



In re Estate of John Kiruki Wanuthu (Deceased) (Succession Cause 184 of 2016) [2025] KEHC 1374 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 184 OF 2016
SM MOHOCHI, J
FEBRUARY 20, 2025**

IN THE MATTER OF THE ESTATE OF JOHN KIRUKI WANUTHU (DECEASED)

BETWEEN

VERONICA WANGUI WAMBUGU PETITIONER

AND

BETH WANJIRU MAINA PROTESTOR

RULING

1. The deceased, John Kiruki Wanuthu, died intestate on 1st January, 2016 Veronica Wangui Wambugu and Margaret Wangeci Wambugu, deceased's widow and her sister respectively filed a petition for letters of administration intestate on 16th March 2016.
2. According to the Petition, the Deceased was survived by:
 1. Veronica Wangui Wambugu-Wife/Petitioner;
 2. Catherine Nyambura Kiruki-Daughter (Adult); and
 3. CMK-Daughter (Minor)
3. According to the Petition, the estate of the deceased comprised of the following assets;
 - a. Title No. Kinamba Mithiga Block 2/287(Mithiga) Approximately 1.443 Ha.;
 - b. Title No. Laikipia/Lariak/452 Approximately 0.800 Ha.;
 - c. Title No. Pioneer/Ngeria Block 1 (Eatec)/8962 Approximately 0.10Ha
 - d. Equity Bank A/C No.016019201xxxx;
 - e. Co-Operative Bank A/C No. 0111668919xxxx;



- f. Mwalimu National Sacco A/C No.3020xxxx;
 - g. Barclays Bank A/C No.003464xxxx;
 - h. 120 Shares at National Bank Of Kenya Ltd;
 - i. 33 Shares at Kenya Commercial Bank Ltd;
 - j. 532 Shares at Kenya Commercial Bank Ltd;
 - k. CDSC Shares at Co-Operative Bank Limited;
 - l. Kshs.200,000/= loaned to Fedha Micro Investment Ltd;
 - m. Kshs.150,000/= investment plan with Old Mutual;
 - n. Safaricom Cellphone No.072120xxxx;
 - o. Mwalimu Sacco Shares; and
 - p. Death Gratuity/Pension from Teachers Service Commission.
4. The grant was made on the 27th June, 2016 appointing the petitioners as the personal representatives. By the 5th of September, 2016, Beth Wanjiru Maina, had filed Summons for Revocation of grant which Application was disallowed on the 24th February 2024.
 5. The Ruling of this court dated 24th February 2024 declined to recognize Beth Wanjiru Maina as having been married to the deceased thus a beneficiary. However, the court recognized her daughter, Natasha Muthoni Kiruki as being a child of the deceased hence a beneficiary.
 6. The Administrators were directed to file an amended petition to include Muthoni Kiruki as a beneficiary and a summons for confirmation of grant within thirty (30) days.
 7. Before me is the summons for confirmation of grant dated 27th March 2022 which I consider together with an affidavit of protest dated 10th May 2022.
 8. The properties listed for distribution in the summons for confirmed grant are as follows:-
 - a. Kinamba Mithiga Block 2/287 (Mithiga)
 - b. Laikipia/Lariak/452
 - c. Laikipia/Lariak/469
 - d. Nyahururu Plot/Riverside Nyandarua
 - e. Pioneer/Ngeria Block 1 (EATEC)
 - f. Uasin-Gishu/Kimumu
 - g. Ordinary Shares held at National Bank of Kenya Ltd
 - h. Ordinary Shares held at Kenya Commercial Bank Ltd
 - i. Ordinary Shares held at Co-operative Bank Ltd.
 - j. Gratuity held at Teachers Service Commission.
 - k. Shares held at Mwalimu Sacco.



- l. Savings held at Mwalimu Sacco Account Number 3020xxxx
 - m. Savings held at Mwalimu National Sacco
 - n. Shares held at ABSA Formerly Barclays Bank Ace No. 00346xxxx
 - o. Funds held at Co-operative Bank Ltd. Acc No 0111668919xxxx
 - p. Funds held at Equity Bank Acc No. 016019201xxxx
 - q. Shares at Old Mutual Unit Trusts
 - r. Ordinary Shares at Fedha Micro Investment Ltd.
9. The hearing of the protest was undertaken concurrently with the hearing of the summons for confirmation of grant which was by way of viva-voce evidence with the daughter of the protestor and beneficiary testifying without calling additional witnesses while the petitioners had three witnesses testifying in support of the summons.
10. The only point of divergence between the administrators proposed mode is that;
- i. The Protestor proposes that the estate be shared equally amongst the current beneficiaries.
 - ii. The Administrator on her part argues that, she contributed to the acquisition of the following assets and as such only 50% interest belongs to the estate of the deceased and is thus available for distribution;
 - a. Kinamba Mithiga Block 2/287 (Mithiga);
 - b. Pioneer/Ngeria Block 1(EATEC) 8962;
 - c. Laikipia/Lariak/452 and
 - d. Laikipia/Lariak/469
 - iii. The Administrator proposes to inherit the whole share of Nyahururu Plot/Riverside Nyandarua, since it was jointly owned with the deceased.
 - iv. The Administrator submits that, the shares at Mwalimu National Sacco and Savings-Mwalimu National Sacco AC Number 3020xxxx are not available for distribution under the *Law of succession Act* as the nominee's rights override the rights of the dependants.
 - v. The Administrator equally cherry picks the following movable assets to be inherited by her exclusively and absolutely;
 - a. whole share of the Old Mutual Unit Trust; and
 - b. whole share Ordinary Shares Fedha Micro Investment Ltd.
 - vi. While the Administrator testified of a property known as Nyandarua/Ol'Joro-orok Salient/4022 being in the joint names of the deceased and the Administrator, I am afraid this asset appears in the middle of a trial, no evidence of ownership has been presented and as such I shall disregard the same until proof of ownership is demonstrated

Analysis and Determination

11. Having considered the competing pleadings with divergent modes proposed, clearly depicts misconception on the part of the protestor on behalf of Ms Natasha Muthoni Kiruki to stake a claim(s)



- in a transactional manner at quantum's unsupported. However, as a child of the deceased she shall be entitled to an equal share of the net-estate.
12. On the same note the summons for confirmed grant and the evidence in support does not have any basis of the cherry-picked assets for exclusive and absolute inheritance.
 13. The only single-issue coalescing is, what is a lawful and fair mode of distribution under the circumstances?
 14. For avoidance of doubt the following beneficiaries are entitled to an equal share of the net-estate;
 - a. Veronicah Wangui Wambugu
 - b. Catherine Nyambura Kiruki
 - c. CMK
 - d. Natasha Muthoni Kiruki
 15. It is now trite law that, when a person dies with a single wife and children, the estate will be divided equally amongst the surviving spouse and all children, with each receiving an equal share of the net intestate estate, as per Section 38 of the Law of Succession Act; essentially, the surviving wife and each child would share the assets equally.
 16. In tandem with the aforesaid reasoning therefore Ms Natasha Muthoni Kiruki shall thus be entitled to an equal share of the net-intestate estate.
 17. This Court has equally in consideration of the pleadings in support of, and in opposition to, that, the following properties are unavailable for distribution by dint of having been sold by the deceased with conclusion of the aforesaid sale being at different stages;
 - a. Laikipia/Lariak/452 Approximately 0.800 Ha.
 - b. Laikipia/Lariak/469
 - c. Title No. Pioneer/Ngeria Block 1 (Eatec)/8962 Approximately 0.10ha
 - d. Uasin-Gishu/Kimumu
 18. The Administrator shall be expected to conclude the aforesaid transactions, receive any outstanding considerations and thereafter move court for appropriate orders to transfer to the purchasers
 19. This court finds and concurs with the petitioner with regards to the matrimonial home at Title No. Kinamba Mithiga Block 2/287(Mithiga) Approximately 1.443 Ha. That she did contribute to its acquisition albeit without proof. It was her contention that 50% would suffice leaving 50% share of the deceased for distribution. This court however finds that the petitioner's contribution is modestly at 30% with 70% of Kinamba Mithiga Block 2/287 (Mithiga) being available for distribution.
 20. With regards to the property commonly known as Nyahururu Plot/Riverside Nyandarua since the property was jointly owned with the deceased and is a lease-hold property thus the same is unavailable for distribution.
 21. This Court is persuaded with the reasoning in the case of Re Estate of M'kiunga M'rinviru (Deceased) [2021] eKLR where the court held that: -

“ This was evidently a joint tenancy. The position in law is clear that in such joint tenancies, when one of the tenants passes on, the remaining tenant automatically becomes the new



sole owner under the doctrine of survivorship. This implies that the property is not up for distribution as the surviving tenant is now the new owner. The property will only be up for distribution upon the demise of the new sole owner, and even then, this property would only be the subject of the Estate of this new owner. This is the hallmark of the principle of jus accrescendi which provides for the right of survivorship.

"If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of death delete the name of the deceased tenant from the register by registering the death certificate."

22. Pensions and related benefits are governed by the Retirement Benefits and this Court is persuaded by the reasoning in the case of *re Estate of Carolyn Acheng' Wagah (Deceased)* [2015] eKLR;

"It is the law that the funds the subject of a nomination do not form part of the nominator's estates and therefore such funds cannot pass under the will of the deceased or vest in his personal representative. Such funds are not subject to the succession process, and should be dealt with in accordance with the law governing nominations. Nominations are statutory, in the sense of them being specifically provided for by a particular statute."

23. It thus follows that, the following assets of the deceased subject to nomination, are unavailable for distribution;

- a. Gratuity held at Teachers Service Commission.
- b. Shares held at Mwalimu Sacco.
- c. Savings held at Mwalimu Sacco Account Number 3020xxxx

24. The following Net-assets after liquidation shall be shared equally amongst the four beneficiaries including the petitioner;

- a. Funds held at ABSA Formerly Barclays Bank A/C No. 00346xxxx
- b. Funds held at Co-operative Bank Ltd. Acc No 0111668919xxxx
- c. Funds held at Equity Bank Acc No. 016019201xxxx
- d. Shares at Old Mutual Unit Trusts
- e. Ordinary Shares at Fedha Micro Investment Ltd.
- f. Ordinary Shares held at National Bank of Kenya Ltd
- g. Ordinary Shares held at Kenya Commercial Bank Ltd
- h. Ordinary Shares held at Co-operative Bank Ltd.

Conclusion

25. In the upshot the following net-assets are available for distribution as follows;



Asset	Beneficiaries
Title No. Kinamba Mithiga Block 2/287(Mithiga) Approximately 1.443 Ha. 70%(Available)	i. Veronicah Wangui Wambugu-17.5% ii. Catherine Nyambura Kiruki- 17.5% iii. CMK - 17.5% iv. Natasha Muthoni Kiruki- 17.5% (To be shared Equally)
a. Funds held at ABSA Formerly Barclays Bank A/C No. 00346xxxx b. Funds held at Co-operative Bank Ltd. Acc No 0111668919xxxx c. Funds held at Equity Bank Acc No. 016019201xxxx d. Shares at Old Mutual Unit Trusts e. Ordinary Shares at Fedha Micro Investment Ltd. f. Ordinary Shares held at National Bank of Kenya Ltd g. Ordinary Shares held at Kenya Commercial Bank Ltd h. Ordinary Shares held at Co-operative Bank Ltd.	i. Veronicah Wangui Wambugu ii. Catherine Nyambura Kiruki iii. CMK . iv. Natasha Muthoni Kiruki (To sold and proceeds be shared Equally)

It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 20TH DAY OF FEBRUARY 2025

MOHOCHI S.M

JUDGE

In the presence of: -

M/S. Njeri Njagua, Advocate for the Protestor

Mr Akang'o Advocate for the Petitioner

