



In re Estate of Regina Wairimu Wachira (Deceased) (Succession Cause E026 of 2023) [2025] KEHC 12950 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E026 OF 2023
DKN MAGARE, J
SEPTEMBER 18, 2025**

IN THE ESTATE OF REGINA WAIRIMU WACHIRA [DECEASED]

IN THE MATTER OF

**EMMAH WAMBUI WACHIRA 1ST PETITIONER
PANGARASIO WACHIRA WANGOMBE 2ND PETITIONER**

JUDGMENT

1. The dispute arose at confirmation stage regarding the share of one parcel of land, that is Land Parcel No. Nairobi/Block/108/13. The case evokes memories in the biblical story of King Solomon's judgment involving two women who both claimed to be the mother of a living baby. One baby had died, and each woman asserted the surviving child was hers. Solomon, wanting to discern the true mother, ordered the living baby to be cut in half, with each woman receiving a portion. The story is allegorical and I need not add more.
2. The deceased herein, Regina Wairimu Wachira died on 27.08.2021 aged 79 years. The Petitioners herein filed for Petition of Letters of Administration Intestate on 27.11.2023. Their petition listed Emmah Wambui Wachira (daughter), Pangarasio Wachira Wangombe (son) and Clement Gathuku Wachira (son) as beneficiaries.
3. The estate of the deceased comprises of the following parcels of land:
 - a. Land Parcel No. Muhito/Muyu/1172;
 - b. Land Parcel No. Nairobi/Block/108/13;
 - c. Land Parcel No. Nairobi/Block/84/811;
 - d. Land Parcel No. Nairobi/Block/70 (unregistered)



4. The Petitioners gazetted the same which gazette notice was published on 26.01.2024. The petitioners filed for Summons for confirmation of grant on 8th May 2024, where they proposed the assets to be divided as follows:
 - a. Land Parcel No. Muhito/Muyu/1054 be shared equally between Pangarasio Wachira Wangombe and Clement Gathuku;
 - b. Land Parcel No. Nairobi/Block 108/13 be given to Pangarasio Wachira Wangombe;
 - c. Land Parcel No. Nairobi/Block/84/811 be given to Clement Gathuku Wachira and:
 - d. Land Parcel Number No. Nairobi/Block/70 to Emmah Wambui Wachira.
5. On the hearing date the parties differed on one of the properties, that is, Land Parcel No. Nairobi/Block 108/13. The court issued preliminary Certificate of Confirmation of Grant where the estate was divided as follows:
 - a. Land Parcel No. Muhito/Muyu/1054 be shared equally between Pangarasio Wachira Wangombe and Clement Gathuku;
 - b. Land Parcel Number No. Nairobi/Block/84/811 be given to Clement Gathuku Wachira and:
 - c. Land Parcel No. Nairobi/Block/70 to Emmah Wambui Wachira.
6. In respect to Land Parcel No. Nairobi/Block 108/13 the parties were referred to mediation on 07.10.2024. However, the beneficiaries disagreed on the mode of distribution. The court decided to hear the case as it was not clear what the dispute was. Parties were told to file documents but filed scanty ones or did not file.
7. On 19.5.2025 the court heard PW1, Emmah Wambui Wachira. She stated that Land Parcel No. Nairobi/Block 108/13 belongs to her late mother and measures 0.0429 hectares. She stated that she paid land rates. She informed court that she started making payments when she was informed 7 years prior to her death. She had spent Ksh 1,200,000/= on the plot. Though there were no receipts, this part was not disputed seriously by her brothers, Pangarasio Wachira Wangombe and Clement Gathuku Wachira.
8. On cross-examination by Pangarasio Wachira Wangombe, she stated that she had been called to take title documents to her mother. She testified that her mother handed the documents to Regina and that the documents were kept at her daughter's house. She further stated that she later took the documents to the house where her brothers reside. According to her, the documents included title deeds for the parcels of land her mother had acquired.
9. PW2, Clement Gathuku testified that his brother and sister are in dispute over a plot that was given to his sister, Emma, by their mother. He stated that Emma paid land rates amounting to Ksh. 1,200,000/= in 2016. He further stated that their mother had affirmed that the land belonged to Emma. According to him, the land is currently unoccupied and undeveloped. He added that their mother had written similar instructions in the presence of elders. He also referred to an agreement dated 11th April 2019, which he produced in court as Exhibit P.Exh1.
10. On cross-examination by Pangarasio Wachira Wangombe he stated that it was their mother who stated that the land goes to Emmah Wambui Wachira and that she never used to lie. He stated that he believed that the money for rates was paid.



11. DW1, Pangarasio Wachira Wangombe stated that his mother was staying at Oldonyo Rongai. It was his evidence that land was sold by his mother but Emma took the money. He had been given the said plot number 11, which the late deceased herein subsequently sold. He was now taking over Land Parcel No. Nairobi/Block 108/13 to replace the sold parcel. He stated that his mother differed with his current wife who unfortunately passed away three months later.
12. He stated that he has all his mother's documents and that they had three months to agree before subdivision. He stated that he did not give land documents to the assistant chief. It was his case that the deceased had given him Muhito land. He posited that Emma did not pay land rates and that it was only 2,000/= that was outstanding. There was no evidence of this.
13. On cross-examination, he stated that the deceased did not receive any money from the sale of the Rongai plot. He further stated that although the deceased sold the Rongai plot, Emma took the title deed. He affirmed that it was his mother who sold the land, though he did not know the reason for the sale. He also stated that he was unaware that the land was sold to cater for cancer-related medical expenses.
14. He stated that he knew that the deceased was sick for a long time. He stated that the deceased gave him motor vehicle KBB 133W Nissan matatu and that he was to refund the deceased once the vehicle got to work. He stated that he got a loan for Ksh. 100,000/= and got another Ksh. 100,000/=. He stated that he only refunded Ksh50,000/=. He further stated that he knew Emma bought the deceased land. He stated that it was the deceased who called him to tell him that the investment shall go to the family.
15. He stated that the plot was not in danger of being repossessed. He stated that Land Parcel No. Nairobi/Block/84/811 and Land Parcel No. Nairobi/Block/70 were built by the deceased herein. These plots were said to be having tenants. He stated that the deceased had allotted Land Parcel No. Nairobi/Block/84/811 which was given to Clement, that Land Parcel No. Nairobi/Block/70 was given to Emma. He stated that the deceased had given him Cantafu plot to replace the Mihango plot. The court has no idea, what those plots were. He was however, evasive on who was initially given Land Parcel No. Nairobi/Block 108/13.
16. On cross examination he admitted to have been bought motor vehicle registration number KBB 133W Nissan matatu. He was to refund but had only refunded the mother Ksh. 50,000/=. He stated that later Land Parcel No. Nairobi/Block 108/13 was given to him.
17. In order to get the feel of the land the court cross examined him on the values of the plot. He indicted the anecdotal values as follows:
 - a. Land Parcel No. Nairobi/Block 108/13 was valued Ksh. 2.5-3 Million.
 - b. Land Parcel Number No. Nairobi/Block/84/811 measured 40 by 80 and is valued at Ksh 6 million.
 - c. Land Parcel No. Nairobi/Block/70(unregistered), measured 100 by 50 and was Kshs. 8 million.
 - d. Land Parcel No. /Muhito/Muyu/1054 was about 1.5 million.
 - e. The motor vehicle was Kshs. 800,000/=.
18. Parties as at 2:29 pm on 29.7.2025 had not filed submissions on CTS nor in the file despite the court's direction to file by 30.6.2025. The matter was put off to today.



19. The issue for determination would be whether the property known as Land Parcel No. Nairobi/Block 108/13 be divided equally between Emmah Wambui Wachira and Pangarasio Wachira Wangombe or should go absolutely to Emmah Wambui Wachira or Pangarasio Wachira Wangombe. Clement Gathuku Wachira is satisfied and had not laid any claim to Land Parcel No. Nairobi/Block 108/13.
20. There is no doubt that Nairobi/Block 108/13 is part of the free property of the deceased. Her wishes did not amount to a will but cannot be ignored. There is no doubt whatsoever that the deceased settled the children before her demise. Emma was settled on Land Parcel No. Nairobi/Block/108/13 and Land Parcel No. Nairobi/Block/70 (unregistered). She continued paying rates.
21. The same may not be Ksh.1,200,000/= as alluded. However, Clement Gathuku was of the view that it was settled that Land Parcel No. Nairobi/Block 108/13 was given to Emmah Wambui Wachira. Pangarasio Wachira Wangombe was given Cantafu land and the motor vehicle. These were gifts inter vivos. L. W. Gitari J, while addressing the question of gifts inter vivos, stated as follows in the case of Micheni Aphaxard Nyaga & 2 others v Robert Njue & 2 others [2021] eKLR:

11. Gift inter vivos are provided under Section 42 of the *Law of Succession Act*. It provides:

“Where-

- (a) 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; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

The characteristics of the gifts inter vivos are that they are made and settled during the lifetime of the deceased and have been identified, awarded and settled for the person to whom it has been given. It is a gift made to a beneficiary when the deceased was alive and is considered when distributing the net intestate estate so that person who received it may be considered as having received his share and may reduce or diminish any entitlement to the net intestate estate. The gift which is transferred and settled for the beneficiary during the life-time of the deceased, will not form part of his estate but it will be taken into account in determining the share of the net intestate estate finally accruing to that beneficiary.

The concept of gifts is divided into two categories. First gifts intervivos and gifts causa mortis. Gifts intervivos as contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without expectation of death.

In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of inter vivos the gift must go to the donee absolutely during the lifetime of the donor. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts.

22. A plethora of judicial precedent and by statute vests this court in probate to gather the estate of the deceased and distribute it to the deceased legitimate beneficiaries. In the case of Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013, the court held that:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where



issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

23. Only where one has established claim against the estate that has already crystallised is when he can litigate it as was held in *Alexander Mbaka –vs- Royford Muriuki Rauni And 7 Others* [2016] eKLR;

“It is only where one has established claim against the estate that has already crystallised that he can litigate it before a Family Court. The claim is to be considered as a liability to the estate. This Court, in my view, cannot be called upon to ascertain whether or not one has a right to an estate of the deceased where such right has not yet crystallised. The right must be shown to have crystallised before the Family Court can entertain it.”
24. It was the contention of Emma Wambui wachira that she paid land rates over Nairobi Block 108/113 amounting to Kshs. 1,200,000/= and saved the property from repossession. PW2, Clement Gathuku was of the same view and argued that the same was true and that she did pay land rates in 2016. He further stated that PExh.1 was an agreement concerning the same and that their deceased mother had communicated the same.
25. A scrutiny of the court record reveals that the property known as NAIROBI/BLOCK 108/13 is still in the name of the deceased. As at 2:29 pm on 7.7.2025 the court record reflects that the parties herein had not filed supporting affidavits into the court file nor had they filed hard copies. Thus this court has not had the privilege of scrutinizing the alleged land rates which ought to have filed as evidence nor had PW2 tendered the alleged agreement of 2021 which would give this court insight as to what was the contents of the agreement between the deceased and Emmah Wambui Wachira.
26. Further, by the testimony of PW2, no one is utilizing the land thus rights have accrued or considerations that would have moved this court to consider it being given to one beneficiary over another. As was espoused in *In re Estate of Daniel Kanzi Mulati alias Daniel Kani Mwalabu (Deceased) (Succession Appeal E150 of 2021) [2023] KEHC 21642 (Kland Parcel Number) (9 August 2023) (Judgment)*, the court stated that regard be given to the dependants and others who are settled on a piece of property.
27. Pangarasio Wachira Wangombe and Clement Gathuku Wachira have already received a fair share of their property from land parcel number Muhito/Muyu/1054. Pangarasio Wachira Wangombe received gifts inter vivos. I do not believe that the mother sold the Cantafu land. Clement Gathuku Wachira also received Land Parcel No. Nairobi/Block/84/811 absolutely. So far, the two brothers have a lion’s share of the estate. It is fair to equalize them by giving land parcel number Nairobi/Block 108/13 to Emmah Wambui Wachira. This will make Pangarasio Wachira Wangombe have a slightly less portion today, though on overall he received the lion’s share. I am comforted that the deceased expressed her wishes though not binding, have been used in the rest of the subdivision. It is on the basis of this agreement that Emmah Wambui Wachira did not get a share out of land parcel number Muhito/Muyu/1054. A party cannot thus approbate and reprobate.
28. Pangarasio Wachira Wangombe received a gift inter vivos which was sold to buy him a vehicle. That gift offsets the balance and equalizes all. Consequently, I direct that Nairobi/Block 108/13 be bequeathed wholly to Emmah Wambui Wachira.
29. This being a family dispute, each party will bear their own costs.



Determination

30. The upshot of the foregoing is that I make the following orders: -
- a. The grant issued herein is confirmed.
 - b. Consequently, I direct that Nairobi/Block 108/13 be bequeathed wholly to Emmah Wambui Wachira.
 - c. Certificate of confirmation of grant be consequently rectified to reflect this order.
 - d. This being a family matter, each party shall bear its own costs.
 - e. Transmission be concluded by 18th March, 2026.

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

KIZITO MAGARE

JUDGE

Represented by: -

Pro se parties

Court Assistant – Michael

