



REPUBLIC OF KENYA



**In re Estate of Vincent Kariuki Njoroge (Deceased) (Succession Cause  
105 of 2019) [2025] KEHC 5943 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 105 OF 2019**

**A MSHILA, J**

**MAY 9, 2025**

**IN THE MATTER OF THE ESTATE OF VINCENT KARIUKI NJOROGE (DECEASED)**

**BETWEEN**

**PAUL KIARIE NJOROGE ..... 1<sup>ST</sup> PETITIONER**

**CAROL KARUNGARI KARIUKI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ELIZABETH WANJIRU MATU ..... 1<sup>ST</sup> OBJECTOR**

**CATHERINE WAITHERA MATU ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

**Background**

1. Paul Kiarie Njoroge and Carol Karungari Kariuki the administrators of the deceased's estate herein who died on 6<sup>th</sup> April, 2018 filed an application for Summons for Confirmation of grant seeking for an order that the letters of administration intestate made to themselves in this matter on 28<sup>th</sup> February, 2024 be confirmed before the expiry of six months from the date of issue.
2. In his affidavit in support of the application for Confirmation of Grant, Paul Kiarie Njoroge listed the deceased's dependants being;-
  - a. Carol Karungari Kariuki-Widow
  - b. Ann Muthoni Kariuki-Daughter
  - c. Tom Phillip Njoroge Kariuki-Son
  - d. Victor Lewis Gitau- Dependant



3. The identification and shares of all persons beneficially and dependant entitled to the said estate were ascertained and determined as follows:-



Assets	Beneficiary	Share
Gatuanyaga/Ngoloba Block 3/28 26.82 acres	1. Ann Muthoni Kariuki 2. Tom Phillip Njoroge Kariuki 3. Carol Karungari Kariuki 4. Victor Lewis Gitau	9 acres 9 acres 7.82 acres 1 acre
Gatuanyaga/Ngoliba Block 3/26 4.92 acres	Carol Karungari Kariuki	4.92 acres
Motor Vehicle Reg. No. KAM 888J Mitsubishi Lancer	Victor Lewis Gitau	Absolutely
Co-operative Bank A/c's a) 011090XXXXXX00-Kshs. 0 b) 011480XXXXXX00-Kshs. 29,024 c) 011030XXXXXX00-Kshs. 1,925/= d) 011095XXXXXXXXXX0-closed Rafiki Microfinance bank account e. 0072XXXXXX001-Kshs. 445 Tai Sacco accounts f. 0060XXXXXX405-Kshs. 193.99 g. 0060XXXXXX4S02-Kshs. 2,193.34 h. 0060XXXXXX4S03-Kshs. 900 Equity Bank Accounts i. 08701XXXXXX431-Kshs. 10,750.33 j. 08701XXXXXX350-Kshs. 423.00	Carol Karungari Kariuki	Absolutely



k. 0870XXXXXX7448-Kshs. 233.00		
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4. Teresia Wanjiku Gitau filed her affidavit in protest against confirmation of grant dated 12<sup>th</sup> July, 2024 in her capacity as the mother and next friend of Victor Lewis Gitau (a minor) a dependant of the estate herein. She deposed that she is objecting to the mode of distribution as only one (1) acre and a car has been allocated to Victor Lewis Gitau as the same is unreasonable and unfair. She stated that the dependant should be treated like the other children of the deceased. She proposed that the son should get the same acreage of the properties of the deceased as the other children.
5. Carol Karungari Kariuki filed her response to the affidavit of protest against the confirmation of grant dated 7<sup>th</sup> November, 2024. She deposed that the deceased used to pay school fees for Victor Lewis Gitau who was said not to be a biological son of the deceased. It was deposed that Victor is entitled to a share of his father's estate who is alive as such the share of one acre and a motor vehicle which is in his mother's custody is fair. The court was urged to dismiss the protest.
6. Tom Phillip Njoroge Kariuki the deceased's son filed his witness statement stating that Victor was one of the children the deceased used to pay school fees for and should be satisfied with his share which was agreed upon by the other beneficiaries as he has his own father from whom he will benefit.
7. Teresia Wanjiku in her further affidavit in protest to the summons for confirmation of grant, stated that the deceased considered Victor as his own son as such even after the death of the deceased, the family continued to take care of Victor's rent and school fees. She stated that Victor has no other father and has always considered the deceased as his father as such should not be discriminated just because he was not a biological child and that he is entitled to an equal share of the deceased's estate to enable him realize the potential and educational opportunities that the deceased had planned for him.
8. The parties were directed to canvass the Protest by filing and exchanging the written submissions.

#### **Administrators' Submissions**

9. The Administrators submitted that the court has discretion in making provision for a dependant and the factors stipulated under Section 28 of the *Law of Succession Act* were put into consideration. Reliance was placed in the case of *re estate of Gurdip Kaur Sagoo* (2021) eKLR. It was submitted that Victor was not a biological son to the deceased as such is not entitled to an equal share with the other beneficiaries and should be contented with what has been allocated to him.

#### **Protestor's Submissions.**

10. The Protestor submits that biological parentage is not determinative as what matters is the deceased's acceptance and assumption of responsibility. Reliance was placed in the case of *Waiyaki & Another vs Kamau & another* (2024) KECA 1151 (KLR). The allocation of one acre and a motor vehicle to Victor was said to be unreasonable provision as the other beneficiaries are set to receive nine (9) acres each. The deceased's intention of treating Victor as his own child was said to be clear and should be reflected in the distribution. Reliance was placed in the case of *In the matter of the estate of the late Sam (deceased)* (2017) eKLR. The court was urged to order that Victor should receive an equal share of the deceased's estate.



## Issues For Determination

11. Having read and considered the affidavits and the respective rival written submissions, this Court has framed only one issue for determination, which is given the current circumstances what is the most reasonable mode of distribution of the deceased's estate.

## Analysis

12. The mode of distribution proposed for the Motor Vehicle Reg. No. KAM 888J Mitsubishi Lancer is not contested by any of the parties; therefore this Court will not interfere the proposal and the vehicle shall be distributed as proposed to Victor Lewis Gitau.
13. The Bank Accounts have negligible sums of money which are not worthy of contestation and this Court hereby distributes the same to Carol Karungari Kariuki.
14. The contentious issue arises from the proposed mode of distribution of the two (2) properties which mode of distribution the Protestor deems as being unfair; Given the current circumstances the applicable law is found under the provisions of Section 35 (1) of the *Law of Succession Act* which provides for the mode of distribution on an intestate's estate where the deceased was survived by a spouse and child or children; it reads as follows that:-

“Subject to the provisions of section 40, where an intestate has left a surviving spouse and child or children, the surviving spouse shall be entitled to: the personal and household effects of the deceased, absolutely; and a life interest in the whole residue of the net intestate estate..”

15. In the case of *Tau Katungi -v- Margrethe Katungi & Another* (2014) eKLR the Court stated that:-

“The effect of section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children's right to the property crystallises upon the determination of the life interest following the death of the life interest holder... Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated.”

16. Accordingly, this Court is satisfied that given the circumstances of this case bestowing upon the widow who is still alive a life interest in the two (2) properties of the deceased's estate would be the best way of resolving the dispute on the distribution of the property. This life interest was elaborated in the aforementioned case of *Tau Katungi -v- Margrethe Katungi & Another* (2014) eKLR, wherein the court stated that;

“Life interest confers a limited right to the 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 was 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 interest of 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.”



17. Therefore, Carol Karungari Kariuki shall have a life interest and shall hold the two (2) parcels of land in trust for the children who are beneficiaries of the estate of the deceased. Victor when of age can personally defend his interest.
18. The upshot is that the Protest is found to be devoid of merit.

### **Findings And Determination**

19. For the foregoing reasons this Court makes the following findings and determinations:-
  - i. Given the current circumstances this Court finds that the most reasonable mode of distribution of the deceased's estate is as set out in paragraphs *12, 13* and *16* herein-above;
  - ii. This Court finds the Protest to be devoid of merit and it is hereby dismissed
  - iii. The Grant be and is hereby confirmed in terms of paragraphs *12, 13* and *16* herein.
  - iv. The parties are at liberty to apply
  - v. Each party shall bear their own costs.

Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of;

Julie – Court Assistant

Gathura for the Protestor

N/A for the Administrators

