



In re Estate of LHP (Deceased) (Succession Cause 2039 & 2090 of 2008 (Consolidated)) [2025] KEHC 13702 (KLR) (Family) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2039 & 2090 OF 2008 (CONSOLIDATED)
CJ KENDAGOR, J
SEPTEMBER 16, 2025
IN THE MATTER OF THE ESTATE OF LH ALIAS LHP ALIAS LHP – (DECEASED)**

BETWEEN

RCS APPLICANT

AND

DMP RESPONDENT

RULING

1. The Succession Cause relates to LH alias LHP alias LHP, deceased, who died on 5th August, 2006 aged 85 years.
2. The probate has been in Court since 2008 due to proceedings that were initiated in Succession Cause No. 2039 of 2008 and Succession 2090 of 2008, (the two were later consolidated), Succession 451 of 2010 and Succession 271 of 2018.
3. Following the consolidation of Succession 2039 and 2090 of 2008, Grant of Letters of Administration with Written Will was made to DMP (1st Administrator) and RCS (2nd Administrator) as co-administrators on the 26th July, 2018.
4. Several objections were lodged against the grant, and in a judgment delivered on 6th June, 2024, following a trial, Abida Aroni J (as she then was) made the following determination in the matter;
 - a. Dismissed the objections of;
 - i. DMM dated 4th January 2013;
 - ii. RPR dated 4th September 2018;



- iii. OO dated 24th September 2013.
 - b. Declared the Wil dated 23rd May 2003 to be a forgery;
 - c. Declared the set of Wills dated 13th March 2005 and 7th September 2007 to be the valid Will of the deceased.
 - d. Awarded costs against the objectors.
5. Upon the delivery of the judgment, the co-administrators set into motion the Confirmation of Grant issued to them. The application for Confirmation of Grant dated 25th February, 2011 was presented by the 2nd Administrator.
 6. The Administrators disagree on how to distribute one property – 10 acres – L.R. No.XXX (Karen property). The parties tried to reach a deed settlement regarding the distribution but were unsuccessful.
 7. The issue for determination in this ruling is on the construction of the Wills dated 13th March, 2003 (first Will) and 7th September, 2005 (second Will), which the Court held as the valid Wills of the deceased.
 8. In the first Will, the deceased appropriated the Karen property as follows;
 - i. 5 acres to TP (1st Administrator’s daughter)
 - ii. 3 acres to TS
 - iii. 2 acres to NK or 3,000 USD
 9. The second will dated 7th September 2025 read as follows;

“Langata Plot XXX to be divided between DGP for he daughter T as she is underage _ and TS/OR her niece M and uncle RS _ To NK 1 acre of the plot, as he has been so devoted house-boy 50 years _.....”
 10. The 2nd Administrator/Applicant seeks that the Karen property be distributed into four parts as follows:-
 - a. 1 acre to N’o K
 - b. 1/3 of remainder to the 1st Administrator/Respondent for her daughter T
 - c. 1/3 to TS or M
 - d. 1/3 to 2nd Administrator/Applicant
 11. The 2nd Administrator/Respondent disagrees with the Applicant’s interpretation and avers that the Karen property be distributed into three parts;
 - a. 1 acre – N’o K
 - b. Half of the remainder to the 1st Administrator/Respondent in trust for her daughter T
 - c. The remaining half to either TS or jointly M and the 2nd Administrator/Applicant



Interpretations of Wills

12. The interpretation of Wills is governed under the [Law of Succession Act](#) and also common law. Section 22 of the [Law of Succession Act](#) provides that;

“Wills shall be construed in accordance with the provisions of the First Schedule to this Act.”

13. The first Schedule sets out the general rules for the construction of Wills. The following rules are pertinent to the issue at hand;

Rule 1 - Wording of will

It is not necessary, in order to give effect to any disposition, that any technical words be used in a will, but only that the wording be such that the intention of the testator can be known therefrom.

Rule 2 - Meaning of clause to be collected from entire will

The meaning of any clause in a will is to be ascertained from the entire instrument, and all the provisions of the will are to be construed with reference to each other; but where two clauses or provisions are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Rule 9 - Words in general

Words in general shall be construed in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected from the will and that other sense can be ascertained.

14. Halsbury’s Laws of England, 4th Edition, Volume 50, provides a comprehensive elaboration on the principles of construction of wills. It advocates for a construction of wills that solely gives effect to the expressed and implied intentions of the testator and states as follows;

“The first duty of a court of construction is to ascertain the language of the will, to read the words used and to ascertain the testator’s intention from them. Unexpressed mental intentions are irrelevant. Where the will must be in writing, the only question is what is the meaning of the words used in that writing.”

15. In a most recent decision, *Mwangi v Mwangi & 4 others* (Civil Appeal E095 of 2022) [2025] KECA 925 (KLR) (7 March 2025) (Judgment), the Court of Appeal held as follows on the interpretation of wills;

“...It is a well-established law that effect must be given to the wishes of the testator and those wishes must not be disregarded merely from consideration of expediency or possible greater benefit to beneficiaries. See *Abdulla Rehemtulla Waljee v Alibhai Haji and Rajabali Hasham Paroo* [1943] 10 EACA 7. The general law is, therefore, that the court ought to, as much as possible, uphold the wishes of the deceased as expressed in the will.”

16. The core principle guiding the interpretation of a will is the utmost respect for the testator’s wishes. Courts endeavour to fulfil these intentions, striving to ensure that they are executed as intended, as long as the language of the will is clear and free from ambiguity or absurdity.
17. In the Second Will, the deceased stated that the two Wills should be read together and was cautious to ensure no one was left behind.



18. In the will dated 13th March, 2025, the deceased clearly specified how the Karen Property should be divided in terms of acreage. Based on the wording, it can be interpreted that the ‘2 houses’ refer to the 1st and 2nd administrators involved.

“My plot in Karen should be divided in 2 houses and 5 acres to the daughter of DMP; and Mrs. TS 3 acres.” ...

19. In the Will dated 7th September, 2005 the deceased also clearly allocated one acre of the Karen property to NK. What, then, is the interpretation of the wording in the Will dated 7th September 2025 (reproduced below) regarding the remaining portion that was not specified in terms of acreage?

“Langata Plot XXX to be divided between DGP for her daughter T as she is underage _ and TS/OR her niece M and uncle RS _ To NK 1 acre of the plot, as he has been so devoted house-boy 50 years _.....”

20. The parties submitted in support of their views on what the words ‘between’ and the ‘/Or’ in the Will dated 7th September, 2005, mean.
21. The Applicant submits that the wording in the Will identifies four primary beneficiaries: N’o, T (the Respondent’s daughter), T (the Applicant’s mother), and R (the Applicant). According to the Applicant, the use of “/Or” creates an alternative only for T, denoting M, with R (the Applicant) as a separate beneficiary.
22. The Respondent, on the other hand, argues that the division should be among three individuals: No, T, and T, with an alternative for T being M and the Applicant, R.
23. Examining the wording of the Wills, the deceased identified the Applicant’s and Respondent’s families as separate entities and each as a collective group. She referred to them in the first Will as the two houses.
24. In the first Will, it is clear that she intended for T to receive a larger portion, but this was not the case in the second Will. In the second Will, the Court interprets the word ‘between’ as referring to the two houses, rather than fragmenting either of them.
25. The Applicant argues that the Court should not interpret the word ‘between’ literally as referring to only two parties. I disagree with the applicant’s suggestion that the deceased’s limited education meant she failed to communicate her intentions or that a secondary meaning should be used in reference to the words used.
26. I concur with the analysis by Justice A. Aroni, as she then was, in the Judgement delivered on 6th June, 2024 where she stated as follows;

“Based on the available evidence placed on record, the provision of the law, and the case law cited the court is convinced that the two Wills placed before the court carry the intent and wishes of the deceased. The deceased appears not to have been a very educated personality despite her affluent life and sophistication exhibited by the life she led. This explains her modus operandi as far as her two Wills are concerned. They could have been written differently that as it may, to a large extent the Wills which appear to have been intended to be read together as stated in the second, confirm to Section 11 of the Act as read with rules 23 and 24 of the First Schedule. The intent of the deceased is clear, the beneficiaries can be identified from the names without any difficulties, and the property is well described.”



27. In this context, a secondary meaning of use of the word ‘between’ is not required when the circumstances surrounding the testator suggest a specific intention. In my opinion, the deceased used the word ‘between’ to refer to one party (house) and another party (house).
28. I have further observed that the language and structure of the Will clearly indicate that the deceased’s primary intention with regard to the Karen property was to secure the intended recipients.
29. There was a careful consideration of circumstances and prioritization. Specifically, in the case of T, who was a minor at the time, there was notable additional protection in place to safeguard her interests by having the Respondent’s name as holding in trust for her. Similarly, in T’s situation, there is a clear specification of secondary beneficiaries, which outlines the individual who would receive (M and R) if not T, who is a primary beneficiary.
30. The alternative arrangement created by the ‘/OR’ is that if T (the Applicant’s mother) does not receive the half share she was bequeathed, it would be divided between M and the Applicant. It cannot be correct that she intended for TS’s family to have a larger share than T’s.
31. If the deceased had intended to allocate differences in acreage for T’s and T’s or priority over another, she would have explicitly stated this in the second Will, as was the case with NK’s portion of 1 acre.

Disposition

32. I make the following determination with regard to the application for confirmation of grant dated 25th February, 2011;
 - i. I hereby confirm the grant made on 26th July, 2010 to the 1st Administrator/Respondent and the 2nd Administrator/Applicant;
 - ii. The estate shall be distributed according to the Will dated 7th September 2005;
 - iii. The property L.R. No.XXX (Karen property) shall be distributed as follows;
 - i. 1 acre to N’o K;
 - ii. The remaining parcel to be distributed as follows:
 - a. 1st half to TP;
 - b. 2nd half to TS wholly or to be shared equally between MS and RS.
 - iv. A certificate of confirmation of grant shall issue accordingly;
 - v. Each party shall bear own costs.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 16TH DAY OF SEPTEMBER, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl



Kahura Advocate for 1st Administrator

