



REPUBLIC OF KENYA



In re Estate of Chrispin Munjal Ndege (Deceased) (Succession Cause 4 of 2008) [2024] KEHC 12281 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 4 OF 2008**

WM MUSYOKA, J

OCTOBER 15, 2024

IN THE MATTER OF THE ESTATE OF CHRISPIN MUNJAL NDEGE (DECEASED)

RULING

1. This case relates to the estate of the late Chrispin Munjal Ndege, who died on 28th December 2007, according to certificate of death number 12954 of 22nd January 2008.
2. Representation to his intestate estate, was sought by Rosemary Aoko Munjal, vide a petition that she filed herein on 23rd January 2008, in her capacity as widow of the deceased. 3 individuals are mentioned in the petition, as survivors of the deceased, being Allan Ndege Munjal, Kevin Mala Munjal and John Ololo Munjal. The deceased is said to have had died possessed of South Teso/Angorom/3530 and Bukhayo/Mundika/2710, 5670 and 6440.
3. An objection was raised to the petition for representation, at the instance of Noel Namenya Munjal, on grounds that she was also a widow of the deceased, and to support her case she attached copies of a marriage affidavit, national identity card and a funeral programme. A trial was conducted, on the objection, and a ruling was delivered, on 21st April 2015, by F. Tuiyott J, where the court found and held that the objector, Noel Namenya Munjal, was a widow of the deceased. Both the petitioner, Rosemary Aoko Munjal, and the objector, were appointed administratrices of the estate of the deceased. They were directed to file for confirmation of their grant, and, in the event of disagreement, each administratrix was to file a separate mode of distribution. A grant of letters of administration intestate was subsequently issued, in the joint names of the 2, dated 23rd May 2016. I shall hereafter refer to the 2 corporately as the administratrices.
4. Thereafter, Rosemary Aoko Munjal filed a summons for confirmation of grant, dated 7th September 2016. She identified the survivors of the deceased to be 2 widows and 4 children, being the 2 administratrices, Allan Ndege Munjal, Kevin Mala Munjal, John Ololo Munjal and Daisy Munjal. The assets were listed as South Teso/Angorom/3530 and Bukhayo/Mundika/2710, 5670 and 6440. Distribution was proposed as follows: South Teso/Angorom/3530 to John Elvis Munjal; Bukhayo/Mundika/6440 to Allan Ndege Munjal; Bukhayo/Mundika/5670 to Kevin Mala Munjal; and



- Bukhayo/Mundika/2710 to Allan Ndege Munjal, Kevin Mala Munjal and John Elvis Munjal, with the 2 administratrices and Daisy Munjal having life interest.
5. Noel Namenya Munjal raised a protest. Her principal argument was that she and the deceased had established a matrimonial home on Bukhayo/Mundika/2710, and that was where she was living at the time of the demise, and thereafter. She also argued that she had contributed to the development of the property, and that she took out a number of loans to that end. Her other argument was that Daisy Munjal was a stranger to the estate. She disclosed that she had no children with the deceased. She proposed distribution as follows: South Teso/Angorom/3530 to John Elvis Munjal; Bukhayo/Mundika/6440 to Allan Ndege Munjal; Bukhayo/Mundika/5670 to Kevin Mala Munjal; and Bukhayo/Mundika/2710 to herself. She proposed that her co-administratrix would have life interest in the assets devolved to her children.
 6. That application was canvassed by way of written submissions, following directions that were given on 30th November 2016. The court, Kiarie J, delivered a ruling on 27th January 2021, highlighting that the deceased had died a polygamist, and that his estate fell for distribution, in terms of section 40 of the Law of Succession Act, Cap 160, Laws of Kenya, and proceeded to set out verbatim the said provisions, no doubt, for emphasis. The court also set out section 42 of the Act, on previous benefits, and the bringing of such benefits or gifts into the hotchpotch. In the end the parties were directed to file proposed modes of distribution along the lines of those 2 provisions.
 7. Compliance with the directions of the ruling of 27th January 2021 would have required no more than filing affidavits, setting out the respective proposals on distribution, aligned to those directions. Noel Namenya Munjal, in her wisdom, elected to file a fresh summons for confirmation of grant, dated 5th October 2023. She proposed distribution of only 1 asset, Bukhayo/Mundika/2710, to be devolved to herself. She also filed an affidavit of protest, sworn on 30th November 2023, proposing that Bukhayo/Mundika/2710 and South Teso/Angorom/3530 be devolved upon herself, Bukhayo/Mundika/5670 upon Allan Ndege and Kevin Mala Munjal, and Bukhayo/Mundika/6640 upon John Elvis Munjal and Daisy Munjal. There was no provision for her co-widow.
 8. Rosemary Aoko Munjal ignored the directions given in the ruling of 27th January 2021, for she did not file any proposed mode of distribution. When the matter came up on 18th October 2023, Mr. Ashioya, who appeared for her, indicated that what was outstanding were directions on a summons dated 7th September 2018. This was an act of misleading the court, given that Kiarie J had given directions on 27th January 2021 on what was to happen, yet the court was now being taken back to 2018, as if the directions of 27th January 2021 were never made.
 9. Anyhow. An oral hearing was conducted, on 8th February 2024 and 26th June 2024. Both administratrices testified.
 10. Rosemary Aoko Munjal went first. She stated that she married the deceased in 1980, and they got 4 children: Allan Ndege Munjal, Kevin Mala Munjal, John Ololo Munjal and Daisy Marcela Akinyi. She also stated that the deceased had the 4 pieces of land. She proposed a distribution along the lines of her application dated 7th September 2016. During cross-examination, she stated that it was the court which made her co-administratrix a co-widow, she did not agree with it, but she was going along with it. She said that she had not allocated her co-widow anything except a life interest on 1 of the assets. She emphasised that the co-widow had no children with the deceased. She said that the deceased did not set up a matrimonial home, and that they lived in rental houses, on Bukhayo/Mundika/6640, which belonged to the deceased. She testified that when she moved to Kisumu, her co-administratrix moved into her house in Bukhayo/Mundika/6640, whereupon she came and forced her out, and she moved into Bukhayo/Mundika/2710, with the deceased, where the deceased passed on after 2 months.



She stated that she had developed the ground floor of Bukhayo/Mundika/2710 together with the deceased. She stated that her co-administratrix developed the first floor on Bukhayo/Mundika/2710, as her residence, after the deceased died, despite opposition. She stated that Allan had also moved into Bukhayo/Mundika/2710, at about the same time with the co-administratrix, but the 2 fought, and he eventually moved out, on her advice. She stated that Bukhayo/Mundika/6640 was rental property, from which she was collecting rent. She stated that her co-administratrix did not interfere with Bukhayo/Mundika/6640, while she did not interfere with Bukhayo/Mundika/2710. She said that Bukhayo/Mundika/3510 was undeveloped, while Bukhayo/Mundika/5670 was developed, with rental houses, and she collected rent from that property.

11. Noel Namenya testified next. She stated that she lived on Bukhayo/Mundika/2710, and that she and the deceased had developed the ground floor, then she extended the first floor after he died, and that was where she lived. She said that she worked with the Busia Municipal Council, and she took loans for construction. She said that she and the deceased married in 2004, and that the 4 assets had been acquired before she met him. She said she would like to be given the whole of Bukhayo/Mundika/2710. She said she was farming on Bukhayo/Mundika/3530, the vacant plot, and she sought to be allocated that too. She said that her co-administratrix had converted her matrimonial home, on Bukhayo/Mundika/6640, into a commercial property. She said she should get 2 of the assets, while her co-administratrix should get the other 2.
12. At the close of the oral hearings, Mr. Ashioya, sought to place a valuation report on record. The said report had not been requisitioned by the court, nor had any order been made for the valuation to be done, neither had any effort been made to have it produced by his client, when she testified, which would have afforded a chance to the other side to cross-examine on its contents. For whatever it was worth, I directed that the same be placed on the record. I gave the parties 14 days to submit. I have not seen their written submissions in the file of papers before me.
13. The deceased died a polygamist, in 2007, after the Law of Succession Act had come into force in 1981. He died intestate, and distribution of his estate should be in accordance with Part V of the Act. Section 40, in Part V, sets out how the estate of an intestate polygamist is to be shared out or distributed. Kiarie J recited that provision verbatim, for the benefit of the parties, in his ruling of 27th January 2021. I shall not repeat the recitation. It provides that the estate shall be divided into units, in accordance with the number of children that the deceased had, with any surviving widows being treated as additional units. Once a ratio of distribution is worked out, the estate is distributed according that ratio. See Kuria and another v. Kuria [2004] KLR (Musinga, J), Rono v. Rono & another [2005] 1 EA 363, [2005] eKLR (Omolo, O’Kubasu & Waki, JJA) and Munyole v. Munyole [2022] KECA 373 (KLR) (M’Inoti, Kiage & M Ngugi, JJA). Distribution of the estate should thereafter follow the provisions in sections 35 to 38 of the Act. See In re Estate of Katama Nyaki (Deceased) [2019] eKLR (Muchemi, J).
14. The deceased had 2 wives. The first wife had 4 children, while the second had none. The first house shall, therefore, constitute the first widow and her 4 children, making 5 units; while the second house shall constitute of the 1 widow, making a total of 6 units. The ratio of distribution works to 5:1. The assets being South Teso/Angorom/3530 and Bukhayo/Mundika/2710, 5670 and 6440 shall be shared out in that ratio of 5:1, so that the first house shall take 5/6 of all the assets, while the second house shall take 1/6.
15. I note that all these assets were acquired before the 2nd widow was married. She said that she was married in 2004, while the 1st widow was married in 1980. The deceased died in 2007, meaning that he was with the 2nd widow for only 3 years. I note too that the 1st widow bore the deceased 4 children, while the 2nd widow bore him none. The 2nd widow claims that she and the deceased developed Bukhayo/



- Mundika/2710, the ground floor, before he died. The 1st widow testified that the ground floor had been developed before the second marriage. No documents were presented by either of them. Both were agreed that the first floor was developed after the deceased died. The 1st widow said she objected, to no avail. The 2nd widow said that she took loans for that development, but produced no documents.
16. It will be of note that developing an asset of the estate, after the demise of the owner, without leave of court, amounts to intermeddling, and since intermeddling is an offence under section 45(2) of the [Law of Succession Act](#), the court would usually ignore the development, for it is often viewed as a mischievous endeavour or effort to steal a march over the other beneficiaries. See [In re Estate of Kamatu Mwanthi Kamatu](#) (Deceased) [2020] eKLR (Odunga, J) and [In re Estate of Ruth Wanjiku Karugu](#) (Deceased) [2021] eKLR (T. Matheka, J). The 2nd widow should have waited, for the property to be distributed, before she embarked on developing a property which did not belong to her. The fact that the deceased had been her spouse, during his lifetime, gave her no right to develop his property after he died, and before distribution, precisely because the law outlaws it. She did that development at her own peril.
 17. There is the issue of Daisy Marcela Akinyi. The 2nd widow alleged that she was a stranger to the estate, but she offered no explanation for that assertion. The 1st widow listed her as a child of the deceased, in the application for confirmation of grant, but, curiously, left her out in her proposals on distribution. Her name does not appear at all in the petition. It was the 2nd widow who first introduced her name into this cause, when she listed her as a daughter of the deceased, in her objection. I cannot speculate as to why she would later describe her as a stranger. I would also not speculate as to why the 1st widow, who I presume is her biological mother, did not disclose her in her petition, and why in the application for confirmation of grant, she makes no provision for her. I can only hazard a guess, that she was and is left out on account of her gender. I shall treat Daisy Marcela Akinyi as a child of the deceased.
 18. I need to say more on this gender issue, and I will say it here. I will repeat that the deceased died in 2004, after the [Law of Succession Act](#) had come into force in 1981. He died intestate, and Part V of the [Law of Succession Act](#) shall apply to distribution of his estate. The provisions in Part V of the act are gender neutral. They talk of the estate being shared out amongst the children of the deceased. There is no mention of sons and daughters, nor male and female children. Children, collectively, therefore, refers to both gender, which would mean that there should be no discrimination of the children based on their gender. See [Ejidiob Njiru Mbinga v. Mary Muthoni Mbinga & another](#) [2006] eKLR (Khaminwa, J). Sections 35(5) and 38 of the [Act](#) provide that the estate of an intestate shall be shared equally between the children, be they male or female, sons or daughters. See [Grace Wangari Mwaura & another v. Wanjiku Mwaura](#) [2003] eKLR (Rawal, J), [Rono v. Rono & another](#) [2005] 1 EA 363, [2005] eKLR (Omolo, O’Kubasu & Waki, JJA), [Naomi Watiri Githuku v. Naphtali Kamau Githuku & another](#) [2006] eKLR (Koome, J), [In re Estate of Lerionka ole Ntutu](#) (Deceased) [2008] eKLR [2013] 1 EA 91 (Rawal, J), [Mwongera Mugambi Rinturi & another v. Josphine Kaarika & 2 others](#) [2015] eKLR (Waki, Nambuye & Kiage, JJA) and [Ludiah Chemutai Bett v. Joseph Kiprop Tanui](#) [2017] eKLR (M Ngugi, J).
 19. In addition to the [Law of Succession Act](#) there is the [Constitution](#) of Kenya, 2010. the [Constitution](#) has reinforced the equality or neutrality principle in sections 35(5) and 38 of the [Law of Succession Act](#), through its Article 27. See [In re Estate of Andashe Munyeti](#) (Deceased) [2020] eKLR (Musyoka J) and [In re Estate of Chepleke Chemusany](#) (Deceased) [2020] eKLR (Sitati, J). Article 27, in the Bill of Rights, outlaws discrimination generally. With respect to gender, it provides that men and women should be treated equally in all spheres of life, including in succession. See [Michael Mwangi Joram v. Robin Njue Njagi](#) [2016] eKLR (Muchemi, J), [Joseph Achichi Aburili v. George Ochola Aburili](#) [2017] eKLR (Majanja, J), [In re Estate of Chepleke Chemusany](#) (Deceased) [2020] eKLR (Sitati, J) and [In re Estate of Nyambia Mukaya](#) (Deceased) [2022] eKLR (Odero, J). Article 27 should be read together



with Article 2(4), which states that any act, which contravenes the Constitution, would be invalid. The discrimination of Daisy Marcela Akinyi, by not providing for her, equally with her brothers, would contravene or be inconsistent with Article 27, in terms of her being treated differently, on account of her gender, and that would be an invalid act, by virtue of Article 2(4). See In re Estate of M'Itunga M'Imbutu (Deceased) [2018] eKLR (Gikonyo, J) and In re Estate of Stanley Mugambi M'Muketha (Deceased) [2019] eKLR (Gikonyo, J). If the apparent discrimination against Daisy Marcela Akinyi is founded on customary law, then Article 2(4) would also apply. It states that any law, including customary law, which contravenes or is inconsistent with the Constitution would be void. Any custom, which discriminates against a woman, just because she is a woman, is void. See Irene Mabuti Gitari v. Zacharia Njege Gitari [2017] eKLR (Gitari, J), In re Estate of Evan Muthui s/o Nyamu [2019] eKLR (Ngaah, J), In re Estate of Peter Gathogo (Deceased) [2020] eKLR (Meoli, J) and Wanjiru & 4 others v. Kimani & 3 others [2021] KECA 362 (KLR) (W Karanja, HA Omondi & Laibuta, JJA).

20. The final orders are as follows:

- a. That the grant herein is hereby confirmed;
- b. That the estate shall be distributed in the following manner - that the house of Rosemary Aoko Munjal shall take 5/6 and the house of Noel Namenya Munjal shall take 1/6 share of South Teso/Angorom/3530 and Bukhayo/Mundika/2710, 5670 and 6440;
- c. That the 5/6 share devolving to the house of Rosemary Aoko Munjal shall devolve upon her during life interest, and thereafter, upon determination of the life interest, to Allan Ndege Munjal, Kevin Mala Munjal, John Ololo Munjal and Daisy Marcela Akinyi, in equal shares;
- d. That the 1/6 share due to Noel Namenya Munjal shall devolve upon her absolutely;
- e. That a certificate of confirmation of grant shall issue accordingly;
- f. That in the event that any of the assets cannot be subdivided into 6 units, or the parties are unable to agree on the subdivision, the same shall be sold, and the proceeds of sale distributed equally amongst all the 6 beneficiaries;
- g. That this matter shall be mentioned, after 6 months, on 15th April 2025 for the administratrices to confirm, to the court, that they had distributed the estate, as per the certificate of confirmation of grant to be issued under (c), above, after which the court file shall be closed;
- h. That each party shall bear its own costs; and
 - i. That any party, aggrieved by these orders, has leave of 30 days, to file an appropriate appeal at the Court of Appeal.

21. It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 15TH DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ashioya, instructed by Ashioya & Company, Advocates for Rosemary Aoko Munjal.



Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for Noel Namanya Munjal.

