



**In re Estate of John Mwai Njagi (Deceased) (Succession Cause  
485 of 2013) [2025] KEHC 2001 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 485 OF 2013**

**J WAKIAGA, J**

**FEBRUARY 18, 2025**

**IN THE MATTER OF THE ESTATE OF JOHN MWAI NJAGI (DECEASED)**

**BETWEEN**

**NAOMI WANJA MWAI ..... PETITIONER**

**AND**

**JANE NDUITA MWANGI ..... OBJECTOR**

**RULING**

1. This cause was initially filed in the High Court of Kenya at Nyeri, wherein the petitioner applied for grant of letters of Administration to the estate of the deceased in her capacity as a widow and named Benson Kinuthia Mwai (son) and the objector, Jane Nduta Mwai (daughter ) as the survivors to the estate which consisted of LOC 8/Kaganda / 761 and shares and monies in Murata Sacco
2. By an application dated 19<sup>th</sup> February 2014 the petitioner applied for confirmation of grant and proposed that the land and the shares be registered in her name as the sole proprietor.
3. On 6<sup>th</sup> October 2014, the objector filed an affidavit of protest in which she deposed that she was a daughter in law having been married to a son of the deceased namely David Mwangi Mwai who died on 14<sup>th</sup> February 1999 and that she was survived with two children whom the petitioner intended to dis-inherit.
4. She proposed that her late husband's shares be registered in her name to hold in trust for herself and her children.
5. The petitioner filed a replying affidavit in which she deposed that the LR No Loc 8/Kaganda /761 was bought with proceeds which came from the joint effort of herself and the deceased, who had another wife namely Virginia Waitherero deceased , who was the mother of the protestors husband and that she was buried in parcel number LOC 8/Kaganda /94 which is pending succession wherein the protestor



is entitled to 0.7 Acres and that the protestor was in occupation of 0.65 acres on LOC8/Kaganda /761 where she had planted coffee bushes to the exclusion of the other family members. It was contended that the brothers of the deceased were yet to file for succession to the estate of their father Njagi Kabeni , to enable them effect the agreement herein.

6. The petitioner filed a supplementary affidavit in response to the protest in which she contended that the estate be redistributed as follows;
  - A. Naomi Wanja Mwai ..... All the shares in account no 011-8XX7-001-0XX35 with murata Sacco Society
  - B. Jane Nduta Mwangi ..... 0.65 Acres in Loc 8/Kaganda /761
  - C. Jane Nduta Mwangi .....0.7Actres in LOC 8/Kaganda /94 pending succession proceedings of the estate of Njagi Kabeni
  - D. Benson Kinuthia Mwai .....1.35 Acres in LOC 8/Kaganda /761.
7. She contended that her proposed mode of distribution was in line with the agreement reached by the parties and dated 11<sup>th</sup> April 2014 attended by the protestor and the members of the clan and that it was not her intention to dis-inherit the protestor and that the distribution should now be as per the agreement executed by all the parties wherein the protestor was entitled to get 0.7 acre from LOC.8/ Kaganda /94 where the mother of her late husband is buried.
8. On 6<sup>th</sup> May 2019 the court (Kimondo J) issued direction on the disposal of the protest by way of viva voce evidence and directed the petitioner and the objector to file witness statement which was duly complied with and the cause proceeded for hearing before me, having directed that the chief of the area to attend court as a witness.
9. The chief Olive Munjiru Macharia testified that the deceased John Mwai Njagi had two wives namely Virginia Waithera (deceased) and Naomi Wanja (the petitioner). It was her evidence that Virginia had two sons Mwangi and Njoroge both deceased and that the protestor was the wife of Mwangi, while Naomi had one son Kinuthia. She confirmed that both the petitioner and the objector lived in one farm while there was another farm which they both cultivate.
10. Cross -examined by the petitioners Advocate he stated that the dispute herein was referred top the chief and that the Elders attempted to resolve the dispute but could not reach an agreement as the petitioner wanted the objector to take the land which was in her father in laws name while the objector wanted them to share both lands.
11. PW 1 Jane Nduta Mwangi the objector testified that the estate of the deceased be subdivided into two units representing his wives, and thereafter she be given the portion belonging to her mother in law which she has actual occupation thereof. She stated that she had filed a succession cause in respect of the same estate with the public trustee at Nairobi being PT ADMN Cause No 570/201.
12. In cross examination, she stated that the land of the father of the deceased belonged to many people and that the same had not been distributed and therefore upon subdivision both herself and the petitioner should be entitled to the portion belong to the deceased in equal shares. She stated further that, the parcel of land which belonged to their grandfather, was occupied by a son of his daughter called Jane Wangui and that when her husband wanted to go to that land, the deceased declined and directed that he builds in the land in dispute.



13. She contended that the property of the deceased be subdivided into two between them in as much as they were not living in peace and that the petitioner had lived with her husband until 2003 even after marrying her in 1996.
14. RW1 Naomi Wanja Mwai stated that she was married in the year 1974 when, the mother of the objector's husband had left the deceased with young children , whom she brought up as her own and that when the objector was married, she lived with her for nine years up to 2004. She stated that when the mother of the objector's husband died, her body was brought back but was buried on the land belonging to their father in law .
15. She stated further that when the deceased was admitted in hospital before he died, he informed her that the land no 761 had been given to three of his children and since the mother in law of the objector had been buried there she should inherit the same. She contended that she had contributed to the purchase of LOC8?Kaganda/94 from her earnings as a teacher and that is why the deceased made that oral will.
16. It was her evidence that the objector lived with her in her house together with her husband and since they did not have anything to their name the deceased declined to allow them to move out and only did so when she became abusive. In cross examination she confirmed that the deceased did not give the oral will in the presence of the objector and he did not tell her to give her the said information and that it was the will of the deceased that the objector have the share of 761 so she proposed that the estate be subdivided between them as stated in her affidavit in opposition to the protest

### **Submissions**

17. On behalf of the objector, it was submitted that the estate of the deceased consists of LOC8/ Kaganda /761 and the shares and monies in Murata Sacco Society and that the b beneficiary of the estate are not in dispute. It was contended that the petitioner has brought into her proposed mode of distribution land that does not belong to the estate of the deceased .
18. She contended that since the deceased had two families the estate be divided into two as per the current occupation and that when LOC.8/Kaganda /94 which belongs to the estate of Njagi Kabeni is administered and subdivided amongst his sons including the deceased, herein the same be shared between them. It was submitted that it was the intention of the deceased in his life time that the suit property be shared equally between her and Benson Kinuthia Mwai having shared the same equally amongst them.
19. On behalf of the petitioner it was contended that the estate was subject to section 40 of the law of succession since the deceased was in a polygamous marriage and therefore the estate of the same should be divided into three units, though the petitioner is contended with getting only the shares and having the land divided as per the wishes of the deceased into two equal with the protestor getting the enter shares in LOC8./Kaganda /94 and 0.65 acres in the disputed land as a way of compensation.

### **Determination**

20. In this cause, the estate and the beneficiaries of the deceased is not in dispute, neither is the intention of the deceased and the administrator to divide the estate equally amongst the children of the deceased in dispute. What is disputed is how the petitioner intend to affects the said intention.
21. The issue for the court's determination is whether the deceased had a valid oral will as contended by the petitioner or whether the same had expressed his intention in his life time ass contended by the objector and whether the court can take into account a property that does not belong to the estate being probated in effecting an equitable mode of distribution.



22. For an oral will to be valid the following elements are required : under section 9(1) of the *law of Succession Act* provides that no oral will shall be valid unless (a) it is made before two witnesses and (b) the testator dies within a period of three months from the date of the making of the will. In this cause the petitioner is silent on when the testator allegedly made those utterances and neither is there any allegation that they were made in the presence of another witness, neither has she confirmed that the deceased died with three months. It is therefore the finding of the court that the deceased did not leave any oral instruction and or will on the proposed mode of distribution by the petitioner.
23. From the evidence on record, it is clear that the deceased in his life time had settled his two sons who have been identified by the petitioner as the beneficiaries on the subject property and whereas the petitioner has noble intention in her proposed mode of distribution, the property known as LOC.8/Kaganda /94 does not form part of the estate of the deceased as at the time of the distribution of the estate herein and can not be taken into account by this court, while administrating the estate of the deceased herein.
24. It therefore follows that the objector has made up a case in support of her proposed mode of distribution and therefore allow the objection herein and direct that the estate of the deceased be subdivided as proposed by the objector herein as follows ;
- a. Land Parcel no Loc8/Kaganda / 761 to be shared equally between Benson kinuthia Mwai and Jane Nduta Mwangi (to hold on her behalf and in trust for the grandchildren of the deceased )
  - b. Murata Sacco shares Account no 011-8XX7-001-0XX35 to Naomi Wanja Mwai
  - c. Mugama Farmers Sacco Society Shares to Naomi wanja Mwai
  - d. The deceased shares on LOC8/Kaganda /94 in the estate of Njagi Kabeni when administered to be shared equally between Benson Kinuthia Mwai and Jane Nduta Mwangi .
25. This being a family dispute, each party shall bear their own cost and it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025**

**J.WAKIAGA**

**JUDGE**

In the presence of

Mr. Njoroge for the petitioner

No appearance by the objector in person

