



REPUBLIC OF KENYA



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**In re Estate of Kibicho Wanjie (Deceased) (Succession Cause
111 of 2013) [2025] KEHC 4593 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 111 OF 2013**

RM MWONGO, J

APRIL 8, 2025

**(FORMERLY NAIROBI HC SUCCESSION CAUSE NO. 334 OF
2009 & KERUGOYA SRM SUCCESSION CAUSE NO. 257 OF 2007)**

IN THE MATTER OF THE ESTATE OF KIBICHO WANJIE (DECEASED)

BETWEEN

STEPHEN MUGO KIBICHO PETITIONER

AND

JEMIMA NJOKI KIBICHO (DCD) 1ST PROTESTOR

MILLICENT WANGARI KIBICHO 2ND PROTESTOR

JOHN MURIITHI KIBICHO 3RD PROTESTOR

JUDGMENT

Summons for confirmation

1. The deceased died on 27/10/2006 domiciled in Kirinyaga (District). A grant of letters of administration to the estate of the deceased was jointly issued to the petitioner and Jemima Njoki Kibicho (now deceased), who were the deceased's son and wife. The petitioner filed summons for confirmation of grant dated 01st February 2021, the subject of the present protest.
2. In the affidavit supporting the summons, the petitioner stated that the deceased was survived by his late wife and 5 children. He named them as Jemima Njoki Kibicho (deceased), Stephen Mugo Kibicho, Rose Wangari, James Muriuki, Millicent Wangari and John Muriithi.
3. He also listed the properties, stocks and bank accounts forming the estate of the deceased, and proposed that the estate be distributed as follows:
 1. Land parcel number Mwerua/Gitaku/561 measuring 6.79 acres:



- a. Stephen Mugo Kibicho - 1 acre
 - b. Rose Wangari - 1 acre
 - c. James Muriuki - 1 acre
 - d. Millicent Wangari - 2.89 acres
 - e. John Muriithi - 0.9 acre
2. Land parcel number Mwerua/Gitaku/562 measuring 2.1 acres
 - a. John Muriithi- 2.1 acres
 3. Half share in plot no. 125 Kagio: to be jointly held in equal shares by the 5 children of the deceased
 4. Shares in Cooperative Bank: to be shared equally among the 5 children of the deceased.
 5. Shares in Kimmi Housing Limited: to be shared equally among the 5 children of the deceased.
 6. Munyaka shares: to be shared equally among the 5 children of the deceased.
 7. Mwirua Cooperative Society shares: to be shared equally among the 5 children of the deceased.
 8. Funds in KCB Kerugoya: to be shared equally among the 5 children of the deceased.

The Protest

4. The 2nd and 3rd protestors filed their joint affidavit of protest dated 17th March 2022. In it, they deposed that they are children of the deceased with their late mother Jemima Njoki Kibicho. That before their mother married the deceased herein, she had 2 children namely the petitioner and James Muriuki Kibicho. The deceased also had a daughter, Rose Wangari Murogoi with another woman before his marriage to their late mother.
5. They proposed that the estate be distributed as follows:
 1. Land parcel number Mwerua/Gitaku/561 measuring 6.79 acres:
 - a. Millicent Wangari- 4.29 acres
 - b. John Muriithi- 2.5 acres
 2. Land parcel number Mwerua/Gitaku/562 measuring 2.1 acres
 - a. John Muriithi- 2.1 acres
 3. Half share in plot no. 125 Kagio to be held in equal shares amongst:
 - a. Rose Wangari
 - b. James Muriuki
 - c. Millicent Wangari
 - d. John Muriithi
 4. Shares in Cooperative Bank: to be shared equally among the 5 children of the deceased.
 5. Shares in Kimmi Housing Limited: to be shared equally among the 5 children of the deceased.



6. Munyaka shares: to be shared equally among the 5 children of the deceased.
 7. Mwirua Cooperative Society shares: to be shared equally among the 5 children of the deceased.
 8. Funds in KCB Kerugoya: to be shared equally among the 5 children of the deceased.
6. They deposed that the deceased had received land parcels numbers Mwerua/Gitaku/226 and 228 from the Unjiru clan in 1960. That he gave this land to the petitioner and James Muriuki as gifts while they were still minors. They produced copies of green cards as evidence. The deceased also gave half of plot number 125 Kagio to the petitioner as a gift later in his lifetime. This plot has rental spaces which generate rental income and the petitioner has continually benefitted from excluding the other children of the deceased.

The Hearing

7. The protest was heard viva voce. The first protestor having died, the 2nd protestor testified as PW1. She testified on behalf of herself and the 3rd protestor, who she said are in occupation of parcel numbers Mwerua/Gitaku/561 and 562 where they also carry out farming activities. Their late mother was also buried there but the other siblings have never lived on the said land. The petitioner owns and occupies half of the plot in Kagio.
8. In cross-examination, she stated that the deceased had about 5 wives and she does not know some of them. It is the deceased who gave Muriithi parcel number Mwerua/Gitaku/562 but he did not have it transferred to him. That the deceased intended that Mwerua/Gitaku/561 be given to his late wife and the 2nd protestor and upon the death of his wife, it should be left to the 2nd and 3rd protestors. She stated that James Muriuki and the petitioner grew up on parcel number Mwerua/Gitaku/561 but they were given other pieces of land by the deceased before he died. The deceased gave half of the Kagio plot to the petitioner as a gift but she did not have any document to prove this.
9. The petitioner testified as RW1. He stated that parcel numbers Mwerua/Gitaku/561 and 562 are family land to which he is entitled. That he purchased plot number 125 Kagio with his late father and that is why he owns half of it. He stated that he was given parcel number Mwerua/Gitaku/226 by the clan and not by his father, and at the time of adjudication, he was 7 years old in 1960.
10. He said that he occupies that land to date; that he bought plot 125 Kagio with his father and he developed it with rental units. He did not have evidence that he bought the land and he could not recall who the vendor was. He stated that the rent is about Kshs.20,000/= when the units are fully occupied and he used to give his late mother money for sustenance from that plot. He stated that given the current value of the land, he cannot afford to buy own his co-owner's portion.
11. RW2, James Muriuki Kibicho, stated that he was given parcel number Mwerua/Gitaku/228 from the clan in 1960, He was born in 1940. Neither he nor RW1 occupy Mwerua/Gitaku/561 and 562 and that the land is occupied by the 2nd and 3rd protestors who live on and cultivate it. He said they were given the plots by the deceased before he died. He stated that the petitioner has already benefitted from half of the plot at Kagio and he shouldn't benefit from the remaining half that is now in the estate. That even though it is the petitioner who manages the Kagio plot, he does not share proceeds with the other siblings and only used to share with their late mother.
12. RW2 further testified that at the point of adjudication, it was the deceased who told the clan to give parcel number Mwerua/Gitaku/228 to him. The deceased was given parcel number Mwerua/Gitaku/227 by the clan and he later subdivided it to Mwerua/Gitaku/561 and 562. That they all grew



up on parcel number Mwerua/Gitaku/227 before the deceased subdivided it so that Muriithi could get 2 acres of the land which is now Mwerua/Gitaku/562.

13. RW3 was Rose Wangari who stated that the deceased was first married to her mother who died while giving birth to her. (RW3). That the deceased married another wife who had 4 children. She stated that the deceased lived on parcel numbers Mwerua/Gitaku/561 and 562 with the 2nd and 3rd protestors, which land was given to him by the clan. He did not give that land to them upon his death. She did not know how parcel numbers Mwerua/Gitaku/228 and 226 were acquired and whether RW1 and RW2 are in possession of the said land. As for the Kagio plot 125, she stated that she saw the petitioner and the deceased go there to build but she couldn't tell whether the petitioner had been given half of it.

Submissions

14. The parties filed written submissions as directed by the Court.
15. In his written submissions, the petitioner stated that the protestors had failed to prove that the land was given to them by the deceased prior to his death. Relying on section 107 and 109 of the [Evidence Act](#), the petitioner argued that the onus was on the protestors to prove their allegation but they had failed. He urged the court to distribute the land according to section 42 of the [Law of Succession Act](#). Regarding parcel number Mwerua/Gitaku/562, he stated that the deceased wished for it to be given to John Muriithi and this position should be upheld. He relied on the case of *Silas Ruguaru M'itambu v Gedion Mutwiri M'itambu & another* [2017] KEHC 3114 (KLR).
16. Regarding parcel number Mwerua/Gitaku/561, the petitioner urged the court to distribute it amongst the children of the deceased as proposed in the affidavit in support of the summons for confirmation of grant. He argued that there is sufficient evidence to prove that he co-owed plot no. 125 Kagio with the deceased and it is only right that the deceased's half be left to his children in equal shares. He urged the court to adopt his mode of distribution.
17. On their part, the protestors submitted that the petitioner and James Muriuki were given land parcel numbers Mwerua/Gitaku/226 and 228 by the deceased before he died. He retained for himself Mwerua/Gitaku/223 which he subdivided into Mwerua/Gitaku/561 and 562. The latter portion was 2.1 acres which he intended to give John Muriithi as a gift just like he had given the petitioner and James Muriuki. They placed reliance of Sections 107, 108, 109, 110 and 112 of the [Evidence Act](#), Section 42 of the [Law of Succession Act](#) and the case of *Joseph Wairuga Migwi v Mikielina Ngina Munga* [2016] KEHC 6110 (KLR). They urged the court to dismiss the summons for confirmation of grant and distribute the estate according to the mode proposed in the affidavit of protest.

Issue of determination

18. The core issue for determination is; how should the estate of the deceased be distributed?

Analysis and Determination

19. PW1, the 2nd protestor testified that prior to his death, the deceased left land parcel numbers Mwerua/Gitaku/561 and 562 to her and the 3rd protestor since they were already living there. She stated that the deceased did not leave a will but that those were his oral wishes. It was her evidence that the petitioner and James Muriuki were already given land gifts by the deceased before he died and so they are not entitled to the estate.
20. In rebuttal, RW1 and RW2 testified that they received land parcel numbers Mwerua/Gitaku/226 and 228 from the clan upon recommendation by the deceased in 1960. That the deceased received parcel



number Mwerua/Gitaku/227 where he raised all his children (save for Rose Wangari) This parcel he later subdivided into the current Mwerua/Gitaku/561 and 562. The deceased intended that the 3rd protestor would get Mwerua/Gitaku/562 since all his other sons already had other parcels of land from the clan.

21. All evidence in civil matters, including the evidence presented herein, is subject to the standard of proof, namely, on a balance of probabilities. Section 107 and 109 of the *Evidence Act* places the burden of proof on the alleging party. Through the affidavit of protest, the protestors produced copies of green cards for the properties Mwerua/Gitaku/226 and 228 showing that the properties were registered to them as first owners.
22. This position is supported in their evidence that they received the land from the clan through adjudication in 1960. The land is not in the name of the deceased and cannot feature as part of the deceased's estate. As to the argument that the land was given to them as a gift from the deceased, it was incumbent upon the protestors to provide clear evidence to prove this allegation. They have not done so.
23. The estate of the deceased is made up of Mwerua/Gitaku/561 and 562 and half plot number 125 Kagio, together with stocks and money. Both parties are in agreement concerning distribution of the stocks and money; the disagreement is on the immovable property. From the testimonies, there is no doubt that the properties Mwerua/Gitaku/561 and 562 belonged to the deceased prior to his death. It has also been proved on a balance of probabilities that half of plot number 125 Kagio belonged to the deceased, having acquired it alongside the petitioner.
24. How should the deceased's property be distributed? The deceased had 5 children. His known wife is also deceased. The distribution herein is, therefore, subject to section 38 of the *Law of Succession Act* which provides:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
25. The petitioner gave his reasons for proposing distribution in the manner set out in his summons for confirmation. In the proposal, the 2nd protestor will set a fairly larger portion of the property Mwerua/Gitaku/561 than the others. The 3rd protestor got a smaller portion of Mwerua/Gitaku/561, but also the whole of Mwerua/Gitaku/562. The summons for confirmation proposes distribution of half of the plot 125 Kagio amongst the 5 children in equal shares.
26. The court endeavors to attain equitable distribution of the estate given the circumstances at hand. In Black's Law Dictionary, 9th Edition 'equitable' means 'Just; consistent with principles of justice and right; Existing in equity; available or sustainable by an action in equity, or under the rules and principles of equity'.

Conclusion and Disposition

27. Ultimately, the protestors have not given sufficient reason for the court to adopt their mode of distribution. Accordingly, the protest fails and it is hereby dismissed. In the result, the property shall be distributed according to the mode of distribution proposed in the supporting affidavit to the summons for confirmation of grant.
28. Each party shall bear its own costs, costs, this being a family matter.



29. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 8TH DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Ms. Ann Thungu for Petitioner
2. Mr. Munene holding brief for Ngige for 2nd and 3rd Protestors
3. Francis Munyao - Court Assistant

