

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1789 OF 2001
IN THE ESTATE OF MARY WANJIKU GICHURU ALIAS
MARY W. GICHURU, MARY WANJIKU MUHORO, MARY
KURIA (DECEASED)

RULING

INTRODUCTION

1. Vide Summons for confirmation dated 29th March 2022 the Administrators herein seek that the grant herein be confirmed and the estate be distributed in accordance with Paragraph 7 of the affidavit Dr. Nyambura Kuria sworn on 29th March 2022.
2. On 15th July 2025 I directed that the Summons of Confirmation alongside the Protests be canvassed via written Submissions.

BACKGROUND

3. The deceased herein died on 24th October 1993 and was survived by the following-
 1. Jesse Mwigariuri Gichuru Muhoro
 2. Kimani Muhoro
 3. Nyambura Kariuki
 4. Njeri Muhoro
 5. Wambui Muya
4. Grant of letters of Administration issued to Jesse Mwigariuri Gichuru Muhoro, Kimani Muhoro, Nyambura Kariuki and Njeri Muhoro. Before the Grant was confirmed however 2 of the administrators died and on 6th May 2025 a fresh grant

issued to Nyambura Kariuki and Njeri Miriam Pauline also known as Njeri Muhoro.

5. Nancy Gakii Maitima has sworn an affidavit of Protest on July 2022 in which she objects to the confirmation of grant on the basis that she is not provided for in the schedule of distribution, yet she is the widow and beneficiary of the estate of Kimani Muhoro. Nyawira Kawira has also sworn an affidavit of protest on 27th June 2022. Her objection is on the basis that the distribution is not equitable.

ANALYSIS AND DETERMINATION

6. The applicable provisions of the law are Section 71 of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. The protests filed herein prompted me to investigate whether the summons as presented complies with Sections 71 of the Law of Succession Act.
7. The proviso to Section 71 in particular provides that, **in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed**

the grant shall specify all such persons and their respective shares.

8. Rule 40 (3) requires the application set out the names, ages and addresses of the Children of the deceased and other kin who were dependent upon him. Rule 40 (8) requires that the application be accompanied with consent of the beneficiaries.
9. On reviewing the affidavit sworn by Dr. Nyambura Kariuki, I find that it does not comply with these mandatory provisions. This is important because the schedule of distribution introduces parties who were not listed in the Petition. That is Nyawira Kuria, Philip Nyadimo Gichuru and Stephanie Wanjiku Kimani. This cannot be ignored by the Court as the protests filed touch on them.
10. For this reason, exercising the powers donated by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules I will grant leave to the Administrators to file a complaint supplementary affidavit within 21 days along with the required consents.
11. I have also taken note of the protests filed herein and to facilitate the earliest determination of this matter, direct that in the absence of a consent to mode of distribution by

the beneficiaries, the administrators to present a valuation of the properties so that the court is able to ensure that the estate is distributed in accordance with Section 38 of the Law of Succession Act.

12. Having deferred the Confirmation of the Grant pursuant to Section 71 (d) of the Law of Succession Act I make the following orders;

1. The Administrators will file and serve on all rightful beneficiaries of this estate a compliant supplementary affidavit, accompanied with the required consents executed by the beneficiaries, within 21 days from the date hereof.
2. Any beneficiary opposed to the proposal on distribution granted leave to file affidavit of protest within 14 days of service.
3. The matter will be mentioned on 26th November 2025 to confirm compliance and take directions.
4. This being a family matter there will be no order as to costs.
5. Party exercising their right of appeal granted leave to do so within 30 days.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT
THIS 16th DAY OF OCTOBER, 2025.**

**P. M. NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant

Ms. Lynn Nganga for Protestor

Ms. Kihengo for Estate of Kimani Muhoro

Wanyingi for Nancy Gaku for Beneficiary in Estate of Kimani
Muhoro

ORIGINAL