



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Magochi Kanyonyo (Deceased) (Succession Cause
232 of 2015) [2025] KEHC 14242 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 232 OF 2015
CW GITHUA, J
OCTOBER 9, 2025**

IN THE MATTER OF THE ESTATE OF MAGOCHI KANYONYO (DECEASED)

BETWEEN

LUCY WANJIRU NJAMBUYA PETITIONER

AND

BEATRICE MAKAA PROSECUTOR

RULING

1. The late Magochi Kanyonyo (hereinafter the deceased) died intestate on 22nd May 2008. He was the son of Kanyonyo Maithori who had predeceased him. According to the certificate of confirmation of grant dated 16th July 2002 issued in Succession Cause No.381 of 1986 in the Estate of Kanyonyo Maithori, the deceased was a beneficiary and co-administrator of his late father's Estate which comprised of two parcels of land namely, Loc.20/Kambirwa/749 and Loc.11/Maragi/455. The certificate of confirmation of grant shows that the deceased was allocated a share of each of the aforesaid assets as follows;

Loc.20/Kambirwa /749 – 2.7 acres

Loc.11/Maragi /455 – 2.5 acres
2. It is not disputed that at the time of his death, distribution of his late father's Estate was not complete as the shares allocated to his beneficiaries including the deceased had not been transmitted to their names. Title to the two properties was still registered in the name of the deceased Kanyonyo Maithori.
3. Upon Magochi Kanyonyo's demise, Lucy Wanjiru Njambuya, (hereinafter the applicant) who described herself as the deceased's widow petitioned and obtained a grant of letters of administration to his Estate on 17th March 2016. In her petition, she listed the properties comprising the Estate of Kanyonyo Maithori as the same assets constituting the Estate of the deceased.



4. On 28th November 2016, the petitioner filed a summons for confirmation of the grant issued to her on 17th March 2016. In the affidavit supporting the summons, at paragraph 4, the applicant confirmed that the assets she wanted distributed were the shares allocated to the deceased during distribution of his father's Estate (the primary Estate). She proceeded to list the deceased's beneficiaries and made a proposal for mode of distribution of what in her view comprised the deceased's Estate.
5. The court record shows that on 24th July 2017, Beatrice Makaa who claimed to be one of the wives of the deceased filed an affidavit of protest. She challenged the summons for confirmation of grant on grounds that the deceased did not own any property that would constitute his Estate; that at the time of his death, the shares allocated to him in his father's Estate had not crystalized since title to them had not passed to him; that the deceased did not therefore have an Estate that could pass to his beneficiaries upon his death.
6. . By consent of the parties, the summons was prosecuted by way of written submissions. The applicant's submissions were filed on 28th November 2024 by the firm of J.N. Mbuthia & Company Advocates while those of the protestor were filed by her advocate on record Ms. T.M. Njoroge Advocate on 29th December 2024.
7. I have considered the summons, the affidavit of protest, the rival written submissions and the authorities cited. I have also read the court record. From the undisputed facts stated hereinabove and the parties written submissions, i find that the key issue arising for my determination is whether the shares allocated to the deceased in the primary Estate as per the certificate of confirmation of grant dated 16th July, 2022 constituted his Estate which could be distributed to his heirs as proposed in the summons for confirmation of grant dated 18th November 2016.
8. The starting point in addressing the above issue is a consideration of what in law constitutes a deceased person's Estate.

Section 3 of the *Law of Succession Act* (hereinafter the Act) defines an Estate as the free property of a deceased person.

The provision proceeds to define free property in relation to a deceased person as "the property of which that person was legally competent to freely dispose during his lifetime, and in respect of which his interest has not been terminated by his death"
9. In this case, as stated earlier, it is not disputed that the assets listed for distribution in the summons for confirmation of grant are shares allocated to the deceased during distribution of the primary Estate which had not been transmitted and registered in his name at the time of his death. The shares were still in his late father's name.
10. From the material placed before me, I find that although the deceased was entitled to a share of his father's estate, as correctly submitted by the protestor, the said share had not crystalized at the time of his death as it had not been transmitted and transferred into his name. The said share did not therefore constitute his Estate as it cannot be said to have been the deceased's free property which he could have competently and freely disposed of during his lifetime.
11. That said, the question that now begs an answer is this- what happens to a share allocated to a beneficiary who subsequently dies before the executor or administrator of the Estate in question transfers the shares to the beneficiary's name like what happened in this case?

This question has been answered by several decisions of this court some of which have been cited by the applicant. *In the matter of the Estate of Tuaruchiu Marete Alias Turuchiu s/o Marete (Deceased)* [2019] KEHC 10486 (KLR), for example, Gikonyo J when allowing an application for amendment



of a certificate of confirmation of grant for the purpose of distributing shares of a deceased beneficiary stated as follows;

”....of significance to note is that the share of the deceased beneficiary belongs to his Estate and therefore to all the beneficiaries of the deceased beneficiary. A more creative way which is supported by law is to indicate that the share shall go to the Estate of the deceased to be shared equally by his children. Such share is held in trust by the administrators of the original cause for transmission to the Estate of the deceased beneficiary

Consequently, I direct that the share of the deceased beneficiary, the father of the 1st administrator shall revert back to his Estate to devolve to all the beneficiaries of his Estate in equal shares. The certificate of confirmation herein shall be so amended. Meanwhile my understanding of the law is that the said share shall be held by the administrators herein in trust for the benefit of his estate.....”

12. The court proceeded to cite with approval the case of *Kambora Mamau V Esther Nyambura Kirima* [2002] eKLR in which Khamoni J held that;

“As I said in this court’s Succession Cause No 1086 of 1995, *in the matter of the Estate of Ndungu Kariuki (unreported)*; a certificate of confirmation of grant confers upon a beneficiary under it a beneficial interest. I stated: As a certificate of confirmation of grant, also referred to as a certificate of confirmation, confers upon a beneficiary under it a beneficial interest in the estate of the deceased person, where such a beneficiary subsequently dies before the executor or administrator of the estate for which the certificate of confirmation was issued transfers the resultant legal interest or title to the aforesaid beneficiary, it is not proper and lawful to proceed under rectification of that certificate of confirmation to replace the deceased beneficiary with a person other than a confirmed executor or administrator of the estate of the deceased beneficiary.”

.....To get to be a confirmed executor or administrator of the estate of a deceased beneficiary, the proper procedure would be for the person aspiring to replace the deceased beneficiary to start the ball rolling in separate proceedings being a petition for the grant of probate or letters of administration in the estate of the deceased beneficiary. The aspirant will start those proceedings either as a petitioner as well as a beneficiary or as a purely beneficiary influencing others interested to have the petition filed.”

13. . Drawing from the foregoing, it is evident that the applicant’s summons for confirmation of grant was filed prematurely before the deceased’s share in the primary Estate was formally reverted to his Estate. The certificate of confirmation of grant issued in the primary Estate which is part of the documents filed together with the petition for grant of letters of administration of the deceased’s Estate shows that the shares allocated to the deceased were still in his name.
14. . In my view, having obtained a grant of representation to the deceased’s Estate, the applicant as the deceased’s legal representative had an obligation to gather and secure the deceased’s Estate by pursuing the surviving administrators in the primary Estate to apply for review or amendment of the certificate of confirmation of grant to have the deceased’s shares reverted to his Estate by substituting the deceased either with his legal representative or one of the surviving administrators who would hold the shares in trust for the benefit of the deceased’s Estate. Another way of vesting the shares in the deceased’s Estate would have been to have the certificate of confirmation of grant amended to have the shares directly registered in the deceased’s Estate.



15. It is important to point out that confirmation of a grant entails distribution of a deceased persons Estate. Distribution cannot be done in a vacuum. There must be an Estate available for distribution. As matters now stand, there is no Estate in this case that is capable of distribution to the deceased's heirs as proposed or otherwise. To this extent, the protest succeeds with the result that the summon for confirmation of grant dated 18th November 2016 is hereby dismissed for lack of merit.
16. Before I pen off, I wish to observe that in her submissions, the protestor claimed that the grant issued to the applicant was irregularly obtained. She however did not make this claim in her affidavit of protest. If the protestor was serious in her aforesaid claim, she ought to have challenged validity of the grant using the legal mechanism prescribed by the law for that purpose.
17. Lastly, this being a family matter, the order that best commends itself to me on costs is that each party shall bear her own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 9TH DAY OF OCTOBER 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

Mr. Ndonga holding brief for Mr. Mbuthia for the Petitioner

Mr. T. M. Njoroge for the Respondent

Ms. Susan Waiganjo, Court Assistant

