



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Paul Thuo Kamunya (Deceased) (Succession Cause E002 of 2024) [2025] KEHC 8453 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8453 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE E002 OF 2024  
DKN MAGARE, J  
JUNE 12, 2025**

**IN THE MATTER OF THE ESTATE OF PAUL THUO KAMUNYA (DECEASED)**

**RULING**

1. Vide the Summons for Confirmation of Grant dated 7.3.2025, the Petitioner applied for an order that the grant of letters of administration intestate made to Rose Wambui Thuo and James Kamunya Thuo on 8.4.2024 be confirmed.
2. The Summons was accompanied with the Affidavit of Rose Wambui Thuo and James Kamunya Thuo. It was their case that the deceased was survived by the following:
  - a. Miriam Mukami Thuo – widow
  - b. James Kamunya Thuo – son
  - c. Charles Ngirubiu Thuo – son
  - d. John Magondu Thuo – son
  - e. Rose Wambui Thuo – daughter
  - f. Wangechi Charity Thuo – daughter
  - g. Peter Ndegwa Thuo – son
3. The estate is understood to comprise of the following:
  - a. Tigithi/Matanya Block 12/1X4 (Nyeri Tea)
  - b. Tigithi/Matanya Block 12/1X4 (Nyeri Tea)
  - c. Tigithi/Matanya Block 12/1X3 (Nyeri Tea)
  - d. Tigithi/Matanya Block 12/1X5 (Nyeri Tea)
  - e. Plot No 2X/Kariko Market



- f. LR No 27712/2X
  - g. LR No 27712/8X
  - h. LR No 27712/8X
  - i. LR No 27712/8X
  - j. LR No 27712/8X
  - k. Otema Housing Co-operative Society Limited (156,200)
  - l. Shares in Safaricom Limited (500)
  - m. Shares in Cooperative Bank Limited (44,184)
  - n. KCB Account – 1103XXX668
  - o. Equity Bank Account – 00801XXXX5812
  - p. M-pesa Account – 0722XXX944
4. The court has perused the summons for confirmation of the grant and noted the proposal for distribution of the estate propounded by the Petitioners. The Petitioners appear to first allocate absolute shares to a beneficiary and propose that the beneficiary thereafter will share with the other beneficiaries. This was not an acceptable mode of distribution and I declined it. Further, In *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR, the court also held that:
- It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because:- “The law never implies, the Court never presumes, a trust, but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”
5. The court directed that the beneficiaries to come up with a mode of distribution that gives accord to Sections 35, 38 and 40 of the *Law of Succession Act*. Instead of filing a proper mode, they stuck to the mode, only explaining that the widow was 86 and sickly, hence did not require provision as she was being cared for.
6. What surprised me was that parties wished to own each piece of land together, including others as small as one eighth of an acre. Parties did not provide any mechanism for equating the plot to the said parcels. On enquiring they informed me that they are doing so as the parcels were of different values and they needed to each own a piece of the pie.
7. I was unable to understand and fathom, why, all beneficiaries being adult they wanted someone to hold land in trust for them absolutely. This was both an oxymoron and tautological. It is when the court directed that it shall rule on the summons for confirmation of grant today. The court, though not old, has handled too many cases of love gone sour and jilted sisters and brothers, ending up resorting to matters that are of interest to criminal jurisprudence.
8. Under the *Law of Succession Act*, either a trust is created as governed under Section 83 of the *Law of Succession Act*, or Sections 35, 38 and 40 of the *Law of Succession Act* is complied with. Creating a mongrel is not part of succession matrix. Further, the position of the widow cannot be gainsaid. She appears frail and sickly and could not look at the gift horse in the mouth.



9. The court is therefore the best placed to decide where parties are either too shy or too timid to speak. For example, in the interrogations, it turned out that Rose Wambui Thuo, was using Plot No 2X/Kariko Market but it is placed for some other persons. Surely why not provide for the plot she is using? When asked about other plots, the beneficiaries told me that they have their own shares, without indicating, in the documentation.
10. The provision of basic items for the widow's welfare is paramount. She cannot live on the good will of others. In the case of *Elizabeth Wanjiru Njonjo Rubia v Brian Mwaituria* [2019] eKLR, the Court of Appeal [Ouko, (P), Nambuye & Warsame, JJ.A] posited that:

In considering the present question, we bear in mind Part V of the *Law of Succession Act*, and in particular section 35 regarding distribution of the estate of a deceased person who is survived by a spouse and one child. It states as follows;

- “ 35 Subject to the provisions of section 40, where an intestate has left  
(1). 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 of the residue of the net intestate estate;

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

.....

- (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, remarriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.’

11. It is therefore this court's considered position that so long as the widow is alive and not remarried, she is entitled to the life interest in the whole of the residue of the net intestate estate. Thereafter, be shared equally among the children. The shares for each of beneficiaries must be distinct and ascertainable and must not be a promise to obtain a share from another beneficiary on a future unascertained date. In *Tau Kakungi v Margrethe Thorning Katungi & another* [2014] eKLR, Musyoka J was of the view that the purpose of Section 35 of the Act was to prevent a spouse of the deceased from being impoverished after the demise of the other by distributing the entire estate to the children. The court stated:-

“ 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 crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate...The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving



spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance.”

12. The *Law of Succession Act* provides for equal distribution of the estate amongst the children of the deceased. In the case of *Nyidha v Nyidha & another* (Succession Appeal E012 of 2023) [2024] KEHC 8314 (KLR) (5 July 2024) (Judgment), RE Aburili, J, posited as follows, regarding the import of Sections 38, 40 and 41 of the *Law of Succession Act*.

Section 38 of the *Law of Succession Act* provides for equal distribution of the estate amongst the children of the deceased. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 of the Act does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the *Law of Succession Act*. That said, any custom that goes afoul Article 27 of the *Constitution* is unconstitutional and therefore null and void.

13. To contextualize and conceptualize the real issues in controversy can only come out if the court breaks the issues into a simpler issue. From the assets it is noted that items (a)-(j) are real property while k, l and m, are shares in various entities.
14. The rest are money in accounts and M-pesa, a mobile money service. Parties were even unable to recognize their own mother. It is interesting that though parties indicated they have agreed, they only postponed the trouble to another day. I am alive to what can happen to beneficiaries once the properties fall in wrong hands. In the case of *Kibunya v Kariuki & another* [2024] KECA 1274 (KLR), the court of appeal [S.G. Kairu, F.A. Ochieng, W.K. Korir] stated:

“Even the appellant herself acknowledged that the 2nd deceased had completed the administration of the estate of the 1st deceased. The jurisdiction donated to the 2nd deceased by the succession court had lapsed. Indeed, the 2nd deceased who is the person alleged to have fraudulently obtained the letters of administration in respect to the estate of the 1st deceased is no more. The respondents cannot answer for the sins, if any, of their father. The responsibility bestowed upon the 2nd deceased with respect to the administration of the estate of the 1st deceased was not one to be shared with his offspring. Indeed, substituting the 2nd deceased with the respondents and even revoking the grant that was issued to the 2nd deceased in respect to the estate of the 1st deceased would be an exercise in futility. It would be an exercise in futility for this Court to allow the appeal knowing well that the asset the appellant is after is beyond reach. There is no allegation that the purchasers of the property knew of the alleged defect in the grant issued to the 2nd deceased. We are of the view that section 93 of the *Law of Succession Act* would protect the titles of the purchasers. Reopening the succession proceedings will take the parties through fruitless litigation which is likely to add pain to the appellant by way of costs.

.....Even though the appellant ought to be saddled with costs for her unceasing litigation, we appreciate that she may be pained that their late brother took everything that their deceased father left for them when he exited this world.

15. The parties do not fathom what can go wrong when full grown adults entrust the entire of their inheritance to their siblings and then wait to rely on their benevolence. It is thus the finding of this court that its duty at this stage is to carry out distribution in accordance with the law of intestacy as set out



in Sections 35, 38 and 40 of the *Law of Succession Act*. Should parties feel sufficiently philanthropic to surrender their shares to their brothers, they shall be at liberty to do so outside the realm of succession. This can only be done after the demise of the surviving widow. In that regard, the properties shall be divided into two. The first set is the cash and cash equivalents. This covers shares, cash at bank and e-money.

16. The bank accounts, e-money in form of M-pesa and shares devolve upon the widow, Miriam Mukami Thuo. The said amount is minuscule and is part of the net residual estate. The same shall therefore devolve absolutely to the surviving widow. She cannot be begrudged for consuming her late husband's movable property. These will be necessary for her to maintain a quality of life she may have envisioned with the late husband.
17. Secondly in respect to real estate, that is parcels of land and the plot, the widow shall have life interest over the whole of the net residual estate of the deceased herein. Given her advanced age, it is not necessary to deal with other conditions in section 35 of the *Law of Succession Act*.
18. The properties shall therefore be registered in the names of beneficiaries, with the widow having a life interest in each of the parcels. Upon the death of Miriam Mukami Thuo the beneficiaries shall share as follows:
  - a. James Kamunya Thuo, Charles Ngirubiu Thuo and John Magondu Thuo, shall share land parcel numbers, Tigithi/Matanya Block 12/1X4 (Nyeri Tea) measuring 0.7560 hectares and Tigithi/Matanya Block 12/1X5 (Nyeri Tea), measuring 0.7560 hectares, equally, absolutely, with each beneficiary getting 0.504 hectares.
  - b. Rose Wambui Thuo, Wangechi Charity Thuo, and Peter Ndegwa Thuo shall share land parcel numbers Tigithi/Matanya Block 12/1X4 (Nyeri Tea) and Tigithi/Matanya Block 12/1X3 (Nyeri Tea) measuring 0.7560 hectares, equally, absolutely, with each beneficiary getting 0.504 hectares.
  - c. Plot No 2X/Kariko Market shall be inherited by Rose Wambui Thuo absolutely.
  - d. LR No 27712/2X shall be inherited by James Kamunya Thuo, absolutely.
  - e. LR No 27712/8X shall be inherited by Charles Ngirubiu Thuo, absolutely.
  - f. LR No 27712/8X shall be inherited by Peter Ndegwa Thuo, absolutely.
  - g. LR No 27712/8X shall be inherited by Wangechi Charity Thuo, absolutely.
  - h. LR No 27712/8X shall be inherited by John Magondu Thuo, absolutely.
19. The court recalls that land parcel numbers measure 0.75 hectares and are in arid and semi-arid areas. The end result is that a Certificate of Confirmation of Grant is hereby issued as aforesaid.

### **Determination**

20. The application for confirmation of grant is allowed in the following terms:
  - A. Real properties shall therefore be registered in the names of beneficiaries, with the widow, Miriam Mukami Thuo, having a life interest in each of the parcels. Upon the death of Miriam Mukami Thuo the beneficiaries shall share as follows:
    - a. James Kamunya Thuo, Charles Ngirubiu Thuo and John Magondu Thuo, shall share land parcel numbers, Tigithi/Matanya Block 12/1X4 (Nyeri Tea) measuring 0.7560



hectares and Tigithi/Matanya Block 12/1X5 (Nyeri Tea), measuring 0.7560 hectares, equally, absolutely, with each beneficiary getting 0.504 hectares.

- b. Rose Wambui Thuo, Wangechi Charity Thuo, and Peter Ndegwa Thuo shall share land parcel numbers Tigithi/Matanya Block 12/1X4 (Nyeri Tea) and Tigithi/Matanya Block 12/1X3 (Nyeri Tea) measuring 0.7560 hectares, equally, absolutely, with each beneficiary getting 0.504 hectares.
  - c. Plot No 2X/Kariko Market shall be inherited by Rose Wambui Thuo absolutely.
  - d. LR No 27712/2X shall be inherited by James Kamunya Thuo absolutely.
  - e. LR No 27712/8X shall be inherited by Charles Ngirubiu Thuo, absolutely.
  - f. LR No 27712/8X shall be inherited by Peter Ndegwa Thuo absolutely.
  - g. LR No 27712/8X shall be inherited by Wangechi Charity Thuo, absolutely.
  - h. LR No 27712/8X shall be inherited by John Magondu Thuo, absolutely.
- B. The following shall devolve absolutely to the widow, Miriam Mukami Thuo.
- a. Otema Housing Co-operative Society Limited (156,200)
  - b. Shares in Safaricom Limited (500).
  - c. Shares in Cooperative Bank Limited (44,184)
  - d. KCB Account – 1103XXX668
  - e. Equity Bank Account – 00801XXXX5812
  - f. M-pesa Account – 0722XXX944
- b. Each party to bear their own costs.
  - c. Transmission be concluded by 13.12.2025.
  - d. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 12<sup>TH</sup> DAY OF JUNE, 2025.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

No appearance for parties

Court Assistant – Jedidah

**M. D. KIZITO, J.**

