



REPUBLIC OF KENYA



**Mukungo & another v Mukungo & another (Civil Appeal
E100 of 2023) [2025] KEHC 10487 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E100 OF 2023**

EM MURIITHI, J

JULY 17, 2025

BETWEEN

MARGARET WANJIRU MUKUNGO 1ST APPELLANT

SUSAN MUTHONI MUKUNGO 2ND APPELLANT

AND

IRENE WANJIRA MUKUNGO 1ST RESPONDENT

REGINA KAMORI MUKUNGO 2ND RESPONDENT

*(Being an appeal from the judgment delivered by Hon. L. W. Kabaria
(P.M) on 10/11/2023 at Gichugu Succession Cause No. 123 of 2017)*

JUDGMENT

1. The 1st Appellant herein, the 2nd Respondent herein and Francis Nyamu Ndambiri petitioned for grant of letters of administration intestate in respect of the estate of Mukungo Njoka. On 1/4/2022, the 1st Appellant and Francis Nyamu Ndambiri filed summons for confirmation of grant where they proposed that L.R No. Baragwe/Guama/3625, L.R No. Mbeti/Gacuriri/1512, L.R No. Mbeti/Gacuriri/1515 and L.R No. Mbeti/Gacuriri/1516 be shared equally between Regina Kamori Mukungo, Margaret Wanjiru Mukungo and Francis Nyamu Ndambiri, while L.R No. Kabare/Nyagithuci/384 and Plot No. 37A Kutus be shared equally between Francis Nyamu Ndambiri and Benson Muriithi Mukungo. They further proposed that the shares at Kangaita Tea Factory, Kimunye Tea Factory, Thumaita Tea Factory, Kenya Tea Development Agency and Gichugu Housing Coop S. Limited be shared equally between Regina Kamori Mukungo, Margaret Wanjiru Mukungo and Francis Nyamu Ndambiri.
2. Francis Nyamu Ndambiri swore a Supplementary Affidavit on 7/9/2023 in support of his proposal.



3. On 14/6/2022, the 1st Respondent filed an affidavit of protest in opposition to the proposed mode of distribution as well as the listed beneficiaries. She listed her own beneficiaries and proposed that the estate properties be distributed equally among the 13 beneficiaries of the deceased.
4. The 1st Respondent swore a supplementary Affidavit on 30/6/2023 attaching official searches in respect of L.R No. Sosian/Block/11088 and L.R No. Segera/Segera/Block 2/1126 and the green cards in respect of L.R No. Mbeti/Gachuririr/1512, 1515 and 1516.
5. The 2nd Respondent swore an affidavit of protest on 13/6/2022 adopting the 1st Respondent's mode of distribution but her interest in L.R No. Kabare/Nyagithuci/384, was only where she had constructed her house.

Statements

6. Francis Nyamu Ndambiri filed his witness statement on 16/1/2023 in support of the summons for confirmation of grant.
7. In her impugned judgment, the trial court rendered thus:

“10. We revert then to the provisions of the Succession Act regarding intestate succession. Now it is common ground that the deceased was polygamous and was survived by two widows and eleven children. The provisions of Section 40 of the Law of Succession Act are therefore applicable, Section 40(1) provides as follows: 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. Section 40(2) then provides 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. The position the protestors have taken in this regard aligns with the law. The mode of distribution proposed by petitioners has no foundation in law. 11. That said, it is also common ground that there are beneficiaries who have property transferred to them by the deceased in his life-time identified as the following;

- a. Kabare/Nyagithuci/385 0.26ha Regina Kamori and Irene Wanjira jointly
- b. Baragwe/Guama/36260.21ha Margaret Wanjiru Mukungo
- c. Kabare/Nyagithuci/381 0.26ha Susan Wanjiku Karimi
- d. Kabare/Nyagithuci/382 0.26ha Irene Wanjira Mukungo
- e. Kabare/Nyagithuci/383 0.26ha Mary Wawira Gichobi
- f. Kabare/Nyagithuci/386 0.26ha Cecily Muthoni Mukungo
- g. Kabare/Nyagithuci/387 0.26ha Wangu Mukungo
- h. Kabare/Nyagithuci/389 0.26ha Francis Nyamu
- i. Kabare/Nyagithuci/390 0.26ha James Gichobi



- j. Kabare/Nyagithuci/391 0.26ha Benson Muriithi
- k. Kabare/Nyagithuci/392 0.26ha Joseph Kariuki

In accordance with Section 42 of the *Law of Succession Act* where an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house. 12. A quick analysis of the above confirms that the daughters of the deceased each received 0.26ha from the deceased except for Irene Wawira who received 0.26ha jointly with her mother. It is also apparent that the sons received double that portion 0.58ha from the deceased in his lifetime all except one son Lucas Mithamo. Of the two surviving widows only one Margaret Wanjiru Mukungu has land to herself measuring 0.21ha, the second widow Regina Kamori Mukungo as earlier stated has land where she jointly registered with her daughter. 13. Now we have six properties so far identified as forming the estate looking at the acreage it is impossible to bring every beneficiary to the same level therefore equal distribution would result in inequity for reason that those already with property will have received more benefit from the deceased. Where the property cannot be distributed equally the court must then do what it can to do so equitably; it is then necessary to bring those beneficiaries who did not benefit from the deceased to a position that is as close as possible to those who did. For this reason, I find it is proper that the parcel Kabare/Nyagithuci/388 measuring 0.58ha devolve to Lucas Mithamo. The court is told that the 2nd widow Regina Kamori lives on the parcel Kabare/Nyagithuci/384, the parcel measures 0.26ha she and her daughter received from the deceased the parcel 385 jointly they will have Kabare/Nyagithuci/384 in equal shares to bring them close to par with the other beneficiaries. As stated the sons of the deceased already received land measuring 0.58ha twice as much as their sisters received, the six daughters of the deceased and the two surviving widows Mary Wawira Gichobi, Esther, Cecily, Susan, Susan Muthoni, Irene, Regina and Margaret will have Baragwe/Guama/3625 jointly considering its size and Sosian/Block 1/11088 in equal shares. The five sons of the deceased will take Segera/Segera Block 21/1126 in equal shares. The plot Block/Plot/Kibothere/37A Kutus will devolve to the two surviving widows and the eleven children of the deceased in equal shares.”

The Appeal

- 8. On appeal, the Appellants filed their memorandum of appeal on 29/11/2023 raising 7 grounds as follows:
 - 1. The learned magistrate erred in law and fact in delivering judgment against the weight of evidence adduced by the petitioner in respect to distribution of Land Parcel Kabare/Nyagithuru/Kithuki/384.
 - 2. The learned magistrate erred in law and fact by holding that all daughters of the deceased were given 0.26 Hectares each except the 1st Respondent Irene Wanjira Mukungo who was never given land by the deceased like the other daughters whereas she was given land parcel



Kabare/Nyagithuci/382 measuring 0.26 Hectares just like the other daughters. (See page 4 of the judgment).

3. The learned magistrate erred in law and fact by holding that the 2nd Respondent who was a wife to the deceased Regina Kamori was given L.R Kabare/Nyagithuci/385 measuring 0.26 Hectares which land was jointly registered with her daughter Irene Wanjira whereas the 2nd Respondent was given the land by the deceased just like the other surviving wives and she later enjoined her daughter the 1st Respondent in the title as her joint registered proprietor.
4. The learned magistrate erred in law and fact by holding that the land parcel Kabare/Nyagithuci/384 should be shared equally by the Respondents so as to bring them close to par with the other beneficiaries whereas the Respondents had been given land parcels Kabare/Nyagithuci/382 measuring 0.26 Hectares by the deceased during his lifetime.
5. The learned magistrate erred in law and fact by not putting into consideration that the 1st Appellant who was a wife to the deceased was given L.R Baragwe/Guama/3625 measuring 0.21 Hectares which is lesser portion than what the deceased was giving to his wives and daughters since they were getting 0.26 Hectares which is more than what the 1st Appellant got with 0.05 Hectares (1/8 one - eighth of an Acre) yet the learned Magistrate did nothing to bring the 1st Appellant to par with what the daughters and wives of the deceased got.
6. The learned magistrate erred in law and fact by bequeathing land parcel Baragwe/Guama/3625 jointly in the names of the daughters of the deceased and the two surviving wives yet giving land parcel Kabare/Nyagithuci/384 to the Respondents on which is unfair given the fact that the two had been given land by the deceased during his lifetime.
7. The learned magistrate erred in law and fact by discriminating against the other daughters and wives of the deceased by giving bigger portion of land to the Respondents herein.

Duty of the Court

9. 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).

Evidence

10. Protestor's Witness I Irene Wanjira Mukungo adopted her affidavit of protest sworn on 13/6/2022 as her evidence in chief. She testified that, "I want the property of the deceased to be shared, equally among the children and the two spouses to be treated equally. The deceased left two wives and eleven children. The wives are Regina Kamori Mukungo and Margaret Wanjiru Mukungo. I have read the statement of Francis Nyamu dated 29th December 2022. I don't agree to this proposal to share the property among the houses because some of us will be left behind without inheriting our father's property. I have seen what he is saying about Kabare/Nyagithuci/384. He says it be divided amongst two brothers. I don't agree because they are sons of Bernard Mukungo. They are from the same mother. The land is $\frac{3}{4}$ acre. That land my mother and my dad had constructed the house they were living since we were young. My mother Priscilla Kamori Mukungo lives there she was left there. I would request that her residential house not be demolished. She is aged. She should be left on the same portion where her house is built. About plot 37A Kutus he is saying it goes to two people. No, I was not aware he wants it to go to the two widows. I object to his proposal the plot belongs to our father so the members of the family have an equal right to share the plot it should be shared equally and living spouses be



treated the same. The rates have been paid I am aware. It is Benson Muriithi who has been paying. That does not guarantee him to get the plot because as family members we have not refused to refund what he has paid as rates annually. We had agreed as a family that he comes for refund from the family he hasn't. What I can say about Gacuriti the people who were given land my dad was one of them but here was a case and the titles reverted to the owners. The case is ongoing. My dad had sold part of the lands he owned there so we cannot claim from the person he sold to. The land remaining in Gacuriri is just one portion which is 1516 the land has been reverted and the Green Card was cancelled so we cannot say it can be distributed. The vehicle is a pick up, in its condition presently is not one that can go to the market and be sold, it can be sold as scrap and the proceeds distributed amongst all the children and the remaining spouse. We have the recent searches that show the land Sossion/Block 1/11088 and Segerasegera 1126 exist they have been confirmed by the registrar's office."

11. During cross examination, she stated that, "Yes, I know Kabare/Nyagithuci/382. It is mine. I got it from the deceased. Yes, I have already benefited from his property. Kabare/Nyagithuci/385 belongs to Regina Kamori Mukungo, my mother. Yes, my mother was the 2nd wife to the deceased. No, the 1st wife Selina Mukungo did not get anything from the deceased. Yes, she will be getting the 2nd time if she gets more now. Mbeti/Gachuririr/1512 belongs to Bernard Mwaniki Alison. No, it does not belong to the deceased person. When we were filing this succession cause, I am not the owner who filed it. It was filed by Francis in 2017 I had to respond to it. Yes, I have seen his statement saying the land does not form part of the estate. Sossion/block/1/11084 I have the search with me. It is not stamped by the court but it is in my file. It is not before the court. I know about the land, it is in Laikipia. Segera/Segera belongs to Mukungo Njoka. I have the documents to show it but it seems they were never filed. Plot no. 37A Benson has been paying the rates. He was supposed to come and bring the documents and the family will refund his money. Yes, there was an agreement with the family. It was if you pay you come with the receipt and you be refunded the money. I don't have the date of the agreement I don't have the agreement with me. Yes, we don't have that agreement but it was supposed to be like that. Yes, the motor vehicle is now a scrap. It has no one to take care of it. I have not done a valuation report to show that it is scrap. The family members know it's a scrap even the number is very old. I don't have the picture of the vehicle with me. It is not registered in my dad's name. The vehicle is presently in Elburgon. My nephew was left with it he is Kennedy Mugo. Yes, Kennedy is part of my family. I am not sure how he got the vehicle what I know is that my father had taken it there with a nephew. There is nowhere my father pointed at property and how it should be shared. (Referred to the last sentence in the affidavit of protest) yes, I have distributed shares at Gichugu Housing. I know Susan Mukungo she is a daughter of the deceased. If she is not included in the sharing it is a typing error. I have said the property be distributed equally amongst the children and the spouses."
12. In re-examination, she stated that, "In our family everyone has land and they have title deeds everyone got a portion of land not just me and mother. My mother Selina died a long time ago in 2008 and our father distributed land in 2015, she was already deceased. I distributed no 1515 and 16 because when Francis did the searches the names had not been changed the land was still in my father's name. After the registrar transferred I went to the land registrar and I confirmed that the land in Mbeere was cancelled and the land has reverted. I was relying on earlier searches that have now changed."
13. Protestor's Witness 2 Regina Kamori Mukungo adopted the affidavit of protest sworn on 13/6/2022 as her evidence in chief. She testified that, "Njoka is my husband he is deceased. I am one of the administrators. He distributed his property before his demise. Irene is my last-born daughter. I did not hear what she said in court. I don't understand Kiswahili. I would also like for the children to be given the property. I want the property distributed amongst the children all the children should get a share, an equal share. We are only two widows she has her own home I have mine. They be given property just like the children. I was given land. She was also given land, where I live is mine and my husbands."



It is in my name. It still is part of his estate. I would want the house be left to me because there is no one to construct the land for me. Yes, my house is on Kabare/Nyagithuci/384.”

14. During cross examination, she stated that, “The property be distributed amongst the children. What will be left for me is the house. I have land, this land belonging to their father let them share between them. Margaret is in Gichugu. She has her land there. She was given land her daughter was also given land. I don't mind if her daughter gets another share as the children get their shares. There is nothing I want in the land Baragwe/Guama/3625. Kabare/Nyagithuci/384 I have no interest in it, it belongs to the children. If I am given Mbeti/GACHIRIRI/1515 I will not refuse it. The tea shares I would like them to be given to me to be given to all of us. The vehicle it should be shared out as well. It be sold and distributed. Plot 37A Kutus is not developed. I don't know if the sons have been paying rates or not. Francis and Benson, they are the ones who look after the plot. Why should they be given the plot only the two of them? It should be given to all of Mukungo's children. They will give me a portion as well. The vehicle should be sold and proceeds shared out to all the children. It is in Elburgon. He had given his daughter land but she was not to go with it. My husband died he had not said what property is whose.”
15. In re-examination, she stated that, “I want the property be distributed amongst all the children. Yes. I also want a share I am also and administrator.”
16. Petitioner's Witness 1 Francis Nyamu Ndamberi adopted his statement recorded on 29/12/2022 his evidence in chief. He testified that, “The person who is left to distribute the property of the deceased is the spouse so I cannot distribute without giving respect to the mothers. That is why I first put the mothers in consideration they get and then distribute to the children. But there is property our father distributed before his demise like the vehicle was for his wives. We have three houses our father said we don't concern ourselves with the vehicle it is for Margaret and Regina. He said that the plot in Kutus Benson to look for a buyer so that Selina's house can get funds and buy their own vehicle for use in their farm. Regina and Margaret know about the vehicle. The remainder of the property that is the Nyagithuci land and the one in Gichugu Baragwe Guama the lands were to be distributed among the three wives but we realized as the house of Selina we will be disadvantaged because Regina Kamori and Margaret Wanjiru have their own land. We ask the court to consider our position so that Selina's house can also have something to distribute amongst themselves as others distribute. The other things like shares be divided per the three houses which was my proposal. I ask the court to distribute the estate as per my petition (referred to a list and bundle of documents dated 29th December 2022) I wish to produce them as evidence (produced as they appear P.Exh. 1-9).”
17. During cross examination, he stated that, “I am not aware if Mukungo left a will. He just spoke about the vehicles as a father does in the presence of his children. I don't have evidence to show that our father said the Kutus plot be for the benefit of Selina's family but we decided as a family not to leave the rates unpaid so as not to get into trouble with the county. We wanted it to remain paid up. Yes, in my statement I have stated how my father distributed his estate. Yes, he gave each wife and child land, this was in 2015. My mother Selina passed on in 1999. A deceased person cannot be given land but her children can be given what is hers. My brother and I were not given land. Our father gave land to all the children but when he gives his wives property our mother's portion was not factored in. This case is not just about our mother's portion Regina refused to let us sit and talk as a family. Yes, while my father was alive I asked him about Selina's share. He said that in the land he left each wife had a share. No, he did not give me her share. Yes, my father gave land to his children and wives. We are not following the same method because one house will be left with nothing to remind them of their mother's existence. Yes, my proposal will mean that the spouse will become trustees. Yes, I want the wives to become trustees



of their children. No, none of the children are minors. The wives are both elderly, they need to have a means to see to their daily needs. We are still young we can fend for ourselves they cannot. A wife is the one who inherits from her husband then she distributes to her children. The widows cannot go look for casual work so if the little property left to them by their husband is taken from them they will really suffer. Yes, the land that can be tilled is Kabare/Nyagithuci/384 even the land in Guama can be tilled. Yes, those are the parcels they can benefit from. Then land on 384 belongs to Regina Kamori and our father. Margaret does not till that land neither I nor Muriithi my brother till it. I disagree with Regina's proposal that in the distribution she be given the portion where her house is. I can let her continue to live in that house. If the court deems it fit she can be allowed to remain there. Margaret and I agreed that she is not inheriting no. 384. I propose the house of Selina be given no. 384. Yes, myself and my brother. It is not that we will get a larger share than the others just our mothers share will have gone to us. We will have a larger land yes. The plot in Kutus I want it to go to me and Benson because that is what our father had said. Equal distribution will depend on how many houses they are and how many wives there are. Yes, the children of a deceased person are equal. Yes, my mother's house only has two children. Yes, Regina's house has eight children and Margaret has one. Yes, if the distribution is done as I proposed the children will not get equal share. No, I am not making this proposal because I will benefit more. Regina was given land she accepted it Margaret also got land she also accepted their property will eventually go their own children. Our mother had not been chased out of the home that is why we want her portion to come to us. No, it is not because I will benefit more. We tried to talk at home and agree they refused. It is Regina and her children who refused. The vehicle KBR 964 since it was born they have never let us talk about it he gave to his daughter so we don't know about the vehicle and the particulars of registration. They don't like it when we talk about the vehicle. It is not scrap it is a vehicle. Yes, I sold my portion no. 389 after my father gave it to me."

18. In re-examination, he stated that, "Yes, if Regina's family get land they will have larger shares than our house. We tried to set up meetings in 2016 but Regina's children kept changing the agenda. We realized there was no chance of agreeing, my mother's house and that of Margaret are in agreement. It is the home of Regina Kamori that refused to come to an agreement. Yes, I have proposed that our father's property be shared between the three houses so that we also get our mother's portion."

Submissions

19. In the submissions on record, the description of the parties has inadvertently been interchanged. It thus appears that the Appellants did not file any submissions.
20. The Respondents lauds the trial court for properly exercising its discretion in finding that it was impossible to give all beneficiaries equal portions, and pray for the dismissal of the appeal. They urge that the court took into consideration that the 2nd Respondent was the 1st wife to the deceased and they acquired the properties long before the 1st Appellant came into the picture. They urge that although section 40 of the *Law of Succession Act* provides a general provision for distribution of the estate of a polygamist deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate. They cite *Scholastica Ndululu Sura v Agnes Nthenya Suva* (2019) eKLR, *In the Matter of the Estate of Mwangi Giture – Deceased* (2004) eKLR, *Re Estate of Zakayo Mulei (Deceased)* (Civil Appeal 61 of 2018) [2022] KEHC 13153 (KLR) and *Mary Rono v Jane Rono & another* [2005] KECA 326 (KLR) to buttress their submissions.



Analysis and Determination

21. From the grounds of appeal, the issue for determination is whether the distribution of L.R No. Kabare/Nyagithuci/384 (hereinafter referred to as the disputed property) was against the weight of the evidence led.
22. The 1st Respondent herein testified that, “I have seen what he is saying about Kabare/Nyagithuci/384. He says it be divided amongst two brothers. I don't agree because they are sons of Bernard Mukungo. They are from the same mother. The land is ³/₄ acre. That land my mother and my dad had constructed the house they were living since we were young. My mother Priscilla Kamori Mukungo lives there she was left there. I would request that her residential house not be demolished. She is aged. She should be left on the same portion where her house is built.” She admitted on cross examination that she and her mother, the 2nd Respondent herein received bequests from the deceased during his lifetime as follows, “Yes, I know Kabare/Nyagithuci/382. It is mine. I got it from the deceased. Yes, I have already benefited from his property. Kabare/Nyagithuci/385 belongs to Regina Kamori Mukungo, my mother. Yes, my mother was the 2nd wife to the deceased. Yes, she will be getting the 2nd time if she gets more now. There is nowhere my father pointed at property and how it should be shared.”
23. Her evidence was corroborated by the 2nd Respondent herein who restated that, “Njoka is my husband he is deceased. He distributed his property before his demise. Irene is my last-born daughter. I want the property distributed amongst the children all the children should get a share, an equal share. We are only two widows she has her own home I have mine. They be given property just like the children. I was given land. She was also given land, where I live is mine and my husbands. It still is part of his estate. I would want the house be left to me because there is no one to construct the land for me. Yes, my house is on Kabare/Nyagithuci/384.” When she was cross examined, she stated that, “The property be distributed amongst the children. What will be left for me is the house. I have land, this land belonging to their father let them share between them. Margaret is in Gichugu. She has her land there. She was given land her daughter was also given land. There is nothing I want in the land Baragwe/Guama/3625. Kabare/Nyagithuci/384 I have no interest in it, it belongs to the children.”
24. Petitioner's Witness 1 testified that, “But there is property our father distributed before his demise like the vehicle was for his wives. We have three houses our father said we don't concern ourselves with the vehicle it is for Margaret and Regina. The remainder of the property that is the Nyagithuci land and the one in Gichugu Baragwe Guama the lands were to be distributed among the three wives but we realized as the house of Selina we will be disadvantaged because Regina Kamori and Margaret Wanjiru have their own land.” During cross examination, he acknowledged that, “Yes, in my statement I have stated how my father distributed his estate. Yes, he gave each wife and child land, this was in 2015. Then land on 384 belongs to Regina Kamori and our father. Margaret and I agreed that she is not inheriting no. 384. If the court deems it fit she can be allowed to remain there. Yes, Regina's house has eight children and Margaret has one. Yes, if the distribution is done as I proposed the children will not get equal share. No, I am not making this proposal because I will benefit more. Regina was given land she accepted it Margaret also got land she also accepted their property will eventually go their own children. Yes, I sold my portion no. 389 after my father gave it to me.”
25. The record is certainly clear that L.R No. Mbeti/Gachuririr/1516, L.R No. Mbeti/Gachuririr/1515 and L.R No. Mbeti/Gachuririr/1512 did not form part of the estate of the deceased, pursuant to the cancellation of the deceased title thereto on 11/11/2022, and they were thus unavailable for distribution to the beneficiaries.



26. There is irrefutable evidence on record that the deceased had made gifts inter-vivos to his beneficiaries during his lifetime, as evinced by the copies of green cards adduced. On 6/7/2018, the Respondents were registered as joint proprietors to L.R No. Kabare/Nyagithuci/385 measuring 0.26 Ha, and they acquired title thereto on 24/7/2018. The 1st Appellant was registered as the proprietor of L.R No. Baragwe/Guama/3626 measuring 0.21 Ha, and she acquired title thereto on 16/12/2015. On 1/2/2017, Joseph Kariuki Mukungo was registered as the proprietor of L.R No. Kabare/Nyagithuci/392 measuring 0.58 Ha, Benson Muriithi Mukungo acquired title to L.R No. Kabare/Nyagithuci/391 measuring 0.58 Ha on 28/4/2016, James Gichobi Mukungo acquired title to L.R No. Kabare/Nyagithuci/390 measuring 0.58 Ha on 13/10/2016, Francis Nyamu Ndambiri acquired title to L.R No. Kabare/Nyagithuci/389 measuring 0.58 Ha on 28/4/2016, Esther Wangu Mukungo acquired title to L.R No. Kabare/Nyagithuci/387 measuring 0.26 Ha on 19/6/2017, Cecily Muthoni Mukungo acquired title to L.R No. Kabare/Nyagithuci/386 measuring 0.26 Ha on 16/1/2018, Mary Wawira Gichobi acquired title to L.R No. Kabare/Nyagithuci/383 measuring 0.26 Ha on 27/4/2018, Irene Wanjira Mukungo acquired title to L.R No. Kabare/Nyagithuci/382 measuring 0.26 Ha on 20/4/2023, and Susan Wanjiku Karimi acquired title to L.R No. Kabare/Nyagithuci/381 measuring 0.26 Ha on 21/12/2017.
27. The trial court took into account, and properly so, the properties, gifts and bequests made by the deceased to the beneficiaries by during his lifetime, during distribution of the estate, as mandated by the provisions of section 42 of the *Law of Succession Act*.
28. The Appellants lament that in purporting to bring parity between the Respondents and the other beneficiaries, the trial discriminated against her and other daughters of the deceased.
29. In their summons for confirmation of grant, the 1st Appellant herein and Francis Nyamu Ndambiri proposed that the disputed property be shared equally between Francis Nyamu Ndambiri and Benson Muriithi Mukungo. Her belatedly newfound interest in it at the appellate stage is contrived, and it raises doubt as to its bona fides. The same is suspect and can, therefore, be reasonably construed, as an afterthought.
30. The Appellants' witness acknowledged in cross examination that, "Margaret and I agreed that she is not inheriting no. 384."
31. The Respondents have demonstrated by uncontroverted evidence that the 2nd Respondent resides on the disputed property, and the demolition of her house, under the pretext of achieving an arithmetical equalization of the shares of all the beneficiaries would occasion her a grave injustice, which this court cannot countenance.
32. In an ideal situation, the distribution of the estate of the deceased herein who was a polygamist, would have been in accordance with the children in each house, with the surviving spouses being treated as additional units. Nonetheless, that distribution need not necessarily be equal among the number of children in each house, as was held by the Court of Appeal in *Rono v Rono* (2005) 1 EA 364, that; "Under statutory law, the superior Court has discretion to take into account fairness in determining the distribution to dependants. This discretion must be exercised on sound factual and legal basis. The possibility of girls marrying is only one factor that may be considered. Equal treatment of the children by the deceased was another factor. However, in intestate succession, there was no principle of law that the houses of the deceased, or the children/beneficiaries, must inherit equally."
33. Admittedly, the 1st Appellant has only one child while the 2nd Respondent has eight. Evidently, an equal distribution of the estate among the number of children in each house would occasion great prejudice



to the 2nd Respondent, and unduly disadvantage her. It reasonably expected that the house with more children would justifiably get proportionately a larger share.

34. The number of children in each house is undoubtedly a material consideration as was espoused in *Mary Rono v Jane Rono & another* [2005] KECA 326 (KLR) by Omollo JA as follows: “My understanding of that section is that while the net intestate estate is to be distributed according to houses each house being treated as a unit, yet the judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that they must be equality between houses they would have been no need to provide in the section that the number of children in each house be taken into account. Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work injustice particularly in the case of a young child who is still to be maintained, educated and generally seen through life. If such a child whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”
35. The court is satisfied that the trial court’s decision was firmly grounded on law and the evidence adduced and there is no basis to warrant this court’s interference.

Orders

36. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
37. The appellant shall pay the costs of the appeal to the respondent.
- Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. Waweru for the Appellant.

Ms. A. Thungu for the Respondent.

