



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Stanley Mbaabu (Deceased) (Succession Cause
96 of 2016) [2025] KEHC 10917 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 96 OF 2016**

**SM GITHINJI, J
JULY 23, 2025**

BETWEEN

NTINYARI JOHN 1ST PETITIONER

GLORY MAKANDI MBAABU 2ND PETITIONER

AND

EVANS MUTWIRI MBAABU 1ST PROTESTOR

DENNIS MWENDA MBAABU 2ND PROTESTOR

JUDGMENT

1. The Petitioners filed summons for confirmation of grant on 9/6/2017, where they proposed at paragraph 4 of the affidavit in support thereof how the estate properties were to be distributed.
2. On 22/11/2017, the Protestors filed an affidavit of protest where at paragraph 4 thereof, they made their own proposal of the distribution of the estate properties.
3. In his statement filed on 19/11/2018, the 2nd Protestor herein, a son to the deceased and a step son to the 1st Petitioner herein contended that he and his brother, the 1st Protestor herein have been residing on Plot No. 44 their entire life and the 1st Petitioner has a home elsewhere. The 1st Petitioner separated with the deceased herein 30 or so years ago and the estate properties were purchased and extensively developed by the deceased herein and his mother (both deceased).
4. His sentiments were echoed by Dennis Mbaabu Marangu, Faith Kagwiria and David Mwiti, in their statements filed on 20/9/2019.
5. The 1st Petitioner herein, Samson Mworira and Geoffrey Gatobu, the wife and brothers to the deceased respectively, filed their witness statements dated 23/1/2019 in support of the Petitioners' proposed mode of distribution. They contended that after the separation of the deceased with his 1st wife,



Damaris, he married the 1st Petitioner and dowry was paid. The 1st Petitioner then took in the 3 children from the deceased 1st marriage and raised them as her own. The deceased and the 1st Petitioner bought a plot in Kulamawe, built semi-permanent houses there and moved in with their children. They had Kulamawe 229, Kulamawe 44, Plot No 1 Kiwanjani 'A' and Nturingwi 4 acres. The 1st Petitioner only took her children after they were chased away from their home.

6. Ruth Kairuthi Gatobu, the sister in law to the deceased and Hellen Karuru Mugambi filed their statements on 24/2/2021 in support of the summons for confirmation of grant.

Oral Evidence

7. Protestor's Witness 1 Dennis Mwenda Mbaabu, who is the 2nd Protestor herein adopted his affidavit of protest and his statement dated 19/11/2018 as his evidence in chief. He stated that the deceased was his father, the 1st Protestor is his brother and their mother is Damaris Ntinyari Mbaabu and Paskwalina Ntinyari John. The 1st Petitioner herein attended the funeral of the deceased as his wife. They were brought up with 2 children of the 1st Petitioner, namely Kelvin Matumbi and Caroline Karimi. Although they never lived with the 1st Petitioner at plot No. 44, they lived with her children whom they knew as their step brother and sister. Caroline left while in form 2 while Kelvin left when he was in 1st year university to go and live with their mother, the 1st Petitioner herein.
8. Protestor's Witness 2 Faith Kagwiria adopted her witness statement dated 25/9/2019 as her evidence in chief. She stated that the Protestors were children of her elder sister namely Damaris Ntinyari, a wife to the deceased herein and they lived on plot No. 44, Isiolo. She saw the 1st Petitioner at the funeral of the deceased and her children used to live with her sister.
9. Protestor's Witness 3 Daniel Murithi adopted his witness statement dated 20/9/2019 as his evidence in chief. He stated that he knew the Protestors and the deceased herein and it was the Protestors who live on plot No. 44 Kulamawe. The 1st Petitioner stayed with the deceased at plot No. 44 for a short time before she went to Kiwanjani area where she lives to date.
10. Protestor's Witness 4 Dennis Mbaabu Marangu adopted his statement dated 20/9/2019 as his evidence in chief. He stated that the deceased and his wife Damaris lived on plot no. 44 Kulamawe with their children namely Gitonga, Kendi, Kathambi, Karimi, Makandi and Mukiri. During the burial of the deceased, the 1st Petitioner was introduced as his wife.
11. Protestor's Witness 5, Evans Mutwiri Mbaabu and the 1st Protestor herein, told the court that the 2nd Protestor is his brother and they are children of Damaris Kanyiri and the deceased herein. Plot No. 44 is where his parents lived and it is where they grew up. The 1st Petitioner claimed to be their father's wife and brought wrangles at the home when their mother was alive. When Stanley Mbaabu died, he left them on Plot No. 44 where they reside upto to date. The 1st Petitioner resides in Kiwanjani with her children and his complaint was on the distribution. Plot No. 44 has one bedroom and rental houses and they lived on the plot since birth to date.
12. Petitioner's Witness 1, Pascalina Ntinyari John adopted her supporting affidavit dated 9/6/2017 and the statement dated 29/1/2019 as her evidence in chief together with the list of documents dated 15/11/2022. She stated that Damaris was her co-wife, and she had been given a place in Isiolo to stay rent free. Damaris and the Protestors lived on plot 44 Kula Mawe until Damaris died. The Protestors came with their mother in 1990 while Glory, Nkathambi and Kendi are children of Damaris and the deceased. She never lived on the plot but her children lived there before they were chased away by Damaris. She prayed to be given plot No. 44 as she is the one who bought and developed it. Plot 229 was also developed and she was agreeable to equal distribution of Plot at Ngaremara and Plot 4 at



Maua. Plot 2 Kwegu was given to Damaris while the deceased retained Plot 1. She bought Plot 1 and it should be given to her. The market stalls were demolished by County Government and Mwangaza plots have a case before court. Plot 229 has 10 rental wooden semi-permanent houses and she and the deceased first lived there when they bought it. The 3 plots at Redcross measured approximately 50 × 100 each and she did not know whether the sewing machines were still in existence. The rental income from Plot 229 was going to the Protestors and Nturingwe B should be shared equally between her and the 2nd Protestor.

13. Petitioner's Witness 2, Samson Mworira adopted his statement dated 23/1/2019 as his evidence in chief. He testified that Stanley Mbaabu was his brother and he had 2 wives namely Damaris Ntinyari and Paskwalina Ntinyari Mbaabu. The 1st wife Damaris had 3 children while the 2nd wife Ntinyari has 2 children with the deceased. Damaris had separated with the deceased and she came back with 2 other children, and while the Protestors are not biological children of the deceased, he adopted them as his children, and when he died, he left them at his home. Damaris Ntinyari came in 1991 to the matrimonial home where she lived with the deceased before he died. The land was developed by Damaris and the deceased herein and the 2 wives were never at the home of the deceased at the same time. The house which the deceased built is still there and it is occupied by the Protestors.
14. Petitioner's Witness 3 Ellen Karuri Mugambi adopted her statement dated 22/2/2020 as her evidence in chief. She stated that when the deceased died, John Ntinyara was not living with him. The Protestors came to live with the deceased and he brought them up with his other children as his own.
15. Petitioner's Witness 4 Ruth Kaiyungi Gatobu adopted her statement dated 22/2/2021 as her evidence in chief. She stated that the Protestors were living on plot 44 with Damaris and the deceased, and the Protestors live there to date. Other children of the deceased, Damaris and Ntinyara John live at different places.
16. The parties filed their respective submissions in support of their respective proposals, which I have duly considered.

Disposition

17. Having analyzed the pleadings, the evidence led and the submissions by counsel, I find the issue for determination to be how Plot Nos. 229 and 44 Kulamawe - Isiolo, 3 Plots not registered at Red Cross, Plot No. 1 – Kiwanjani A, Plot No. 2 - Kiwanjani B, Stall at Isiolo Market, Poultry Group Plot No. 17 Kiwanjani C, Land at Ngare – Mara Location, Nturingwe A - 5 Acres, Land at Ngare – Mara Location, Nturingwe B – 4 Acres and 9 Sewing Machines (hereinafter called the estate properties) should be distributed.
18. The Petitioners propose that Plot No. 229 Kulamawe goes to Kelvin Matumbi Mbaabu, Plot No. 44 and Plot No. 1 Kiwanjani A to the 1st Petitioner, Plot No. 2 Kiwanjani B to the 2nd Petitioner and Purity Kendi Mbaabu, Plot No. 17 Kiwanjani C Poultry Group to Mwenda Mbaabu, the 1st Cube of the Stall at Isiolo Market to the 1st Protestor, the 2nd Cube of the Stall at Isiolo Market to the 1st Petitioner, the 3 unregistered red cross plots to the 1st Protestor, Caroline Karimi Mbaabu and Roselyne Kathambi Mbaabu, the 9 sewing machines to the Protestors, Glory Makandi, Purity Kendi and Roselyne Kathambi, Land at Ngare – Mara Location, Nturingwe A - 5 Acres to all the beneficiaries and Land at Ngare – Mara Location, Nturingwe B - 4 Acres to all the beneficiaries while the 1st Petitioner retains 1 Acre thereof.
19. On their part, the Protestors propose that plot No. 229 be given to the 1st Protestor in whole, Mwangaza plot to wholly go to Kelvin Matumbi Mbaabu and the 3 Red cross Plots to go to them and Kelvin



- Matumbi Mbaabu, Kiwanjani Plot No. 1 to go to the 7 children of the deceased in equal shares, Market Stores and Plot No. 44 to go to them while the remainder of the estate properties to be distributed to all the 8 beneficiaries in equal shares.
20. In his introductory letter dated 19/11/2015, the chief of Waso Location listed Damaris Ntinyari Mbaabu - (1st wife - deceased), Pascarina Ntinyari Mbaabu - 2nd wife, Glory Makandi Mbaabu - Daughter, Purity Kendi Mbaabu - Daughter, Roselyn Kathambi Mbaabu - Daughter, Caroline Karimi Mbaabu - Daughter, Denis Mwendu Mbaabu - son, Kelvin Matumbi Mbaabu - son and Evans Mutwiri Mbaabu – son, as the beneficiaries of the deceased.
 21. I find that the birth certificates on record irrefutably shows that the Protestors are children of the deceased, and thus his beneficiaries.
 22. The 1st Petitioner acknowledged in her testimony that, “The two objectors came with their mother. I considered they are children of the deceased and they should get a share as the deceased took them in the family.”
 23. Her testimony was corroborated by Samson Mworira, the brother to the deceased who stated that, “Mbaabu adopted the 2 children and he took care of the children until he died. When he died he left them at his home Evans and Dennis were adopted by the deceased. They came with their mother Damaris.”
 24. Petitioner’s Witness 3 and 4 also affirmed in their testimonies that the Protestors were brought up by the deceased as his own children.
 25. The record is clear that the deceased herein, a polygamist died intestate on 20/3/2014 survived by the beneficiaries hereinabove stated.
 26. Section 40 of the [Law of Succession Act](#) provides that; “(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children. (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
 27. Ideally, the estate properties ought to be distributed according to the number of children in each house, with the 1st Petitioner being treated as an additional unit, by dint of section 40 of the [Law of Succession Act](#).
 28. The Protestors have proved by uncontroverted evidence that they have been raised on Plot No. 44 since their childhood and they still reside there up to date. The Petitioners went to great lengths in a bid to disinherit the Protestors their rightful shares of their deceased father’s estate, in insisting that they were not children of the deceased.
 29. I adopt the Petitioners’ proposal of distribution of Plot No. 229 solely to Kelvin Mbaabu since the Protestors have already benefitted from Plot No. 44, which is also income generating.
 30. Save for Plot No. 229 and Plot No. 44, the other estate properties shall be distributed equally among the 8 beneficiaries of the deceased in accordance with the provisions of section 40 of the [Law of Succession Act](#).
 31. The upshot from the foregoing analysis is that the estate properties shall be distributed as follows:



1. Plot No. 44 to go wholly to Evans Mutwiri Mbaabu and Dennis Mwenda Mbaabu.
 2. Plot No. 229 to go Kelvin Matumbi Mbaabu in whole.
 3. The other estate properties to be shared equally among Ntinyari John, Glory Makandi Mbaabu, Evans Mutwiri Mbaabu, Dennis Mwenda Mbaabu, Purity Kendi Mbaabu, Caroline Karimi Mbaabu, Kelvin Matumbi Mbaabu and Roselyne Kathambi Mbaabu.
32. Matter be mentioned on 15/12/2015.

DATED AND DELIVERED AT MERU THIS 23RD JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Mr. Muthamia holding brief for Mr. Rimita for the Petitioner.

Ms. Kaume is for the protestors (absent).

