



**In re Estate of the Late Cypriano M'Mathige M'Nabea alias Muthige Nabea (Deceased)
(Succession Cause 418 of 2012) [2025] KEHC 1994 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 418 OF 2012**

HM NYAGA, J

FEBRUARY 6, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE CYPRIANO
M'MATHIGE M'NABEA ALIAS MUTHIGE NABEA – DECEASED**

BETWEEN

ANGELICA KAINDA MUTHIGE ADMINISTRATOR

AND

ROSE GATIRITHU MUTHIGE APPLICANT

JUDGMENT

1. The matter before this court concerns the distribution of the estate of Cypriano M'Mathige M'Nabea (deceased) and the legality of transactions involving portions of land L.R. No. Nyaki/Giaki/358 (measuring approximately 12 acres).
2. The petitioner, Angelica Kainda Muthige, the widow of the deceased, proposed a mode of distribution that favoured the sons, giving minimal portions to the daughters based on their marital status. This proposal was objected to by the daughters, led by Rose Gatirithu Muthige, who sought equal distribution on behalf of herself and her sisters Teresa Makena Cyprian, Lucy Kagwiria Muthige, Juanina Karainto Cyprian and Sabella Karimi Muthige.
3. From the evidence on record, I have identified the following issues for determination.
 - a) Whether the sale of part of estate property before confirmation of the grant was valid.
 - b) Whether the daughters of the deceased have an equal right to inheritance alongside the sons.
 - c) The appropriate mode of distribution consistent with the Law of Succession Act and constitutional principles.



Determination

A. Validity of the Sale of Estate Property Before Confirmation of the Grant

4. Evidence presented before the court confirmed that the Petitioner and two sons of the deceased sold portions of the estate property to third parties before the confirmation of the grant.
5. The *Law of Succession Act*, (Cap 160) under Section 45, prohibits intermeddling with a deceased person's property before grant confirmation.
6. Section 82(b)(ii) on the other hand provides that immovable property cannot be sold before the grant is confirmed.
7. The High Court in the case of *In re Estate of M'Ngarithi M'Miriti alias Paul M'Ngarithi M'Miriti (Deceased)* (Succession Cause 108 of 2014) [2017] KEHC 7904 (KLR) (7 February 2017) (Judgment) held that:

“Intermeddling with an estate before the grant of letters of administration is a criminal offense, and any disposition of the property before confirmation is void.
8. Similarly, the Court of Appeal in the case of *In re Estate of Jamin Inyanda Kadambi (Deceased)* [2021] eKLR reiterated that:

“No immovable property of a deceased person shall be sold before confirmation of the grant. Any transaction that purports to dispose of an estate property before such confirmation is unlawful and null and void.”
9. Applying these principles, the court finds that the sales of portions of Nyaki/Giaki/358 by the petitioner and her sons are null and void.

Equal Right of Daughters to Inheritance

10. *The Constitution* of Kenya, under Article 27, guarantees equality and non-discrimination. Sections 35 and 38 of the *Law of Succession Act* provide that where a deceased is survived by a spouse and children, all children shall inherit equally, regardless of gender or marital status.
11. The Court of Appeal in *Re Estate of Lerionka Ole Ntutu (Deceased)* [2008] eKLR upheld that:

“Under the *Law of Succession Act*, all children of the deceased, whether male or female, married or unmarried, have equal rights to inherit their parent's estate.”
12. In *Stephen Gitonga M'Murithi v Faith Ngira Murithi (Civil Appeal 3 of 2015)* [2015] KECA 347 (KLR) (14 October 2015) (Judgment), the Court of Appeal made the following observations:

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried....”
13. Discriminatory practices in inheritance violate constitutional principles. Consequently, this court finds that all children of the deceased have equal rights to the estate. The argument that daughters should receive less or nothing at all because they are married is discriminatory and unconstitutional.



14. Given the above findings, the proposed distribution by the petitioner is unlawful as it fails to recognize the equal rights of all children.

Purchasers' rights if any

15. In Kenyan law, the sale of a deceased person's estate property before the confirmation of a grant is generally prohibited. The *Law of Succession Act*, under Section 82(b)(ii), explicitly states that no immovable property shall be sold before the confirmation of the grant. This provision aims to protect the estate and ensure that the interests of all beneficiaries are considered before any disposition of estate assets.
16. Engaging in such transactions prior to grant confirmation is considered intermeddling with the estate, which is prohibited under Section 45 of the same Act.
17. The Court of Appeal has consistently upheld these provisions. In the case of *In re Estate of Jamin Inyanda Kadambi (Deceased)* [2021] eKLR, the court emphasized that any sale of immovable property before the confirmation of the grant is unlawful and null and void. Similarly, in *Re Estate of M'Ngarithi M'Miriti alias Paul M'Ngarithi M'Miriti (Deceased)* [2017] eKLR, the High Court reiterated that intermeddling with an estate before the grant of letters of administration is a criminal offense, and any disposition of the property before confirmation is void.
18. Consequently, purchasers are strongly advised against engaging in transactions involving estate property before the confirmation of the grant, as such transactions are legally unenforceable and may lead to criminal liability. In this case, I find that the sale agreements are null and void.

Orders

1. Flowing from the foregoing analysis, the orders that commend to this court and which I hereby issue are as follows:
 1. The purchasers have no valid claim to the estate and must pursue redress from those who sold them land.
 2. The estate of the deceased comprised in L.R. No. Nyaki/Giaki/358 shall be distributed in equal shares amongst the widow and all the children of the deceased irrespective of gender.
 3. A certificate of Confirmation of Grant shall issue accordingly
 4. This being a family matter, each party shall bear its costs of these proceedings, as well as the costs associated with the subdivision and the issuance of the title deeds.

DATED THIS 03RD DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

DELIVERED AT MERU THIS 6TH DAY OF FEBRUARY 2025

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H.M. NYAGA

JUDGE

This ruling is delivered under the provisions of Order 21, Rule 2 of the Civil Procedure Rules



Apology for delay

The Court acknowledges that there has been a delay in the delivery of this ruling due to an unfortunate accident involving the Judge who initially presided over the matter. The Court sincerely regrets the inconvenience this has caused to the parties involved. The Judiciary remains committed to the timely dispensation of justice, and every effort has been made to ensure that this matter is concluded appropriately.

