



**In re Estate of Njuguna Ngarama (Deceased) (Succession Cause 2619 of 2014)  
[2024] KEHC 15633 (KLR) (Family) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2619 OF 2014  
EKO OGOLA, J  
DECEMBER 3, 2024  
IN THE MATTER OF THE ESTATE OF NJUGUNA NGARAMA (DECEASED)**

**BETWEEN**

**JANE WANJIKU KIBUI ..... 1<sup>ST</sup> APPLICANT  
MARGARET WAIHERA KIBUI ..... 2<sup>ND</sup> APPLICANT  
SUSAN GATHONI WARUNGE ..... 3<sup>RD</sup> APPLICANT  
AGNES WAIRIMU KIBUI ..... 4<sup>TH</sup> APPLICANT  
JECINTA MUMBI WAWERU ..... 5<sup>TH</sup> APPLICANT**

**AND**

**BERNARD NGARAMA NJUGUNA ..... 1<sup>ST</sup> RESPONDENT  
MICHAEL NGARAMA KIBUI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The amended Summons for Revocation before this court is dated 12<sup>th</sup> December 2014. The applicants pray for the following orders:-
  - a. Spent;
  - b. That, injunction orders be issued restraining the respondents, their agents, employees, servants, and or any other person from interfering with land parcel Kabete/Kibichiku/1542 pending the hearing and determination of this grant.



- c. That, the confirmed grant issued to Bernard Ngarama Njuguna on 24<sup>th</sup> September 1991 vide Succession Cause No. 181 of 1988 at Nairobi High Court be revoked.
  - d. That the applicants be recognized and included as legal beneficiaries of the estate of the deceased and in particular land parcel number Kabete/Kibichiku/1542 before distribution thereof.
  - e. That the cost of this application be borne by the respondents.
2. The application was based on the grounds set out therein and the applicants' Supporting Affidavit. The applicants deposed that they are daughters of the deceased daughter, the late Mary Kibui who died in 1980. Therefore, they are the grandchildren of the deceased. The 1<sup>st</sup> respondent is the applicants' cousin and the 2<sup>nd</sup> respondent is the applicant's brother.
3. The applicants deposed that the 1<sup>st</sup> respondent initiated Succession Cause No. 181 of 1988 and excluded them as beneficiaries of the deceased estate. The 1<sup>st</sup> Respondent was issued with a Certificate of Confirmation of Grant on 24<sup>th</sup> September 1991. In the mode of distribution, parcel Kabete/Kibichiku/79 was to be distributed amongst the 1<sup>st</sup> and 2<sup>nd</sup> respondent, Joseph Kimani Njuguna, Francis Mungai Njuguna, and Ngarama Njuguna. The said plot was later subdivided and Kabete/Kibichiku/1542 was issued to the applicants' brother, the 2<sup>nd</sup> respondent.
4. According to the applicants this share was to be issued to their mother who was excluded due to the Kikuyu customary law which dictates that married women do not inherit from their father's estate. Hence, the 2<sup>nd</sup> respondent inherited that portion to the exclusion of his sisters, the applicants herein.
5. The applicants believe that the Certificate of Grant and the Certificate of Confirmation of Grant issued to the 1<sup>st</sup> respondent were issued through concealment of material facts of the existence of application as beneficiaries of the deceased estate.
6. In response, the 1<sup>st</sup> respondent filed a Replying Affidavit where he deposed that the 1<sup>st</sup> applicant was aware of Succession Cause 181 of 1988 since she accompanied the 2<sup>nd</sup> respondent to court as he was still a minor. He reiterated that the deceased estate was distributed subject to Kikuyu Customary law and married women whether daughters or granddaughters of the deceased do not inherit from their fathers or grandfather's estate. Therefore, the applicants cannot be said to be the beneficiaries of the deceased estate.
7. Furthermore, the 1<sup>st</sup> respondent deposed that the deceased died in 1977. Therefore, the Law of Succession which came into operation in 1981 cannot be applicable to the deceased estate. According to the 1<sup>st</sup> respondent, no sufficient reason has been put forward to revoke the Certificate of Confirmation of Grant.
8. The 2<sup>nd</sup> respondent opposed the summons for revocation by way of a Replying Affidavit. He deposed that plot 1542 was not bequeathed to him on behalf of their late mother. He deposed that the applicants were aware of the Succession proceedings therefore, this summons for revocation is an afterthought and a malicious way to disinherit him. He reiterated that The Law of Succession does not apply to the estate of the deceased.
9. There is an Affidavit from Benson Nguru Njuguna, the applicant's uncle and Rahab Wanjiku Heho a family friend of the entire extended family. They all deposed that the 1<sup>st</sup> applicant was present and aware of the process it took for the 2<sup>nd</sup> respondent to be bequeathed of plot 1542. On record is an affidavit from Francis Mungai Njuguna, the applicants' uncle. He deposed that plot 1542 was bequeathed to



the 2<sup>nd</sup> respondent to be held on behalf of the family. However, the 2<sup>nd</sup> respondent has adamantly refused to share it with the applicants who have lived in that land.

10. The summons were canvassed by way of viva voce evidence in open court and written submissions. I have considered the record and the rival submissions.

### **Determination**

11. I have considered the pleadings as filed and the entire record of the court.
12. The first issue for determination is whether the Law of Succession applies to the suit herein. The scope of the Law of Succession Act is stated in Section 2 thereof. For the avoidance of doubt, the said section states as follows:-

“2(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the Law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”

13. The effect of Section 2(1) of the Law of Succession Act is that the provisions of the said Act are to apply to the estates of all persons dying after the commencement of the Act on 1<sup>st</sup> July 1981, subject of course to the exceptions created by the Act. The Act applies both as the substantive law as well as the procedural law to the estates affected.
14. Section 2(2) of the Law of Succession Act defines the application of the Law of Succession Act with respect to persons who died before the said Act commenced on 1<sup>st</sup> July 1981. The provision is categorical that the substantive provisions of the said Act are not applicable to the estates of persons who died before the said Act commenced. The substantive provisions of the Act are those governing devolution or distribution of the estate of the dead person, whether such person died testate or intestate. These provisions are to be found in Parts II, III, IV, V and VI of the Law of Succession Act. The substantive law of succession for estates of the persons who died before 1<sup>st</sup> July 1981 is not to be found in Parts II, III, IV, V and VI of the Law of Succession Act, but in the written laws and customs that applied at the date of the death of the person in question.
15. The second part of Section 2(2) of the Law of Succession Act states that the administration of the estates of persons who died before 1<sup>st</sup> July 1981 should commence or proceed so far as possible in accordance with the provisions of the Law of Succession Act. In other words, the procedure with respect to the administration of estates of such persons is to be governed, not by the law as at the time of death, but by the procedures set out in the Law of Succession Act. The said provisions in the Law of Succession Act governing procedures and processes in the administration of estates are to be found in Part VII. Part VII of the Law of Succession Act applies universally to the estates of persons dying either before or after the commencement of the Act.
16. It is not in dispute that the deceased person the subject of these proceedings died before the Law of Succession Act came into force. Consequently, the substantive law governing devolution of his estate is



that stated in Section 2(2) of the Law of Succession Act – that is the written laws and customs in force as at the time of his death.

17. From the material before me the deceased person died intestate, for there is nothing on record to suggest that he died otherwise. As of the time of the deceased's death, estates of African Kenyans who died intestate were subject to customs of the community from which such African hailed, while the written wills of any African who had reduced his death wishes into writing were governed by the African Wills Ordinance of 1960. This position changed in 1981 when the Law of Succession Act came into force, for it ousted the application of African Customary law of intestate succession, except in respect of the estates of persons subject to Sections 32 and 33 of the Law of Succession Act.
18. The deceased and the parties herein are Kikuyu by ethnicity. The deceased was subject to the Kikuyu customs which governed devolution of the estate of a person who died intestate. Kwach, JA (as he then was) in the case of *Wambugi w/o Gatimu v Stephen Nyaga Kimani* (1992) 2 KAR 292 where the Court discussed extensively the application of customary law vis vis Section 3(2) of the Judicature Act stated as follows:-

“ The former Court of Appeal for East Africa in the case of *Kimani v Gikanga* held that where African Customary Law is neither notorious nor documented, it must be established for the court's guidance by the party intending to rely on it and also that as a matter of practice and convenience in civil cases, the relevant customary law, if it is incapable of being judicially noticed, should be proved by evidence of expert opinions adduced by the parties”.
19. The Kikuyu customary law of intestate succession is well documented in such treatises as Eugene Cotran, *Restatement of African Law, Kenya*, Sweet & Maxwell, 1968 and Jomo Kenyatta's *Facing Mount Kenya: The Tribal Life of the Gikuyu*, among others. It has also been restated in several judicial pronouncements, such as in *Kanyi vs. Muthiora* (1984) KLR 712. However, I am of the view that the position as stated in the treatises may not be true today.
20. Under the Kikuyu Customary Law of intestacy, succession is patrilineal. Devolution is in favour of the male relatives of the deceased. Where a male deceased person is survived by a widow and male and female children, the land devolves upon the sons with the widow being entitled to life interest. Daughters are not entitled to inherit. They play their part in the family or clan in which they get married, but it is permissible for daughters who attain the age of marriage but never marry to inherit from their parents. Where the deceased person has daughters only and the said daughters are all married, the property will pass to his brothers or their sons, with the widow having a life interest.
21. The position stated above is no doubt discriminatory in favour of men and against women. This was however sanctioned by Section 82(4) of the repealed *Constitution*. Section 82(1) of the said *Constitution* stated that “... no law shall make any provision that is discriminatory either of itself or in its effect.” Section 82(4) of the said *Constitution* made a number of exceptions to Section 82(1); it states that: “... Subsection (1) shall not apply to any law so far as that law makes provision ... (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.”
22. The coming into operation of the *Constitution*, radically changed the position, for the new law outlawed discrimination in all its forms. Thus, any customary law that discriminates against women in inheritance is inconsistent with the letter and spirit of our Constitution and therefore null and void.
23. From the foregoing, the law that is applicable in this suit is Kikuyu Customary law.
24. The second issue for determination is whether the Certificate of Confirmation of Grant should be revoked. The applicants' complaint is that they were omitted from the list of beneficiaries in



the Certificate of Confirmation of Grant. They seek revocation on that ground. Under Kikuyu Customary Law, the applicants have no stake in the deceased estate. Despite this being discriminatory, the Constitution at that time, unfortunately, did not recognize discrimination of African Customary law on issues of devolution of property on death. Therefore, cancelling the Certificate of Confirmation of Grant and ordering fresh distribution will not affect the correct legal position.

25. In view of the foregoing, I dismiss the Amended Summons for Revocation dated 12<sup>th</sup> December 2014. Costs be in the cause.

Orders accordingly.

**DATED AND DELIVERED IN NAIROBI THIS 3<sup>RD</sup> DAY OF DECEMBER 2024**

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**E.K. OGOLA**

**JUDGE**

In the presence of:

Ms. Mbiri h/b Mr. Ngige for the Applicants

Mr. Kariuki for the Respondents

Gisiele Muthoni Court Assistant

**E. OGOLA J.**

