



REPUBLIC OF KENYA



KENYA LAW
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**Githegi v Kiongo (Civil Appeal 060 of 2023)
[2025] KEHC 3397 (KLR) (Civ) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

CIVIL

CIVIL APPEAL 060 OF 2023

KW KIARIE, J

MARCH 20, 2025

BETWEEN

ELIZABETH NJOKI GITHEGI APPELLANT

AND

MONICAH WANJIKU KIONGO RESPONDENT

(Being an appeal from the ruling and order in Engineer Principal Magistrate's Succession Cause No. E046 of 2020 by Hon. Daffline Nyaboke Sure –Senior Resident Magistrate)

JUDGMENT

1. On the 30th day of November 2022, Hon. Daffline Nyaboke Sure delivered in which she distributed the estate of Joseph Githegi Warui, the deceased, herein contrary to the proposals made by the parties. The appellant was aggrieved by the said ruling and filed this appeal. The firm of Kinyanjui & Njau Advocates represented her. She raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and, in fact, in holding that the kiosk known as “St Joseph Clinic” at Matches and the temporary kiosk at Matches were one plot instead of two (2) plots.
 - b. The learned trial magistrate misdirected herself in failing to find that the deceased had been allocated the kiosk known as St Joseph Clinic at Matches and had purchased the temporary kiosk at Matches Centre; thus, the deceased had two (2) distinct plots.
 - c. The learned trial magistrate misdirected herself in law by failing to find that the appellant had contributed to the acquisition and development of the temporary kiosk of Matches Centre.
 - d. The learned trial magistrate erred in fact and law in holding that the respondent had established her matrimonial home at the temporary kiosk at Matches Centre.



- e. The trial magistrate misdirected herself by disregarding the agreed mode of distribution and imposing her mode of distribution on the parties.
 - f. The learned trial magistrate misdirected herself in treating the appellant's evidence with triviality and wholly disregarding the said evidence.
2. The respondent was served, yet she did not file any grounds of opposition or submissions as instructed.
 3. This is the first appellate court. I recognize my duty to evaluate all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] EA 123, where it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions on the matter.
 4. The respondent filed an affidavit of protest dated September 9, 2022. She disagreed with the proposed distribution on only two issues in the Summons for Confirmation for Grant filed by the appellant. These were:
 - a. The Kiosk known as "ST. Joseph Matches Clinic" had been allocated by the County Government of Nyandarua. The appellant sought to have it shared equally by Elizabeth Njeri Githegi and Monicah Wanjiku Kiongo, the respondent.
 - b. The County Government of Nyandarua allocated a temporary kiosk at Matches Centre. The appellant sought to have it shared equally by Elizabeth Njeri Githegi and Monicah Wanjiku Kiongo, the respondent.
 5. The respondent claimed that this was one plot and proposed to share it equally between Monicah Wanjiku Kiongo, Sarah Njeri Githegi, Ruth Wangui Githegi, Tersia Wamuhu Githegi, and Victor Warui Githegi.
 6. I agree with the appellant that the learned trial magistrate erred in distributing the other properties not in issue.
 7. The evidence on record indicates that land parcel number Ngando/Githunguchu/879 belongs to the deceased's father-in-law. Thus, it was unavailable for distribution, and the learned trial magistrate erred in attempting to distribute it.
 8. There is sufficient evidence supporting the appellant's contention that two distinct plots exist.
 9. I am persuaded that the distribution proposed by the appellant was fair and had been agreed upon by the other beneficiaries except the respondent.
 10. I set aside the impugned ruling of the learned trial magistrate and substitute it with the confirmation of grant in terms of paragraph 4 of the Affidavit in Support of Confirmation of Grant.
 11. Since this is a family matter, each party will bear its costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 20TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

