



**In re Estate of Fred Mugivane Inuani also known as Fred Inuani Mugivane (Deceased)
(Succession Cause 1779 of 2016) [2025] KEHC 6122 (KLR) (Family) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6122 (KLR)

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

FAMILY

SUCCESSION CAUSE 1779 OF 2016

HK CHEMITEI, J

MAY 15, 2025

**IN THE MATTER OF THE ESTATE OF FRED MUGIVANE
INUANI ALSO KNOWN AS FRED INUANI MUGIVANE**

BETWEEN

MARY VODEMBEKE MUGIVANE APPLICANT

AND

MARY CHAO MUGIVANE RESPONDENT

JUDGMENT

1. This matter relates to the estate of Fred Mugivane Inuani aka Fred Inuani Mugivane (deceased) who died intestate on 8th December, 2015. A grant of letters of administration intestate was issued on 7th February, 2020 to Mary Chao Babu Mugivane and Evelyne Nettah Sayo.
2. Evelyne Nettah Sayo filed the pending summons for confirmation of grant dated 28th February, 2020 which is the subject of this ruling. It seeks for ORDERS THAT:-
 - a. The grant of probate for letters of administration made to the said Applicant in this matter on 7th February, 2020 be confirmed.
 - b. The costs of the application be in the cause.
3. The application is opposed by Mary Chao Babu Mugivane vide affidavit of protest and further affidavit of protest dated 22nd July, 2020 and 18th January, 2021 respectively.
4. She avers inter alia that there is no agreement between the parties in line with the court's decision from 7th February 2020 regarding the distribution of the deceased's estate. The University of Nairobi



pension (if any) is not part of the estate's free property under the [Law of Succession Act](#) and pension documentation needs to be submitted for court review.

5. That the properties excluded from the deceased's free property include: Komarock property (L.R. No. Nairobi/Block 133/154) – Jointly owned with the deceased which by law, belongs to her and the matrimonial home on L.R. No. Bungoma/Ndalu/477 – Acquired and developed jointly with the deceased and thus falls under the [Matrimonial Property Act](#), not succession law.
6. She averred that Mary Vodembeke and her children did not contribute to it. Mary has her own home at Big Tree, Ndalu, Sugarcane crop – Planted solely by her after the deceased's death in 2015; and Motor vehicle KAK 955T – Purchased jointly and transferred to her by the deceased.
7. She deponed that she was unaware of any estate-related rental income held by Mamuka Valuers or assets with Chuna Sacco. That the properties recognized as part of the estate include: Funds in Co-operative Bank, Standard Chartered Bank and Ecobank; Safaricom shares; Motor vehicles KAU 346W (Daihatsu Terios); and KBY 838J (Toyota Wish). The vehicles were jointly purchased and have sentimental value to her.
8. She said that she was willing to give up KAU 346W to resolve the matter peacefully, though she's ready to contest further if necessary. There's also Ikumba House on South/Maragoli/Buyanga/1428 (a subdivision of 1389), which the deceased had bought. Mary Vodembeke allegedly sold it unlawfully during her separation from the deceased and must account for it.
9. Mary Chao Babu Mugivane filed written submissions dated 10th March, 2023.
10. Evelyne Nettah Sayo filed written submissions dated 17th October, 2022 and further submissions dated 17th April, 2023 placing reliance among others on the following:-
 - a. Margaret Wachira v Eliud Waweru Njenga [2018] eKLR where it was ruled as follows: “The courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case, the title produced by the Plaintiff shows that the suit land is registered in her name. That position was not challenged by the Defendant in fact the Defendant failed to file any pleadings in opposition to the claim either in person or through his counsel on record.”
 - b. Gladys Nkirote M'itunga v Julius Majau M'itunga [2016] eKLR where the court stated as follows: “In this case, the Applicant has accused the Respondent of intermeddling with the estate of the deceased through felling of trees growing in the estate property. Is the act complained of intermeddling in the essence of section 45 of the [Law of Succession Act](#)? Whereas the Law of Succession does not define what intermeddling with the property of the deceased is, there is a simple judicial decision on acts which may amount to intermeddling. For instances, in the case of BENSON MUTUMA MURIUNGI vs C. E. O. KENYA POLICE SACCO & ANOTHER [2016] eKLR where the court observed that: “Whereas there is nor specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant or representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the [Law of Succession Act](#). I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law.



I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and may issue any appropriate order (s) of protection of the estate against any person.”

11. This Honorable Court found that both Mary Chao Babu Mugivane and Mary Vodembeke Mugivane (hereinafter “both wives”) were the deceased’s spouses.
12. The deceased’s union with Mary Vodembeke Mugivane was blessed with 2 children i.e. Evelyne Netta Sayo and Marjorie Irene Volege.
13. The deceased’s union with Mary Chao Babu Mugivane was blessed with 2 children i.e. Janet Iminza Inuani and Tavita Joy Alivista Inuani.
14. The properties in dispute, according to the 2 widows, are as follows:-

Mary Chao Babu Mugivane:

- a. Bungoma/Ndalu/477.
- b. South Maragoli/Buyonga/1428.
- c. Nairobi/Block/133/154.
- d. Daihatsu Terios KAU 346W.
- e. Toyota Wish KBY 838J.
- f. Co – operative bank of Kenya Ltd Account Number 01109XXXXXXXX900.
- g. Standard Chartered Bank Kenya Limited Account Number 010XXXXXXXX0500.

Mary Vodembeke Mugivane through Evelyne Netta Sayo:-

Properties forming the estate of the deceased:

- a. Bungoma/Ndalu/477.
- b. Livestock on Bungoma/ Ndalu/477.
- c. West Kenya Sugar Company – Kshs. 1, 091, 000. 00 from Bungoma/Ndalu/477.
- d. Trees on Bungoma/Ndalu/477.
- e. Leasing of Bungoma/Ndalu/477 to an outsider.
- f. Developed rental property L.R. No. Nairobi/Block 133/ 154 Komarock.
- g. Daihatsu Terios KAU 346W.
- h. Toyota Wish KBY 838J.
- i. Nissan Datsun KAK 955T.
- j. Kshs. 550, 000 at Standard Chartered Bank.
- k. Kshs. 40, 000 at Eco Bank.
- l. Kshs. 20, 000 at Safaricom.
- m. Kshs. 150, 000 at the University.



- n. Kshs. 55, 000 being NSSF dues.
- Properties not forming part of the deceased's estate:
 - o. S/ Maragoli Buyonga/ 1428.
 - p. South Maragoli/ Buyonga 112.
- 15. Mary Chao Babu Mugivane does not lay claim on L. R. No. South Maragoli/Buyonga/1428.
- 16. Mary Chao Babu Mugivane states that the following are matrimonial properties:
 - a. Bungoma NdalU/477.
 - b. Nairobi/Block 133/154 jointly owned with the deceased.
 - c. Daihatsu Terios KAU 346W.
 - d. Toyota wish KBY 838J.
 - e. Nissan Pick Up KAK 955T.

Analysis And Determination

- 17. Having perused the rival affidavits as well as the submissions as summarized above, I find that the best approach is to deal with each of the properties separately and apportion it appropriately.
- 18. Land parcel number BUNGOMA/NDALU/477 was registered in the deceased's name on 7th September, 2012. Since this court found that both wives are the deceased's spouses it thus falls within the ambit of Section 8 (b) of the [Matrimonial Property Act](#) which states that:-

“... if the parties in a polygamous marriage divorce or a polygamous marriage is otherwise dissolved, the matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the man and each of the wives.”

- 19. Both wives and their children are the deceased's dependents as per Section 29 (a) of the [Law of Succession Act](#) which provides that:-
- 20. “... For the purposes of this Part, “dependant” means the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.”
- 21. Both wives claim that this parcel of land is their matrimonial home.
- 22. In P AW-M vs. C M A W-M [2016] eKLR, the Court states as follows:-

“As defined by Section 2 of the [Matrimonial Property Act](#) a matrimonial home means premises occupied by the spouses [Emphasis mine].

There is no evidence that the spouses used to live anywhere else apart from the Kilifi house. Between 2007 and 2008 there were no divorce proceedings. Although the premises were undergoing renovations, that cannot be a reason to disqualify the Kilifi house as a matrimonial home. That is where the two parties used to reside as husband and wife. It was therefore their matrimonial home [Emphasis mine]. The plaintiff has known no other home in Kenya other than the Kilifi house. The premises were already owned by the defendant and she has been residing there up to now. The defendant lived in the house with the plaintiff for the period 2007 up to March 2009. The length of time taken between the occupancy



of the premises is quite reasonable. That is where the defendant took the plaintiff as their home. I therefore find that the Kilifi house was a matrimonial home.”

23. It is not disputed that the parcel of land was acquired by the deceased on 7th September, 2012. It has also not been disputed that the house on the parcel of land was still being constructed by the time the deceased died. None of the wives has presented any evidence before this court showing that indeed they lived on the parcel of land during their marriages. None of the wives has also presented any evidence of any contribution that they made towards acquisition of the land, the trees on the parcel of land and the livestock on it.
24. It has not been disputed that Mary Chao Babu Mugivane sold 3 of the 5 dairy cattle and leased out 4 acres of the parcel of land.
25. In the case of *Tau Katungi versus Margaret Katungi* (2014) eKLR, Hon. Musyoka J stated that, “... Life interest confers a limited right to a surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it is their own. By virtue of Section 37 of the Act, a surviving spouse cannot during the life interest dispose of any property subject to that life interest without the consent of all the adult children, co – trustees and the court. This is meant to safeguard the children who are the ultimate beneficiaries of the property the subject of the life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children.”
26. In light of the foregoing, I find that both wives and or houses have a life interest over land parcel number BUNGOMA/NDALU/477 and are therefore obligated to hold it in trust for their 4 children. The same ought to be divided equally between the two houses as found above.
27. As regards NAIROBI/BLOCK 133/154 this property is jointly registered between the deceased and Mary Chao Babu Mugivane. Section 60 of the *Land registration Act* on transmission on death of joint proprietor provides that:-

“If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.”
28. In *Julius Omondi Odeny & another v John Ohanga & 4 others* [2022] eKLR, the Court observed at paragraph 26 that,

“.... Four main features mark this type of ownership: (1) the joint tenants own an individual interest in the property as a whole; each share is equal, and no one joint tenant can ever have a larger share. (2) the estates of the joint tenants are vested (meaning fixed and unalterable by any condition) for exactly the same period of time in this case, the tenant’s lifetime. (3) the joint tenants hold their property under the same title. (4) the joint tenants all enjoy the same rights until one of them dies. Under the right of survivorship, the death of one joint tenant automatically transfers the remainder of the property in equal parts to the survivors (jus accrescendi). When only one tenant is left alive (as is the case in this instance), he or she receives the entire estate [Emphasis mine]. If the joint tenants mutually agree to sell the property, they must equally divide the proceeds of the sale.”
29. As such, I find that NAIROBI/BLOCK 133/154, together with all the developments on it, wholly belongs to Mary Chao Babu Mugivane and it is not available for distribution under succession law.



30. In respect to motor vehicles, namely, DAIHATSU TERIOS KAU 346W, TOYOTA WISH KBY 838J & NISSAN PICK - UP KAK 955T I find that Mary Chao Babu Mugivane has shown her contribution in helping the deceased acquire NISSAN PICK - UP KAK 955T. I thus hold that the same vehicle be awarded to her absolutely.
31. Both wives have not shown their contribution to the acquisition DAIHATSU TERIOS KAU 346W and TOYOTA WISH KBY 838J. I thus find that TOYOTA WISH KBY 838J be awarded to Mary Chao Babu Mugivane and DAIHATSU TERIOS KAU 346W be awarded to Mary Vodembeke Mugivane.
32. The funds and shares in various bank accounts and bodies or agencies be divided equally between the two houses.

Conclusion

33. The grant is hereby confirmed as hereunder:-
 - (a) Land parcel number Bungoma/Ndalu/477 shall be divided equally between the two houses.
 - (b) Nairobi/Block 133/154 Komarock Estate Nairobi is not available for distribution but exclusively for Mary Chao Babu Mugivane Inuani.
 - (c) Motor vehicles registration number KBY 838J Toyota Wish and KAK 955T Nissan pick up to the house of Mary Chao Mugivane.
 - (d) Motor vehicle registration number KAU 346W Daihatsu Terios to the house of Mary Vodembeke Mugivane.
 - (e) Shares and or moneys in Cooperative Bank Ltd account number 01109XXXXXXXX900, Standard Chartered Bank Limited account number 010XXXXXXXX0500, Eco Bank Limited, Safaricom, University of Nairobi and NSSF to be shared equally between the two houses.

Each party to bear its own costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 15TH DAY OF MAY 2025.

H K CHEMITEI

JUDGE

