



**In re Estate of Joseph Wagana Kiberi (Deceased) (Succession Cause  
2055 of 2015) [2025] KEHC 7695 (KLR) (Family) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7695 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2055 OF 2015  
HK CHEMITEI, J  
JUNE 5, 2025**

**BETWEEN**

**JOHN KIBERI MAIGIA ..... 1<sup>ST</sup> APPLICANT**

**PETER MAIGIA KIAI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JECINTA WANGUI RAINGU ..... RESPONDENT**

**JUDGMENT**

1. This judgment relates to the application dated 15<sup>th</sup> December, 2022 filed by John Kiberi Maigua and Peter Maigwa Kiai seeking for ORDERS THAT:
  1. Spent.
  2. Spent.
  3. The status quo currently subsisting in the assets of the deceased particularly land parcel number Chinga/ Kiaguthu/5X4 be maintained pending the hearing and determination of this application.
  4. That the grant of letters of administration made to Jecinta Wangui Raingu and Joyce Muthoni on 6<sup>th</sup> June 2016 and confirmed on 13<sup>th</sup> June 2017 be revoked
  5. Costs of this application be provided for.
2. When the matter came up for directions the court ordered that the same be heard by way of oral evidence.



3. The Applicant John Kiberi Maigwa testified and he did not call any witness. The Respondent as well testified and did not call any witness.
4. The parties essentially relied on their affidavits on record.
5. The Applicant relied on the affidavits sworn by him and Peter Maigwa Kiai on 15<sup>th</sup> December, 2022 and 7<sup>th</sup> September, 2023 respectively.
6. He testified that they were the rightful heirs to the estate as the deceased was his uncle and the Respondent their Aunt.
7. That their grandfather had two houses and the deceased who was a brother to their late father disappeared and was presumed dead after the Respondent petitioned the court surreptitiously.
8. The deceased was legally presumed dead by a court order on 29<sup>th</sup> September, 2014, after disappearing in the mid-1990s, with no trace of him despite a police report being filed. Without informing the other family members, the estate administrators filed Nairobi High Court Misc. Application No. 122 of 2013, which led to the official declaration of his death. This was done in bad faith and without the involvement of the family.
9. He went on to state that the deceased owned only one asset, L.R. No. Chinga/Kiaguthu/5X4, which originally belonged to their grandfather, Kiberi Mumbiko Kiai (alias Kiai). He divided the land into four equal parts, giving one to each of his sons: Kiai Kiberi, Maigua Kiberi, Mumbiko Kiberi and the deceased, Wagana Kiberi. The deceased was unmarried and had no children.
10. After his presumed death, the administrators obtained a grant to his estate without notifying the rightful heirs. The nephews only recently learned that Jecinta Wangui Raingu had taken control of the land after hearing rumors that it was being sold. Jecinta is married into another family and was never involved in taking care of the deceased.
11. He disputed the claim that Jecinta is the sole heir to the land, as they and other family members also have a rightful claim to it. The land is part of their father's inheritance from L.R. No. Chinga/Kiaguthu/2X0, and the family had previously agreed on how the land should be divided if the deceased was not found.
12. Jecinta had been living over 150 km away from the deceased's residence at the time of his disappearance, and the family had made efforts to search for him, including police involvement and radio announcements. The family asserts that Jecinta cannot be the sole owner of the land, as it belongs to the Wagana Estate, which should be shared by all beneficiaries. They believe Jecinta obtained a letter from the local chief through misrepresentation and without informing all members of the extended Kiberi Mumbiko family.
  1. Top of Form
  2. Bottom of Form
13. The Respondent beside her oral evidence relied on her replying affidavit sworn on 14<sup>th</sup> February, 2023.
14. She testified that the estate in question originates from land parcel L.R. No. Chinga/Kiaguthu/2X0, initially owned by Kiberi alias Baa the patriarch of the Kiberi family. He had two wives: Gathoni Kiberi (the first wife) and Gatoto, alias Wambui Kiberi (the second wife). Gathoni had 5 children - Wairima Kiberi, Kiai Kiberi, Maigua Kiberi, Mwihaki Kiberi and Wambui Kiberi. Wambui had 4 children – Muthoni Kiberi, Kiai Kiberi alias Mumbiko Kiberi, Joseph Wagana Kiberi (the deceased herein) and Jecinta Wangui Raingu (the Respondent herein).



15. L.R. No. Chinga/Kiaguthu/2X0 was divided into 4 equal portions with new parcel numbers, distributed among the sons as follows: Kiai Kiberi - Chinga/Kiaguthu/5X3, Maigua Kiberi - Chinga/Kiaguthu/5X5, Joseph Wagana Kiberi - Chinga/ Kiaguthu/5X4 and Mumbiko Kiberi - Chinga/Kiaguthu/5X6. These allocations reflected the respective lineages of the L.R. No. Chinga/Kiaguthu/2X0 wives.
16. She said that John Kiberi Maigua, the first Applicant, is the son of Maigua Kiberi and thus a descendant of the first wife, Gathoni. His rightful claim is to L. R. No. Chinga/Kiaguthu/5X5 through his father.
17. Peter Maigua Kiai, the second Applicant, is the son of Kiai Kiberi, also a descendant of Gathoni, whose claim is limited to L.R. No. Chinga/Kiaguthu/5X3. As both Applicants are from the first wife's lineage, they are not legally entitled to the deceased's estate, which belongs to the lineage of the second wife, Wambui. Jecinta Wangui Raingu, the only surviving sibling sister of the deceased from the second wife's lineage, is the legitimate heir under the Succession Act, Cap 60, Laws of Kenya.
18. Being closest to the deceased, she took steps to find him after he went missing, including filing a police report. She later petitioned the High Court vide Misc. Cause No. 122 of 2013 and on 23<sup>rd</sup> September, 2013, Justice M. Muigai declared Joseph Wagana Kiberi presumed dead under Section 118 (a) of the *Evidence Act*. The order was sealed on 3<sup>rd</sup> July, 2014 and issued on 29<sup>th</sup> September, 2014. Subsequently, Jecinta filed Succession Cause No. 2055 at the High Court in Nairobi to administer the estate.
19. Following due legal process, she was granted a certificate of confirmation of grant on 13<sup>th</sup> June, 2017, naming her the sole heir. This allowed her to obtain a title deed and become the legal owner of L.R. No. Chinga Kiaguthu/5X4. She maintains that the land was never owned by Kiberi Mumbiko (alias Kiai) and that she fulfilled all statutory requirements as the next of kin. She argues that the current application is baseless, built on hearsay, lacks legal merit and should be dismissed with costs.
20. The Applicants have filed written submissions dated 22<sup>nd</sup> July, 2025.
21. The Respondent has not filed written submissions.

### **Analysis And Determination.**

22. The court has heard both parties extensively as well as the pleadings on record and the submissions by the Respondent.
23. The issue that is clear is that the Respondent is an Aunt to the Applicants. Their late father was a brother to her.
24. Secondly what is not disputed is that the late Kiberi alias Baa had two houses, namely the first wife was one Gathoni aka Nyambura and second was Gatoto aka Wambui.
25. The first wife had four children namely Wairimu Kiberi, Kiai Kiberi, Maigua Kiberi, Mwhaki Kiberi and Wambui Kiberi. They are all deceased.
26. The second wife had Muthoni Kiberi, Kiai Kiberi Wagana Kiberi and Jecinta Wangui Kiberi, the Respondent.
27. The deceased had land parcel number Chinga/Kiaguthu/2X0 which he divided into four portions and transferred to his sons.
28. Parcel number 553 went to Kiai Kiberi and parcel number 5X5 to Maigua Kiberi both from the first house.



29. Parcel number 5X6 went to Kiai Kiberi and parcel number 5X4 to Wagana Kiberi the deceased herein and both from second house.
30. The Applicants are the sons of Kiai Kiberi and Maigua Kiberi from the first house.
31. It is therefore evident that Wagana Kiberi disappeared and the orders presuming him dead have not been challenged to date.
32. In terms of consanguinity therefore the closest person to inherit his estate is her sister the Respondent. The Respondent from the evidence of the family tree examined above and clearly portrayed in the affidavits on record will rank secondary.
33. At the same time, they already have the portions bequeathed to their parents. Why should they cross over to the second house which the Respondent represents?
34. It would have been different if there was no closer relative to inherit the land in question but now that the Respondent is available and alive, I do not see any reason whether living 150 kilometers or not why she should not inherit his brother's estate.
35. In essence the Applicants ought to be content with what they have and let their Aunt get the estate of her brother.
36. The court has been granted by the Act wide discretion to determine who should inherit deceased estate in situations such as this where the deceased died intestate and did not have any heir or issue.
37. For example, In re Estate of the Late M'thigai Muchangi (Deceased) [2020] eKLR the court pronounced itself as follows:

“There the deceased has died intestate and has not left behind a wife or children. The court has to determine the question as to who between the disputing parties is the closest to the deceased in terms of the degree of consanguinity and affinity. The Law of Succession Act (Cap 160 Laws of Kenya) to be referred to as the Act gives the court discretion to determine the person or persons to whom the grant of letters of administration shall be issued. This is provided under Section 66 of the Act which provides:-

“Preference to be given to certain persons to administer where deceased died intestate. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

The court is also guided by Section 39 of the Act which deals with the situation here the deceased has left no surviving spouse or children. It is provided under the section –



- (1) “ Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-
  - (2) (a) father; or if dead
  - (3) (b) mother; or if dead
- CAP. 160 Law of Succession [Rev. 201524[Issue 2]
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
  - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
  - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares. (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

The parties have stated their relationship with the deceased in their affidavits. The court will therefore exercise its discretion provided under section 66 of the Act based on the evidence before this court as deponed in the affidavit. Under Section 39 of the Act the order of priority where the deceased has left no spouse or children is set out. For the court to determine who among the Applicant and the protestor is the closest to the deceased, the consideration is based on the degree of consanguinity and affinity. The kindred under Section 39(1) (a)- (d) does not present any difficulties. Under (e) the court has discretion to determine the relatives based on the nearest degree of consanguinity and affinity. In the case of *Immaculate Wangari Munyaga -v- Zachary Waweru Ireri* (2016) eKLR Justice Mativo stated while dealing with a similar issue- “An examination of consanguinity and affinity chart below will help in determining the issue.”

The law requires that a person claiming to be entitle to the estate be related to the deceased from one common relative starting from the parents to the particular relative who is traced from the parent of that deceased. This will inform the court on the degree of consanguinity and affinity the claimant has to the deceased.”

38. I agree wholesomely with the above legal position and based on the evidence before me I find that the Applicants in as much as they wished to have inherited the deceased estate do not come closer to the Respondent in terms of consanguinity.
39. The application/objection is therefore dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS**

**5<sup>TH</sup> DAY OF JUNE 2025.**

**H K CHEMITEI**

**JUDGE**

