



**Kiambati & another v Karambu (Civil Appeal E019 of 2024)
[2025] KEHC 8964 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E019 OF 2024
SM GITHINJI, J
JUNE 23, 2025**

BETWEEN

BETTY NKUENE KIAMBATI 1ST APPELLANT

MUGURE KIAMBATI 2ND APPELLANT

AND

JUSTER KARAMBU RESPONDENT

*(An appeal from the Judgment of Hon. E. O. Wambo (P.M) in
Nkubu Succession Cause No. 97 of 2022 delivered on 11/1/2024)*

JUDGMENT

1. This Appeal arises from the judgment of the learned Principal Magistrate Hon. E. O. Wambo delivered on 11.01.2024 in Nkubu Succession Cause No. 97 of 2022, equally distributing the estate of the deceased among the beneficiaries.
2. Aggrieved by the said Judgment, the Appellants set forth the following grounds in the Memorandum of appeal dated 8th February, 2024;
 1. The Honorable Trial Magistrate erred in law and fact by ignoring and/or failing to take into account the evidence on record and the desires of the majority of the beneficiaries thereby arriving at a decision that is wholly unfair and unconscionable.
 2. The Honorable trial magistrate erred in law and fact by failing to ascribe to any and/or adequate grounds/reasons known in law for his judgment/decision.
 3. The Honorable court erred in law and fact by failing to find that the protest lacked merit.
 4. The learned trial Magistrate relied on extraneous factors in arriving at the Judgment/decision.



Submissions

3. The Appellants through the firm of Mokuia Obiria & Ass. Advocates filed submissions dated 10/4/2025. Counsel faulted the trial court for failing to consider the wisdom behind the Appellants' mode of distribution, and cited *Scholastica Ndululu Sura v Agnes Nthenya Sura* (2019) eKLR. According to counsel, the contest herein was not between daughters and sons per se because majority of the daughters supported the Appellants' mode of distribution. Counsel submitted that the trial court's judgment was outlandish and unsupported by any legal or factual basis.
4. The Respondent through the firm of Mutwiri Arimi & Co. Advocates filed submissions dated 19/5/2025. Counsel lauded the trial court for distributing the estate equally to the beneficiaries irrespective of their gender as per the law.

Analysis and Determination

5. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
6. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA, the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."
7. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsel.
8. From the grounds of appeal, the issue for determination is whether the trial court's judgment was flawed.
9. The Appellants petitioned for grant of letters of administration on 19/2/2022 in their capacity as daughters of the deceased, which was issued on 10/11/2022. The Appellants filed summons for confirmation of grant on 25/5/2023, proposing at paragraph 3 of the affidavit in support thereof that the 2 sons of the deceased (both deceased) get 4 acres each while the daughters of the deceased equally share the balance of 1.2 acres. The Respondent swore an affidavit of protest on 16/5/2023 championing for an equal distribution of the estate among all the beneficiaries. The Appellants swore an affidavit on 1/8/2023 in response to the protest, contending that the deceased had, prior to his death, settled his 2 sons on 4 acres each of LR no ABOGETA/L-CHURE/275 (henceforth referred to as the estate property), leaving the balance of 1.2 acres to them and their mother.
10. In his introductory letter dated 8/7/2022, the chief of Igoki Location listed 6 beneficiaries namely Juster Karambu Moses - daughter, Alice Nkatha M'Inoti - daughter-in-law, Rael Kirigo M'Ithima - daughter-in-law, Betty Nkuene Kiambati - daughter, Mugure Kiambati - daughter and Mary Mukami Kiambati - daughter.
11. The Appellants proposed that the 2 sons of the deceased get 4 acres each of the estate property in view of the developments they had undertaken thereon, while the 4 daughters shared the remaining 1.2 acres in equal shares, each getting 0.3 acres. The explanation proffered for that mode of distribution is that the deceased had allegedly settled his 2 sons on the 8 acres of the estate property during his lifetime. It is manifestly unjust to give a whopping 8 acres to the 2 sons while the 4 daughters meagerly get 1.2



acres. Such distribution is rather archaic and parochial, because it undermines the inherent principles of fairness and justice.

12. There is no gainsaying that the children of the deceased whether male or female should be accorded equal treatment in law, because to act otherwise would constitute a violation of the constitutional dictates of gender equity and equality.
13. In recognizing children, Section 29 (a) of the [Law of Succession Act](#) does not classify them on the basis of gender or marital status. [In Re Estate of Solomon Ngatia Kariuki \(deceased\)](#) (2008) eKLR, the court (Makhandia J as he then was) rendered inter alia thus:

““The [Law of Succession Act](#) does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”

14. There is no dispute that the deceased herein was survived by his 6 children, and thus the provisions of Section 38 of the [Law of Succession Act](#) come into play as follows;

““Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

15. Undoubtedly, I find that the trial court, properly guided by the provisions of section 38 of the [Law of Succession Act](#), distributed the estate property equally and fairly among the 6 children of the deceased.
16. Consequently, I find the appeal to be in want of merit and it is hereby dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU 23RD THIS JUNE, 2025

S.M. GITHINJI

JUDGE

Appearances:-

No party present.

They be notified.

