



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Miriam Njoki Karanu (Deceased) (Family Appeal
2 of 2023) [2025] KEHC 11146 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY APPEAL 2 OF 2023
FN MUCHEMI, J
JULY 24, 2025
IN THE MATTER OF THE ESTATE OF MIRIAM NJOKI
KARANU (DECEASED)**

BETWEEN

JOSEPH GITAU KARANU APPELLANT

AND

SAMUEL KANYOTU KARANU 1ST RESPONDENT

ANN GATHONI KARANU 2ND RESPONDENT

*(Being an Appeal from the Ruling of Hon. H. M. Ng'ang'a (SPM) delivered
on 29th January 2020 in Gatundu SPM Succession Cause No. 218 of 2016)*

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Gatundu Senior Principal Magistrate in SPM Succession Cause No. 218 of 2016 whereas the court dismissed the appellant's application dated 28th October 2019 and reinstated the succession cause for full hearing and determination; issued an order requiring the preservation of proceeds emanating from property LR No. Ndarugu/Gacharage/2473 directing the Kenya Tea Development Agency (KTDA) to withhold payments to account numbers TH50-xxx and TH50-xxx until the conclusion of the cause and final distribution of the estate of the deceased or until further orders of the court; appointed Samuel Kanyotu Karanu as a co-administrator of the estate of the deceased together with Joseph Gitau Karanu; the deceased's KCB Bank Account number 1/xxx held at KCB Gatundu Branch and KTDA growers account numbers TH50-xxx and TH50-xxx be included in the summons for confirmation of the grant as part of the deceased's estate and the petitioner files the summons for confirmation of the grant within 30 days from the date of the ruling.



2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in fact and law in finding that KTDA Account No. TH50-xxx was part of LR No. Ndarugu/Gacharage/2473 which property belonged to the deceased and that the said KTDA Account is part of the deceased's estate.
 - b. The learned trial magistrate erred in law and in fact when he failed to acknowledge that the deceased had in the course of her lifetime gifted the KTDA Account No. TH50-xxx to the appellant.
 - c. The learned trial magistrate erred in law and in fact when he failed to appreciate the principles applicable for the grant of a freezing order and issued an order requiring the preservation of proceeds emanating from LR No. Ndarugu/Gacharage/2473 and directing KTDA to withhold payments to Account Nos. TH50-xxx and TH50-xxx until the hearing and determination of the succession cause and final distribution of the estate of the deceased.
3. Parties put in written submissions to dispose of the appeal.

Appellant's Submissions

4. The appellant submits that the learned trial magistrate misdirected himself in holding that KTDA Account No. TH50-xxx was part of LR No. Ndarugu/Gacharage/2473 as the existence of the account does not automatically mean that it is part of the estate property. The account represents proceeds from tea farming undertaken by the appellant independent of the deceased's ownership.
5. The appellant submits that he has been growing tea on the said property using his own resources and was assigned a grower's number. Further the respondents have never sought to farm or claim the proceeds during the deceased's lifetime thus establishing that he had exclusive beneficial interest over the account. To support his contentions, the appellant refers to the case of [*Kamau & 8 Others v Moboyo & 4 Others* \[2024\] KEELC 3920](#).
6. The appellant argues that the deceased had during her lifetime gifted the KTDA Account No. TH50-xxx to him. The appellant further argues that he had exclusive control over the account during the deceased's lifetime demonstrating an intention by the deceased. Furthermore, the respondents never challenged his use of the account proceeds during the deceased's lifetime.
7. The appellant refers to the case of [*Purity Njeri Kathenya v Tharaka Niithi County Government & Another* \[2018\] KEELRC 697 \(KLR\)](#) and submits that the respondents failed to satisfy the conditions for granting of preservation orders. The mere allegation that the KTDA account is part of the estate of the deceased does not meet the threshold of a prima facie case. The appellant submits that he has been receiving and using proceeds from the account for decades thus freezing the account without substantive evidence of its inclusion in the estate is prejudicial. To support his contentions, the appellant relies on the case of [*Al-Alyaan Motors Ltd v Ngala* \[2023\] KEHC 19745](#).

The Respondents' Submissions.

8. The respondents submit that the deceased is the registered proprietor of land parcel LR. No. Ndarugu/Gacharage/2473 and upon the deceased's demise, it was established that proceeds from the tea growing in the said property was being paid in two different accounts being TH50-11 and TH50-07 by Kenya Tea Development Agency (KTDA). It was further established that the said proceeds were being channelled to the appellant to the detriment of the estate. On 1st October 2019, the 1st respondent



sought injunctive orders directing KTDA to withhold payments to the said accounts in order to preserve the estate of the deceased.

9. The respondents argue that one cannot claim to have equitable interest over a property that belongs to the deceased. Further, the respondents submit that they had no right to lay claim to the deceased's property prior to her death as alleged by the appellant. Furthermore, pursuant to the common law concept of land expressed in latin maxim as "cujus est salum est usque ad coelum" meaning whose is the soil is also that which is above it, the appellant cannot claim ownership over the tea grown on the deceased's property as that would defy the said latin maxim.
10. The respondents submit that the KTDA Account No. TH50-xxx was not gifted to the appellant. The appellant claims that by having exclusive control over the account during the lifetime of the deceased amounts to ownership. Relying on the cases of *Cain v Moon* (1896) 2 QB 283; *Re Estate of Kabue Ole Lepate (Deceased)* [2018] KEHC 4936 (KLR) and *Re Estate of Ruth Wanjiku Karugu (Deceased)* (2021) eKLR, the respondents submit that control of the account does not in any way insinuate that it was the intention of the deceased. Further the appellant has not indicated when the said account was gifted to him. Thus, it is clear that the said account was not gifted to the appellant as he does not meet the threshold for gift in contemplation of death.
11. The respondents further submit that the issue of the account being a gift has been raised at the appeal stage. The appellant has never indicated to the trial court that the said account was a gift in contemplation of death prior to the court deliver of the ruling. Further, the appellant claims that the said account was both a gift in contemplation of death and a gift inter vivos, which he cannot claim both. Thus, the same is an afterthought.
12. The respondents submit that the learned magistrate's issuance of preservation orders was proper as the same sought to preserve the estate of the deceased from further intermeddling until all the pending issues raised in the succession cause were resolved.
13. The respondents submit that the record shows that he appellant failed to include properties belonging to the deceased in a bid to benefit from them to their detriment. The appellant did not deny that he failed to include the said properties clearly showing that he would have continued intermeddling with the estate of the deceased. The appellant further used a power of attorney granted to him during the deceased's lifetime even after her death to withdraw funds from KCB Bank account owned by the deceased. Thus the result of the appellant's actions led to the court to issue orders that would preserve the estate until confirmation. To support their contentions, the respondents rely on the case of *Re Estate of Godfrey Karani Mbogori (Deceased)* (Succession Cause E007 of 2023) [2024] KEHC 3357 (KLR).
14. The respondents argue that the appellant did not lead any evidence to show that he will suffer irreparable harm. Further the appellant cannot claim undue hardship yet there are benefiting from the proceeds emanating from the estate of the deceased to the detriment of other beneficiaries.

Issue for determination

15. The main issue for determination is whether the appeal has merit.



The Law

16. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:
- “.....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. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
17. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR the Court of Appeal stated that:-
- An appeal to this court from a trial by the High 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.
18. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles: -
- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
 - c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the appeal has merit.

19. The deceased died on 4th December 2015 and was survived by the respondents and the appellant who are siblings. The appellant was issued with grant of letters of administration on 27th March 2017. The matter was dismissed on 6/3/2019 for want of prosecution and the trial court reinstated the succession cause on 29th January 2020 on condition that the petitioner files the summons for confirmation within one month from the date of the ruling.
20. It is not in dispute that the tea registered under KTDA Account Nos. TH50-xxx and TH50-xxx is plucked from the deceased’s property which is land parcel LR. No. Ndarugu/Gacharage/2473 a fact that the appellant does not deny. However the appellant argues that he has grown tea on the said property using his own resources and therefore he has an equitable interest as he controls the said tea. The appellant further argues that the deceased in her lifetime gifted him the Account No. TH50-xxx. It is evident from the record that the arguments by the appellant that he was gifted by the deceased with the said account during her lifetime was not an issue before the lower court. The issue has been raised on appeal. Before the court below, the appellant informed the court that he commenced planting tea using his own resources on the deceased’s property on the section under grower’s number GA-2091 which was later extended to the adjacent plot with the consent of his father from the year 1969-1974.



It is evident that the appellant's contention that the account was a gift from the deceased during her lifetime is an afterthought.

21. It is noted that the appellant has not indicated the period or the date the deceased gave him the KTDA tea account as a gift. He has not adduced any evidence to show that the account was transferred to his name at any one time. Additionally, the appellant did not refute the claims by the respondents that the tea belonged to the deceased and any support by him was to boost the yield which the other beneficiaries also did from time to time as siblings. It is documented that the land LR No. Ndarugu/Gacharage/2473 on which the tea crops is planted belongs to the deceased. It is not unusual that a parent can delegate management of part of her land with crops to one of her children for a certain period. If this so happens, it cannot be claimed in the parents succession that the management shall continue even after death of the said parent. If it so happens then, such claim would affect the rights of inheritance of the other beneficiaries. In such a scenario, the appellant can negotiate with his siblings on the value of the additional crop, if any, which he may have planted.
22. The appellant further faults the trial court for issuing preservation orders in respect of KTDA Account Nos. TH50-xxx and TH50-xxx by directing KTDA to withhold the payments to the said account numbers until the conclusion of the succession cause. It is noted from the record that the appellant has been receiving proceeds from the said accounts to the exclusion of his siblings since the death of the deceased in December 2015. It is a requirement of the law that the estate of the deceased be preserved pending distribution to the beneficiaries. No one beneficiary should be allowed to enjoy income of the estate to the exclusion of others. I am convinced that the magistrate had to give the orders for preservation to protect the other beneficiaries who have been excluded from enjoying the income of the deceased's estate for about a decade.
23. The evidence of the respondent which the honourable magistrate looked into account is that the appellant's conduct is wanting as he deliberately concealed and failed to include the deceased's KCB Account No. 1/xxx as well as other properties as part of her estate despite knowing of its existence prior to the death of the deceased. Thus following the intermeddling by the appellant and his material non-disclosure of the bank account and other known properties of the deceased had to be preserved to avoid further intermeddling by the appellant.
24. I come to a conclusion that the court below relied on cogent evidence adduced by the parties to grant the orders in its ruling delivered on 29th January 2020. It is my considered view that the magistrate did not err in granting the orders that she gave in her ruling.
25. I find no merit in this appeal and it is hereby dismissed.
26. Being a family matter, I order that each party meets its own costs
27. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

