



REPUBLIC OF KENYA



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**Kariuki v Kabugi (Civil Appeal E078 of 2024)
[2025] KEHC 10856 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E078 OF 2024**

EM MURIITHI, J

JULY 24, 2025

BETWEEN

JOSIAH MIANO RICHARD KARIUKI APPELLANT

AND

SIMON GICHANGI KABUGI RESPONDENT

*(An appeal from the Judgment of Hon. Alex Ithuku (C.M) in
Kerugoya Succession Cause No. 13 of 1986 delivered on 17/10/2023)*

JUDGMENT

1. On 15/6/2009, the Appellant filed Summons for Confirmation of Grant where he listed himself as the only beneficiary to the estate of the deceased comprising of L.R No. Mutira/kirunda/2X0 (hereinafter referred to as the estate property). He swore an affidavit of protest sworn on 18/7/2017 in support of his Summons for Confirmation of Grant. In reply thereto, the Respondent filed Summons for Confirmation of Grant dated 23/11/2016 where he proposed at paragraph 10 of the affidavit in support thereof that the estate property be distributed equally among the children of the 3 cousins of the deceased (also deceased). He also filed Summons for Confirmation of Grant dated 23/6/2017 supporting his earlier mode of distribution. John Muriuki Karuri and Mercy Muthoni Muriuki swore an affidavit of protest on 28/6/2010, where they proposed that the estate property be shared equally by the children of the 3 cousins of the deceased. The children from the 3 cousins were to get 0.53 Ha jointly.
2. In its judgment subject of this appeal, the trial court ruled:

“It is common ground that the deceased died without getting married. He did not have children, brothers and sisters. It is also agreed that the extent of the estate is Mutira/kirunda/2X0 measuring 1.61 hectares...The Petitioners and Protestor rank equally under Section 39 of the Law of Succession Act. Then Josiah Miano stated that he used to support



deceased financially. He is not claiming to be a creditor of the estate. What is clear is that he was not a dependent of the deceased. Looking at the evidence on record, I find that the only distribution that will be fair is one that considers the nearest relatives. The cousins. I have seen the consent dated 23/11/2016 and filed on the same date. I have seen the decision by Justice Mativo on Immaculate *Wangari Munyaga v Zachary Waweru Ireri* (2016) eKLR. The consanguinity and affinity chart fits this case. The parties in this case are equal in rank. They will share the estate equally. The grant is confirmed as proposed under paragraph 10 of the Supporting Affidavit to the application dated 23/11/2016.”

The Appeal

3. On appeal, the Appellant filed his memorandum of appeal on 29/1/2024 raising 8 grounds as follows:
 1. The learned Magistrate erred in law and fact by making a determination that the estate of Karuri Zakayo should be devolved to cousins yet the deceased had already sold his land.
 2. The learned Magistrate erred in law and fact by failing to realize if the estate was to devolve to cousins then not all cousins were before court there are some cousins left out which are about 37 not 8 as listed.
 3. The learned Magistrate erred in law and fact in completely disregarding the evidence put forth by the appellant.
 4. The learned magistrate erred in law and fact by failing to appreciate that the appellant has fully developed the estate of the deceased by virtue of the fact that he had paid some purchase price of Kshs 550,000/= and constructed a homestead the protestor and other cousins don't live there.
 5. The Learned Magistrate erred in law and fact in failing realize that the reasons the cousins and other parties before court did not object to the appellant being given letters of administration is because they knew the land had been sold.
 6. The learned magistrate erred in law and fact in failing to fairly evaluate the evidence tendered by the parties.
 7. The learned magistrate erred in law and fact by failing to realize that the petitioner to this case the appellant Josiah Miano Richard Karuri was issued with letters of administration on 20/1/2009.
 8. The learned magistrate erred in law and fact in failing to realize that the deceased had cousin sisters and allegations that he had no sisters was not true.

Duty of the court

4. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

Oral Evidence

5. Protestor's Witness 1 Josiah Miano Karuri and the Appellant herein testified that, "I was Protestor in High Court No. 508 of 2015. I have made application for confirmation of grant on 15/06/2009. Simon Gichangi filed a protest. I am a nephew to the deceased. The Protestors in 13/1986 are known to me. I do not know their relationship with the deceased. I wish to adopt my statement dated 22/07/2019.



I know that the property is Mutira/Kirunda/2X0. I have lived on the land for over 40 years. I had appealed to the High Court. Justice Kasango held that I was the closest relative. I was declared the administrator of the estate. I was ordered to gazette the matter. The land should belong to me. The Protestors have never occupied the land. I have grown coffee on the land. I know Simon Gachangi Kabugi. He is a son to Muriuki Mwangi.”

6. On cross examination, he stated that, “I’m nephew to deceased. He did not have a wife. He did not have siblings. He had no children. I know Richard Karuri Mwangi. He was my father. He is deceased. Elias Mwangi was my uncle. John Muriuki Mwangi was my uncle. He’s also deceased. They were closest to the deceased. They were at the same level. I have brothers and sisters. They are Gideon Munene, Faith Miano is my sister in law. Mary Wanjiru Muriuki is wife to my brother, John Marinki Katioki. Gideon is alive. I know Simon Gichangi. His father is Elias. I do not know John Gitari. I knew Peterson Mwangi. He is from the family of John Muriuki Mwangi. I do not know the number of children of John Muriuki Mwangi. The Protestor resides in Kangaita. I’m from Kirunda. I do not accept that the Protestors are in the same land with me. The estate has never been distributed. I object to the property being distributed to the three brothers. I was given property by the deceased. I used to assist him financially.”
7. Petitioner’s Witness 1 Simon Gichangi Kabugi and the Respondent herein testified that, “I’m from Mwea West. I filed summons for confirmation dated 23/06/2017 before High Court 508/2015. I had filed Affidavit of protest. I ask that I be allowed to adopt the Affidavits as my evidence in chief. I ask for distribution as stated in paragraph 10 of the supporting Affidavit. The deceased left three families. Richard Karuri is deceased. The Petitioner herein was one of his sons. John Muriuki is deceased. He had Faith Wangui as wife. Joseph Karuri had wife called Faith Wanjiru. Elias Kabugi was my father. John Githui is my brother. John Muriuki was my uncle. He is survived by Benard Wanjau. Mutira/Kirunda/2X0 should be divided into three equal portions.”
8. On cross examination, he stated that, “Mr. Ngigi is my advocate. I have recorded a statement. I’m not aware of any appeal in Nyeri. I have not lived on the land. I have not occupied it. I cultivate it once.”
9. In re-examination, he stated that, “I have not lived on the land. I cultivated. I adopt my Affidavits. The land should be shared equally to three families.”

Submissions

10. The Appellant urged that he was the closest living relative of the deceased herein, and was thus entitled to his estate.
11. The Respondent urged that the Appellant was not a creditor to the deceased’s estate, and the allegations that he was a purchaser for value of title number Mutira/Kirunda/2X0 had been belatedly introduced in this appeal. He cited *Estate of Stone Kathuli Muiende* (Deceased) (2016) eKLR and *Re Estate of Alice Mumbua Mutua* (Deceased) (2017) eKLR on the jurisdiction of a Probate and Administration court. He urged that he proved his case on a balance of probabilities as required under the law, and cited *Immaculate Wangari Munyaga v Zachary Waweru Ileri* (2016) eKLR and *Jasbir Singh Rai & Others v Tarlochan Rai & Others* (2014) eKLR.

Determination

12. From the grounds of appeal, the singular issue for determination is whether the trial court’s judgment was grounded on law and the evidence adduced.
13. The parties herein are in agreement that the deceased herein died without a wife, children, brothers or sisters.



14. The Appellant acknowledged on cross examination that, “I’m nephew to deceased. He did not have a wife. He did not have siblings. He had no children. I know Richard Karuri Mwangi. He was my father. He is deceased. Elias Mwangi was my uncle. John Muriuki Mwangi was my uncle. He’s also deceased. They were closest to the deceased. They were at the same level. I have brothers and sisters. They are Gideon Munene, Faith Miano is my sister in law. Mary Wanjiru Muriuki is wife to my brother, John Marinki Katioki. Gideon is alive. I know Simon Gichangi. His father is Elias. I do not know John Gitari. I knew Peterson Mwangi. He is from the family of John Muriuki Mwangi. I object to the property being distributed to the three brothers. I was given property by the deceased. I used to assist him financially.”
15. The Respondent testified that, “The deceased left three families. Richard Karuri is deceased. The Petitioner herein was one of his sons. John Muriuki is deceased. He had Faith Wangui as wife. Joseph Karuri had wife called Faith Wanjiru. Elias Kabugi was my father. John Githui is my brother. John Muriuki was my uncle. He is survived by Benard Wanjau. Mutira/Kirunda/2X0 should be divided into three equal portions.”
16. The parties have equally conceded that the deceased herein had three cousins namely Richard Karuri Mwangi, Elias Kabugi Mwangi and John Muriuki Mwangi, all deceased. Richard Karuri Mwangi was survived by Mary Wanjiru Muriuki, Faith Wanjiru Karani (deceased but substituted by Robert Kinyua Karani), Gedion Munene Karuri and Josiah Miano Richard Kariuki, Elias Kabugi Mwangi was survived by Simon Gichangi Kabugi and John Gitari Elias whereas John Muriuki Mwangi was survived by Mercy Muthoni Muriuki and Bernard Wanjau Muriuki. Evidently, the deceased herein died intestate survived by children of his 3 cousins.
17. The court notes the Consent dated 28/6/2010 duly executed by all the 8 beneficiaries and the one dated 23/11/2016 duly executed by 7 beneficiaries save for the Appellant herein.
18. Section 39 (1) of the *Law of Succession Act* provides that:

“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- (a) father; or if dead (b) mother; or if dead (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.”
19. The court finds that the trial court, after due evaluation of the evidence adduced, properly applied the provisions of section 39 of the *Law of Succession Act*, in distributing the estate property into 3 equal portions of 0.53 Ha for each of the 3 cousins of the deceased (also deceased), now survived by their respective children.
20. This court further finds that, on the evidence, the Appellant has not substantiated his contention that he had purchased the estate property from the deceased during his lifetime.

Orders

21. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
22. There shall be no order as to costs.

Order accordingly.



DATED AND DELIVERED THIS 24TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. Kimotho for the Appellant.

Mr. Ngigi for the Respondent.

