/ T175
 2. Wanjau
LR No 2389/ 165 Pangani
79/1 Kiambu
Loc. 9/ Kiruri/ T178
Loc. 9/ Kiruri/ T181
Loc. 9/ Kiruri/ 1075
 3. Gathoni
LR 209/ 2152/2 4th Parklands
79/1 Kiambu



- Loc. 9/ Kiruri/ T178
Tukika 209/232/2
4. Ruth
209/5570 Luthuli
79/1 Kiambu
Loc. 9/ Kiruri/ T181
5. Wanjiru
709/5640 Kirima Market
209/2490/47- opp Ngara Girls
79/1 Kiambu
Loc. 9/ Kiruri/ T180
6. Ann
209/2783/3- Kumasi Road
LR 209/21/5 & 6 Amani
79/1 Kiambu
Loc. 9/ Kiruri/ T1082
7. Susan
209/5637- Off ring road Ngara
209/5639- Kirima Market
LR 209/ 4401/92 Hamza
Loc. 9 9/ Kiruri/ T728/1
8. Agnes
209/12305- Likoni Lane, Kilimani
9. Teresia
79/1 Kiambu
Embakasi LR13675
10. Alice
79/1 Kiambu
Embakasi LR13674
LR No. 5/27 Kabasarian Close
11. Fred
1/3rd Duruma Road 209/1836
3/5th 209/4348 Kirima House



209/2490/29- Ngara
79/1 Kiambu
Loc. 9 / Kiruri/T468- Near R. Mathioya
LR. 209/2490/28 Ngara

12. Sam
209/2490/29- Ngara
209/9960- Kaloleni
79/1 Kiambu
LR No 5/27 Kabasarian Close
Loc. 9/ Kiruri/T468- Near R. Mathioya
209/6020- Ofafa Maringo
13. Wanjiku
Embakasi LR13675
14. Irene
Dagoretti/ Riruta/ 395
209/4844/ Mbotela
79/1 Kiambu
15. Steve Kirima
209/49/2 Mugumo
209/6574 Jericho Road
Loc. 9/ Kiruri/T516
16. Grace
Kshs 100,000,000
35. The Co Administrator Teresia Wairimu filed an affidavit of protest on 27th June 2017. She laments that the co Administrator did not reach out to her so that they would present a joint Summons.
36. She states that she has a life interest in the net intestate of the deceased. On motor vehicles, she states mv KBN 100N is used by James Njuguna, while she is in possession of KAK 519 F and KAH 110E. She enumerates the assets of the deceased in paragraph 23 of her affidavit.
37. She supports the Application of Catherine Wanjiru Njau. She seeks time to consult with the advocates and then advise.
38. Wanjau Kirima's affidavit of protest is sworn on 27th June 2017. He is opposed to Teresia Wairimu being confirmed as an Administrator. He avers that the administrators have not listed assets of the deceased that were in the UK.
39. He observes that LR No. 209/5570 has not been included and it is land he owned jointly with the deceased. He says that in distribution of assets owned jointly between him and the deceased only the



- deceased's share is available for distribution. He states that in principle he concurs with the proposed mode of distribution except when it touches on property in which he is a joint owner.
40. Stephen Kirima has sworn supplementary Affidavit on 23rd October 2017. He is on all fours with Wanjau Kirima with regard to exclusion of some properties. He avers that the provision made for his mother is not adequate. He confirms that Loc. 9/ Kiruri/ 516 was gifted to him by the deceased. He reiterates that the property at Convent Drive was owned jointly by him, Fredrick Kamau and Sam Ndei (both deceased).
 41. In support of his claim to a portion of Kiambu 79/1 he has attached decision in ELC No. 440 of 2018 (Nairobi). It is his contention that LR No 79/1 Kiambu no longer exists.
 42. The Applicant has sworn the following further affidavits in response to the Protestors
 1. Affidavit sworn on 8th September 2017 in response to the Affidavit of Alice Njeri Kirima sworn on 28th June 2017
 2. Affidavit sworn on 8th September 2017, sworn in response to the Affidavit of Wanjau Kirima sworn on 27th June 2017
 3. Affidavit sworn on 18th September 2017 in response to the Application of by Catherine Wanjiru Aura dated 20th June 2017. She denies that the Applicant is a dependant as claimed
 4. Affidavit sworn on 8th September 2017 in response to affidavit of Protest sworn by the Jane Kirima and Margaret Wanjiru Kirima
 43. The matter proceeded to hearing by way of viva voce evidence with the following testifying on diverse dates.

Summary of Viva Voce Evidence

44. Anne Wangari Kirima Isaac Lenaola J (as he was then), appointed her, James Njuguna Kirima and Samuel Nderi Kirima as an interim administrators of the estate on 14/6/2010. Samuel Nderi passed away on 23/6/2011 and Alice Njeri Kirima was appointed to replace him. On 30/10/2013, the court appointed her and Teresia Wairimu as co administrators of the estate of the deceased.
45. She enumerated assets of deceased as set out in the summons, including gifts, those who she considers to have intermeddled with the estate and her proposed mode of distribution. She stated that assets in the name of Kirima Trust are not part of the Estate
46. In cross examination she stated all assets were registered as GK Kirima. Occasionally he would register jointly with his sons. The deceased 100% funded the purchase of the properties. There was no single asset in his name and that of Teresia. They realized that the Tumaini property had been transferred to Teresia after the deceased's death.
47. Rent from Tumaini is deposited into the account of Chopis General Investment Ltd which is owned by Teresia Wairimu, Samuel Nderi and Rachel Wachuka. The deceased purchased most of the properties before he married Teresia. The property in Tumaini was purchased in 1968 in the name of Gerishom Kamau Kirima and John Gerishom Kamau trading as Kirima & Sons. Kirima & Sons was a partnership of the deceased, her late mother and her brother who was 11 years old then.
48. According to her, gift intervivos are assets that the deceased bought but registered in the names of someone else. He put them in their names, in trust for the rest of the family. During re-examination, she stated that her retaining the property in Kabesarain will not affect the mode of distribution. She



only recognises Agnes as a beneficiary because of the property registered in her name that initially was registered in the deceased's name. The other beneficiaries should be allocated the properties registered in their names. Anne received a house in Runda which was not availed for distribution. The table of proposed distribution includes properties that were gifted to certain beneficiaries.

49. Alice Kirima She relied on her affidavit of protest as her evidence in chief. She disagreed with the mode of distribution proposed by Anne. According to her, the first family gets the bulk estate. She proposes that she should be allowed to keep Kabasarian property, L.R. No. 5/27. She omitted the properties in Gikomba and Convent Drive which are registered in the names of Fredrick, Samuel and Stephen Kirima. L.R No. 209/4348 Moktar Daddah property is not a trust property. It belongs to Fred, Wanjau and the deceased. Properties registered in Kirima & Sons Ltd are not available for distribution.
50. The ancestral land in Kiruri should be allocated to Stephen, Fred and Samuel because they are already in occupation. The Kiambu property should be shared amongst the children of Agnes. The trustee has never been operational. Anne Kirima is the only surviving trustee, there is need to appoint other trustees. Anne Kirima and John Njuguna collected rent for one year from the deceased's estate.
51. She proposed that the motor vehicles be distributed to whoever is in possession. The pending liabilities of the estate is land rates and KRA dues. Rent from the properties registered under the trust are collected and deposited into a CBA account.
52. During cross examination, she stated that Grace Warwathia was not a dependant of the estate but she should be provided for. Stephen, Fred and Samuel collect rent from the Kiruri property. She proposes that the 40% in Kirima & Sons Ltd belonging to the deceased should be distributed among the beneficiaries.
53. Rachel Wacuka has intermeddled with the properties in Kabasarian close, Ofafa Lavington, Gikomba, Mbotela, Runda. James Njuguna is also a surviving trustee of the Kirima & Sons Ltd. Due to his old age, Anne runs the trust alone. The remainder of L.R. No. 336/39 Kariobangi should be shared equally among all the beneficiaries. Catherine Kirima, the wife of Fred Kirima operates a butchery in one of the properties belonging to the estate. The Kirima Trust makes up 70% of the estate. According to her, the trust should end and the properties be distributed among the beneficiaries. Irene collects rent from 209/5570 – Luthuli Avenue.
54. Anne has access to LR 209/3438 (Moktar Daddah Property) registered in the name of G.K. Kirima and Fredrick. She collects the rent from tenants. Gathoni operates a church in Kiambu which is registered in the name of G.K Kirima. Gathoni and Maria have access to that property. Gathoni does not pay rent to the estate. She also collects rent from the office. The vehicles with Sam has are business vehicles. Maria has not surrendered motor vehicle registration number KAK 001 C, which belongs to the estate.
55. According to Anne, the projected rent collections for G.K. Kirima were Kshs.18 m per month. The rent reduced during her tenure. Anne and James managed the estate when the deceased was alive. She began getting involved in the rent collection in 2011, December.
56. Clauses 4 (8) of the Trust Deed deals with appointment /removal of Trustees. None of the Trustees who have died has been replaced. There have been 2 Trustees since 2011. She is not aware of any properties that are maintained by the trust or any investment. She is also not aware of any beneficiaries that have benefited from the Trust. She does not know where the monies collected by the Trust go.
57. TERESIA WAIRIMU She told the court that she was the wife of the deceased and an Administrator of the Estate of the deceased. She adopted her Affidavit in Protest dated 27th June, 2017 and filed on 28th June, 2017 as her evidence in chief. Her evidence was that, she got four children with the deceased,



- three of them are deceased. She lived with the deceased in Njiru then moved to Kitusuru. She lived with the deceased until his death. She contributed towards the development of the Njiru home. The deceased had two other wives; the mother of Anne and Steve. Agnes Waruguru (Anne's mother) lived in Kiambu. Agnes had 7 children. The second wife had 2 children Agnes moved into her house in Kitusuru and lived with her for almost 10 years.
58. She told the court that she worked in the construction business with the deceased and operated the slaughter house in Njiru which was registered in her name. The slaughter house is not running because of conflict related to the estate of the deceased. The farm has been invaded thus she is unable to access the slaughter house. Squatters moved into the farm after the deceased's death.
 59. Plot No. 778543 situated in Runda is registered in her name and Fredrick. The property was acquired through her effort. The plot in Gikomba is registered in the name of Steven, Samuel and Fred. The deceased gifted his sons in recognition of their hard work. Convent Drive is registered in the name of Steven, Sammy and Fred. The property was gifted to them in appreciation of their hard work. Kitusuru/ NSSF is registered in the name of Steven and Fred. This did not belong to the deceased. She identified it and bought it for her sons.
 60. She is not aware that the plot in Mbotela is registered in the name of Agnes. She has no objection to it being allocated to her. Regarding the land in Kiruri Block 9/1075 Murang'a which is a family burial ground and family home, it belongs to all the families. She is opposed to the land going to Wanjau. Wanjau, Steven and herself were given a portion of the land.
 61. She is opposed to the land in Njiru being allocated to Wanjau alone. Everyone in the family should get a share. Agnes Waruguru was settled on the land in Kiambu LR No. 79/1(measuring 60 acres). It is an agricultural land. she has built a home on that portion. The deceased executed a Will in which he distributed to all his children. The children of Agnes should be apportioned where the house stands while the remaining portion should be distributed equally to other beneficiaries including her.
 62. Agnes' children should get a share in LR 336/339 – Kariobangi and the Mbotela property. Teresia should account for all the motor vehicles. Wanjau forcefully took motor vehicle registration number KAK 519F from her. She is in possession of Mercedes KAH 001C, KNB 737, KTN 857 and KUN 144 which are in her possession but not in a good condition. She denied having knowledge or operating the accounts in CFC Stanbic Bank and Barclays Bank. The list of properties in item 12 should be distributed to all the beneficiaries. If the property is to be sold every person should be allowed to sell to whomever they choose.
 63. Kirima & Sons Limited (Tumaini) was formed by herself, the deceased and Sam (deceased). The order by Maraga Judge (as he was then) on 21st October, 2011, stated that the estate was separate from the company. She had no obligation to deposit the rent. Tumaini was managed by salaried employees. Maintenance cost is paid out of the company. Alice has not paid for rent and maintenance of the property.
 64. The deceased registered a trust whose objective was to develop properties and provide for education. The trustees were James (her brother in law), Anne, Sammy and Fredrick. Fredrick and Sammy have since died. James is not available. The dead trustees have never been replaced.
 65. As an Administrator, she has not been furnished with accounts of the trust. She is not aware of any developments to the properties of the deceased. She is also not aware of any properties that are maintained or run by the trust. She maintains the properties listed in the schedule belong to the deceased. She proposes that all the properties even those registered under the trust be distributed amongst the beneficiaries.



66. 40% of the rent she collects is used to manage the estate. The rest is deposited into a bank account. The deceased gifted her land in Embakasi where she has constructed a house. Stephen and a secretary also got a share. The property listed on page 9-10. (paragraph E of the Affidavit) were constructed before the deceased died. She constructed single rooms with her resources. It is not among the assets that she collects rent from the estate of the deceased. she stated that the estate has the following liabilities: legal fees and KRA debt approximately Kshs. 364 million.
67. On cross –examination, she stated that she should be considered a wife of the deceased. Her proposal of distribution provides for all the beneficiaries. At some point sent back to her home in Nyeri. Grace was provided for as a beneficiary but not a wife. Elizabeth Wanjiku was a daughter of the deceased living with a disability. She was not married and she did not have any children. According to her, Elizabeth is a beneficiary because she died after the deceased’s death. Elizabeth’s share should vest in her mother. The consent of 30th October 2013 recognizes her as a beneficiary. Amani House is owned by Kirima Trust. The tenants pay rent to the CBA Account. The house in Fedha estate is registered in her name. It is not true that the house was transferred to Stephen Hilary Ngonyani. He was her tenant. He sued her in ELC 1262 of 2016 but she won the case.
68. She shared her proposal for distribution as per schedule attached to her affidavit. Catherine Kirima the wife of Fredrick Kirima runs a bar on LR 209/2790/28 – Ngara. Catherine and Rachel took over LR No. 209/6020-Jericho Nile Road Ofafa which is registered in the name of the deceased.
69. The deceased’s share in LR 209/4348 should be shared among all the beneficiaries. The 1st house manages and collects rent from this property. Rent collected should be shared equally among all the beneficiaries.
70. She proposes that Grace be given Kshs. 100,000,000(100 million) for her subsistence. The main source of income of the estate is from rent. She has not availed receipts to show expenses in maintaining the properties of the estate.
71. Stephen Kirima His evidence was that, according to the Succession Act, distribution should be by houses. The proposal in the summons does to reflect this. The values of the properties are not taken into account in the proposal.
72. The proposal allocates property worth Kshs. 3 billion to Wanjau and the rest get property worth about Kshs. 100m. His evidence was that, the provision for Grace Warathia was not adequate. The property in City Park 209/11092/16 which has been allocated to Irene has a dispute on ownership.
73. He opposes the proposal by Anne Wangari as it includes assets that are not part of the estate. All the liabilities of the estate have not been considered and a proposed on how they will be settled. The estate has not been properly run resulting in substantial losses. He agrees with the mode of distribution proposed by Teresia.
74. He is not opposed to Catherine getting her gift. He stated that the grant should be revoked because there is no accountability. He suggests that both administrators should be removed. The transfers were legitimate.
75. Catherine Aura. She told the court that the deceased was her uncle. She was worked as a secretary for the deceased for over 24 years. She also worked as his personal assistant and supported the deceased in managing his property. The deceased gifted her Embakasi 13763 and 13764 in the presence of his family members. The deceased also gifted her a plot in Kiambu measuring 0.2023 ha.



76. Jane Gathoni Kirima. She adopted the following as her evidence in chief: affidavit of protest dated 19th June, 2017, proposal dated 21st June, 2019, amended submissions filed on 16th July, 2021, schedule of orders dated 20th March, 2023 filed by Wambugu Advocates, a beneficiary forum proposal for distribution dated 14th July, 2016 and the 3 volumes of the legend report. Her evidence was that she sourced properties that the deceased acquired and facilitated their purchase. These include convent drive, Gymkhana, 4th Parklands Avenue, Dagoretti Road, Likoni Road State House.
77. The properties of the estate comprise those under G.K. Kirima, Kirima Trust and Kirima & Sons Ltd. She does not agree with the management of the Trust. Ann and James Njuguna are surviving Trustees. The properties under Kirima & Sons should be available for distribution. She told the court that the deceased gave her LR 209/11415 – Kitisuru as a wedding gift.
78. All the rent is not being banked into the estate account. The Administrators have allowed some beneficiaries to illegally occupy some assets, depriving the estate of rental income. These include the Kabarsian Properties occupied by Alice and Rachel, the property in Likoni occupied by Irene, the Convent Drive in Lavington which was once occupied by Rachel, Steven, Fred and Sam are collecting rent from Gikomba and from 3 properties in Convent Drive Lavington. Steve has built several rental units at Embakasi notwithstanding Court orders barring him from doing so. Maria collects rent from Moktar Daddah property. Teresia and her daughter Alice collect rent from Tumaini Estate (Flagship Development) direct into their account. Anne Wangari Kirima is currently collecting rent from the Runda Property. Teresia Wairimu is also collecting rent from a property in Runda jointly owned with Fredrick.
79. The rents are paid into personal accounts depriving the estate of income at the expense of beneficiaries not occupying estate property. Rental income for Satellite dishes from Safaricom and Access Kenya are paid into the accounts of the Administrators. (Teresia, Alice and Anne). The payments received for compensation from Athi River Sewage Company Limited in excess of Kshs.5m was paid to Anne Wangari Kirima. This was not paid to Estate Account.
80. On the Gifts inter vivos, she only agrees with the gift to Samwel Ndei Kirima which was given as a wedding gift. She does not agree with gift LR 7785/307 in Runda to Anne Kirima. The Legend Valuation report volume 2 item 40 states the property was transferred to Anne on 18th July, 1998 for Kshs.8m. It was either a gift or purchased. The 3rd property LR 7785/43 in Runda was transferred to Fredrick and Teresia when Fredrick was a minor.
81. She asked the court to adopt her proposed mode of distribution dated 21st June, 2019. She argues that her proposal caters for the 15 beneficiaries so that each gets equal rental income.
82. The current administrators should be removed and be replaced. They have reduced the value of the estate. There has been in gross mismanagement of the Estate. The Administrators have also intermeddled with the estate. She proposes that Wanjau and Margaret should replace them as administrators. She is willing to be an administrator if Wanjau is not willing to be an administrator. Currently, there are 38 orders that are yet to be complied with.
83. At the conclusion of the hearing the parties filed written submissions.

Summary of Submissions

84. The Submissions of Anne Wangari are dated 20th May 2021, 9th September 2024 and supplementary submissions dated 12th February 2025. The Administrator identifies the following to be the issues for determination



1. Who are the beneficiaries of the Estate?
 2. Whether Catherine Wanjiru Aura has proved her claim as a dependant of the Estate?
 3. Whether Catherine Aura has proved her claim of gifts, inter vivos and what orders should issue?
 4. Whether any assets or properties of the deceased were gifts, intervivos, and if so, how should they be dealt with during distribution of the Estate? And;
Whether the assets in the names of Gerishon Kamau Kuria, Grishon Kirima, Gershon Kamau Kuria, Gereshon Kamau, John Gerishon Kirima and John Waweru Kirima are Estate properties and;
Whether Jane Gathoni Kirima prove (sic) her claim over the Kiambu Property
 5. Whether the validity of the incorporation of Kirima & Sons Limited can be determined in these proceedings, and whether its assets should be distributed in the cause?
 6. Whether the assets for the registered trustees of Kirima Trust form part of the assets for this Estate and what orders should issue with regard to the said assets?
 7. What the Estate of G.K Kirima Comprises of
 8. Whether there are liabilities to the Estate and if so, to what extent and how should they be settled?
 9. Distribution of the Estate
 10. Whether Teresia Wairimu should be confirmed as an Administrator of this Estate?
85. On the 1st issue, it is submitted that the issue of the beneficiaries of the Estate was resolved by consent of 30th October 2013. It is submitted that with regard to Elizabeth Wanjiku the Court should find that she was not a dependant of the deceased as she predeceased the deceased, was not married did not have children, was not working, had a medical challenge and was wholly dependant on her parents.
86. It was submitted that there were no letters of Administration in respect to the estate of Elizabeth Wanjiku and that therefore and therefore her share of the estate cannot vest in Teresia Wairimu. Reliance was placed on the decision in *Rajesh Pranjiyan Chudasama vs Sailesh Pranjivan Chundasama* [2014] eKLR.
87. On the 2nd issue as to whether Catherine Wanjiru Aura has proved her claim as a dependant to the Estate? It is submitted that she has not brought her claim within the boundaries of Section 29 of the *Law of Succession Act*
88. On the 3rd issue Whether or not Catherine Wanjiru Aura has proved her claim of gifts, inter vivos and what orders should issue? It is submitted that the claim by Catherine to having been gifted a portion of LR No.s 13763 and 13764 must fail as the property is registered in the name of Kirima & Sons Limited and therefore does not comprise part of the estate. Reference is made to the decision in *Salomon vs A Salomon & Co. Limited* [1896] UKHL.
89. It is further submitted that her claim to have been gifted a portion of LR No. 79/1 Kiambu must fail as there is no evidence to show that the deceased sub divided the land and further the transaction to convey to her the gift was not completed. Reference is made to the decision in *Estate of the Late Gideon Manthi Nzioka (Deceased)* [2015] KEHC (KLR) and re *Estate of Chesimbili Sindani (Deceased)*



- [2021] KEHC 6616 (KLR) where the Court stated gifts inter vivos must be completed for the same to be valid. For these reasons it is submitted her claim must fail.
90. The Administrators urge that she should be found guilty of intermeddling and account both to the Directors of Kirima & Sons Limited and the Estate.
 91. The Administrator submits that the claim by Jane Gathoni to the Kiambu Property must also fails it does not meet the established test of a gift inter vivos.
 92. On the 4th issue it is submitted that in accordance with Section 42 of the *Law of Succession Act* on distribution of the estate of a deceased the Court must consider any gifts to beneficiaries of the Estate.
 93. With regards to the various names, it is submitted that all these names are names of the deceased and reference the decision in Environment and Land Case No. 1257 of 2014 (OS), John Otieno Obade & 299 Others vs Teresia Wairimu Kirima & Anne Wangari Kirima consolidated with ELC Case No 252 of 2010 (OS), ELC No. 509 of 2014, ELC No. 1496 of 2013 , ELC No. 1496 of 2013 and ELC No. 850 of 2014.
 94. The 5th issue is whether the validity of the incorporation of Kirima & Sons Limited can be determined in these proceeding and whether its assets should be distributed in this cause? It is submitted that there is uncontroverted evidence that the properties registered in the name of the Company were acquired solely by the deceased and that further even though the incorporation of the Company is disputed, the memorandum of Association show he was a majority shareholder. The Administrator therefore seeks that this Court invalidates the transfer of partnership or in the alternative the Court find that the deceased's shareholding ought to be 60%.
 95. The 6th issue is whether the assets registered in the name of Kirima Trust form part of the assets of the Estate. It is submitted that the Kirima trust is a separate legal entity and the assets of the trust are not available for distribution.
 96. The 7th issue is what the Estate of GK Kirima comprises of. The Administrator lists the following assets as belonging to the Estate; Loc 9/ Kiruri/1075; Loc 9/ Kiruri/T175; Loc 9/ Kiruri/T178; Loc 9/ Kiruri/T180; Loc 9/ Kiruri/T181; / Loc 9/ Kiruri/T179; Loc 9/ Kiruri/468; Loc 9/ Kiruri/516; Loc 9/ Kiruri/728/1; Loc 9/ Kiruri/860; Loc 9/ Kiruri/127; LR No. 209/ 5570 (½ share); LR No. 209 /5640; LR No. 209/2940/47; LR No. 209/2940/29; LR No. 209/6574; LR No. 209/12305; LR No. 5/27; Kajjado/ Kisaju/ 103; LR No. 209/2490/28; LR No. 209/6020; LR No. 209/4844/63; LR No. 209/4401/192; LR No 209/4401/192; LR No. 209/ 11092/16; share in LR No. 209/1836; share in LR No. 209/4348; share in LR No. 209/2389/165; LR No. 7741/125; LR No. 79/1; Land Reference No. 336/39; LR No. 209/5570.
 97. Additionally, the deceased had motor vehicles, lorries and other equipment. Regarding the shares that the deceased held it is submitted that following consent orders that issued on 16th December 2013, it was agreed that the shares be shared equally among the beneficiaries.
 98. In addition to the shares there has been a partial distribution of the estate in reference to the following assets LR No. 5908/8; Land reference No. 6825/2; Land reference No. 336/39; Kajjado/ Kisaju/103.
 99. The 8th issues address the liabilities of the estate. The Administrator notes that only the net estate is available for distribution. Reference is made to the decision in Re Estate of Mukhobi Namonya (Deceased) [2020] eKLR. The respondent recommends that LR No. 13763 be sold and the proceeds therefrom be used to settle all Estate Liabilities.



100. It is submitted that as at 26th February 2018, the liabilities amounted to Kshs 32,341,746.89. The liabilities include Valuation fees, Legal fees, Refund to Beneficiaries for fencing, Senaca EA, First Force Security Services Limited, Kenya Revenue Authority; Land Rates and Land Rent. It is also submitted that there are at least 13 Court cases pending against the estate and that provision should be made for their settlement.
101. It is further suggested that the Estate meet the Costs of transmission to each of the beneficiaries.
102. The Administrator has made proposal on the distribution of the Estate and proposes that the following factors are for consideration when distributing the estate
1. Gifts inter vivos made to some beneficiaries
 2. Intermeddling by some of the beneficiaries
 3. The Contribution of Agnes Waruguru in acquiring some of the assets in the deceased estate
103. The final issue is whether Teresia Wairimu should be confirmed as an Administrator. It is submitted that she should not be confirmed. It is proposed that Anne Kirima and Stephen Kirima be confirmed as Administrators of the Estate and the grant issued in favour of Teresia Wairimu be revoked. Reasons given are that she has consistently failed to comply with court orders to the detriment of the estate and beneficiaries. Further owing to her inaction, the Deputy Registrar has been executing documents to give effect to Court orders. That she has intermeddled with the estate therefore not acting in the interests of the estate. That notwithstanding that she stated the Estate had a 40% share in Kirima & Sons Limited she had failed to pay any dividend to the Estate.
104. It is therefore proposed that if the Court confirms Teresia Wairimu as an administrator then the Court direct that distribution be concluded within a particular time and in default the grant be revoked.
105. In conclusion it is submitted that the Costs of the Administrator be borne by the estate.
106. In her Supplementary Submissions dated 12th February 2025, she takes issue with the Special grant issued to both Teresia Wairimu and Alice Njeri in respect to the estate of Elizabeth Kirima and urge that the document be expunged. She reiterates the need of the Court to safeguard the interest of the Estate in its determination of payment of costs.
107. She submits that the Court does not have the requisite jurisdiction to determine disputes relating to the Trust or its properties. It is reiterated that Teresia Wairimu should be directed to avail accounts of the Kirima & Sons Company and further that the properties in the name of Agnes Waruguru do not form part of the estate of the deceased.
108. The claim by Jane Gathoni to Kiambu 79/1 as a title is challenge and submitted that the claim must fail. It is submitted further that no evidence has been placed before Court in support of her claim for reimbursement for works on the parcel of land. The Administrator submits that all gifts made to beneficiaries when they were minors are void and those assets should revert to the Estate.
109. It is stated that by the time LR No. 209/11415 was compulsorily acquired it was already in the name of Jane Gathoni. It is denied that Anne Wangari has been intermeddling with LR No. 7785/307 as this asset was transferred to her in the life time of the deceased.
110. The sums paid to the beneficiaries on account of school fees, should be considered in distribution. It is submitted that the costs of Anne Kirima as Administrator should be made by the Estate.



111. In response to the submissions by Wanjau Kirima, it is submitted that LR No 209/5570, LR No. 209/1836, LR No.209/4348, LR No 209/2389/165 should revert to the estate as the co-owners were minors at the time of registration and therefore these transactions were a nullity and voidable. It is further submitted that Wanjau Kirima failed to prove his claim to half share of LR No. 6825/ 2 and LR No. 5908/8 and that therefore the entire parcel should revert to the estate for distribution among the beneficiaries.
112. In response to the submissions by Stephen Kamau Kirima, Grace Warwathia and Irene Karima, it is reiterated that the portion that Catherine Wanjiru claims is registered in the name of Kirima & Sons Limited and therefore not available for distribution in the estate. It is further submitted that no basis exists for considering Grace Warwathia as a 3rd House.
113. In response to the Submissions by Catherine Macharia on behalf of the Estate of Fredrick Kamau, it is submitted that Nairobi Block 101/222 and LR No. 3734/264, LR No.7785/43, LR No. 209/2763/27 are gifts and should be factored in distributing the estate of the deceased.
114. It is also submitted that LR No. 209/1192/15 was registered in the names of Samuel Ndei Kirima and Fredrick Kamau Kirima when the two were minors and that the transfer should therefore be nullified and the asset revert to the estate.
115. In response to the submissions on the estate of Agnes Waruguru, it is submitted that the rents collected from her constitute an Estate liability.
116. Teresia Kirima and Alice Kirima filed joint submissions dated 28th November 2024. The following are the issues framed for determination
1. Who are the beneficiaries to the Estate of G.K. Kirima?
 2. What comprises the Estate of G.K.Kirima?
 3. How should the Estate be distributed among the beneficiaries?
 4. What amounts to liabilities in the Estate of G.K. Kirima?
 5. How should the cost deal with the issues of intermeddling of the Estate?
 6. Whether the Administrators of the Estate being Ann Kirima and Teresia Kirima should be confirmed?
117. On the 1st issue it is submitted that the issue of the beneficiaries was settled by the consent order of 31st October 2013, that enumerated the beneficiaries of the estate and provided for provision of Grace Warwithia Kamau. It is submitted that consent orders are binding and reliance placed on the decision in Kenya Commercial Bank Ltd v Specialised Engineering Co. Ltd [1982] KLR 485 as cited in the Court of Appeal Decision in *Board of Trustees National Security Fund v Michael Mwalo (Civil Appeal 293 of 2014)* [2014] KECA 782 (KLR) (Civ) (24th April 2015).
118. They submit that the consent should stand except for the estate of Agnes Waruguru since she predeceased the deceased and therefore she ought not to be treated as a beneficiary.
119. It is further submitted that the Estate of Elizabeth Wanjiku is properly recognised as a beneficiary and that her estate will be distributed among her beneficiaries who include her mother, sister, nephews and nieces. It is submitted that there is a Limited Grant Ad Colligenda Bona issued on 2nd December 2024.
120. On the 2nd issue, what comprises the Estate of the deceased, it is submitted that the following are the assets of the estate. Loc 9/ Kiruri/T175; Loc 9/ Kiruri/T178; Loc 9/ Kiruri/T180; Loc 9/ Kiruri/



T181; / Loc 9/ Kiruri/T179; Loc 9/; Loc 9/ Kiruri/728/1; Loc 9/ Kiruri/860; Loc 9/ Kiruri/127; LR No. 209/ 5570 (½ share); LR No. 209 /5640; LR No. 209/2940/47; LR No. 209/2940/29; LR No. 209/6574; LR No. 209/12305; LR No. 5/27; Kajiado/ Kisaju/ 103; LR No. 209/2490/28; LR No. 209/6020; LR No. 209/4844/63; LR No. 209/4401/513; LR No. 209/4401/522; LR No. 209/4401/514 LR No 209/4401/521; LR No. 209/ 11092/16; share in LR No. 209/1836; share in LR No. 209/4348; share in LR No. 209/2389/165; LR No. 79/1; Land Reference No. 336/39; LR No. 209/5570. LR No. 6825/2; LR No. 5908/8

121. It is also submitted that the following assets registered in Kirima Trust are included in the estate as the Trust is inoperative. LR No. 209/49/2; LR No.209/6823/3; LR No. 209/5639; LR No. 209/21/ 5 & 6; LR No. 209/2788/3; L.R. No. 209/2152/2; L.R. No. 209/1584/1; LR No. 209/5637.
122. Also included is the anticipated compensation payment for properties that were compulsorily acquired; Kitisuru LR No. 209/11414 and Portion of Kariobangi LR No. 336/ 39.
123. The Estate is entitled to 40 % shareholding in the Kirima & Sons Limited and shares in the following companies; National Industrial Credit Bank, Firestone East Africa, Kenya Power and Lighting Co. Limited, Kenya Airways Limited, National Bank Limited, Kenya Commercial Bank Limited; East African Breweries Limited, Kakuzi Limited, Centrum Investments Limited, Wangu Investments Limited, Kenda Investments Limited, Housing Finance Co. Limited and Unilever Tea Limited.
124. The following moveable states comprise the estate; KAV 185 m, KAM 370 V, KAW 001D, KAV 120 Z, KBM 901 N (Kirima Trust), KAT 001 N, KAK 001C, KAK 519F, CAT 938 G and CAT U26 C.
125. The estate also comprises cash held in the following banks as enumerated, Kenya Commercial Bank, CFC Stanbic and Commercial Bank Africa. Also included are accounts held in the name of Kirima Trust.
126. It is submitted that this cause is not the proper forum to determine the validity of the incorporation of Kirima & Sons Limited.
127. On distribution of the Estate it is submitted that the Court should adopt the proposal by Alice Kirima in her affidavit of Protest sworn on 28th June 2017.
128. It is submitted that in relation to LR No 13763 and LR No. 13764 that the bequest to the individuals be carved out of the 40 per cent shareholding of Kirima & Sons Limited.
129. Further a portion of LOC /9/ Kiruri/1075 should be held in trust for for the family members by the Administrators.
130. It is submitted that LR 209/4844/16 & 48 although registered in the name of Agnes Waruguru are part of the estate of the deceased and should be ascribed to her children.
131. On intermeddling it is proposed that the court disregard the issue of intermeddling as all the beneficiaries have engaged in intermeddling with the estate. It is submitted that the 1st House has continued to collect rent for the property on Moktar Daddah Street and have failed to account for it. Other beneficiaries have taken possession of motor vehicles and others reside on estate properties.
132. On liabilities it is submitted that the liabilities should be settled first before distribution of the estate. These include payments due to Kenya Revenue Authority. Land Rents and Land Rates. Advocates fees.
133. It is submitted that both the Administrators should be confirmed.



134. Submissions on behalf of the Estate of Elizabeth Wanjiku Kirima are dated 28th November 2024. The submissions are identical to those filed by Teresia Kirima and Alice Kirima.
135. Submissions by Margaret Wanjiru Kirima are dated 4th December 2024 and Supplementary Submissions dated 10th February 2025. She identifies the following as the issues for determination.
1. What does the estate of G.K. Kirima comprise?
 2. Who are the beneficiaries of the Estate?
 3. Kirima & Sons Estate
 4. Ownership and Sale of Ngiru (sic) Estate based on judgment delivered on 23rd October 2023 in Environment and Land Case No. 1257 of 2014 (OS), John Otieno Obade & 299 Others vs Teresia Wairimu Kirima & Anne Wangari Kirima consolidated with ELC Case No 252 of 2010 (OS), ELC No. 509 of 2014, ELC No. 1496 of 2013, ELC No. 1496 of 2013 and ELC No. 850 of 2014.
 5. Whether any assets or properties of the deceased were gifts inter vivo (sic) and if so, how they should be dealt with during distribution
 6. Whether the deceased owned any properties jointly with any of his children
 7. Whether the Administrators have implemented the court's orders for partial distribution of the estate
 8. Whether there has been intermeddling in the estate and if so by whom and to what extent?
 9. How should intermeddling be resolved in the distribution of the estate
 10. Should the grant of letters of administration to Teresisa Wairimu and Anne Wangari Kirima be confirmed?
 11. How should the Estate be distributed to the beneficiaries?
 12. Who should pay costs of the suit?
136. On the 1st issue it is submitted that the Estate comprises
1. Kirima Trust (50%)
 2. Tumaini, Kirima & Sons (40%)
 3. G.K. Kirima (10%)
137. She submits that the beneficiaries of the Estate are as per the consent dated 30th October 2013 save that the Estate of Elizabeth Wanjiku Kirima cannot benefit from the Estate of G.K. Kirima because 'although a daughter of the deceased she died young and had no children)
138. She submits that the Kirima Trust operations are opaque and she along with Jane Gathoni Kirima have initiated Nairobi High Court Civil Case No. e223 of 2020 for the removal of Anne Wangari and James Njuguna as Trustees. She submits that the Court should compel the trustees to deposit the rental income in the Estate account. She submits that if the trust cannot be run transparently it should be dissolved and the properties distributed among the beneficiaries.



139. On the Kirima & Sons she is aligned with Anne Kirima that the issues of its incorporation can be determined in this cause and that Teresia Wairimu and estate of Samuel Ndei should account for the rental income.
140. On distribution she concurs with Jane Gathoni on the mode of distribution of the shares and dividends. On inter vivos gifts to some of the beneficiaries. She submits that the following gifts were not legitimate-
1. LR No. 209/2763/27
 2. LR No. 7785/307
 3. LR No. 209/6057
 4. LR 7785
 5. LR 3734/264
- She submits that the properties were bought when the children were minors and lacked the capacity to sign any documents relating to properties. She relies on the decision on LMM and FMM (minors) through their grandfather and next friend HNR (2018) eKLR.
141. This she submits the titles in relation to
1. Luthuli Avenue LR 209/5570
 2. Forthall Road 209/2389/165
 3. Dandora LR 6825/2
 4. Moktar Daddah Street LR No 209/4348
 5. Kitasuru (sic)
142. On intermeddling, she avers that She, Susan Kirima, Ruth Kirima and Wanjau Kirima have not intermeddled with the Estate. She has set out what she quantifies as the extent of the intermeddling by Teresia Wairimu Kirima, Catherine Njeri, Rachel Ndei, Alice Kirima, Irene Kirima, Stephen Kirima, Maria Kirima and Anne Kirima.
143. She submits that the grant issued to Teresia Wairimu and Anne Kirima be revoked and a fresh grant issue to her and Jane Gathoni Kirima. It is her submission that the current Administrators have not discharged their duties in accordance with the law, have failed to comply with court orders and have not been transparent in their dealings with the estate.
144. She submits that each beneficiary should pay for their own legal costs.
145. She concludes by submitting that a continuing trust be established to distribute income of the estate of the deceased by income until equalization is achieved among the 15 beneficiaries
146. Properties registered in the name of Agnes Waruguru Kirima do not form part of the Estate of Gerishon Kamau Kirima. That all those beneficiaries who have not intermeddled should be allocated Kshs 7 million to purchase a motor vehicle.
147. That for the gifts that are fraudulent the properties should revert to the estate and be distributed among the beneficiaries (LR 3734/265; LR No. 7783/43; LR No. 209/6057 Mbotela; LR No.7783/307 Runda and LR No. 209/2763/27 Gikomba; LR 209/5570- Luthuli Avenue; LR No. 209/22389/165 Pangani; Moktar Daddah Street LR 209/4348; Kitisuru 7741/125 and Njiru)



148. Submissions of Catherine Njeri Macharia Co Administrator of the Estate of Fredrick Kamau Kirima are dated 28th November 2024. On beneficiaries of the Estate she submits that they are as set out in the consent of 30th October 2013.
149. On assets that comprise the estate, it is submitted that the following assets are not part of the Estate-
1. LR No. Nairobi Block 101/222- Kitisuru NSSF
 2. LR No. 3734/264 Convent Drive
 3. LR No. 7785/43 Runda
 4. LR No. 209/11092/15 City Park Nairobi
 5. LR No. 209/2763/27
150. It is submitted that the estate is entitled to a share in the following assets that are jointly owned
1. LR No. 209/ 4348
 2. LR No. 29/1836
 3. LR No. 209/2389/165
 4. LR No. 7741/125
151. With regard to the Kitisuru property it is proposed that it be considered the property of Teresia Wairimu as the widow of the deceased without attaching any inter vivos benefit to the Estates of Fredrick Kamau Kirima and Samuel Ndei Kirima.
152. It is submitted that the Court distinguishes between rewards given by the deceased to his sons as against gifts inter vivos. In urging that the Court respect the wishes of the deceased reliance is placed on the decisions in Succession Cause No. 2469 of 2007 Estate of Kamau Ngari (Deceased) and Estate of Ramesh Shah (In the Estate of Pratik Ramesh Meghi Shah [2015] eKLR.
153. It is recommended that in distributing the estate the court should be guided by the need to achieve equity and not necessarily equality. It is submitted that there is nothing unusual about the deceased preferring some of his children over others and reference made to the decision in Beth Wambui & Another vs Gathoni Gikonyo & two others [1988] eKLR and Mary Rono vs William Rono [2005] eKLR; Scholastica Ndululu Nduva vs Agnes Nthenya Suva [2019]eKLR
154. On liabilities to the Estate it is submitted that his estate is owed rental income with respect to the following properties
1. i/5th Share of LR No. 209/4348
 2. 1/3 share in LR No. 29/1836 Duruma Road
 3. 1/3rd Share in LE No. 209/2389/165.
- The unsubmitted dues effective 2011 are said to amount to Kshs 122, 005,936 and are claimed from the estate.
155. As administrator of the Estate Catherine Njeri Macharia also claims the sum of Kshs 23, 100,000 from the estate being unpaid monthly maintenance of Kshs 150,000 per month as ordered by the Court.



156. On whether or not both the administrators should be confirmed, it is submitted that the Summons for confirmation sought confirmation of the grant and that parties are bound by pleadings.
157. The Submissions of Ruth Kirima are dated 18th October 2024 and addendum to submission dated 29th November 2024. She confirms that the beneficiaries of the Estate are as enumerated in the consent order of 30th October 2013. On distribution however she qualifies this and states that the Court consider and take into account the loss occasioned to the estate by Teresia Wairimu the Co Administrator herein.
158. She further submits that the Estate of Elizabeth Wanjiku Wairimu cannot be considered for distribution as it has no grant and had no dependants.
159. She submits that Catherine Aura has not proved her claim to dependant and the summons filed by her ought to be dismissed. Likewise her claim of having been gifted portion of land must fail and she be directed to provide an account of the rental income she has been collecting from the estate properties. Her claim to the Kiambu Property must also fail as she has never lived on the parcel of land.
160. She agrees with Anne Kirima on the assets that constitute the estate of the deceased. She also submits the claim by Jane Gathoni against the Kiambu property must fail. She urges that the actions of Jane Gathoni amount to intermeddling with the estate.
161. She urges the Court to find the incorporation of Kirima & Sons as being fraudulent. She also submits that the assets in the name of Kirima Trust are not part of the Estate. She submits that Teresia Wairimu should not be confirmed as an Administrator of the Estate on account of her conduct. She proposes that Anne Kirima, Stephen Kirima and Alice Kirima be confirmed as Administrators.
162. The Submissions of Maria Njeri Kirima are dated 15th October 2024. On Beneficiaries of the Estate she replicates the Submissions of Anne Kirima. Likewise, on the claims by Catherine Wanjiru Aura. She concurs with Anne Kirima on the Gifts inter vivos made by the deceased and the fact that the deceased used multiple names and properties registered under those names should be deemed to belong to him. She submits that Jane Gathoni has not proved her claim to being gifted a portion of the Kiambu property and should be instead be found to have intermeddled with the estate.
163. She submits that this Court should pronounce on the validity of the incorporation of Kirima & Sons or in the alternative find that the share of the Estate in the Company is 60 % and not 40 %.
164. She also concurs that assets registered in the name of Kirima Trust do not comprise part of the Estate and finally that Teresia Kirima should not be confirmed as an Administrator.
165. The Submissions of Rachel Wachuka Ndei as Administratrix of the Estate of Samuel Ndei Kirima are dated 29th November 2024. She frames the following as the issues for determination
 1. Whether any properties and/ or assets owned by Samuel Ndei Kirima at the point of demise of Gerishon Kamau Kirima (the Deceased) can be deemed to be part of the estate of Gerishon Kamau Kirima?
 2. What gifts, if any, were given to Samuel Ndei Kirima during the lifetime of the deceased to qualify to be gifts inter vivos for purposes of the distribution of the estate of the deceased?
 3. What proven benefit and/ or advantage if any did Samuel Ndei Kirima obtain from the estate of Grishon Kamau Kirima in the form of alleged inter meddling.
 4. In view of the response to the above stated issues, whether the Applicant's mode of distribution regarding Samuel Ndei Kirima is reasonable, fair and just



166. On the 1st issue it is submitted that the following assets do not comprise the estate of the deceased
1. Runda Mimosa (LR No. 7785/40)- transferred to Samuel Ndei (deceased) and his wife Rachel as a wedding gift
 2. LR No. 209/2763/27- (Gikomba Property) this is reward to Samuel Ndei Kirima (deceased) and his brothers Stephen Kamau Kirima and the late Fredrick Kamau Kirima for their hard work and commitment to the family enterprise.
 3. Convent Drive Lavington Property (LR No. 3734/264)- this property was directly purchased by the 3 brothers; Samuel Ndei Kirima (deceased), Stephen Kamau Kirima and the late Fredrick Kamau Kirima
 4. City Park Property (LR No. 209/ 11902/15) – this was a direct allotment from the Nairobi City Council and not a gift from the deceased and there is an ongoing litigation.
 5. Kitisuru Property (Block /222) was purchased by the two brothers.
167. Reference is made to the decision in *Shikuku Mason Sitera & Anor v Ben Kumbuti Wasilwa* [2017] KECA 4(KLR) for the assertion that only free property, that is registered in the name of the deceased can be available for distribution.
168. On the 2nd issue therefore it is submitted that only the Runda asset was a gift inter vivos from the deceased to Samuel Ndei Kirima.
169. On the 3rd Issue, touching on intermeddling, the allegations of intermeddling with assets of Kirima & Sons are denied. It is submitted further that the challenge to the incorporation of Kirima & Sons Limited is beyond the mandate of this Court and the same can only be handled by the Commercial Court, there is infact a pending matter; Winding Up Cause No. 26 of 2011 lodged by Wanjau Kirima.
170. With regards to *Kabasarian 5/27* it is submitted that Samuel Ndei and Rachel Wachuka moved into the house in the life time of the deceased and there was therefore a legitimate expectation that this would survive his death.
171. The allegations of fraud are vehemently denies the allegations of frauds.
172. On distribution, it is submitted that in a polygamous home, the Court strives for equity not necessarily equality and reference made to the decision in *Re Estate of Leroinka Ole Ntutu (Deceased)* [2008] eKLR.
173. It is further submitted that the investment made in the education of the 1st home must also be factored in, in distributing the estate and reliance placed on the decision in *Re Estate of Koel Mungai Muhia (Deceased)* [2018] eKLR
174. She further takes issue with the proposed mode of distribution that does not factor in the contribution of her deceased husband in growing the estate and inter vivos transfers such as the transfer of a portion of Kiambu 79/1 to Gareth Kamau Ndei a grandson to the deceased. It is proposed that the Court adopt the proposal on Administration by Teresia Wairimu.
175. The Submissions on behalf of the Estate of the Late Agnes Waruguru Kirima are dated 7th February 2025. She submits that the beneficiaries of the Estate are those provided for in the consent dated 30th October 2013. It is submitted that the beneficiaries who have intermeddled with the estate ought to give an account failing which the court to quantify and factor this in the distribution.



176. It is submitted that Grace Warwathia be granted a living expense of Kshs 100,000 per month payable out of the rental income of LR 209/11092/16 or LR No. 209/5570.
177. It is submitted that the estate should only be distributed after liabilities are met. The liabilities include taxes due to Kenya Revenue Authority, Rates due to Nairobi County Government, Rent due to the National Land Commission; Advocates fees for the Estate Advocate, First force Security, Seneca East Africa Limited, Clifford Foster, Rent due to the Estate of Agnes Waruguru Kirima in relation to Mbotela 209/4844/16 and Mbotela 209/4844/48. It is proposed that LR 209/11092/16 be preserved and used for settlement of ascertained debts.
178. It is proposed that for each of the properties registered in the deceased's name, distribution be equally to all the beneficiaries, less the intermeddling. Likewise the properties registered in the deceased's aliases.
179. It is submitted that for those assets that the deceased jointly with others (specifically his underage sons) those titles revert to the estate entirely and be distributed to all the 15 beneficiaries equally.
180. With regard to Kirima & Sons Limited the Court is invited to find that the alleged incorporation was fraudulent and the properties revert to the Estate or in the alternative find that the 40 per cent shares attributed to the estate should devolve to the estate and the 20 % shares to Alice Kirima and Samuel Ndei be considered gift inter vivos.
181. It is submitted that the properties registered in the name of the Trust be excluded from the estate.
182. Finally, it is submitted that in considering the Summons the Court consider the conduct of the administrators and expedite distribution of the estate.
183. The Submissions of the Kirima Trust are dated 6th FEBRUARY 2025. It is submitted that the Kirima Trust is an irrevocable Trust. The trust was never annulled. The properties in the schedule constitute trust property and cannot therefore be subject of distribution in the deceased's estate.
184. It is further submitted that it is necessary to give effect to the wishes of the deceased by including properties attached to the trust deed.
185. The joint submissions of Stephen Kamau Kirima, Grace Warwathia and Irene Kirima are dated 1st October 2024 and further submissions dated 27th November 2024.
186. They identify the following as the issues for determination
 1. Who are the beneficiaries of the Estate?
 2. Whether Catherine is entitled to benefit from any part of the Estate and to what extent?
 3. Whether Catherine is entitled to Gift inter vivos?
 4. Did the late G.K. Kirima give any assets of the estate as gifts inter vivos
 5. What free assets of the estate are available for distribution and how should they be distributed?
 6. Liabilities of the Estate
 7. Can validity of incorporation of Kirima & Sons be deliberated at this point?
 8. Assets registered in the trust
 9. Whether the deceased had any shares in Kirima & Sons Limited and if so to what extent



10. Whether there has been any intermeddling and whether the extent of inter meddling should be considered or taken into account?
 11. Whether the Administrators should be confirmed
187. On the 1st issue it is submitted that the issue of the beneficiaries of the Estate was resolved by the Court in its ruling of 25th July 2014 when it upheld the Consent of 30th October 2013. It is submitted that as a former wife of the deceased, Grace Warwathia should be granted a reasonable provision that is comparable to the provisions for the 2 other wives of the deceased.
 188. In assessing reasonable provision for Grace Warwathia, the Court is urged to consider her advanced age and that her financial needs continue to grow as she is in need of medical expenses, upkeep and housing. Also that no advancements and significant gifts have been made to her.
 189. In accordance with Section 27 of the *Law of Succession Act*, it is proposed that she be given a life time interest in one of the assets of the deceased. It is urged that Grace Warwathia be treated as one of the '3 Houses' of the Deceased. The other 2 being that of Agnes Waruguru (Deceased) and that of Teresia Kirima. It is also proposed that she be provided for a monthly stipend to cater for the needs of the household.
 190. The claim for provision of the estate of Elizabeth Wanjiku Kirima is challenged as it is submitted that she died without dependants and there is no letter of administration in respect of her estate. Reference is made to the decision in Trouistik Union/ International & Anor vs Jane Mbeyo & Anor [199z3] eKLR
 191. On the 2nd issue, whether Catherine Aura is entitled to benefit from any part of the Estate, it is submitted that her claim to be a dependant must fail as she was an employee of the deceased and there is no evidence of dependence on the deceased.
 192. On the 3rd issue, whether Catherine Aura is entitled to Gifts inter vivos? It is submitted that the evidence adduced demonstrates that the deceased gifted Catherine. Reference is made to the decision in Re Estate of Godana Sogoro Guyo (Deceased) [2020] eKLR for the submission that the portion gifted to Catherine Wanjiru does not comprise the estate and is therefore not available for distribution. It is submitted that denial of transmission to her would amount to a violation to right to property as enshrined in Article 40 of *the Constitution* of Kenya.
 193. On the 4th issue, whether the deceased gave inter vivos gifts? It is submitted that the following assets comprise inter vivos gifts.
 1. LR NO 209/6057 gifted to Anne Wangari Kirima
 2. LR No. 7785/307 gifted to Anne Wangari
 3. LR. NO. 7785/ 40 Samuel Ndei
 4. LR No. 209/11415 Jane Gathoni
 5. LR No. 209/2763/27 belonging to Stephen Kirima, Fredrick and Samuel Kirima
 194. On the 5th issue, he enumerates the following as the free assets of the deceased available for distribution
 1. LR No. 209/5637 (off Ring Road- Ngara)
 2. LR No. 209/5639 (Kirima Market)
 3. LR No. 2019/5640 (Kirima Market)



4. LR No. 209/2389/165 (Pangani)
 5. LR No 209/2490/29 (Ngara)
 6. LR No. 209/49/2 (Mugumo)
 7. LR No. 209/21/5 & 6 (Amani Plaza)
 8. LR No. 209/2152/2 (4th Parklands)
 9. LR No. 209/1584 (Gymkhana)
 10. Dagoretti Kiruta/ 395
 11. LR No 209/9960 (Kaloleni)
 12. LR No. 209/4844/63 (Mbotela)
 13. LR No. 209/4401/513,514, 521 and 522 (Hamza)
 14. LR No. 209/4401/ 92 (Hamza)
 15. LR No. 209/6574 (Jericho)
 16. LR No. 79 /1 (Kiambu)
 17. LR No. 209/12305 (Likoni)
 18. LR No. 5/27 (Kabasarian Close)
 19. LOC 9 / Kiruri/ T178 (Kiruri Centre)
 20. LOC 9 / Kiruri/ T189 (Kiruri Centre)
195. It is stated that the following assets are not part of the estate of the deceased-
1. LR No. 209/2763/27
 2. LR No. 3734/264 and
 3. LR No. 209/11092/14
196. The Liabilities of the Estate they enumerate them to include
1. Taxes due to Kenya Revenue Authority
 2. Rates due to the Nairobi County Government
 3. Rent due to the National Land Commission
 4. Advocates fees previously during the life of the deceased
 5. First force Security
 6. Seneca EAST Africa Limited
 7. Clifford foster
197. As the amounts due have not been stated it is proposed that LR NO 209/ 11092/ 16 City Park be sold and the proceeds to be utilised to offset the debts.



198. On the 6th issue, whether this Court can resolve the issue of validity of the incorporation of Kirima & Sons Limited, they are in agreement with the submissions of Ann Kirima. Likewise, on the 8th issue, on how to handle the shares of the deceased in Kirima & Sons Limited.
199. On the 7th issue, it is submitted that the assets of Kirima Trust should be distributed among the beneficiaries.
200. On the 9th issue, whether or not there has been intermeddling with the estate. Reference is made to the decision on *Morris Mwitwa Mburugu v Dennis Kimanathi M. Mburugu* [2016] and urges that intermeddling is unlawful and cannot be protected by the Court.
201. He submits the following as the list of Intermeddlers-
1. Stephen Kamau Part of LR 13763 & 13764
 2. Ann Wangari not accounting for rent
 3. Maria Njeri LR No. 209/4348 Rent for almost 10 years
 4. Jane Gathoni LR No. 79/1 Running a church
 5. Wanjau Kirima m/v (KAK 519F, KAM 370V and KAW 100D) Took possession without authority
 6. Alice Njeri LR 5/27 Staying in part of it
 7. Rachel Wachuka LR 5/27 Staying in part
 8. Irene Njeri LR No. 209/ 13505 Running a business on it
 9. Catherine Njeri LR No. LR No. 209/2490/28 Running a business on it
 10. Teresia Wairimu Kirima Running of Amani Parklands and Embakasi Flats without authority.
202. It is submitted that this intermeddling be factored in the allocations to the various beneficiaries.
203. He agrees that with the proposal by Anne on distribution of the cars and adds the underlisted which he proposes be distributed as hereunder-
1. Kav 185 M Isuzu Lorry to Estate of Fredrick Kirima
 2. Back hoeloder CAT 426 C to the Estate of Samuel Ndei Kirima
 3. Wheel Loader CAT 938G to Stephen Kirima
204. On confirmation of Administrators it is submitted that there be 3 Administrators, Anne Wangari Kirima, Stephen Kirima and Alice Njeri Kirima, to represent all the ‘houses’ of the deceased.
205. On costs it is submitted that each party bear their own costs.

Analysis and Determination

206. Having considered the pleadings, evidence presented, submissions filed alongside the relevant law, I frame the following as the issues for determination
1. Is Catherine Aura a dependant of the deceased?
 2. Who are the beneficiaries/ dependants of the Estate of the deceased?



3. What assets comprise the estate of the deceased available for distribution?
4. Has there been intermeddling in the Estate of the deceased and if in the affirmative, to what extent and what should be the consequential orders with regard to those found to have intermeddled with the estate of the deceased?
5. What if any gifts inter vivos did the deceased make and to whom?
6. What are the liabilities of the Estate of the deceased and what provision should be made for their settlement?
7. How should the estate of the deceased be distributed?
8. Should the grant issued to Teresia Wairimu Kirima and Anne Wangari Kirima be confirmed?
9. Should the Estate pay the legal fees for the Administrators?

Issue 1: Whether Catherine Aura is a dependant to the deceased?

207. The Application dated 20th June 2017 is presented under Section 26 of the [Law of Succession Act](#) and Rules 45 of the Probate and Administration rules. Section 26 provides-

Provisions for dependants not adequately provided for by will or on intestacy

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

208. Section 29 of the [Law of Succession Act](#) provides-

Meaning of dependant

For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

209. Rule 45 of the Probate and Administration rules sets out the procedure for presenting an application under Section 26 and the prerequisites for such an application. Key is that the Applicant must prove dependency. It is not enough to prove relationship as emphasized in the case of RNM v RMN [2017] eKLR.

210. Further in re Estate of the Sandislaw Muriangi Mutwiria (Deceased) (Miscellaneous Succession Cause 49 of 2018) [2022] KEHC 423 (KLR) (16 March 2022) (Ruling) the court in dismissing a claim for



dependency, was categorical that the fact that the Applicant there claimed to have been using the land belonging to the deceased did not make him a dependant of the deceased.

211. There is a condition precedent which a person claiming dependency has to establish. The persons who qualify to be considered as dependants are those listed in Section 29(a), (b) or (c). This is a closed list. The Applicant does not fit within the parameters so defined, she is a niece and employee of the deceased. In the circumstances her claim to be a dependant, within the meaning of Section 26 of the Law of Succession Act, of the estate of the deceased must fail.

212. She claims that she was gifted inter vivos the following parcels of land

1. Portion marked D measuring 0.6100 Ha curved out of Land Reference Number 13763 and 13764
2. Plot No. 4 Measuring 0.2023 Ha on LR No. 79/1 Kiambu

I shall address the validity of her claim when addressing the 6th issue on what if any gifts inter vivos the deceased made and to whom.

Issue 2: Who are the Beneficiaries/ Dependants of the Estate of the Deceased?

213. I find that there is general consensus that the Consent order of 30th October 2013, settled the issue of who the beneficiaries of the estate of the deceased are. The claim of Catherine Aura to be considered a dependant having failed, I find that the list of beneficiaries is-

1. Teresia Wairimu Kirima
2. Alice Njeri Kirima
3. The Estate of Fredrick Kamau Kirima (Deceased)
4. The Estate of Samuel Ndei Kirima (Deceased)
5. The Estate of Elizabeth Wanjiku Kirima (Deceased)
6. Stephen Kamau Kirima
7. Irene Njeri Kirima
8. Wanjau Kirima
9. The Estate of the Late Agnes Waruguru Kirima (Deceased)
10. Maria Njeri Kirima
11. Anne Wangari Kirima
12. Jane Kirima
13. Ruth Wanja Kirima
14. Margaret Wanjiru Kirima
15. Susan Wangari Kirima

214. The consent order provides for the reasonable provision of Grace Warwathia Kamau at the time of distribution of the Estate to cater for her living expenses for her life time.

215. The contentious issue is how the estate should be distributed among the beneficiaries.



Issue 3: What Assets Comprise the Estate of the Deceased Available For Distribution?

216. The mandate of the probate court is to distribute the free property of the deceased person. Section 3 of the [Law of Succession Act](#) defines free property as in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;
217. In *In re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008)* [2022] KEHC 11046 (KLR) (22 July 2022) the Court elucidates the law thus;
- (9)The probate court only distributes assets that are undisputedly owned by the deceased. Assets that are unencumbered (sic) or the subject of ownership disputes are not undisputedly owned by the deceased, and are not available for distribution by the court until the encumbrances (sic) are removed or the ownership disputes resolved. Property available for distribution is defined in section 3 of [Law of Succession Act](#) as the free propriety of the deceased.
218. With that said, I will start with those properties where parties are not agreed as to whether or not they comprise the estate of the deceased.
219. Properties registered in the name of the Registered Trustees of the Kirima Trust. The Trust is a separate legal entity distinct from the deceased person. It follows therefore that the underlisted properties registered in the name of the Kirima Trust are not available for distribution in the Estate of the deceased-
1. Mugumo LR No. 209/49/2,
 2. Kirima Market LR 209/5639,
 3. Highridge LR No. 209/21/ 5 & 6 (Amani Plaza)
 4. Tuthu LR No. 209/2788/3
 5. 4th Parklands Avenue L.R. No. 209/2152/2
 6. Gymkhana L.R. No. 209/ 1584/ 1
 7. Kirima Market LR No.209/5637
 8. Dagoretti/Riruta/395
 9. Kibera Market LR No 62/ 776
220. I have been invited to void the Trust and revert the assets to the estate for distribution. As stated above this Court does not have that jurisdiction to delve into issues touching on the Trust and in any event there is already an active case *Jane Gathoni Kirima & another v Anne Wangari Kirima & another; Stephen Kamau Kirima & 10 others (Interested Parties)* [2022] KEHC 2241 (KLR) pending before Court that will resolve the issue.
221. The other category are the properties that are registered in the name of Agnes Gerishon Kamau, namely, Mbotela 209/4844/16 and Mbotela 209/4844/48 these too will not comprise the estate of the deceased.
222. The properties registered in the name of Kirima & Sons Limited by parity of reasoning will also not comprise the Estate of the deceased. The following assets are therefore not available for distribution.
1. LR No. 13763 Tumaini Estate, Embakasi Area (Original Title Land Reference No.7106/2)



2. LR No. 13764 Tumaini Estate, Embakasi Area (Original Title Land Reference No.7106/2)
 3. LR No. 13765 Tumaini Estate, Embakasi Area (Original Title Land Reference No.7106/2)
 4. LR No. 13766 Tumaini Estate, Embakasi Area (Original Title Land Reference No.7106/2).
223. Once again for want of jurisdiction, I will decline the invitation to look into and consider the validity of the change of ownership from the deceased to Kirima & Sons Limited.
224. I will also exclude those assets that are registered in the name of Kenda Limited.
1. Loc 9/Kanyenyaini/1051/71H, Kenda House
 2. Loc 9/ Loc 9/Kanyenyaini/No. Kiruri 4
225. I will also exclude those assets that are registered in the names of other individuals. These comprise the following-
1. LR No. 209/11902/14, City Park Crescent
 2. LR No. 209/11092/15, City Park Crescent
 3. LR No. 7785/307, Old Runda Estate
 4. 7740/40 Runda Mimosa
 5. 7785/43 Runda
 6. Title No. 209/11415, Kitisuru bordering the Northern Bypass
 7. LR No. 209/6057 Off Jogoo Road -Mbotela Estate
 8. L.R No. 209/2763/27- Quarry Road Gikomba
 9. Kitisuru NSSF House
 10. Block 101/222 Kitisuru NSSF
 11. Loc.9 /Kiruri /1074 (3 acres);
226. Also excluded are assets with pending litigation
- a. Loc.9/ Kiruri /1082(1 acre)- awaiting transfer from Irene Njeri Richu
 - b. Loc.9/ Kiruri /728/1(0.1acres)- has pending litigation
 - c. Loc.9/ Kiruri /860(12.503acres); - has pending litigation
 - d. Loc.9/ Kiruri /830 (6acres); - has pending litigation
 - e. Loc.9/ Kiruri /127 (3.2 acres), - has pending litigation
227. I have not seen proof of ownership of the Properties referred to as Timau Farm and Maragua Farm, they are therefore excluded.
228. In her evidence the Administrator was unequivocal that some of these assets should revert to the estate as they were
1. Purchased using Estate rental income



2. Were registered in the name of the Stephen Kirima, Wanjau Kirima, Fredrick Kamau and Samuel Ndei while they were minors and therefore the registration is void
 3. Were purchased by the deceased and fraudulently registered in the name of some beneficiaries
229. I consider all these challenges to be beyond the jurisdiction of this Court as they seek to have the Court determine title, a matter that is wholly in the jurisdiction of the Environment and Land Court as was well articulated in the decisions below
230. In the case of Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013, -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

231. In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR the Learned Judge held that; -

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”.

232. As held in Alexander Mbaka –vs- Royford Muriuki Rauni And 7 Others [2016] eKLR;

“It is only where one has established claim against the estate that has already crystallised that he can litigate it before a Family Court. The claim is to be considered as a liability to the estate. This Court, in my view, cannot be called upon to ascertain whether or not one has a right to an estate of the deceased where such right has not yet crystallised. The right must be shown to have crystallised before the Family Court can entertain it.”

233. Article 162(2) of *the Constitution* of Kenya provides for the establishment of specialised courts to hear and determine disputes relating to environment and land. Parliament has since enacted the Environment and *Land Act*, No. 19 of 2011 which operationalises the Environment and Land Court.

234. In Republic V Karisa Chengo & 2 others [2017] eKLR, the supreme Court stated as follows-



We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should by the same token be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.

235. In summary it is not for this Court to inquire into the validity of the different titles as presented and cancel them as proposed by the administrator.

The following then are the assets of the deceased available for distribution.

236. I find that the following motor vehicles and machinery belong to the Estate

1. KAK 519 F
2. KAK 001C
3. KAH 001 E
4. KAL 001N
5. KAW 001 D
6. KAM 370 V
7. KAV 185 M Isuzu
8. Back hoeloder CAT 426 C
9. Wheel Loader CAT 938G

237. There is also consensus that the deceased held shares in the following companies;

Shares listed in private Companies:

1. Kenda Investments Limited -Deceased's shares 4627
2. Wangu Investments Ltd – Deceased's shares 5140
3. Kirima & Sons Limited- 40 per cent shareholding

Shares Listed in Public Companies

4. East African Breweries Limited -204570 shares
5. Firestone/ Sameer Africa Limited 900 shares
6. Kakuzi Limited 33000 shares
7. Kenya Airways Limited 1000 shares
8. NIC Bank Ltd 3,770 shares
9. Housing Finance Company Limited 8000 shares
10. Kenya Commercial Bank Limited 12,400 shares
11. Kenya Power & Limited Co. Limited 63099 Shares
12. National Bank of Kenya Limited 2,500 shares



13. Centum Investment Company Limited 62, 411 shares
 14. Unilever Tea Kenya Limited 286 shares (taken out of the Nairobi Securities Exchange)
238. He held the following bank accounts
1. Estate of Gerishon Kamau Kirima, Commercial Bank of Africa Limited, Wabera Branch Account No. 6793310018
 2. Estate of Gerishon Kamau Kirima (Expense A/C), Commercial Bank of Africa Limited, Wabera Branch Account No. 7024710017
 3. Gerishon Kamau Kirima, Commercial Bank of Africa Limited, Account No. 0151578004
 4. Kenya Commercial Bank, Moi Avenue Branch; Account No. 229746379
 5. Kenya Commercial Bank, University Way Branch; Account No. 271640452
 6. CFC Stanbic, Kimathi Branch; Account No: 000223018
 7. Barclays Bank of Kenya Limited, Harambee Avenue Branch; Account No. 031094988
 8. Diamond Trust Bank Limited; Parklands Branch
 9. Paramount Bank, Formerly at Amani Plaza, 3rd Parklands Avenue
239. The following parcels of Land are available for distribution. I have included those assets that are registered in the names of the deceased jointly with others.



No.	Parcel No.
1.	LR No Loc 9/Kiruri/1075
2.	LR No Loc 9/Kiruri/T175
3.	LR No Loc 9/Kiruri/T178
4.	LR No Loc 9/Kiruri/T180
5.	LR No Loc 9/Kiruri/T181
6.	LR No Loc 9/Kiruri/T179
7.	LR No Loc 9/Kiruri/468
8.	LR No Loc 9/Kiruri/516
9.	LR No Loc 9/Kiruri/1074
10.	LR No Loc 9/Kiruri/1082
11.	LR No Loc 9/Kiruri/728/1
12.	LR No Loc 9/Kiruri/860
13.	LR No Loc 9/Kiruri/830
14.	LR No Loc 9/Kiruri/127
15.	L.R No. 209/9960, (Original L.R No. 209/6823/3) Kaloleni Estate
16.	L.R No.209/5640, Kirima Market, Chai Road, off Parkroad
17.	Title No. 209/11414, Kitisuru Bordering the Northern Bypass
18.	<i>Title No. 209/11415, Kitisuru bordering the Northern Bypass</i>
19.	L.R No. 209/5570, Luthuli Avenue
20.	LR No. 209/11092/16, City Park Crescent
21.	LR No. 209/2490/29 Musindi Road, Off Ngara Road



22.	LR No. 209/2490/28 Old Ngara
23.	LR No. 209/2490/47 Ngara New Ngara Opp. Ngara Girls
24.	L.R No. 6825/2, Njiru Area
25.	L.R No. 5908/8, Njiru Area
26.	L.R No. 209/232/4 Tukika House – Off Race Course Road
27.	L.R No. 209/2389/165 (Original L.R No. 209/2389/1) North View Road/Murang'a Road Pangani
28.	LR No. 209/4844/63 Mbotela Flats, Mbotela Estate
29.	L.R No. 209/4401/513, L.R No. 209/4401/514, L.R No. 209/4401/521 L.R No. 209/4401/522 Hamsa, Luka Crescent Road Off Jogoo Road
30.	L.R No. 209/4401/19 Hamza Road, Off Jogoo Road
31.	L.R No. 209/6020 Off Nile Road, Ofafa Jericho
32.	L.R No. 3734/264 Convent Drive, Lavington (Original Number 3734/5/151)
33.	L.R No. 209/1836 Duruma House
34.	L.R No. 209/6574 Jericho Market Off Jogoo Road, Ebony Jericho
35.	L.R No. 5/27 House No. 1 & 2 Kabasarian Avenue
36.	Title No. Kajiado/Kisaju/103 Kajiado District
37.	L.R No. 336/39 Kariobangi North
38.	L.R No. 79/1 Kiambu
39.	LR No. 209/12305, Likoni Lane Off Dennis Prit Road



40.	Kirima House L.R No. 209/4348, Moktkah Daddah
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Issue 4: Whether there has Been Intermeddling With the Estate of the Deceased

240. Section 45 of the *Law of Succession Act* provides as follows: -

1. “Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
2. Any person who contravenes the provisions of this section shall-
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

241. The law therefore prohibits dealing in the properties belonging to a deceased person before obtaining a grant. In Veronica Njoki Wakagoto, (Deceased) [2013] eKLR ,Musyoka J reasoned that;

The effect of [Section 45] .. is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law. Such authority emanates from a grant of a representation and any person who handles estate property without authority is guilty of intermeddling. The law take a very serious view of intermeddling and makes it a criminal offence.

242. In Gladys Nkirote M’itunga v Julius Majau M’itunga[2016] eKLR the court stated that;

Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & Another [2016] eKLR the court observed that:

Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling



and may issue any appropriate order(s) of protection of the estate against any person.

243. In her report dated 1st September 2015, the Administrator, Anne Wangari, has enumerated those whom she charges with intermeddling with the estate. These are the following-
- a. LR No. 5/ 27 Alice Kirima and Rachel Wachuka
 - b. LR No. 209/6020 Ofafa, Rachel Wachuka and Catherine Njeri
 - c. LR No. 209/ 2490/ 28 Catherine Njeri
 - d. LR No. 209/ 6823/3 Kaloleni Catherine Njeri
 - e. LR No 209/ 2788/3 belonging to Kirima Trust by Stephen Kirima
 - f. LR No. 209/21/5-6 Amani belonging to Kirima Trust by Stephen Kirima
 - g. LR No. 209/ 49/2 Mugumo Teresia Kirima
 - h. LR No. 7106/2 Tumaini Teresia Kirima
 - i. LR No. 7106/2 Face me Teresia Kirima
 - j. LR No. 7106/2 Embakasi Teresia Kirima
 - k. LR No. 5908/8 and LR No. 6825/2 Njiru Teresia Kirima
244. Other beneficiaries agree that the estate has been intermeddled with. Stephen Kirima in his submissions includes a list where he adds other beneficiaries not included by the Administrator in her report. According to him, the following have intermeddled with the estate-
1. Stephen Kamau Part of LR 13763 & 13764
 2. Ann Wangari Not accounting for rent
 3. Maria Njeri LR No. 209/4348 Rent for almost 10 years
 4. Jane Gathoni LR No. 79/1 Running a church
 5. Wanjau Kirima m/v (KAK 519F, KAM 370V and KAW 100D)
Took possession without authority
 6. Alice Njeri LR 5/27 Staying in part of it
 7. Rachel Wachuka LR 5/27 Staying in part of it
 8. Irene Njeri LR No. 209/ 12305 Running a business on it
 9. Catherine Njeri LR No. LR No. 209/2490/28 Running a business on it
 10. Teresia Wairimu Kirima Running of Amani Parklands and Embakasi Flats without authority.
245. All the beneficiaries who have addressed the intermeddling, except for Teresia Wairimu and Alice Kirima, agree that for those who have intermeddled, the extent of intermeddling should be considered in considering distribution. Teresia Wairimu and Alice Kirima, are of the view that since all have intermeddled, the Court should disregard the intermeddling.



246. In the end I find that the following have intermeddled with the estate and the same shall be factored in when computing their respective shares in the estate;
1. Teresia Kirima who concedes that she has been collecting rent from the properties known as Tumaini and has not remitted the 40% shares due to the Estate of G. K. Kirima for the rental income in the estate account.
 2. Maria Njeri LR No. 209/4348 rent collected from the premises
 3. Jane Gathoni LR No. 79/1 (Kiambu)
 4. All Beneficiaries who are in possession of motor vehicles and heavy equipment
 5. Alice Njeri Kirima LR 5/27 (Kabasarian) rental income
 6. Rachel Wachuka LR 5/27 (Kabasarian) rental income
 7. LR No. 209/6020 Ofafa, Rachel Wachuka and Catherine Njeri (rental income)
 8. LR No. 209/ 2490/ 28 Catherine Njeri (rental income)
 9. LR No. 209/ 6823/3 Kaloleni Catherine Njeri (rental income)
 10. Irene Njeri LR No. 209/ 12305 (rental income)
247. I have not included the following assets as it is agreed they are not registered in the name of the deceased, LR 13763, 13764, 13764 and 13765 (registered in the name of a Kirima and Sons Limited, this affects the charge of intermeddling against Teresia Kirima, Estate of Samuel Ndei, Stephen Kirima and Catherine Wanjiru Aura.) Except Teresia confirmed that she was collecting rent from the Tumaini asset owned by Kirima & Sons Limited, Teresia Kirima is accountable of the 40 per cent share of the rental income due to the Estate of G K Kirima.
248. Also excluded from intermeddling are the properties registered in the name of the Kirima trust
249. At the hearing on cross examination of Teresia Kirima and Alice Kirima, there was an admission that Teresia Kirima collected rent from these properties and the rent was not deposited into the estate account.
250. Section 45 (b) provides that any person who intermeddles with the estate is answerable to the rightful executor to the extent which he has intermeddled after deducting any payments made in the due course of administration. It is clear therefore that the Court cannot disregard the intermeddling as this would amount to condoning what the law considers criminal.

Issue 5 Whether the Deceased Made Gifts *Inter Vivos* and to Whom

251. Section 28 of the [Law of Succession Act](#) provides that:

In considering whether any order should be made under this Part, and if so what order, the court shall have regard to--.....

(d) whether the deceased had made any advancement or other gift to the dependant during his lifetime.

252. The provisions in Sections 29 and 42 of the [Law of Succession Act](#) therefore ensure that distribution of the estate is guided by principles of equity, equality and fairness in the distribution of the estate of



the deceased to beneficiaries; it avoids double-portion benefit to any beneficiaries and moderates the often insatiable appetite of beneficiaries.

253. Gift inter vivos must be established by evidence. In re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR it was held that:-

For gifts inter vivos_..... gifts of land must be by way of registered transfer or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos be must complete for the same to be valid..... See in this regard Halsbury Laws of England 4th Edition Volume 20 (1) at paragraph 32 to 51.

254. Section 42 provides that during the distribution of the estate, previous benefits or gifts inter vivos be taken into consideration when determining the share of each child. There are certain elements which must be demonstrated to prove that indeed a deceased person gave out a gift inter vivos, it provides: -Where: -

- a. An intestate has, during his lifetime or by will paid, given or settled any property for or the benefit of a child, grandchild or house; or taken had he not predeceased the intestate. That property shall be taken into account in determining the share of the net intestate finally accruing to the child, grandchild or house.

255. The issue for determination is whether the assets that it is contended were gifts meet the legal threshold. Catherine Wanjiru Aura. She claims that the deceased gifted her the following assets

1. Portion marked D measuring 0.6100 Ha curved out of Land Refence Number 13763 and 13764
2. Plot No. 4 Measuring 0.2023 Ha on LR No. 79/1 Kiambu

With regard to Portion D of Land Reference Number 13763 and 13764, the basis of her claim is letter dated 14th May 2007, addressed to Kahai & Kiai Advocates. It is not disputed that at the time of this letter the subject land out of which portion D was to be carved was registered in the name of Kirima & Sons Limited and not of the deceased. The deceased therefore was not the owner of the land at the time he is purported to have gifted it. On this ground the claim must fail and it will sink further when observed that as at the time of the death of the deceased the intended gift had not been perfected.

256. With regard to her claim to Plot No. 4 Measuring 0.2023 Ha on LR No. 79/1 Kiambu, again the gift was not complete as at the time of the death of the deceased. She admits that she has never lived on the said subject or parcel of land. The parcel of land remains undivided to date.

257. In considering validity of gifts inter vivos Odunga's Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1 states thus:

Generally speaking, the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in Re Fry Deceased {1946} CH 312 Rose: and Trustee Company Ltd v Rose {1949} CL 78 Re: Rose v Inland Revenue Commissioners {1952} CH 499 Pennington v Walve {2002} 1WLR 2075 Maledo v Beatrice Stround {1922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the otherhand, the done has under his control everything necessary to constitute his title completely without any further assistance from the donor, the done need no assistance from equity and the gift is complete. It is on



that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See Shell's Equity 29ED Page 122 paragraph 3)

258. In light of the foregoing her claim to have been gifted a portion of Plot No. 79/1 (Kiambu) by the deceased must fail too.
259. Jane Gathoni Kirima
Her claim is that she was gifted LR No 79/1 Kiambu and that she has been in possession running it as a prayer centre. In her evidence she alluded to the parcel of land being a tithe. Her claim was initially supported by Margaret Wairimu in their joint affidavit.
260. The same test applies, nothing was placed before court that meets the requirement that the deceased passed on the asset to the deceased as a gift. Her actions in relation to the property are squarely intermeddling as defined under Section 45 of the *Law of Succession Act*. Her claim therefore fails.
261. It is submitted by Anne Wangari Kirima that LR No. 7785/43 Runda was gifted by the deceased to Fredrick Kamau Kirima and Teresia Wairimu Kirima. Both Teresia Wairimu and Catherine Njeri deny that the property was ever owned by the deceased. In rebutting the claim by Anne Wangari, they aver that property was directly transferred and registered in their names.
262. Section 107(1) of the *Evidence Act* Cap 80 (Laws of Kenya) states that:-
Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist.
263. Further Section 108 of the *Evidence Act* also stipulates as follows: -
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
264. In addition, Section 109 of the *Evidence Act* stipulates that: -
The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
265. Finally, Section 110 of the *Evidence Act* provides that:-
The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.
266. The import of the above provisions is that having claimed that the deceased gifted the property the Administrator had the obligation to avail evidence of that assertion. I find that in this instance, she failed to do so and therefore conclude that LR No. 7785/43 was not a gift.
267. LR No. 209/11092/15 as with the foregoing parcel of land no evidence was adduced to show that the deceased was the original owner of the parcel of land.



268. LR No.209/2763/27- Gikomba.

The land is registered in the names of Stephen Kirima, Fredrick Kamau Kirima and Samuel Ndei Kirima. It is conceded that the property was originally registered in the name of G K Kirima and later transferred to the 3. The Administrator submits it was a gift, the three contend it was a reward. It is submitted that the three were industrious and were instrumental in the expansion of the deceased's portfolio. On account of their contribution, the deceased rewarded them this asset.

269. Evidence on record however shows that the deceased did pay a salary to the children who worked in his business. That was the reward. At paragraph 36 of the submissions of the Catherine Njeri she equates this transaction to that of Anne Kirima and states that both are not gifts. It is further contended that the deceased would further reward his children who wed in church.

270. The attempt to classify gifts by the deceased as rewards must fail. I find that LR No. 209/2763/27 was gift to Stephen Kirima, Fredrick Kamau and Samuel Ndei and will be factored into the final distribution.

271. BLOCK 101/222

I observe that there is no evidence to show that the property passed from the deceased to Samuel Ndei Kirima and Fredrick Kamau Kirima, I therefore decline to find that it was gift.

272. LR 209/11415, the record shows that it was gifted to Jane Gathoni, but subsequently acquired compulsorily by the government. At the time it was acquired it was in the name of Jane Gathoni, the compensation will be to Jane Gathoni and not the estate. Accordingly, this will be a gift to be factored in at the time of distribution.

273. LR No. 7785/307 and LR No. 209/6057. Anne Kirima acknowledges that she received these as a gift. They will be factored in at the time of distribution.

274. Shares to Teresia Kirima, Fredrick Kamau and Samuel Ndei in Wangu Investment Limited and Kenda Investments Limited. It has not been demonstrated that the shares passed from G K Kirima to the three, I therefore find that they were not gifts as stated.

Issue 6: What are the Liabilities of the Estate of the Deceased and What Provisions Should be Made For Their Settlement

275. The following are agreed upon as liabilities of the estate

1. Taxes due to Kenya Revenue Authority
2. Rates due to the Nairobi County Government
3. Rent due to the National Land Commission
4. Advocates fees previously during the life of the deceased
5. First force Security
6. Seneca East Africa Limited
7. Clifford foster

276. It is also submitted that the Estate owes rents that are due to the Estate of Agnes Waruguru, Estate of Fredrick Kamau and Estate of Samuel Ndei. It was not however established that this rent was



being collected by the administrators. Given that it has been a free for all. If the respective estates can demonstrate that it was the administrators who collected the rent then of course this a debt owed.

277. There is also legal fee that is anticipated to be paid to Counsel who have acted for the Estate in various cases concluded and pending. There is also the amount of Kshs 4.9m in respecting of fencing in Kiambu. Payment of Kshs 886,383.54 payable to Harrison Davis Muthura for repairs to house at Kabasarian.
278. The court in *re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR stated that,
- ...After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant...
279. From the foregoing prior to distribution of the Estate to the beneficiaries it will be necessary to settle the liabilities of the Estate. As observed above some of the liabilities are yet to be computed (advocates fees and rents owed to other estates of deceased beneficiaries). It is proposed by the Administrator that, LR No. 209/11092/16, City Park Crescent be sold and the proceeds be utilised to pay the liabilities. The property based on the valuations is valued at Kshs 80 million. I am doubtful that it will be sufficient. For this reason, I will defer distribution of the estate until I have a clearer picture of the liabilities owed and the Administrators make a proposal that matches the liabilities.

Issue 7: How Should the Estate be Distributed

280. Notwithstanding the consent recorded on 30th October 2013 as to who the beneficiaries are, there is a lack of consensus on how the estate should be distributed with regard to
1. Estate of Elizabeth Wanjiku Kirima
 2. Estate of Agnes Waruguru
 3. Grace Warwathia
281. In the seminal case of *Flora N. Wasike v. Destino Wamboko* [1988] eKLR the Court stated:
- It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out
282. The identification of the beneficiaries of the estate was resolved by the consent of 30th October 2013. In subsequent consents especially on partial confirmation of the estate and its distribution it has been agreed to distributed the estate equally among the identified 15 beneficiaries. The consents of 16th December 2013 and 13th December 2023 provided for equal distribution of dividends and shares. Further the following assets were to be shared equally among the beneficiaries; LR No. 5908/8; Land reference No. 6825/2; Land reference No. 336/39; Kajiado/ Kisaju/103.
283. In my view therefore, the manner of distribution of the estate between the beneficiaries has been settled and is not open to review. All the beneficiaries will be entitled to an equitable share of the estate subject to any gifts they may have benefited from and those found to have intermeddled will restore the Estate. I have taken note of the Objection to the obtaining of Grant post fact by the Administrator of the



Estate of Elizabeth Wanjiku. The issue of representation of that Estate can only be determined in that estate and not the estate of the deceased.

284. With regards to Grace Warwathia, the terms of the consent were clear. The Court was to make reasonable provision for her. It is evident from the consent that special provision was being made for her. She was not as is being urged now, being provided for as a spouse or former spouse or as a beneficiary and the obligation was to provide a reasonable provision for her living expenses for her life time.
285. In determining what reasonable provision for Grace Warwathia should be I am mindful of the fact that this consent was recorded in October 2013, that she is now close to 85 years old. I also have considered the value of the estate. I consider that a lumpsum payment of Kshs 54,000,000 would be sufficient. In the alternative, the Administrators will allocate to her a property whose value is equal to Kshs 54 Million. (This computation is based on a monthly stipend of Kshs 150000 per month for 30 years from October 2013.
286. As indicated above owing to the fact that the liabilities are yet to fully crystallise the estate is not up for distribution except for the portions of the Estate where there are already orders of partial confirmation. These are ½ share of LR No. 6825/2; ½ LR No. 5908/8; Kajiado/Kisaju/103 and portion of LR No. 336/39 plus shares and dividends. The payment to Grace Warwathia will also be paid.
287. With regard to LR No. 6825/2 and LR No. 5908/8, Wanjau Kirima has claimed an interest in half of these parcels of land. It is observed that he is yet to establish his claim. It is in the interests of the Estate that he be compelled to establish his claim and not hold the estate in suspense indefinitely, therefore it is directed that he proceeds to initiate the process of establishing his interest in the portion of land within 60 days failure of which the Administrators should move before a court of competent jurisdiction to have the question of ownership determined.

Issue 8: Should the Grant Issued To Teresia Wairimu Kirima and Anne Wangari Kirima Be Confirmed

288. Section 71 of the *law of Succession Act* provides-

Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or



- (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
- (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case: Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

289. The law requires that at confirmation the Court satisfy itself that the proposed administrator will administer the estate in accordance with the law. There have been objections to the confirmation of the 2 administrators.

290. I find that the objections against the confirmation of Teresia Wairimu have merit. In particular, I find that her recalcitrance in declining to effect court orders culminating in the consent orders of 8th December 2020 render her unsuitable to continue as Administrator. As matters stand now the Deputy Registrar is called upon to execute documents on behalf of the estate in her stead.

291. In Estate of Mbaabu M'Abutu (Deceased) [2020] eKLR, the Court observed as follows;

- (9) I have lamented time without number that court administrators should not be turned into administrators of estates of deceased persons. It is awful that a duly appointed administrator of the estate of the deceased should refuse to sign transmission documents as required in law. Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator willfully fails or refuses to diligently carry out his statutory duties, the grant made to him should be revoked rather than authorize the DR or court administrator to sign transmission papers, yet, leaving the indolent administrator in situ. I propose courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action should be given to the administrator whose grant is subject of revocation. See section 76 of the [Law of Succession Act](#). For emphasis, it makes real legal sense to revoke the grant made to recalcitrant administrators, rather than turn court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased.

292. I am prepared to give Anne Wangari Kirima a benefit of doubt and allow her to continue as administrator.

293. Section 71 enables the Court to issue the grant to some other person, having considered the options available in line with Section 56 and 66 of the [Law of Succession Act](#), I will nominate Stephen Kirima and Anne Wangari Kirima to serve as Administrators.

294. The newly appointed administrators will-

- 1. present a final report of all the liabilities of the estate within 6 months from the date hereof.



2. Prepare a comprehensive report of the cost/ loss to the estate occasioned by intermeddling with the estate
3. Submit a revised proposal of distribution of the net estate having made provision for settlement of the liabilities, that encompasses the gifts made and intermeddling by the beneficiaries within 18 months
4. Ensure that all rental income of the estate is deposited into the estate accounts.
5. Pay to Grace Warwathia the sum of Kshs 54 million or make available to her an asset of equal value within 90 days from the date hereof

Issue 9: Whether the Estate Should Pay the Administrators’ Legal Fees

295. Although some beneficiaries have proposed that the Administrator meet her own fees, it is evident that the Administrator has a statutory duty under Section 71 to present the Summons for Confirmation of Grant. Accordingly, I find that the fees of the Administrator in presenting the Summons for Confirmation are to be met out of the Estate.

296. In conclusion, this is a summary of the final orders-

1. The Application dated 20th June 2017 fails in its entirety, Catherine Wanjiru Aura is not a dependant of the deceased neither was she gifted the parcels of land as alleged.
2. The Beneficiaries of the Estate of the deceased are
 - i. Teresia Wairimu Kirima
 - ii. Alice Njeri Kirima
 - iii. The Estate of Fredrick Kamau Kirima (Deceased)
 - iv. The Estate of Samuel Ndei Kirima (Deceased)
 - v. The Estate of Elizabeth Wanjiku Kirima (Deceased)
 - vi. Stephen Kamau Kirima
 - vii. Irene Njeri Kirima
 - viii. Wanjau Kirima
 - ix. The Estate of the Late Agnes Waruguru Kirima (Deceased)
 - x. Maria Njeri Kirima
 - xi. Anne Wangari Kirima
 - xii. Jane Kirima
 - xiii. Ruth Wanja Kirima
 - xiv. Margaret Wanjiru Kirima
 - xv. Susan Wangari Kirima
3. The Assets that comprise the Estate of the Deceased are available for distribution are those enumerated in paragraphs, 237,238,239 and 240



4. Wanjau Kirima to initiate the process of establishing his claim to portion of LR No. 6825/2 and LR No. 5908/8 within 60 days.
5. The following persons are found to have intermeddled with the estate
 - i. Teresia Kirima by collecting, withholding and failing to deposit into Estate Account 40% of the rental income from the Kirima & Sons owned assets
 - ii. Rachel Wachuka residing in LR No 5/27 and thereby denying the estate rental income
 - iii. Alice Kirima residing in LR No 5/27 and thereby denying the estate rental income
 - iv. Maria Njeri LR No. 209/4348 failing to remit rent collected from the premises into the estate account
 - v. Jane Gathoni collecting gate and registration fees at LR No.79/1 Kiambu
 - vi. LR No. 209/6020 Ofafa, Rachel Wachuka and Catherine Njeri (rental income)
 - vii. LR No. 209/ 2490/ 28 Catherine Njeri (rental income)
 - viii. LR No. 209/ 6823/3 Kaloleni Catherine Njeri (rental income)
 - ix. Irene Njeri LR No. 209/ 12305 (rental income)
 - x. All beneficiaries who are in possession of motor vehicles and heavy equipment registered in the name of the deceased.
6. The deceased made the following gifts inter vivos
 - i. LR No.209/2763/27- Gikomba- to Stephen Kirima, Fredrick Kamau and Samuel Ndei Kirima
 - ii. LR 209/11415- to Jane Gathoni Kirima
 - iii. LR No.7785/307 -to Anne Wangari Kirima
 - iv. LR No. 209/6057 to Anne Wangari Kirima
7. The Administrators will present a final report of all the liabilities of the estate within 6 months
8. The Administrators to prepare a cost to the estate report of the intermeddling
9. The administrators will ensure that all rental income due to the estate is deposited into estate accounts effective February 2025
10. The Administrators to pay to Grace Warwathia the sum of Kshs 54 million in cash or identify an asset of that value for transfer to her within 90 days from the date hereof
11. The Administrators to ensure that transmission of the Estate as per partial confirmation of grant vide certificate dated 13th December 2023 is finalised within 6 months
12. Grant issued to Teresia Wairimu Kirima and Anne Wangari Kirima is revoked. Fresh Grant herein issues to Anne Wangari Kirima and Stephen Kirima.
13. The Administrators will present a revised proposal on distribution of the net estate (factoring in liabilities, gifts and intermeddling) within 18 months
14. Mention on 24th September 2025 to confirm compliance



**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
21ST DAY OF FEBRUARY 2025.**

P.M NYAUNDI

JUDGE

In the presence of:

Nyamu for Teresia, Alice Kirima and Estate of Elizabeth Kirima

Kyalo Mbobu – application dated 11th February, 2025

Ms. Muthee – holding brief for Munge Anne Kirima, Maria Kirima beneficiary

Mwangi for Catherine Kirima

Rao holding brief for Ojiambo Senior Counsel for Kirima Trust

Mrs. Wambugu

Prof Migai Akech Jane Gathoni Kirima

Evan Ondieki

Wanjiku Kingori holding brief Jan Mohammed Senior Counsel

Estate of Agnes Waruguru

Munyoki holding brief for Maruti for Estate of Samuel Ndei Kirima

Ms. Koko for Wanjau Kirima

Okenuwa holding brief for Ataka for Wanjau Kirima

Ashuruma for summons dated 20th September, 2024

Susan Kirima – in person

Ruth Kirima – in person

Stephen Kirima – in person

Irene Kirima – in person

Fardosa Court Assistant

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