



REPUBLIC OF KENYA



In re Estate of Susan Nyambura Kamau (Deceased) (Succession Cause 599 of 2009) [2025] KEHC 5697 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 599 OF 2009
DKN MAGARE, J
MAY 5, 2025**

IN THE MATTER OF THE ESTATE OF SUSAN NYAMBURA KAMAU (DECEASED)

BETWEEN

EDDAH NYAGUTHI KAMAU APPLICANT

AND

JOHNSON KAMAU GACHOKA RESPONDENT

RULING

1. This matter does not seem to come to an end. On 5/11/2024, I made the following orders:
 - a. The grant is accordingly confirmed. Further, the administrator is to collect the estate and recover accounts by 5/5/2025 for all parcels and property of the late Susan Nyambura Kamau (deceased).
 - b. Where there is need, the OCS Mûkûrwe'inî Police Station to assist.
2. The matter was supposed to have been concluded by today. The administrator came to court for orders to have the Deputy Registrar sign the transmission documents. The former administrator and the deceased's husband were adamant that he did not want to sign. He wanted matters referred to the elders. The daughters, led by the administrator, were opposed to the request. The matter is concluded, so there is nothing for the 'elders' to decide. Only transmission remains. The original title is with the former administrator, who has refused to hand it over. There is nothing to litigate or discuss over the case. The misplaced notions that the daughters have no right to their mother's land are archaic and out of synch with time.



3. E.M. Muriithi J, in the case of Ripples International v *Attorney General & another; FIDA (Interested Party) (Constitutional Petition E017 of 2021)* [2022] KEHC 13210 (KLR) (29 September 2022) (Judgment), captured the spirit of the matter herein as follows:

However, the discrimination of women and female children under the impugned provisions of sections 35, 36 and 39 of the *Law of Succession Act* is textually clear, and in terms of article 27 (1) of the *Constitution* these provisions of the *Law of Succession Act* are unconstitutional for failing to provide equal protection and benefit of the law to women as with the men.

[39] Having so declared, the interpretation of the sections 35, 36 and 39 of the *Law of Succession Act* must be interpreted in manner that gives effect to the equality of women and men with regard to the protections and benefits accruing under the said provisions. Indeed, clause 7 (1) of the Transitional and Consequential Clauses under article 262 of the *Constitution* of Kenya 2010 provides for such adaptation in the instructions as follows:

- (1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”

The consequential adaptation which must be made to the *Law of Succession Act*, 1981 is that women and men, male and female children, married and unmarried shall have equal protection and rights on administration and succession of Estates of deceased persons under the Act.

4. It must be recalled that customary law does not apply to succession. The law applicable is set out in Section 2 of the Succession Act as follows:
- (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.
 - (2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.
5. The elders will not decide anything after this court’s decision on 5.11.2024. Therefore, the prayer to refer the matter to the elders is declined.
6. This leaves the question of dispensing with documents and signing the transmission forms. An issue of injunction was also raised. I decline to deal with the injunction at this stage. I was cognizant of the militancy I saw in court from all concerned. Whatever is to be done, issuing an order for security appears paramount.
7. Nothing else remains in this matter. The shares were agreed upon and set out in the certificate of confirmation of grant. The upshot of the foregoing is that the application dated 25.03.2025 is allowed in part.

Determination

8. In the circumstances, the application dated 25.03.2025 is allowed in the following terms:



- a. The Administrator shall sign the requested documents together with the other beneficiaries.
- b. The Deputy Registrar of this court shall sign on behalf of the Respondent.
- c. The Respondent to file the title deed in court together with his Identity Card and PIN Certificate. In default of so doing, the Land Registrar shall dispense with the Respondent's documents and the original title deed.
- d. The Respondent to surrender titles in his custody to the court within 7 days.
- e. Directions on 23/7/2025 to confirm surrender of title failing which the Respondent shall be in contempt.

DATED, SIGNED AND DELIVERED AT NYERI ON THIS 5TH DAY OF MAY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Respondent pro se – present

Applicant, pro se – present

Beneficiaries as per the list

Court Assistant – Michael/Munguti

M. D. KIZITO, J.

