



**In re Estate of James Githaiga Kuria (Deceased) (Succession Cause E622 of 2021)
[2024] KEHC 15398 (KLR) (Family) (17 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 15398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E622 OF 2021
EKO OGOLA, J
SEPTEMBER 17, 2024
IN THE MATTER OF THE ESTATE OF JAMES GITHAIGA KURIA (DECEASED)**

**IN THE MATTER OF
GRACE WANJIRU GITHAIGA 1ST ADMINISTRATOR
ALICE WANJIKU MURIGI 2ND ADMINISTRATOR
PAUL KURIA GITHAIGA 3RD ADMINISTRATOR**

JUDGMENT

1. The deceased died intestate on 9th December 2020. He was survived by two widows. The first house is headed by the deceased first widow Grace Wanjiru Githaiga. They bore four children, Margaret Wanjiku Githaiga, Joyce Wambui Githaiga, Paul Kuria Githaiga and Joseph Njooa Githaiga. The second house is headed by the deceased second widow, Alice Wanjiku Murigi. They had two children, namely, Peter Murigi Githaiga and Margaret Wanjiku Githaiga.
2. Grant of letters of administration intestate was issued on 29th September 2021 to Grace Wanjiru Githaiga, Alice Wanjiku Murigi, and Paul Kuria Githaiga. Summons for Confirmation of grant was filed by the 2nd administrator, Alice Wanjiku Murigi. The administrators were directed to file submissions and their proposed mode of distribution.

Determination

3. I have considered the Summons for Confirmation of Grant, the rival submissions and proposed mode of distribution, and the entire record of the court.
4. There is no dispute on the existence of a second house. The dispute is the year the deceased married the 2nd wife. According to the 1st widow, Grace, the deceased married the 2nd widow, Alice in the year 2018. Alice contends that she was married in 1999 but the deceased paid her dowry in 2018.



5. Grace stated that she was married to the deceased in January 1987 and they had four children between 1987 and 1996. According to Grace, the deceased and her acquired properties and businesses and they managed them together till the deceased death. She further stated that all properties were registered in the name of the deceased and she never thought that the deceased would ever marry a second wife.
6. According to Grace, the deceased had an affair with Alice sometime in 1999 and they had a son, Peter Murigi. She deposed that according to Kikuyu's custom, the child was named after Alice's father because the child was born out of wedlock. Due to the deceased affair with Alice, Grace averred that she reported the matter to the deceased family and the deceased ended the relationship.
7. Grace further stated that due to pressure from Alice on the issue of maintenance of the child, the deceased married her as the 2nd wife on 30th June 2018. The deceased then had their second child on 10th July 2019. Grace stated that she continued attending to the businesses and managing the properties while Alice was a housewife.
8. On the other hand, Alice stated that she was married to the deceased in 1999 where the deceased initiated their marriage in Kikuyu customary law by paying a visit to her parents. She averred that since then, she cohabited with the deceased in various estates. The last one was an apartment in Kileleshwa where they lived together till the deceased demise.
9. It is undisputed that at the time of the deceased passing, Alice was a wife married under Kikuyu customary law. It is also undisputed that Alice has been in the deceased life since 1999 when she gave birth to her first son with the deceased. The issue before the court is whether the marriage between Alice and the deceased happened in 2018 when the dowry was paid (ruracio) or was the deceased married in 1999 when the deceased visited Alice's parents. It must be noted that according to Grace the visit was just to inform Alice's parents that the deceased had impregnated Alice and that it wasn't an introductory ceremony. Alice claims that it was an introductory ceremony, the first step in the Kikuyu customary marriage.
10. What is a valid marriage under Kikuyu customary law? Eugene Cotran's "Casebook on Kenya Customary Law" at page 30 sets out the essentials of a Kikuyu Customary marriage. These are stipulated as;
 - i. Capacity; the parties must have the capacity to marry and also the capacity to marry each other.
 - ii. Consent; the parties to the marriage and their respective families must consent to the union
 - iii. Ngurario; no marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.
 - iv. Ruracio; there can be no valid marriage under Kikuyu law unless a part of the ruracio (dowry) has been paid.
 - v. Commencement of cohabitation; the moment at which a man and a woman legally become husband and wife is when the man and woman commence cohabitation i.e. under the capture procedure when the marriage is consummated after the eight days' seclusion, and nowadays when the bride comes to the bride grooms home".



11. Consequently, in the case of *Gituanja vs Gituanja* [1983] KLR 575 the Court held inter alia that;

“The existence of a marriage is a matter of fact which is proved with evidence. The evidence at the trial produced a valid marriage under Kikuyu customary law as was evidenced by the slaughtering of the ngurario.”

12. From the foregoing, a marriage can only be valid under Kikuyu customary law if ngurario, ruracio, and cohabitation have taken place. Therefore, Alice and the deceased were married in 2018. However, it must be noted that Alice was in the deceased life since 1999 and even sired children before 2018. It is evident that Alice to an extent took part in the purchasing and developing of the properties in the deceased estate. Hence, the distribution will not be based on when Alice officially became a wife but will consider whether she contributed in some way to the purchase and/or development of the properties in the estate.

Distribution of the estate

Nyandarua Ndemi plots

13. The plots are as follows:

- i. Nyandarua/Ndemi/8131-Has Grace’s rural matrimonial home. (Registered in April 2014)
- ii. Nyandarua/Ndemi/7033-Adjacent to plot 8131-Grace has planted maize for sale. Alice claims it. (Registered in April 2012)
- iii. Nyandarua/Ndemi/2484- Adjacent to plot 8131- Grace’s tank for irrigating the farms. (Registered in November 2017)
- iv. Nyandarua/Ndemi/900-Adjacent to plot 8131-Grace’s cattle shed and storage of silage. Alice claims it.
- v. Nyandarua/Ndemi/1277- adjacent to plot 8131 Grace’s planted trees for sale. She stated that the deceased bought the land in 1999 but the title deed came out in 2001. Grace stated that her first harvest was in 2010. Alice claims that this is where her rural matrimonial home was to be built.
- vi. Nyandarua/Ndemi/2862- 6km from plot 8131. According to Grace, this is where Alice’s matrimonial property is to be built.
- vii. Nyandarua/Ndemi/2062- Grace is amenable to the property being bequeathed to Alice. Alice has claimed it.
- viii. Nyandarua/Ndemi/2485-Registered on September 2015. Grace has not claimed it. According to Alice, it should be bequeathed to Grace.

14. According to Alice, the deceased purchased the properties adjacent to plot 8131 because he intended to marry a 2nd wife and according to Kikuyu customary law, a husband should have easy access to both wives, therefore, both wives should live close to one another. Alice prays that the court should take into consideration the deceased conduct when he was purchasing the plots adjacent to plot 8131.

15. I am not satisfied that this is a good enough reason to bequeath Alice with any of the plots adjacent to plot 8131. If the deceased had wished to settle Alice in any of the plots he would have done so before his death, even if it was allowing Alice to cultivate or farm in the adjacent plots.



16. Furthermore, Grace stated that she was never agreeable to the deceased marrying a 2nd wife. If at all the conduct of the deceased was to be taken into consideration, then the deceased would have not wished to have both wives live close to each other. Moreover, it must be appreciated that the 1st house has more units than the 2nd house. It is for these reasons that I distribute the Nyandarua Ndemi plots in the following manner:-

1 st House	2 nd House
Nyandarua/Ndemi/8131	Nyandarua/Ndemi/2862
Nyandarua/Ndemi/7033	Nyandarua/Ndemi/2062
Nyandarua/Ndemi/2484	Nyandarua/Ndemi/2485
Nyandarua/Ndemi/900	
Nyandarua/Ndemi/1277	

Ruiru Juja Kiaura plots

17. The plots are as follows:-
- i. Ruiru/Juja/Kiaura Block 11/107- Registered in November 2019-Alice claims it. Grace proposes that it be given to Alice
 - ii. Ruiru/Juja/Kiaura Block 11/148- Registered in November 2019. Alice proposes that this should be given to Grace. Grace has not mentioned it in her proposal.
 - iii. Ruiru/Juja/Kiaura Block 11/149- Registered in November 2019-Alice claims it. Grace has not mentioned it in her proposal.
18. According to Alice, Grace was unaware of these plots as she and the deceased purchased them in 2017 and 2019. Since Grace was only aware of plot 107, and she still proposed that it be given to Alice, I am satisfied with Alice's argument that she purchased the properties with the deceased with no input from Grace. The Ruiru Juja Kiaura plots are to be divided in the following manner:-

1 st House	2 nd House
Nil	Ruiru/Juja/Kiaura Block 11/107
Nil	Ruiru/Juja/Kiaura Block 11/148
Nil	Ruiru/Juja/Kiaura Block 11/149

Nyandarua Olbolossat plots

19. The plots are as follows:-
- i. Nyandarua/Olbolossat/953- 5 km from Grace's rural matrimonial home and close to Ndemi/2862 where Alice was to build her rural home. According to Grace, this should act as Alice's farm. The land measures 1.6 ha. Alice claims it.



- ii. Nyandarua/Olbolossat/102- Grace has not mentioned it. Alice proposes that it be given to Grace. The land measures approximately 1.8 ha. Grace wants it to be sold.
20. Since there is no contention on the distribution of these plots, they shall be shared in the following manner.

1 st House	2 nd House
Nyandarua/Olbolossat/102 (sold to pay for estate's liabilities)	Nyandarua/Olbolossat/953

Ruiru Kirere/ Ruiru West Plots (In Membly estate)

21. The plots are as follows:
- i. Ruiru/Kirere/228- Alice proposes that it be given to Grace. Grace says it be sold or bequeathed to her.
- ii. Ruiru/Kirere/229- Alice proposes that it be given to Grace. Grace says it be sold or bequeathed to her.
- iii. Kiambu/Ruiru West Block 3/965 (Kirere)- Alice proposes that it be given to Grace
- iv. Kiambu/Ruiru West Block 3/629 (Kirere)-Grace proposes that it be given to Alice to build her city matrimonial home despite it being purchased in 2007. Alice claims it.
22. Since there is no contention on distribution, the plots are going to be distributed in the following manner:-

1 st House	2 nd House
Ruiru/Kirere/228	Kiambu/Ruiru West Block 3/629 (Kirere)
Ruiru/Kirere/229 (sold for estate liabilities)	
Kiambu/Ruiru West Block 3/965	

Ruiru/ Kiu Block 3/970 (Sukari)

23. There is no contention that this is Grace's city matrimonial home. It shall remain in the 1st house.

Nairobi/ Block 63/541 (Jamhuri)

24. Grace stated that this property was purchased in 1998 and developed by her and the deceased. She averred that one of her sons lives there. Grace states that before the death of the deceased, she collected the rent for her personal use. She prays that the same remains in the 1st house.
25. Alice argued that the property was purchased from the business she and the deceased run. Therefore, the property is to be shared amongst all the beneficiaries or sold for liabilities.
26. There is no evidence that the property was purchased by the income from Alice's business. Since Grace's son had been living in the premises before the death of the deceased, this is evidence enough



that the deceased had no problem in the 1st house benefiting from the property. If the property had been purchased by Alice, she would have been enjoying the income derived from it while the deceased was still alive.

27. This property will therefore be bequeathed to the 1st house.

LR No. 209/11095/10 Nairobi South C 79340

28. Grace stated that the property was purchased in 2002 and jointly developed by her and the deceased. Alice averred that the deceased and her once occupied that property but due to water shortage and insecurity, they moved out. However, the deceased had planned to settle her in that property. Therefore, this property should be given to the 2nd house as her matrimonial home to strike a balance between Grace's matrimonial home which is a mansion. Furthermore, she stated that she signed a spousal consent when this property was being used as security for the loan facility that was used to develop Simba Centre.
29. From the foregoing, I am satisfied that Alice did not take part in purchasing or developing the said property. She only occupied it for a short while and wished it for herself without putting any effort into its purchase and development. The fact that she signed a spousal consent is not reason enough to show that she put effort in its purchase or development. Therefore, this property shall be bequeathed to the 1st house.

LR No. 209/11095/11 and LR No. 209/11095/12

30. According to Grace, these properties are three houses in South C. The 3rd administrator Paul Kuria Githiga (from the 1st house) lives with his family in plot 11 since the year 2020.
31. Alice has not mentioned these properties in her proposal. There being no contention, both properties will be bequeathed to the 1st house.

LR No. 27683/10 (Pipeline)

32. Grace stated that the property was purchased in 2004 and jointly developed in 2008 by both her and the deceased. The property is named Gracious apartment after her.
33. Alice argued that the apartments were not named after Grace. The apartment name was changed two weeks before the death of the deceased. Still, she proposes that the house be bequeathed to the 1st house while the 2nd house gets the Simba Centre. According to Alice if this property is to be shared between the two houses, there is bound to be conflict and mayhem.
34. Therefore, since, Grace claimed she jointly purchased and developed the apartments and that they were named after her, the property shall be bequeathed to the 1st house.

LR No. 209/16326 (Simba Centre)

35. Grace states that the property was bought in 2016 and developed jointly with her and the deceased. She added that she currently has stores, shops, and offices on that property and it hosts her place of work. She further stated that the property was developed by a loan facility taken under the security of the South C property, that is, LR No. 209/11095/10. She proposed that the rental income be shared amongst the beneficiaries. The 1st house to receive 74% due to the number of units. Whilst the 2nd house should receive 24%.



36. According to Alice, this property should be given to her since she worked to acquire it. She added that she signed spousal consent at the time the deceased was taking up the loan to develop the said property. Furthermore, she added that the deceased had designated her as a spouse in the affairs of the property. Therefore, this Court should take into consideration the conduct of the deceased. Alice was of the view that the 1st house should be given the pipeline property and the 2nd house be given the Simba centre. This is because if both properties were to be shared between the two houses, there is bound to be disagreement and mayhem.
37. From the foregoing, the property was indeed developed from a loan facility from the South C home. Since the deceased sought spousal consent from Alice instead of Grace is evidence that he wanted Alice to be part of the project instead of Grace. Also, the 1st house has been bequeathed the South C property and the Pipeline apartments from which Grace can collect rental income. This property shall be bequeathed to the 2nd house.

Shares in Mwiki SACCO

38. Grace stated that this is a local dairy Sacco in Ndemi to which milk from her cows is sold. Alice claims all the shares in the said Sacco. Alice has not given sufficient reason as to why the 2nd house should be given any part of the shares in this Sacco. Therefore, all shares held in Mwiki Sacco shall be given to the 1st House.

Motor Vehicle KCH 839T (Ford Ranger)

39. Grace deposed that the deceased died when Alice was in possession of the car. Therefore, it should be given to the 2nd house.
40. Alice claims it. Since there is no contention, the car shall go to the 2nd house.

Motor Vehicle KAL 234K (Isuzu NPR)

41. Alice proposes that the car be bequeathed to the 1st house. Grace proposes that the car be sold to settle liabilities. The car shall be sold to settle liabilities.
42. The upshot is that I order the estate to be distributed as follows:-



1 ST HOUSE
Nyandarua/Ndemi/8131
Nyandarua/Ndemi/7033
Nyandarua/Ndemi/2484
Nyandarua/Ndemi/900
Nyandarua/Ndemi/1277
Ruiru/Kirere/228
Kiambu/Ruiru West Block 3/965
Ruiru/ Kiu Block 3/970 (Sukari)
Nairobi/ Block 63/541 (Jamhuri)
LR No. 209/11095/10 Nairobi South C 79340
LR No. 209/11095/11
LR No. 209/11095/12
LR No. 27683/10 (Pipeline)
Shares in Mwiki SACCO
2 ND HOUSE
Nyandarua/Ndemi/2862
Nyandarua/Ndemi/2062
Nyandarua/Ndemi/2485
Ruiru/Juja/Kiaura Block 11/107
Ruiru/Juja/Kiaura Block 11/148
Ruiru/Juja/Kiaura Block 11/149
Nyandarua/Olbolossat/953
Kiambu/Ruiru West Block 3/629 (Kirere)
LR No. 209/16326 (Simba Centre)



Motor Vehicle KCH 839T (Ford Ranger)
Assets to be sold to pay off estate's liabilities
Ruiru/Kirere/229
Nyandarua/Olbolessat/102
Motor Vehicle KAL 234K (Isuzu NPR)
If the estate liabilities are more than the value of the properties, the difference shall be paid from the income derived from the properties bequeathed from estate.

43. There will be no orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2024

E.K. OGOLA

JUDGE

In the presence of:

Mr. Otieno for the 1st Administrator

Mr. Wahome for the 2nd Administrator

N/A for the 3rd Administrator

Ms Gisiele M court Assistant

