



**In re Estate of Mitaru Njogu (Deceased) (Succession Appeal  
E011 of 2024) [2025] KEHC 7903 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7903 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION APPEAL E011 OF 2024  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**IN THE MATTER OF THE ESTATE OF MITARU NJOGU (DECEASED)**

**BETWEEN**

**SICILY MICERE JUSTUS ..... APPELLANT**

**AND**

**JOHN MICIRI MITARU ..... RESPONDENT**

*(Being an Appeal from the Judgement of Deputy Registrar, Wambo E.O at the  
Chief Magistrate's court at Kerugoya, Succession Cause Number E034 of 2022)*

**JUDGMENT**

1. The Appellant and Respondent were Petitioners in the estate of Mitaru Njogu (deceased). They were issued with a Grant in their joint names on 28<sup>th</sup> March 2022 and the Respondent proceeded to file Summons for Confirmation of Grant on 8<sup>th</sup> November 2022. The Respondent included his preferred mode of distribution.
2. The Appellant filed a Protest dated 6<sup>th</sup> November 2022 and included her preferred mode of distribution. The court directed the matter to be heard through viva voce evidence.
3. In its Judgement dated 31<sup>st</sup> January 2024, the court agreed with the Respondent's mode of distribution save that the Respondent be excluded from Baragwe/Guama/1397. A Certificate of confirmation of Grant was issued on 21<sup>st</sup> February 2024.
4. Being aggrieved with the Judgment, Sicily Micere Mitaru filed her Memorandum of Appeal dated 26<sup>th</sup> February 2024 appealed against the whole Judgment and wanted this court to set it aside and her Protest date 6<sup>th</sup> November 2022 allowed.
5. This court directed that the Appeal be dispensed off by way of written submissions.



### **Appellant's submissions**

6. Through her submissions dated 8<sup>th</sup> July 2024, the Appellant submitted that the deceased had three households at the time of his death. That the 1<sup>st</sup> family of Njoki Mitaru, the 2<sup>nd</sup> family of Wamuyu Mitaru had four children (Appellant, Nacusious Muriithi, Teracisio Mukuba and Agnes Njoki Mitaru) and the 3<sup>rd</sup> family had nine children which included the Respondent.
7. It was the Appellant's submission that the trial court erred when it stated that Baragwe/Guama/1398 be shared among four beneficiaries as opposes to two beneficiaries (Appellant and Agnes Muthoni Muriithi). That one of the four beneficiaries i.e. Mary Muthoni Mukuba was the wife of her deceased brother (Teracisio Mukuba Mitaru) and it was clear from her testimony in court that the deceased had been given 1 acre of land being Baragwe/Guama/1393.
8. The Appellant submitted that the other beneficiary that was allocated land in Baragwe/Guama/1398 (Albert Gichobi Muriithi) was the son of her late brother Nacusious Muriithi and it was clear from her testimony in court that the deceased had been given 1 acre of land being Baragwe/Guama/1394. The Appellant further submitted that the trial court failed to appreciate her testimony.

### **The Respondent's submissions.**

9. Through his written submissions dated 29<sup>th</sup> July 2024, the Respondent submitted that the only issue with the Appellant was whether her brothers had been allocated land and did not deserve any share in Baragwe/Guama/1397 and Baragwe/Guama/1398. The Respondent further submitted that the Appellant did not produce any evidence in court in form or title deeds or Green Cards to show how land was transferred from the deceased to them as gifts. He relied on section 107 of the Evidence Act.
10. It was the Respondent's submission that he admitted that he received a share from his father. That there were no renunciations by any other beneficiary and that the court can only consider what is brought before it.
11. I have gone through the trial court record, the Appellant's submissions dated 8<sup>th</sup> July 2024 and the Respondent's submissions dated 29<sup>th</sup> July 2024. The only issue for my determination was whether the trial court erred in dismissing the Appellant's Protest dated 6<sup>th</sup> November 2022.
12. According to the Appellant's and Respondent's proposed mode of distribution, Baragwe/Guama/1397 and Baragwe/Guama/1398 were available for distribution. The Respondent proposed that Baragwe/Guama/1397 be divided equally between Wambui Mitaru, John Muchiri Mitaru (Respondent), Margaret Wambua, Lucy Wateri Njeru, Muriithi Mitaru, Jane Mutitu Mitaru, Sicily Wanja Mitaru, Nancy Wangui Mitaru, Regina Njeri Muthike and Esther Njeri Gitari. On Baragwe/Guama/1398, the Respondent proposed that Mary Muthoni Mukuba, Sicily Micere Justus (Appellant), Agnes Muthoni Konji and Albert Gichobi Muriithi get a ¼ of an acre each.
13. According to the Appellant's proposed mode of distribution contained in her Protest dated 6<sup>th</sup> November 2022, the Appellant proposed that Baragwe/Guama/1397 be divided equally between Wambui Mitaru, John Muchiri Mitaru (Respondent), Margaret Wambua, Lucy Wateri Njeru, Muriithi Mitaru, Jane Mutitu Mitaru, Sicily Wanja Mitaru, Nancy Wangui Mitaru, Regina Njeri Muthike and Esther Njeri Gitari. On Baragwe/Guama/1398, the Appellant proposed Sicily Micere Justus (Appellant) and Agnes Muthoni Konji get ½ an acre each.
14. From the above, it was evident that both parties had no issue with the distribution of Baragwe/Guama/1397. Their point of divergence was on how to distribute Baragwe/Guama/1398 with the Appellant proposing that she and Agnes Muthoni Konji get ½ and acre each and the Respondent



proposing that it be Mary Muthoni Mukuba, Sicily Micere Justus (Appellant), Agnes Muthoni Konji and Albert Gichobi Muriithi get a ¼ of an acre each.

15. During their testimonies in court, the Appellant as the 1<sup>st</sup> Objector's witness testified that before their father's death, he had given all her brothers 1 acre each and that the Appellant and her sister Agnes Muthoni Konji were given 1 acre to share equally since their mother had passed on. When she was cross examined, she testified that Nacusious Muriithi Mitaru and Teracisio Mukuba Mitaru were given 1 acre plus their Titles.
16. Agnes Muthoni Mitaru testified as the 2<sup>nd</sup> Objector's witness. She testified that Nacusious Muriithi Mitaru, Teracisio Mukuba Mitaru, John Muchiri and John Muchiri Mitaru (Appellant) were given 1 acre. When she was cross examined, she stated that she had not been allocated land.
17. On the other hand, the Respondent relied on his proposed mode of distribution. When he was cross examined, he testified that he was given land by their deceased father i.e. Baragwe/Guama/1395.
18. In analysing the above, this was the Objector's case and she bore the burden of proving that her brothers had been allocated land by their deceased father during his lifetime. Section 107 of the *Evidence Act* describes the burden of proof as follows: -
  - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
19. In the case of *Mbuthia Macharia v Annah Mutua Ndwiga & another* [2017] KECA 290 (KLR), the Court of Appeal stated that: -

“The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced.”
20. Having gone through the court record meticulously, the Appellant relied on her Protest dated 6<sup>th</sup> November 2022 during her testimony. In my view, her evidence was insufficient. It was not enough to allege that her brothers were allocated land but she had to prove it. The testimony of one supporting or corroborative witness (Agnes Muthoni Mitaru) without the relevant documents was insufficient to prove that her brothers had been allocated land. In her cross examination, the Appellant stated that her brothers (Teracisio Mukuba Mitaru, Nacusious Muriithi Mitaru and the Appellant) had been allocated land together with their Titles. It would have been prudent and diligent to produce the relevant searches to buttress her testimony.
21. I agree with the trial court for excluding the Respondent as a beneficiary to the estate of the deceased after he admitted that he had received land from his deceased father during his lifetime.
22. Flowing from the above, it is my finding that there was insufficient evidence to sustain the Protest dated 6<sup>th</sup> November 2022 and further that the trial court did not err when it dismissed it.
23. In the end, the Appeal dated February 26, 2024 has no merit and is dismissed.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF JUNE, 2025 IN THE PRESENCE OF:**



N/A for the Appellant

N/A for the Respondent

Siele/Mark (Court Assistants)

.....

**J.K. NG'ARNG'AR**

**JUDGE**

