



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ngaruhiya Kamau (Deceased) (Succession Cause
1 of 2014) [2025] KEHC 4303 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4303 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 1 OF 2014

JRA WANANDA, J

APRIL 4, 2025

IN THE MATTER OF THE ESTATE OF NGARUHIYA KAMAU (DECEASED)

BETWEEN

SAMUEL KAROKI NGARUIYA APPLICANT

AND

JANE WANJIRU NGARUHIA PETITIONER

RULING

1. The Application herein is an interesting one since, from the record, it pits a son against his own mother in respect to inheritance from his father's estate. The son wants the Court to compel his mother to surrender to him his share of the inheritance from his late father from whose estate, the mother was named as the sole beneficiary of all properties. From the record, the son is currently about 57 years old while the mother is about 78 years old.
2. The background of the matter is that the deceased, Ngaruhia Kamau, died intestate on 30/09/2013 at the age of 73 years. On 6/01/2014, the Petitioner, Jane Wanjiru Ngaruhia, as the widow to the deceased, petitioned the Court for Grant of Letters of Administration in respect to the estate. In the Petition, she stated that, apart from herself, the deceased left behind 9 children, including the Applicant. 3 parcels of land were listed as comprising the estate. The Grant of Letters of Administration was then, on 17/03/2014, issued to the Petitioner as the sole Administrator and the same was subsequently confirmed on 16/06/2015 whereof all the 3 properties devolved to the Petitioner as the widow as the sole beneficiary.
3. On 6/02/2021, the Applicant, through Messrs C.D. Nyamweya & Co. Advocates, filed the Summons dated 4/02/2021 seeking orders that the Petitioner be compelled to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and of the dealings therewith. The second prayer was that the Petitioner, due to her advanced age, be substituted as Administrator, by any other



- competent beneficiary. O. Sewe J, by her Ruling dated 12/07/2021, allowed only the prayer to render accounts.
4. The Applicant has now returned to Court with the present Chamber Summons dated 7/12/2021 with the following prayers:
 - i. [.....] spent
 - ii. That this Honourable Court do issue an order for the appointment of the Applicant's shares in the net intestate estate of the deceased Ngaruhia Kamau.
 - iii. Costs be provided for.
 5. The Application is supported by the Affidavit sworn by the Applicant, in which he deponed that the Grant gave the Petitioner a life interest in the whole residual of the net intestate estate, that since 2014 the Petitioner has unreasonably been administering the estate whereby she has been sharing rent income and other incidentals with other beneficiaries to the Applicant's exclusion, that in 2022, the Applicant's son who was attending school and living in one of the estate property was ejected from the property under the instructions of the Petitioner, and that the Applicant is the only beneficiary not living in the estate properties. He deponed that he has been subjected to economic hardship and has been rendered destitute as the Petitioner has ensured that the Applicant does not benefit from the estate, and that the Petitioner has displayed open bias by opening accounts with some of the beneficiaries whom she allows to benefit from the income.
 6. The Petitioner, in his Replying Affidavit in opposition to the Application sworn on 15/04/2015 and filed through Messrs Mathai Maina & Co. Advocates, deponed that all the beneficiaries signed the consents on the mode of distribution of the estate and appeared before Court, and that the administration of the estate having been completed in compliance with the law, and all the titles transmitted into her name, the Court has now become functus officio.
 7. It was then agreed that the Application be canvassed by way of written Submissions. Pursuant thereto, the Applicant filed the Submissions dated 12/08/2024 while the Petitioner filed the Submissions dated 15/04/2024.

Applicant's Submissions

8. The Applicant's Counsel reiterated the matters already deponed in the Supporting Affidavit and submitted that the Petitioner has not responded to the Applicant's various allegations, including the one of being excluded from enjoying the benefits of the estate, and that therefore she has not refuted the claims. He also denied that the Court is now functus officio. She submitted that the Petitioner would only be entitled to absolute ownership of the personal effects and movable assets but as regards the capital assets of the estate, she only has a life interest in.
9. He cited the case of *Susan Wanjiku Ndungu & Others vs Lilian Wambui Ndungu* HCM (Nairobi) No. 36 of 2001, the case of Succession Cause No. 739 of 2009 (Nyeri) *In the Matter of the Estate of Njari Karongi alias Esthon Njari Karongi (deceased)* and also Civil Suit No. 4 of 2019 (Nyeri) *Miriam Nyawira Mwaniki vs Serah Njeri Mwaniki and National Bank of Kenya*. He then submitted that the real owners of the estate properties are the children, that it is wrong for the Petitioner to claim to have taken a loan to renovate some of the properties as per her account earlier rendered in Court as such powers are only exercisable with the consent of all beneficiaries or the Court and that the Petitioner has taken herself to be the absolute owner of the capital estate. He urged further that noting that the beneficiaries are 8 in number and the properties are 3, the Court do appoint a share of 1/8 of the capital estate to the Applicant.



Petitioner's Submissions

10. Counsel for the Petitioner, too, reiterated the matters already deponed to in the Replying Affidavit and basically submitted that in confirming the Grant, the Court satisfied itself that all beneficiaries had given their consents in accordance with Section 71 of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. He reiterated that the Petitioner has distributed the estate in accordance with Section 83(f) of the now Act and has completed the administration. According to Counsel, the estate has been fully transmitted as per the Certificate of Confirmation of Grant and title deeds issued and thus, the Court has become functus officio.

Determination

11. The issues that arise for determination in this matter can be summarized as follows:

“Whether the Court should appoint the Applicant’s share in the net intestate estate of the deceased, the Applicant’s mother being the sole Administrator of the estate and the sole beneficiary.”

12. Regarding a widow’s entitlement to the life interest in her late husband’s estate, Section 35 of the Law of Succession Act, provides as follows:

35. Where intestate has left one surviving spouse and child or children

- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
- (a) the personal and household effects of the deceased absolutely; and
- (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

- (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
- (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so, what order, shall have regard to—
- (a) the nature and amount of the deceased’s property;
- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;



- (c) the existing and future means and needs of the applicant and the surviving spouse;
- (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

13. I also find it relevant to cite the explanation given by Ngaah J in the case of *In re Estate of Justus Nguyo Waititu alias Jastus Nguyo Waititu (Deceased)* [2019] eKLR, in which he held as follows:

“The deceased having been survived by a widow and children the net intestate estate devolves upon the widow subject of course to the proviso to section 35(1)(b) that the widow's interest determines upon her re-marriage to any person. But while she enjoys life interest, the deceased's widow retains the power of appointment in exercise of which she may give any part of the estate or even distribute the entire estate to the surviving child or children.

If the widow has the power to distribute the estate in her lifetime she may as well waive her right to the estate and instead share it out in the confirmation proceedings. My understanding of this provision of the law is that nothing stops her from taking this course as long as she is in agreement with her children. At the end of the day the distribution of the estate during the confirmation proceedings invariably achieves the same purpose that the power of appointment is meant to achieve.

Where there is a disagreement, as has turned out to be the case here, then the only available alternative open to this court is to revert to the strict application of section 35(1)(b) of the Act and transfer the entire net intestate estate to the deceased's widow subject, of course, to a life interest. Upon the devolution, it will be up to the deceased's widow to exercise the power with which she is clothed and distribute all or any part of the net intestate estate, by way of gift, amongst her children or their heirs.

The door will always remain open for the deceased's children or their heirs as the case may be to exercise their right under subsection (3) and apply for appointment of their share if the deceased either unreasonably exercises her power or if she withholds it, again unreasonably.

I will therefore allow the protest and order that the grant made to the applicant be confirmed in the foregoing terms; that the Zipporah Wanjiku Nguyo be registered as the sole proprietor



of Title No. Chinga/Gathera/W-92 subject to life interest. Being a dispute amongst family members, I will not make any order as to costs. It is so ordered.

14. It is also relevant to note that O. Sewe J, in her said Ruling dated 12/07/2021, found and held as follows.

“(21) As to whether the applicant is entitled to a share of the rental income, the court record does support the petitioner’s assertion that all the beneficiaries were in agreement that all the assets be transferred to her name. This is clearly set out at paragraph 8 of the Affidavit in Support of the Summons for Confirmation of Grant sworn on 27 January 2015. One of the documents annexed to that affidavit was a Consent signed by the beneficiaries who were readily available; the petitioner having indicated that some of the beneficiaries were outside the jurisdiction of the Court. It is notable that the applicant was one of the signatories to the consent and thereby joined his siblings in consenting that:

“We the undersigned do hereby give our irrevocable consents confirming our acceptance of the mode of distribution stated in the affidavit in support of the summons for confirmation of the grant herein sworn by Jane Wanjiru Ngaruiya and hereby willingly append our respective signatures and bind ourselves jointly and severally on our own behalf..”

(22) There being no indication, either in the Consent or the Certificate of Confirmation that the petitioner was to hold the property in trust for the other beneficiaries, the applicant’s complaint that he has been left out of the proceeds of the estate, and in particular the rental income, is without basis. It is not for nothing that, in the proviso to Section 71(2) of the *Law of Succession Act*, it is stipulated that

“Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

(23) Where, as in this case, the beneficiaries were all in agreement that the petitioner be the sole recipient of the estate assets, it is to be presumed that the beneficiaries endorsed the right of the petitioner to a life interest over the net assets of the deceased pursuant to Section 35 of the *Law of Succession Act*. Under that provision, the petitioner is at liberty to make gifts from the estate property to any of the beneficiaries as she deems appropriate. Accordingly, I find no merit in the applicant’s complaint that he has been excluded from the income accruing to the estate.”

15. Upon considering all the above, I find that the Application herein cannot succeed. As already held by Sewe J, from the Certificate of Confirmation of Grant dated 16/06/2015 is clear that the entire estate devolved to the Petitioner as the sole heir. All the beneficiaries, including the Applicant who was already of the advanced age of 45 years by that date, expressly consented to this arrangement in writing. It is presumed that all, including the Applicant therefore understood the full implication and consequences



of that arrangement. To now return to Court 10 years later seeking that the Court appoints his share out of her mother's life interest entitlement reeks of an afterthought and insincerity.

16. While I recognize a beneficiary's right to seek the appointment of his share under Section 35 of the Law of Succession Act, viz a viz a widow's right to the life interest in the residual net intestate of her late husband, this case demonstrates the need for families to present clear modes of distribution at the time of confirmation of Grants. In such cases, clarity is key. Not presenting clear arrangements at the time of confirmation of the Grant is a clear recipe for future disputes as has been demonstrated herein. In this case, the situation is even more complicated by the fact that all the properties are now registered in the mother's name and titles long issued in here name, and she has even charged some of the properties as security for loan advances. Granting the prayers sought by the Applicant will therefore also mean that the rights of "innocent" third parties (lenders/banks) would also be affected.
17. Even if it is acknowledged that the widow is entitled to the life interest as recognized under Section 35, my view is that it is still advisable to always include, at the time of confirming a Grant, the respective shares that would eventually devolve to each child upon their mother's death or remarriage. Another option is to state that the mother will hold the properties in trust for the respective children and proceed to expressly mention the respective shares so held in trust. Leaving the issue of shares unaddressed makes it quite difficult for the Court to later on identify and isolate the individual children's apportionments when the Certificate of Confirmation, as herein, is silent on what such shares should be. The Applicant's act of returning to Court this late with the nature of Application now brought herein means that, if granted, the Court may now have to re-open the entire Succession Cause and may even have to conduct a viva voce trial since all parties would need to be given a hearing before the Court determines the apportionments. This, in my view, cannot have been the intention of the drafters of Section 35 of the Law of Succession Act.
18. In any case, even if I were to be of a different opinion, O. Sewe J having already held in this very matter, that the Applicant cannot make the nature of claims that he is making herein, the Certificate of Confirmation of Grant being silent on apportionments of shares or on holding of properties in trust, being a Judge of equal jurisdiction, and I, not having been moved to review her decision, I would have no jurisdiction to rule in a manner that would be contrary to her findings as that would amount to sitting on Appeal on another Judge's decision. Having not appealed against O. Sewe J's findings, the Applicant will have to live with those findings.
19. Before I pen-off however, I wish to cite the "Solomonic wisdom" applied by the Court of Appeal when dealing with a matter of this nature, in the case of Justus Thiora Kiugu & 4 others v Joyce Nkatha Kiugu & another [2015] eKLR in which the following was stated:

"The five appellants are the children of the late M'Ikiugu alias M'Mwirichia (deceased), who passed away intestate on 16th January, 1978. The dispute is over the distribution of the deceased's estate that has put the five appellants on one side against their mother and widow of the deceased, Joyce Nkatha Kiugu, (1st respondent).

The single issue that has dogged this family for over a decade is how to distribute the estate of the deceased among his widow and ten children.

.....

It is common ground that the appellants and the 2nd respondent are children of the deceased and the 1st respondent is their mother and the only spouse and widow of the deceased. Somehow, the widow could not agree with her children on the mode of distribution of her husband's estate. The petition for the letters of administration was filed in the



High Court of Meru in the year 2000 by the widow. The children of the deceased filed objections, although it would appear they later consented to the widow being appointed as the administratrix of her husbands' estate but the issue of distribution of the estate was ordered to be determined.

.....

..... the appellants' request was that the 1st respondent should hold this parcel of land in trust for herself and the sons and daughters of the deceased. The appellants contend that the mode of distribution that was adopted by the learned Judge is not fair as it leaves out some beneficiaries; besides, the 1st respondent gave herself 5.8 acres which she did not need as she is in her 90s.

.....

This appeal was opposed by Mr. Arithi, learned counsel for the widow of the deceased. He argued that the deceased's widow was a key participant with her late husband in the acquisition of the property under distribution. She is entitled to a life interest over all the assets with a power of appointment. Unless the appellants were challenging the power of appointment, their appeal lacks merit.

On the part of the 2nd respondent, this appeal was opposed; Mr. Kaburu, his learned counsel submitted that the 2nd respondent was also a son of the deceased. However, the appellants have isolated him and filed affidavits stating that he should not get any of the deceased's assets. The 2nd respondent was only interested in 1 acre which he was given during the deceased's life time and that was Ntima/Igoki 3524. However, due to the hostilities, he was faced from the appellants for the simple reason that he looks after their mother who is on wheelchair, he would wish to stake his claim for equal shares of his father's estate.

We have given due consideration of the rival submissions with anxious minds because this is an estate of a deceased who died intestate. He left one surviving widow and children. We have wondered as a court time without number why the distribution of an estate such as this one would be protracted. What legal or even moral justification would compel children of the deceased to object to their mother, the only widow of the deceased from obtaining the grant of letters of administration over their father's estate? Secondly why was the estate not distributed simply as provided for under Section 35 of the *Law of Succession Act*? It was emphatically confirmed that the widow has no intention of disposing or selling any of the assets. The protracted proceedings that have raged on from the year 2000, clearly demonstrate that this family of the deceased is divided. There is rivalry, discontent, hatred and contempt especially as against the respondents.

It is clear from the record that the appellants are against their own brother, the 2nd respondent whom they wanted to be excluded from the distribution of the estate. The widow is also clinging to the 2nd respondent as she said he is the one who is providing her with care during her sunset days; this is a matter of great concern as it is expected in most customs that children have an obligation not only to honour and respect their parents, but to take care of them. The widow of the deceased is obviously not amused that her own children have no regard for her as their mother and also the role she played and contributions she made together with the deceased in acquiring the estate that the appellants are striving to control. The appellants have also used derogatory adjectives against their mother by referring to her as old, sick, illiterate and not having many years to live. The appellants are on one side; their



mother is on another with the 2nd respondent; and it is not known which side the daughters of the deceased are as they did not come out to state their case.

Be that as it may, we need to state that all the rivalry, animosity or protagonism in this matter was unnecessary. We urged the parties in this appeal to attempt and make peace among themselves and to nurture harmony and cordial relationship among themselves because the distribution of the estate of the deceased in this matter, as in every case of a deceased person in Kenya, is governed by the Law of Succession Cap 160 of the Laws of Kenya and the Constitution. The distribution of the deceased's estate is not governed by whims, caprice nor is it governed by retrogressive and biased opinions against the aged and the female gender.

It is necessary for us to revisit the provisions of Article 159 (c) of the Constitution of Kenya which provides:

.....

We have revisited the foregoing provision because we urged the parties herein to reconcile and if they reach an agreement, we as a court would adopt their written consent to settle this matter. We did this because we appreciate that an estate of a deceased person who died intestate leaving one spouse and children like in this case of M'Ikiungu Mwirichia cannot legally be distributed in any other way other than the parties agreeing among themselves and filing a consent, or by the court following the provisions of Section 35 of the Law of Succession. In the event that parties agree and they record consent on the mode of distribution, the court has no choice but to adopt the consent and make it an order of the court. Short of a written consent on the mode of distribution, the court has no discretion but to distribute the estate of the deceased as per the provisions of Section 35 of the Law of Succession which makes provisions for an intestate who has left one surviving spouse and child or children.

.....

We think we have said enough to demonstrate that there is no other legal way of distributing the deceased's estate other than the Law of Succession Cap 160.

Accordingly, the decree or certificate of confirmed grant ensuing from the judgment dated 28th November, 2013, is hereby set aside. All the assets of the deceased stated here below and others residue to shall be registered in favour of his widow Joyce Nkatha Kiugu to hold in trust for herself and the deceased children in equal shares:

.....”

20. As shall be noted hereinbelow, I shall adopt and try to apply a bit of the above “wisdom” herein.

Final Orders

21. In the premises, I rule and order as follows:

- i. The Applicant's Chamber Summons dated 7/12/2023 is hereby dismissed.
- ii. However, to safeguard and preserve the estate for the future benefit of the beneficiaries, I prohibit the Petitioner from effecting any further transfer, sale, sub-division, or lodging, charging or mortgaging to any lender, of any immovable property of the estate, or to carry out any other similar dealings that may amount to parting with, or jeopardizing the ownership or validity of the properties, unless and except with the Court's leave.



- iii. To minimise future disputes, I also invoke this Court's inherent powers under the *Law of Succession Act* and direct that the Certificate of Confirmation of Grant dated 23/06/2015, be rectified to provide that the Petitioner holds all the properties listed therein, in trust for the 8 beneficiaries, namely, Peter Kamau Ngaruiya, Zakayo Karanu Ngaruiya, Samuel Karoki Ngaruiya, James Thuo Ngaruiya, Ann Njoki Ngaruiya, Mary Wambui Ngaruiya, Ruth Njeri Ngaruiya and Naomi Wanjiku Ngaruiya, and who shall all be expressly named in the Certificate.
- iV. Should the parties agree, within 60 days from the date hereof, on the respective shares that shall eventually devolve to each beneficiary upon the death or remarriage of the Petitioner, then such shares breakdown shall also be expressly mentioned in the Certificate of Confirmation of Grant. Should there be no such agreement within the said period, the Court shall be at liberty to issue the rectified Certificate of Grant of Confirmation without the necessity of including the respective shares.
- V. The orders hereinabove shall not affect the validity and legitimacy of any already subsisting charge or any other similar security registered against the title to any of the estate properties.
- Vi. As the Application involves a son against his mother, I make no order on costs

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH DAY OF APRIL 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

N/A for all parties

Court Assistant: Brian Kimathi

