



In re Estate of David Kisingu Mbuva (Deceased) (Succession Cause E008 of 2024) [2025] KEHC 13400 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
SUCCESSION CAUSE E008 OF 2024
TM MATHEKA, J
SEPTEMBER 25, 2025**

IN THE MATTER OF THE ESTATE OF DAVID KISINGU MBUVA (DECEASED)

BETWEEN

ANGELA NGALI KISINGU CITOR

AND

JANE MUKII MUNUVE 1ST CITEE

LEONARD NZYUKO KISINGU 2ND CITEE

RHODA MUKULU KISINGU 3RD CITEE

CHARLES NYAMASYO KISINGU 4TH CITEE

MARY KISINGU 5TH CITEE

RULING

- David Kisingu Mbuva of Vulueni Village, Kavuthu Location, Sultan Hamud Town in Makueni County died on the 16th December, 2007, intestate leaving his Children the Citor Angela Ngali Kisingu And The Citees Jane Mukii Munuve, Leonard Nzyuko Kisiingu, Rhoda Mukulu Kisingu, Charles Nyamasyo Kisingu And Mary Kisingu.
Angela cited her siblings seeking grant of letters of administration.
- The 2nd, 4th and 5th citees swore a joint replying affidavit in which they deponed that the estate of the deceased was distributed by clan elders on 13th March 2024. That the 2nd and 4th citees and their mother Kalondu Kisingu(deceased) were the rightful beneficiaries of the estate. They annexed a document marked LCM1 as the proof, deponing that there was no estate left for distribution.
- The annexed document reads in part: that Kisingu Family Meeting was held at home ground on 13th March 2024.mFrom the document I gather that the agenda was about a phone message from the Citor



about ‘court land issue’. When the meeting was called to order the matter was discussed at length. It states that the members agreed that the land was distributed amicably in July 2023 among the two sons of the deceased and another named as Max, described as Regina’s son. It states that the 3 daughters Jane, Rhodah and Mary had no complaint on the land and only Angela remained with a complaint about the land. It states further that members agreed to give Angela seven days to convene a family meeting and air her complaint. Members also agreed that she should take care of all meeting expenses.

4. Jane Mukii Munuve And Rhoda Mukulu Kisingu the 1st and 3rd Citees swore a joint affidavit in which they refuted the contents of the affidavit of the sworn by the 2nd, 3rd and 5th citees. They deponed that they are daughters of the late David Kisingu Mbuva and that the citor, the 2nd, 4th and 5th citees are their siblings and that they are all beneficiaries entitled to share in the estate of David Kisingu Mbuva. THAT their father died on 16/12/2007 intestate and was survived by their mother Kalondu Kisingu and their seven children, being the citor, the 5 citees herein and Regina Mukonyo Kisingu who died in May 2018 and is survived by her son. THAT their mother Kalondu Kisingu did not take out letters of administration of their father’s estate and died on 09/05/2022 intestate. THAT a family meeting was held in June 2022 and August 2023 where they agreed to distribute their parents’ estate equitably amongst themselves as equal beneficiaries. THAT when the citor served them with a caveat, the 2nd and 4th Citees convened a family meeting on 13/03/2024 to discuss the said caveat and during the said meeting the 2nd & 4th Citee and their maternal aunt and uncles colluded and conspired and forced them to sign a document agreeing to a mode of distribution of their father’s estate to the exclusion of the citor. THAT the 2nd and 4th Citees have been subdividing, selling and disposing off the estate of the deceased father including land and the oxcart while the 5th Citee continues to collect and share rental income from a house in Nairobi without lawful authority to do so which they have been advised by their counsel amounts to intermeddling with the property of the deceased and wasting the estate. Ultimately upon being served with the citation dated 30/05/2024 they accepted to take up letters of administration together with the citor.

Parties proceeded to file written submissions.

5. For the Citor, the 1st and 3rd Citees it is submitted that the issues for determination are
 - a. Whether the Citation is properly before this court
 - b. Whether there is intermeddling
 - c. What orders as to Costs
6. It is submitted that so far, no Petition has been filed. Relying on Section 66 read together with Section 38 of the Law of Succession Act it is submitted that the citor and citees are equally entitled to take out letters of administration. That in Josiah Muli Wambua – deceased, Nairobi Succession Cause No. 2557 of 2012 [2014] eKLR W. Musyoka – J stated:-

In intestacy, citation issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The Citor should not be a person who has himself already applied for the grant, for the Citor should only apply for grant after the citee fails to so apply.”

7. It is submitted that the 2nd 4th and 5th citees have admitted to intermeddling with the estate of the deceased. That they are the custodians of the documents (death certificate, title documents , rental income) but are unwilling to move the court . That the citor, the 1st and 3rd citees be granted leave to apply for grant of letters of administration.



8. For the 2nd, 4th and 5th citees the following issues were identified for determination.
 - i. Whether this court has the pecuniary jurisdiction to hear the citation
 - ii. whether the distribution of the deceased estate by the Clan Elders is legally binding under Kenya law
 - iii. whether there is conflict of interest of the part of the advocates acting for the citor and also for the 1st and 3rd citees.
9. It is submitted that pursuant to Kamba customary laws, clan elders convened and distributed the land belonging to the deceased, ensuring fairness and adherence to tradition ;that the said parcel of land was divided among the 2nd & 4th citees and one Marx grandson of the deceased in a manner consistent with tradition and that the distribution was conducted in the presence of witnesses and all beneficiaries consented to the elders decision; that the citor had disregarded this lawful distribution in filing this citation to allegedly distribute land, which is now not available for distribution.
10. It is submitted the citor has not placed any evidence before this court to demonstrate that this court has the pecuniary jurisdiction to deal with this matter. That in the absence of a valuation report to show that the land actually belonged to the deceased herein, this court cannot grant the alleged orders which may not be capable of being enforced, that the court cannot act in vain
11. Further, that it is not disputed that the citor the first, 3rd and 5th citees are daughters of the deceased who are already married and living in their husbands' homes, which factor the clan elders and other family members considered in distributing the land accordingly.
12. The court is referred to section 3(2) of the Judicature Act, Cap 8 which recognizes customary law as part of Kenya laws, provided that it is not repugnant to justice or inconsistent with written law that the Law of Succession Act section 2(1) acknowledges that customary law applies to intestate succession where the deceased was subject to it. The court is also referred to article 11(1) of the Constitution of Kenya, and it is submitted that the court is obligated to protect and promote the diversity of cultural heritage, including customary dispute resolution mechanisms. It is submitted that the Kamba customary law vests authority in clan elders to mediate and distribute land in cases of intestacy as is in the present case. Further that the Magistrate's Jurisdiction Amendment Act and the Kadhi's Court Act exemplify Kenya's recognition of traditional justice systems. It is submitted that a decision of the clan elders was made in accordance with fairness, family consensus and customary norms and that the citor has not demonstrated any irregularity or unfairness in the decision by the clan elders .
13. It is also submitted that counsel for the citor to cannot act for the first and 3rd citees as there is clear conflict of interest. It is submitted that the pleadings and documents filed by the same advocates either for their citor or the 1st and 3rd citees be expunged or struck out from the record.
14. The court is urged to find that the allegations of unlawful subdivision and intermeddling with the alleged estate of the deceased do not hold water and proceed to dismiss the citation with costs in order to prevent unnecessary litigation. They rely Republic versus the Attorney general ex parte Wangari Maathai [2001] eKLR where the court discouraged frivolous suits.
15. I have carefully considered the citation, the affidavits and the submissions by both counsel. The only issue for determination is whether the citation is merited.
16. Counsel for the 2nd, 4th and 5th citees has however raised two other issues: whether this court has the pecuniary jurisdiction to deal with the matter , and whether the elders' decision is binding.



17. On jurisdiction, the High Court has original and unlimited jurisdiction in civil and criminal matters as per Article 165 (3) of *the Constitution* which states
Subject to clause (5), the High Court shall have— (a) unlimited original jurisdiction in criminal and civil matters;
18. It is difficult to understand how counsel would not know this and proceed to make the submissions he made about jurisdiction and the requirement for a valuation report. Those are unnecessary at the moment.
19. As to whether it is necessary to have the valuation reports to demonstrate that the estate belongs to the deceased, again, this submission was misplaced. This is because it is clear from the affidavits of the 2nd, 4 and 5th Citees that they have taken possession of the deceased's estate because they consider themselves as the only ones beneficially entitled to the estate of their father. That the citor and her sisters, because they are married, Kamba customary law does not allow them to inherit from their parents.
20. While I agree with counsel that the courts have an obligation to recognize, and uphold our cultural diversity, and while I am properly guided by *the Constitution* on the place of our cultural diversity and the traditional dispute resolution mechanisms, and while it is correct that clan elders hold a certain authority in our communities, we cannot afford to lose the gains we have made in fighting all forms of discrimination, some of it perpetuated by archaic cultural norms.
21. Article 27 of *the Constitution* provides inter alia
 27. Equality and freedom from discrimination
 - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
 - (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
 - (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)
22. Marital status can never change the status of being the child of one's parents. Having a husband and living at the husband's home cannot be a ground to disinherit one from inheriting their parent's property.
23. The courts are forbidden from upholding traditional dispute resolution mechanisms that are contrary to *the constitution*.
24. Article 165(3) states
 - (3) Traditional dispute resolution mechanisms shall not be used in a way that—
 - (a) contravenes the Bill of Rights;



- (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
 - (c) is inconsistent with this Constitution or any written law.
25. The decision by the elders to only share the property of the deceased to the male children of the deceased because the female children were married contravened the clear constitution prohibition against discrimination, and this court cannot uphold the same.
26. In any event there was no consensus. If indeed the children of the deceased and sat and agreed among themselves on the distribution of the estate, that would have been different. One can tell from the tenor of the document created by the clan elders that they were not pleased with the citor's objections
27. Is there any conflict of interest for counsel to act for the citor and the 1st and 3rd Citees? No, they are all on the same side. They are agreed that they want the estate of the deceased to be administered in accordance with the law.
- s. 66 of the *Law of Succession Act* speaks to the issue before me:
66. Preference to be given to certain persons to administer where deceased died intestate
28. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference
- (a) surviving spouse or spouses, with or without association of other beneficiaries;
 - (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
29. The relevant portion of part V is s. 38 which states:
38. Where intestate has left a surviving child or children but no spouse
- Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children. (Emphasis added)
30. Clearly the clan acted outside its jurisdiction and perpetuated an illegality as prohibited by s. 45 which states:
45. No intermeddling with property of deceased person
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. (Emphasis mine)
 - (2) Any person who contravenes the provisions of this section shall
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and



(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

31. The 2nd, 4th and 5th citees and the clan elders have not presented any evidence to show that they acted under any express authority under the LOSA, or by any other written law, or that they had a grant of representation under the LOSA.
32. In the foregoing circumstances it is evident that the estate of the deceased is at the risk of being wasted by the 2nd, 4th and 5th citees.
33. This court is obligated to safeguard the same by the appointment of administrators.
34. In the circumstances, I am of the view that the 2nd, 4th and 5th citees would be unsuitable as administrators taking into consideration their current conduct vis a vis the estate,
35. Hence the Citation is allowed in the following terms:
 1. Angela Ngali Kisingu, Jane Mukii Munuve, Rhoda Mukulu Kisingu; The Citor, the 1st and 3rd Citees have leave to file for grant of letters of administration intestate for the estate of David Kisingu Mbuva (deceased).
 2. The 2nd, 4th and 5th Citees to surrender all the documents they have in their possession with respect to the estate of the deceased.
 3. The 2nd, 4th and 5th citees are prohibited from dealing with the estate of the deceased in any manner, contrary to the provisions of the Law of Succession Act.
 4. The citor, the 1st and 3rd citees are at liberty to report acts of intermeddling to the nearest police station for necessary action.

Costs in the cause

DATED, SIGNED AND DELIVERED VIA CTS THIS 25TH DAY OF SEPTEMBER 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

