



**Kigotho v Wangeci (Succession Cause E1842 of 2021)
[2025] KEHC 3609 (KLR) (Family) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E1842 OF 2021

PM NYAUNDI, J

MARCH 17, 2025

IN THE MATTER OF THE ESTATE OF FRANCIS KIGOTHO KIMANI (DECEASED)

BETWEEN

MARY WAITHIRA KIGOTHO APPLICANT

AND

MARY CATHERINE WANGECI RESPONDENT

RULING

1. Before this Court is summons for Confirmation of Grant dated 9th May 2024 in which the Administrators sought the following orders:
 1. That the Grant of Letters of Administration Intestate made to the said Mary Waithira Kigotho and Mary Catherine Wangeci in this matter first on 31/1/2023 and further freshly issued in court on the 6/2/2024 be confirmed.
 2. That the Certificate of Confirmation of Grant be confirmed and issued in accordance with paragraph 5 of the affidavit in support of the said grant herein.
2. The summons was supported by the Affidavit of even date sworn by one of the Applicants/ Administrators, Mary Waithira Kigotho and a Further Affidavit dated 6th June 2024.
3. Before the Summons for Confirmation of Grant was heard and determined, Mary Catherine Wangeci opposed the summons vide a Replying Affidavit dated 3rd June 2024.
4. Mary Catherine Wangeci opposed the mode of distribution proposed by Mary Waithira Kigotho. She argued that she was the deceased's wife and the next of Kin of the deceased and the deceased had



indicated how he wished his benefits and pension should be distributed vide a letter dated 15th May 2018. She proposed that the mode of distribution should be as follows;

Name	Description of Property	Share of Heirs
Mary Waithira Kigotho	LOC 3/Kakuia/1212	0.23 acres
Mary Catherine Wangeci	LOC 3/Kakuia/1212	0.23 acres
Mary Waithira Kigotho William Charua Joseph Kimani Kigotho Samuel Murage Kigotho Elizabeth Wanjiku Kigotho	Group Life Benefits from Pioneer Assurance Company I.R.O No. 217138/198XXXXXX76	20% 20% 20%A/C 01200XXXXXXXX00 20%A/ C 01200XXXXXXXX00 20%A/C 01200XXXXXXXX00
Mary Catherine Wangeci	Death Gratuity	100%
Mary Catherine Wangeci	Pension from the National Police Service	100%

5. In her Further Affidavit, Mary Waithira Kigotho avers that the deceased was married to her and Mary Catherine Wangeci. She argued that the *Public Officer Ethics Act* does not govern the law of distribution of the estate of the deceased. and therefore, does not supersede the law of succession. That the declaration by the deceased is not a nomination as presented by the Respondent. She and her children are recognized as legal dependants, heirs, next of kin for the purposes of succession under the Law of Succession. New shares discovered in Harambee Sacco and Harambee Sacco Investments should be shared equally between the two households. She argued Joseph Kimani Kigotho vide a deed of disclaimer dated 3/6/2024 denounced all his rights, title and interest to the share of the deceased's estate and therefore the estate should be distributed equally among the two households.

Background

6. This succession cause relates to the Estate of Francis Kigotho Kimani (hereinafter the deceased) who died intestate on 13th May 2018.
7. The Deceased was survived by the following;
- a. Mary Catherine Wangeci- wife.
 - b. Mary Waithera Kigotho- wife.
 - c. William Charua Kimani- son.
 - d. Joseph Kimani Kigotho-son.
 - e. Samuel Murage Kigotho-son.
 - f. Elizabeth Wanjiku Kithogo-daughter.
 - g. Elizabeth Wanjiku Kithogo-daughter.
 - h. Joseph Kimani Kigotho-son.



- i. Ann Lucy Wanjiku Kigotho- son.
8. The Estate of the Deceased was said to be comprised of the following;
- a. Title No. LOC 3/Kakuia/1212.
 - b. Group Life Benefits (Pioneer Assurance Company, Policy No. 198XXXXXX76).
 - c. Death Gratuity.
 - d. Pension from the National Police Service.
9. Following the demise of the Deceased, Mary Waithera Kigotho petitioned for letters of administration intestate. The grant was issued to her on 31st January 2023. Mary Catherine Wangeci filed summons for revocation of grant dated 2nd October 2023. Parties consented to have the grant revoked and a fresh grant was issued in the names of Mary Waithera Kigotho and Mary Catherine Wangeci on 6th February 2024.
10. The summons for confirmation of grant was disposed of by way of written submissions.

Applicant's Submissions.

11. The Applicant's submissions are dated 18th October 2024. It was her submission that the deceased had two wives. Each house is entitled to an equal share of the deceased's estate. She submitted that nomination under Pioneer Insurance does not supersede the law of distribution in Succession.

Respondent's Submissions

12. The Respondent's submissions are dated 30th October 2024. She submitted that the deceased's pension, Death Gratuity and pension gratuity do not vest in the deceased's estate as stated in Section 100 of the *Insurance Act*. She sought to rely on the decisions in In the matter of the Estate of Faith Muita (Deceased) High Court Succession Cause No. 1324 of 2013 and In the matter of Carolyne Achieng Wagah (Deceased) High Court Succession Cause No. 1374 of 2007.

Analysis and Determination

13. I have carefully considered the competing submissions by the parties and the proposed modes of distribution by the parties. I have also considered the authorities relied on, and the relevant provisions of the law cited. In my view, two main issues arise for determination:
- i. Whether group life benefits, Death Gratuity and Pension from the National Police Service form part of the estate of the deceased?
 - ii. How the estate of the deceased should be distributed.
14. The Law relating to pensions and benefits is governed under the *Retirement Benefits Act* Cap No 3 of 1997 of the Laws of Kenya. Section 36A provides that;

“Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the Estate of the member for purposes of administration and shall be paid out by the trustees in accordance with the scheme rules.”



15. The provisions in Section 36 A of the Act are subject to regulation 23 of the Retirement Benefits (Occupants Retirement Benefit Schemes Regulation which states:

“That the scheme rules shall provide that upon the death of a member, the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named the beneficiary, then trustees shall exercise discretion in the distribution of the benefits to the dependants of the deceased member.”

16. There is now a plethora of case law on exclusion of pensions, insurance policies from estate of deceased where there is a nomination. In the case of *Re Estate of Carolyne Achieng Wagali [Deceased]* 2015 eKLR, the Court stated: -

It is the Law that funds subject of a nomination do not form part of the nominator’s estate 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 the nomination. Nominations are statutory, in the sense of them being specifically provided for by a particular statute.

17. In the instant case from the facts that accrue, there is no dispute that the deceased prior to his death worked as a Police Officer at the National Police Service. The deceased nominated his wife as a nominee. He made a valid and enforceable nomination dated 23rd November 2014 to persons entitled to receive his benefits upon death to be Mary Catherine Wangeci, William Charua, Joseph Kimani Kigotho, Samuel Murage Kigotho and Elizabeth Wanjiku Kithogo.
18. He subsequently and simultaneously on the same date crystalized nomination and made his intention known that the benefits that may accrue upon death be transferred also to the aforesaid beneficiaries.
19. From the foregoing, Group Life Benefits, Death Gratuity and Pension from the National Police Service will go to the nominee of the deceased who is the Respondent and her children.
20. The only remaining property for distribution is LOC 3/Kakuia/1212. The deceased no doubt was polygamous. His estate should therefore be distributed in accordance with Section 40 of the [Law of Succession Act](#), which states as follows:

“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in Sections 35 to 38.”

21. The basic scheme is in line with the principles expounded in the following cases *Rono –v-Rono Civil Appeal NO. 66 of 2002*, where Waki J.A stated inter alia that;-

“More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number



of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife and children of that wife.”

In addition, in the Matter of Re Estate of Benson Ndirangu Mathenge(deceased) Nakuru HCSC NO. 231 of 1998(Ondeyo J), the deceased was survived by his two widows and their children. The first widow had four children, while the second widow had six children. The court stated that the first house was comprised of five units while second had seven units. The two houses of the deceased combined and looked at in terms of units made up twelve units. The court distributed the estate to the children and the widows treating each as a unit. The land available for distribution was forty acres, which was divided by the court into twelve units. Out of the twelve units, five were given to the first widow and her four children, while the remaining seven units went to the second widow and her six children.

22. Further, In the Matter of the Estate of Nelson Kimotho Mbiti(Deceased) HCSC No.169 of 2000, Koome J (as she then was) directed that the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units. The same reasoning was also applied by Judge Abida Ali Aroni in the Estate of Ainea Masinde Walubengo(Deceased) (2017)eKLR stating that;“I am of the view that Section 40 of the Law of Succession Act will apply to the circumstances of this Case. Meaning that the Court will distribute the estate of the deceased according to each house taking into account the number of children in each unit including the surviving widow.”
23. In this case, the first house is made up of 4 units while the second house is made up of 5 units. LOC 3/Kakuia/1212 will be divided in the ratio of 4:5. Each party shall bear their own costs.

It is so ordered

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 17th DAY OF MARCH, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of;

Kanja Court Assistant

Nancy Shikuku for 2nd Petitioners

Mwaura for Administrator 1st Petitioner

