



REPUBLIC OF KENYA



**In re Estate of David Maina Kigo (Deceased) (Succession Cause
155 of 2008) [2025] KEHC 13115 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 155 OF 2008
DKN MAGARE, J
SEPTEMBER 18, 2025
IN THE MATTER OF THE ESTATE OF DAVID MAINA KIGO (DECEASED)**

BETWEEN

LOISE NYAGUTHII MAINA PETITIONER

AND

ROSE WAIRURI KIGO PROTESTOR

RULING

1. By the Ruling of this court dated 25.3.2025, the court terminated the Petitioner as administrator and directed that alternative administrators be appointed by consent of the parties or by court. Subsequently on 19.5.2025, the court appointed Rose Wairuri Kigo and Ibrahim Ndegwa Maina as administrators.
2. The court also directed that the application dated 4.6.2020 be set down for hearing in respect of prayer 4 thereof as the rest of the prayers were spent. Prayer 4 of the notice of summons general dated 4.6.2020 sought the following recourse:
 - a. That there be an order for reasonable provision and equal distribution for the Applicant out of the net intestate estate.
3. The summons was supported by the Affidavit of the Protestor sworn on 4.6.2020 premised on the following grounds:
 - a. ...
 - b. ...
 - c. ...



- d. That an order for reasonable provision and equal distribution for the applicant for the net intestate estate.
4. The Petitioner responded to the summons by way of a replying affidavit sworn on 22.6.2020 by which it was deposed in material as follows:
 - a. The Petitioner had administered the property as per the judgment of court and Section 35 of the [Law of Succession Act](#).
 - b. The Petitioner had transferred to the Protestor Tetu/Unjiru/639/95 and car club shares to the Protestor.
 - c. The Protestor had refused to vacate from Tetu/Unjiru/639/75 in favour of other beneficiaries.
 5. Although directions were given for parties to file submissions, the record shows that no submissions were filed.

Analysis

6. The Protestor's case is that she should be reasonably provided for. The Protestor however did not demonstrate the manner in which she was not provided or sufficiently provided for. Fortunately, she is now one of the administrators. Some of the beneficiaries are utilizing land while the applicant is languishing in abject suffering.
7. In this context I agree that the applicant should utilize the parcel she is on, that is land parcel number Tetu/Unjiru/639/75 until the mother dies after which the parties will divide the estate in nine units. Any transfer in the land of Loise Nyaguthi Maina shall remain part of the estate until the life interest terminates by natural effluxion.
8. Further, the administrators should ensure that none of the beneficiaries utilize less than 1/10 of the estate and not more than 1/9 of the estate. The administrators should have a schedule for which beneficiaries will utilize which parts of the estate.
9. The Protestor is no doubt a beneficiary of the estate by virtue of being a daughter of the deceased and her status as such is not in dispute. On dependants, the [Law of Succession Act](#) (Cap 160) defines who is a dependant at Section 29 as follows:-
 - (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
10. As the Protestor is undisputedly a beneficiary, under Section 28 of the [Law of Succession Act](#), it is provided as follows:

In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- a) the nature and amount of the deceased's property;



- b) any past, present or future capital or income from any source of the dependant;
- c) the existing and future means and needs of the dependant;
- d) whether the deceased had made any advancement or other gift to the dependent during his lifetime;
- e) the conduct of the dependant in relation to the deceased;
- f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

11. The manner and extent of which the Protestor sought to be reasonably provided for remains a mystery as she did not disclose. There appears to be a case where the Petitioner purported to transfer property that was to remain in the name of the estate, including to the Protestor, Tetu/Unjiru/639/95. The petitioner did not have power to transfer to anyone any part of the estate as her power is limited to a life interest.

12. I therefore allowed prayer 4 of the application dated 4.06.2020. Each party shall have their own costs.

Determination

13. In the upshot, I make the following orders:

- a. Prayer 4 of the Summons General dated 4.6.2020 is merited and is accordingly allowed. Each party to bear its own costs.
- b. The protestor/administrator should use land parcel number Tetu/Unjiru/639/75 and one other plot in urban setting until the life interest in favour of Loise Nyaguthi Maina lapses.
- c. The new administrators should ensure other beneficiaries use the estate in a manner that respects the beneficial interests of each of the nine units, and not less than 1/10 and not more than 1/9 of the estate.
- d. Any transfer shall remain unlawful and the life interest shall subsist and all landed properties shall have the life interest of Loise Nyaguthi Maina until her demise upon which the estate shall be shared equally among all the units of children.
- e. Each party shall bear own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 18TH DAY OF SEPTEMBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

Represented by: -

Lucy Mwai & Co. Advocates for the Applicants

Gori Ombongi & Co. Advocates for the Respondents

Court Assistant – Michael



M. D. KIZITO, J.

