



**In re Estate of Samuel Kimemia Ndirangu (Deceased) (Succession Cause
1586 of 2019) [2024] KEHC 13011 (KLR) (Family) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1586 OF 2019
PM NYAUNDI, J
OCTOBER 18, 2024
IN THE MATTER OF THE ESTATE OF SAMUEL KIMEMIA NDIRANGU (DECEASED)**

JUDGMENT

1. Before this Court is for summons for Confirmation of Grant dated 7th August 2023 in which the Administrators sought the following orders:
 1. That the Grant for Letters of Administration (copy annexed and marked “PMK” intestate made to the said Nancy Wanjiru Kimemia, Patrick Maguta Kimemia And Gabriel Muiruri Kimemia in this matter on 19th April 2021 be confirmed and the estate be distributed accordingly.
 2. The costs of this Application be in the cause.
2. The summons was supported by the Affidavit of even date sworn by one of the Administrators, Patrick Maguta Kimemia.
3. Before the Summons for Confirmation of Grant was heard and determined, Judith Wangui Kimemia, (the Objector) filed an affidavit of protest on the proposed mode of distribution dated 18th October 2023. She stated that she was opposed to the mode of distribution because it favours the male beneficiaries of the estate. The female beneficiaries have been discriminated against and given small portions as compared to the male beneficiaries. She argued that the deceased’s estate should be shared equally amongst all the beneficiaries. All the beneficiaries are agreeable to having the estate be distributed equally except for Patrick Maguta Kimemia. One of the beneficiaries who is deceased is represented by his wife, Lucy Muthoni Ndirangu and it is submitted she should only inherit Loc2/ Gacharange/1174(2.02Ha).
4. The summons was canvassed by way of *viva voce* evidence.



Background

5. This succession cause relates to the Estate of Samuel Kimemia Ndirangu (hereinafter the deceased) who died intestate on 19th August 1988.
6. The Deceased is said to be survived by the following;
 - a. Lucy Muthoni Ndirangu- daughter in law (widow of Benson Ndirangu Kimemia).
 - b. Nancy Wanjiru Kimemia- daughter.
 - c. Patrick Maguta Kimemia-son.
 - d. Gabriel Muiruri Kimemia-son.
 - e. Lydia Wambui Kimemia-daughter.
 - f. Judith Wangui Kimemia-daughter.
 - g. Pauline Muringi Kimemia-daughter.
7. The Estate of the Deceased was said to comprise of the following properties;
 - a. Loc.2/Gacharage/475.
 - b. Loc 2/ Gacharage/1174
 - c. Plot No. 10 Loc 2/Gacharage/GikOe Trading Centre.
 - d. Plot No. 8401 Njiru Scheme IV.
 - e. Plot No. D186 Githurai Kimbo.
 - f. Mutuacoro Land 1/3 Share
 - g. Kericho/ Londiani 3/83
8. Following the demise of the Deceased, Nancy Wanjiru Kimemia, Patrick Maguta Kimemia and Gabriel Muiruri Kimemia in their capacity as daughter and sons of the deceased petitioned for letters of administration intestate on 16th December 2019. The grant was issued to them on 19th April 2021.

Evidence

9. PW1, Patrick Maguta Macharia . He stated that he is a retired Chief of Gacharage Location where the members of the family of the deceased come from. He was also related to the deceased who married his aunt, Rahab Waithira Kimemia. He adopted his witness statement sworn on 19th January 2024 as his evidence in chief. His evidence was that, he was invited by the deceased's wife, Rahab to attend a meeting at the deceased's home on 13th July 1997. The meeting was also attended by Ayub Macharia, Wang'ang'a Paul and Muiruri Ismael (all deceased) who were clan members.
10. All the deceased's children were in attendance. Stephen Benson Ndirangu, the deceased's eldest son took minutes of the said meeting and the following mode of distribution was agreed upon; Rahab was to be allocated 1.8 acres from Loc.2/Gacharage/475 to hold in trust for herself and her three daughters, Lydia Wambui, Judith Wangui and Pauline Muringi; Nancy Wanjiru Kimemia was to be given 2 acres from Loc.2/Gacharage/475; Patrick Maguta Kimemia and Gabriel Muiruri were to be given 2.5 acres each from Loc.2/Gacharage/475; Stephen Ndirangu Kimemia was to be given the whole of 5 acres of Loc.2/Gacharage/1174; Plot No. 10 Gikoe Shopping Centre (registered in the deceased's name) was



to be shared by Patrick Maguta and Gabriel Muiruri; Londiani Land, 7 acres (registered in the name of Rahab Waithira Kimemia) to be shared equally between Patrick Maguta and Gabriel Muiruri; land at Mutuacoro which is less than ½ acre was to be given to any of the children who would wish to plant coffee on the farm; Njiru Plot No. Block A562 was to be given to Nancy Wanjiru Kimemia; and Plot No. D186 Scheme 1 Langata Development Company Ltd. was to be given to Lydia Wambui Kimemia.

11. During cross examination, he stated that the deceased did not leave a will. The deceased's son were allocated most properties. He is not aware that distribution should be equal.
12. In re-examination, he stated that the daughters of the deceased were not present in the meeting held on 13th July 1997. The deceased's wife agreed to the mode of distribution.
13. PW2, Lucy Ndirangu told the court that she was the daughter in law of the deceased. Her husband, Benson Ndirangu Kimemia who is the deceased's eldest son is deceased. Her evidence was that she was aware that her late parents in law had expressed how they wished the properties to be distributed. She was allocated 5 acres of land which was registered in the name of the deceased's wife which is also separate from the other properties. During the meeting held on 13th July 1997, it was agreed that Patrick Maguta Kimemia and Gabriel Muiriri were to be given 2.5 acres each from Loc.2/Gacharage/475 and Nancy Wanjiru Kimemia was to be given 2 acres from the same property whereas Rahab was to be allocated 1.8 acres from Loc.2/Gacharage/475 to hold in trust for herself and her three daughters, Lydia Wambui, Judith Wangui and Pauline Muringi. That she was content with the share allocated to her.
14. During cross examination, she stated that she was not present during the meeting, her late husband Benson recorded what was said in the meeting. According to her, the distribution was equal. The deceased had given some plots to Nancy and Lydia which are not mentioned in the list of assets.
15. OW1, Judith Wangui adopted her witness statement dated 25th March 2024 as her evidence in chief. Her evidence that the mode of distribution in the summons for confirmation favours the male beneficiaries more than the female beneficiaries. She asked the court to share the property equally among all the beneficiaries except for Lydia, her late brother's widow who should only inherit Loc.2/Gacharage/1174(2.02 Ha). All the other beneficiaries except Patrick Maguta Kimemia are in agreement that the deceased's properties should be shared equally.
16. During cross examination, she stated that the minutes of 13th July 1997 were shared with them. They were persuaded to accept the wishes of their parents. When the summons for confirmation were filed, their sister in law demanded an extra share. That the law provides for equal distribution which is fair to all parties. The 5 acres occupied by Lucy Ndirangu (PW2) should be considered during distribution.
17. In reexamination, she stated that the estate should be divided equally including the estate of their late brother.
18. OW2, Nancy Wanjiru Kimemia adopted her witness statement dated 25th March 2024 as her evidence in chief. Her evidence that the mode of distribution in the summons for confirmation favours the male beneficiaries more than the female beneficiaries. She asked the court to share the property equally among all the beneficiaries except for Lydia, her late brother's widow who should only inherit Loc.2/Gacharage/1174(2.02 Ha). All the other beneficiaries except Patrick Maguta Kimemia are in agreement that the deceased's properties should be shared equally.
19. During cross examination, she stated that she was not aware that she had been allocated 2 acres. She does not know the acreage of Loc.2/Gacharage/1174.



Objectors Submissions.

20. Counsel for the Objector submitted that Section 38 and 41 of the [Law of Succession](#) provide for equal distribution of the deceased's estate amongst the children of the deceased. That the mode of distribution by Patrick Maguta Kimemia offends the provisions of Article 27 of [the Constitution](#) of Kenya. It was counsel's submission that the deceased's estate should be distributed equally between the sons and daughters of the deceased.
21. Counsel submitted that the share of the deceased brother devolves to the children of the deceased as provided by Section 41 of the [Law of Succession Act](#). In this case, they argued that the deceased's widow cannot lay a claim on the share of their late brother. It was argued that she did not have a claim to the estate as she has not taken out letters of administration with respect to the estate of her late husband. That the mere fact that she was the deceased's wife does not cloth her with right to inherit on behalf of her husband. Counsel cited the authorities in [In restate of Francis Kimani Muchiri \(Deceased\)](#) [2018] eKLR (Musyoka J), [Hawo Shanko vs. Mohammed Uta Shanko](#) [2018] eKLR (Chitembwe J.); [Priyat Shab & another vs Myendra Derchand Meghji Shab](#) [2017] eKLR (N. Mwangi J); [Elizabeth Ndululu Mathuru & Others vs Joseph Mbiu Uthiani & Another](#) [2008] eKLR (Sitati J); and [re Estate of Francis Andachila Luta \(Deceased\)](#) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment).
22. Counsel asked the court that Loc 2/Gacharage/1174 (2.02 Ha) which is 5 acres should go to the children of the first-born child (Benson Ndirangu) and the rest of the properties to be shared equally between all the beneficiaries. That any property that cannot be shared be valued, sold and the amount realized be shared among the beneficiaries of the deceased.

2nd Administrator's Submissions.

23. Counsel for the 2nd administrator submitted that the mode of distribution proposed by the objector (s) is not viable. That the mode of distribution agreed upon on 13th July 1997 by all the beneficiaries should be implemented by this court.

Analysis and Determination

24. I have carefully considered the oral evidence, submissions by the Objector and the proposed modes of distribution by the parties. I have also considered the authorities relied on, and the relevant provisions of the law cited. The issues that arise for determination are
 - a. Who are the beneficiaries of the deceased and how should the estate be distributed?
 - b. What are the distributable assets of the estate?
 - c. Who should pay costs of this suit?

On the 1st issue? Who are the Beneficiaries and How the Estate of the Deceased should be Distributed?

25. [The Constitution](#) of Kenya 2010 as well as the [Law of Succession Act](#) frowns upon the discrimination of women as far as their entitlements are concerned in inheritance matters. Article 27(3) of [the Constitution](#) which specifically provides that:

“women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”



26. Section 29(a) of the *Law of Succession Act* recognizes “children” of the deceased as dependants. It does not distinguish between sons or daughters, and does not indicate that it matters whether they are married or not.

27. Hon. Makhandia J (as he then was) *In re Estate of Solomon Ngatia Kariuki (deceased)* (2008) eKLR, stated as hereunder on the discrimination of beneficiaries on the basis of sex and marital status;

The *Law of Succession Act* does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father’s estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because they are likely to enjoy inheritance of their husband’s side of the family.

28. This position was reiterated by Hon. Kimaru J (as he then was) in *Peter Karumbi Keingati & 4 Others vs. Dr. Ann Nyokabi Nguthi & 3 Others* (2014) eKLR. His Lordship put it this way;

“as regards to the argument by the Applicants that married daughters ought not to inherit their parents’ property because to do so would amount to discrimination to the sons on account of the fact that the married daughters would also inherit property from their parents’ in-law, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would be no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. ...This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which has a tendency of once in a while rearing its ugly head to be forever buried. The ghost has long cast its shadow on our legal system despite numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of *the Constitution* 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for those discriminative cultural practices against women be buried in history.”

29. The same point was made *In The Matter of the Estate of M’ngarithi M’miriti alias Paul M’ngarithi M’miriti (Deceased)* [2017] KLR, where the court stated

From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when *Rono*



vs. Rono [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement *the Constitution*- which states categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and *the Constitution*. More specifically I am content to cite the proclamation by the Court of Appeal in the case of *Stephen Gitonga M'murithi vs. Faith Ngiramurithi* [2015] eKLR that: -

Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried..."Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law. (See article 27 of *the Constitution*). Accordingly, the 3rd Administrator and her children who are claiming the inheritance of late Festus K. M'Ngaruthi, the son of the deceased are only entitled to the share of their late father. They are not, in the circumstances of this case entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M'Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the deceased equally. (all emphasis added).

30. From the foregoing cited authorities this Court is obligated to ensure that the distribution of the estate of the deceased complies with Article 27 of *the Constitution* and Section 38 of the *Law of Succession Act*.
31. It is not disputed that Lucy Muthoni Ndirangu is the daughter in law of the deceased. The Objector in her submissions submitted that Lucy was not entitled to a share of the deceased's estate. That the children of their late brother should lay a claim on their father's share. It was argued that Lucy ought to have taken out letters of administration on her late husband's estate.
32. Section 41 provides that says that in that event any child of the deceased predeceases him the grandchildren of the deceased shall step into the shoes of their dead parent, to take the share that ought to have gone to such dead parent. The law is well established that the estate of a deceased person devolves to the spouse and blood relatives and not in laws. This was articulated by Musyoka J *In re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) when he stated

[29] ... In intestate succession, the state passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead in-law. The *Law of Succession Act* does not recognize them or their rights. Indeed, the *Law of Succession Act* does not even mention them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of administration intestate. Pursuing the interest due to her



late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of section 45 of the [Law of Succession Act...](#)

33. In the circumstances, the rightful beneficiaries are the children of the deceased. The share due to Benson Ndirangu Kimemia shall devolve to his estate. Lucy Muthoni Ndirangu or her Children will initiate proceedings to be appointed administrator of the estate of the late Benson Ndirangu Kimemia.
34. As submitted by the 2nd Administrator, it is preferable that beneficiaries agree. Where however, there is an absence of consensus and the deceased died intestate the Court is guided by Article 27 of [the Constitution](#) and Section 38 of the [Law of Succession Act](#).

On the 2nd Issue, What are the distributable assets of the deceased?

35. At paragraph 50 of his Submissions, the 2nd Administrator enumerates the assets of the deceased's estate to comprise;
 - a. Loc 2/Gacharage/475
 - b. Plot No. 10 Loc 2/Gacharage/Gikoe Trading Centre.
 - c. Plot No. 8401 Njiru Scheme IV.
 - d. Plot No. D186 Githurai Kimbo.
36. This is not controverted by the Protestors as it is agreed that Loc 2/ Gacharage/ 1174 is registered in the name of the mother of the parties herein (Rahab Waithera Kimemia- wife of the deceased). In his submissions, the 2nd Administrator submitted at length on the combined assets of the deceased but ultimately this Cause is limited to the assets of the deceased herein, which I find to be those enumerated in paragraph 34 above.
37. On costs this is a family issue and I find that each party will bear their own costs.
38. The final orders shall be as follows;

The assets listed in paragraph 34 of this judgment shall be distributed to the children of the deceased in equal shares.

 - i. That in the event that an asset cannot be subdivided and shared, the same shall be valued, sold and the proceeds of sale distributed equally to all the deceased's children.
 - ii. The Administrators to conclude transmission of the estate within 180 days, in the event that any administrator fails or declines to execute any documents to facilitate the transmission of the estate within 21 days of delivery, the Deputy Registrar Family Division Milimani Law Courts, Nairobi will execute the same.
 - iii. This being a family matter each party shall bear their own costs.

DATED, SIGNED AND DELIVERED ON VIRTUAL PLATFORM AT NAIROBI THIS 18TH DAY OF OCTOBER, 2024.

PATRICIA NYAUNDI

JUDGE

In the presence of:

Court Assistant Fardosa

