



REPUBLIC OF KENYA



**In re Estate of Patrick Muriithi Ngari (Deceased) (Succession Cause
202 of 2013) [2023] KEHC 20521 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 202 OF 2013
RM MWONGO, J
JULY 20, 2023**

**IN THE MATTER OF
PETER GAKURU MURIITHI PETITIONER**

RULING

1. The petitioner filed summons for confirmation of grant dated March 10, 2021 with a supporting affidavit. The petitioner sought to distribute the deceased's following properties to beneficiaries. The properties are:
 - a. Land parcel Baragwi/ Guama/479
 - b. ½ share plot 97 Kianyaga measuring 25' x 100'
 - c. Terminal dues/pension /death gratuity.
2. Following a partial mediation agreement on December 6, 2022 it was agreed as follows:
 1. That all the deceased's retirement benefits in Kenya Railways Corporations be shared equally to his heirs.
 2. That all the proceeds of tea that was earned before the death of the deceased be distributed to Edith Murango.
 3. That the land parcel Baragwi/ Guama/479 be shared in seven equal shares to the beneficiaries.
 4. That the partial agreement be adopted as an order of the court.3
3. The mediator's agreement was adopted by the court on March 15, 2023.
4. Accordingly, the only issue remaining for determination is the distribution of the ½ share plot 97 Kianyaga which has three (3) rental rooms. The plot is also known as Soko Mjinga.



5. The deceased is survived by his widow and children. The plot No 97 originally measured 50X100' feet. It cannot be viably subdivided among the 11 beneficiaries of the deceased.
6. Accordingly. It would make sense that the plot be held by the deceased's widow as a life interest. Her life interest would only come to an end upon her death or re-marriage.
7. Section 35(1) of the [Succession Act](#) provides as follows:

“ 35

(1) Subject to the provisions of section 40 where an intestate has left one surviving spouse and a child or children the surviving spouse shall be entitled to –

- a. The personal and household effects of the deceased absolutely
- b. A life interest in the whole residue of the net estate.

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.”

(2) A surviving spouse shall, during the continuation of the life interest provided by sub-section (1) have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving children, but that power shall not be exercised by will or in such manner as to take effect at any future date.”

8. Legal precedents have explained these provisions. In [Bob Njoroge Ngarama v Mary Wanjiru Ngarama & another](#) [2014] eKLR. It was held:

“The import of these provisions of the law are to my mind clear and unequivocal. The petitioner/respondent as the surviving widow of the deceased has a life interest in the net residue of his estate. Her life interest would only come to an end upon her death or re-marriage. There is no evidence (neither is it alleged/that the petitioner/respondent has re-married). The surviving children of the deceased are only entitled to a bequest by way of gift under section 35(2) of the [Law of Succession Act](#) but such gift will be made at the sole discretion of the widow”.

9. In the present case, the plot was acquired by the deceased and the widow. Hence, in my view the children should not be left to quarrel over its distribution during the life time of the widow. The property should be vest in the widow who in any event is entitled to rent collected from the rooms during her life interest.

10. In [re Estate of Masilia Mwavu \(Deceased\)](#) [2020] eKLR it was observed:

It has been stated that because the surviving widow has been given a plot with a monthly income of Kshs 30,000/= it's such a big deal for her. It must be remembered that she is the deceased's first wife with whom he went through strenuous life experiences to even acquire the properties the children are now quarreling over. It is therefore not a favour to give her that plot and others.



11. I am in complete agreement with the court's sentiments, and I would adopt them as my own, which I hereby do.
12. Accordingly, it is hereby directed that a life interest shall forthwith vest to the surviving widow Edith Murango in the undistributed $\frac{1}{2}$ share in plot No 97 Kianyaga. The remainder shall thereafter vest equally in the deceased's children.
13. It is so ordered.

DATED AT KERUGOYA THIS 20TH DAY OF JULY 2023

R. MWONGO

JUDGE

