



REPUBLIC OF KENYA



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**In re Estate of Jonathan Njuki Githaiga (Civil Appeal E126 of 2024)
[2025] KEHC 14156 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E126 OF 2024**

**EM MURIITHI, J
OCTOBER 7, 2025**

IN THE MATTER OF THE ESTATE OF JONATHAN NJUKI GITHAIGA

BETWEEN

CLEMENT KUBUTA NJUKI APPELLANT

AND

PHYLIS WANJIKU NJUKI RESPONDENT

*(An appeal from the Ruling of Hon. Monica Munyendo (P.M) in
Gichugu Succession Cause No. 33 of 2018 delivered on 29/11/2024)*

JUDGMENT

1. By Summons dated 27/2/2024, the Appellant sought review and/or setting aside the orders issued on 24/11/2023 and re-distribution of the estate.
2. The Respondent swore a replying affidavit 11/3/2024 urging that a portion of L.R No. Baragwe/Kariru/2030 measuring 1.70499 acres was acquired by National Irrigation Authority while she occupied the remainder of 0.55219 acres. The Appellant was in occupation of 0.1126 acres of L.R No. Baragwe/Kariru/2031. She proposed that Plot No. 20A Kiamwathi, which was quite small, be sold and the proceeds distributed equally amongst all beneficiaries.
3. The Appellant swore a Supplementary Affidavit on 8/10/2024 in support of his application.
4. In the ruling on the re-distribution the estate, the trial court rendered thus;

“First, that there is enough proof that plot 20 A belongs to the deceased persons and forms part of the estate. The court will distribute it accordingly. The Applicant has revealed that the authority vide a sale agreement dated 7th February 2013 acquired 1.534491 acres out of parcels 2030 and 2031. Purchase price was Kshs.14,229,057.50 out of which the



say he should get an equal portion to his brothers, then he now should claim 0.09 ha which translates to 0.22 acres out of the two portions. Then mathematically speaking this would solve the equation and account for equity. I believe that is why from paragraph 4 of the Respondent's Replying affidavit, the Applicant only occupies 0.1126 acres in parcel 2031 while the Respondent is duly entitled to 0.55219 acres in 2030. It makes logical sense. In meeting the two purposes laid out by Justice Gikonyo, I find that by Granting the Applicant's proposal for re-distribution he would get more from the deceased's estate at the expense of his siblings. It would mean he gets to pocket the Kshs. 7 million as compensation for land measuring 0.3 ha and gets an additional 0.40 ha out of the estate. That cannot then be in tandem with the distribution by the court when it rendered its decision on the 22nd November, 2023. I believe that the applicant resides on 0.1126 acres in parcel 2031 as detailed by the Respondent. If we to achieve perfect redistribution then the Applicant would fall short of 0.1 of an acre, however, in view of the colossal amount he received from the authority I am not persuaded that he has been disadvantaged in any way. I must admit that sometimes it's difficult to achieve perfection. This, is one of those instances. I therefore reject the Applicant's proposal for redistribution and now distribute the estate in the following manner in view of the acquisitions made by the Authority in parcels 2030 and 2031 and the additional property being plot 20A in Kiamwathi;- a. Plot no 20 A in Kiamwathi to be distributed equally to the following persons;- Clement Kubuta Njuki, Albert Bundi Njuki, Phyllis Wanjiku Njuki, Shelmith Wairimu Njuki, Daisy Wambui Njuki, Loise Muthoni Njuki, Gladys Wawira Muriithi. The beneficiaries are at liberty to sell the portion if it is too small to distribute equally amongst them and share the proceeds equally. b. A portion of 0.55219 acres out of Baragwe/Kariru/2030 to go to Phyllis Wanjiku Njuki. c. A portion of 0.1126 acres out of Baragwe/Kariru/2031 to go to Clement Kubuta Njuki. d. The remainder of the estate to remain as previously distributed by the court in its Judgment dated 24th November, 2023."

The Appeal

5. The appellant was aggrieved and on appeal, and in his Memorandum of Appeal dated 10/12/2024 raised 3 grounds of appeal as follows:
 1. The learned magistrate erred in law and fact in totally disregarding the evidence adduced by the Appellant in regard to land Reference Baragwe/Kariru/2030 and land reference Baragwe/Kariru/2031 thereby arriving at a wrong finding.
 2. The learned magistrate erred in law in the Application of Section 42 of the Law of Succession Act Cap 160.
 3. The learned magistrate erred in law and in fact and made an unjust and inequitable distribution of the deceased's estate contrary to the provisions of the Law of Succession Cap 160.

Duty of the Court

6. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).
7. The application was canvassed by way of written submissions filed by both parties.



Submissions on Appeal

8. The Appellant faults the court for distributing the whole of LR Nos. Baragwi/Kariru/2030 and 2031 whereas the same were not available for distribution, yet the same had been bequeathed to him by the deceased during his lifetime. He cites *Re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke (Deceased)* [2022] eKLR, for the proposition that, “A court’s jurisdiction to interfere with the wishes of the deceased with respect to distribution of his estate is to be exercised sparingly, such that a court can only interfere in extraneous circumstances.” He urges the court to allow the appeal with costs, and cites *Punchlines Limited v Joseph Mugo Kibaria & 10 Others* (2018) eKLR.
9. The Respondent urges that an Appellant who results to order 40 (7) of the Civil Procedure Rules forfeits his right of appeal, and cites *Nguruman Limited v Jan Bonde Nielsen & Others* (2013) eKLR.

Analysis and Determination

10. From the grounds of appeal, the sole issue for determination is whether the re-distribution of L.R No.s Baragwe/Kariru/2030 and 2031 was supported by the evidence led.
11. In its Judgment dated 24/11/2023, the trial court ruled as follows:

“14. Now the court is also told by that parcels 2030 and 2031 were acquired by the national irrigation authority, this is not reflected in the certificate of search, should this be confirmed to be the position the court be moved appropriately. Regarding distribution then Section 38 of the Act that envisions equal distribution of the net estate of the deceased between his/her surviving children irrespective of gender and whether married and comfortable in their marriage. See Stephen Gitonga MMurithi-vs Faith Ngiramurithi (2015) eklr. Now it emerged in evidence that some of the children of the deceased benefited from the deceased in his lifetime; the late Albert Njuki and Arthur Muthike received an acre of land each from the deceased no parcels Baragwe/Kariru/2371 and 2372. This must be factored in the distribution in accordance with Section 42 of the Act. I have looked at the remaining assets of the deceased; It is proposed by the petitioner that Clement continue to occupy the parcel he lives on number 2031 it is half an acre in size that is appropriate. He will further have 0.20 ha out of parcel Baragwe/Kariru/2030. The petitioner Phyllis Wanjiku Njuki will have the remainder 0.39 ha. The four daughters of the deceased will have Baragwe/Kariru/2370 and Karingani/Mariani/1257 in equal shares. The parcel Mwea/Ngucwi/676 will devolve to the seven beneficiaries in equal shares and his widow will have Mwea/Ngurubani/676 in equal shares. The grant is then confirmed in terms; (i) Baragwe/Kafiru/2031 measuring 0.20 ha - Clement Kubuta Njuki - whole share (ii) Baragwe/Kafiru/2030 measuring 0.69 ha - Clement Kubuta Njuki - 0.20 ha, Phyllis Wanjiku njuki - 0.49 ha (iii) Baragwe/Kafiru/2370 measuring 0.634 ha - Shelmith Wairimu Njuki, Daisy Wambui Njuki, Loise Muthoni Njuki, Gladys Wawira Muriithi - in equal shares (iv) MWEA/NGUCWI/676 measuring 0.81 ha - Shelmith Wairimu Njuki, Daisy Wambui Njuki, Loise Muthoni Njuki, Gladys Wawira Muriithi, Clement Kubuta Njuki, Phylis Wanjiku njuki, Albert Bundi Njuki - in equal shares (v) Karingani/Mariani/1257 measuring 0.9 ha - Shelmith Wairimu Njuki, Daisy Wambui Njuki, Loise Muthoni Njuki, Gladys Wawira Muriithi - in equal shares.”

12. Whereas the Appellant asserts that L.R Nos. Baragwe/Kariru/2030 and 2031 were gifts inter vivos by the deceased, the Respondent affirmed that she occupied the balance of L.R No. Baragwe/Kariru/2030 whilst L.R No. Baragwe/Kariru/2031 was occupied by the Appellant.



13. The Court notes the agreement dated 7/2/2013 between the deceased and the Appellant, which reads in part that, “Clement Kubuta Njuki being a son of the Registered Land Owner and occupies part of the land registered in the name of Jonathan Njuki Githaiga as L.R NO. Baragwe/Kariru/2030 & Baragwe/Kariru/2031. It is hereby therefore agreed the registered owner of LR NO. Naragwe/Kariru/2030 & Baragwe/Kariru/2031 shall receive directly a sum of Kshs 6,972,257.50/- plus 15% of purchase price and the beneficial owners shall receive as follows:- Clement Kubuta Njuki shall also receive KSHS 7,256,800.00/-.”
14. Having received compensation of Ksh.7,256,800 from the National Irrigation Board for a part of L.R Nos. Baragwe/Kariru/2030 and 2031, the Appellant is estopped from claiming an additional share of the estate properties, and acceding to his quest for review would amount to double and unjust enrichment, at the expense of the other beneficiaries. The distribution of the other estate properties was done equitably and in accordance with the applicable law.
15. The court is satisfied that the trial court’s decision was supported by the evidence on record and well founded on the law, and there, consequently, no basis for this court’s interference.

Orders

16. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
17. Costs of the Appeal to the Respondent.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Otieno for Mrs. Makworo for the Appellant.

Mr. Ombachi for the respondent.

