



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Richard Thuita Wanganga (Deceased) (Succession Cause  
1473 of 2015) [2025] KEHC 14001 (KLR) (Family) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1473 OF 2015  
PM NYAUNDI, J  
OCTOBER 3, 2025**

**JUDGMENT**

1. The deceased herein, Richard Thuita Wanganga died intestate on 19<sup>th</sup> February 2003. In the affidavit in support of Petition for Letters of Administration Intestate, the Deceased was said to be survived by the following;
  - a. Eunice Wambui Kariuki– daughter.
  - b. Mary Muthoni Mwangi– daughter.
  - c. Grace Wangeshi Njuguna – daughter.
  - d. Serene Wanjiku Ndung’u – grand- daughter.
  - e. Loise Nduta Ndung’u – daughter.
  - f. Mary Njeri Ng’ang’a – daughter- in- law.
  - g. Lilian Gathoni Thuita – grand-daughter.
  - h. Grace Wanjiku Gachari – grand- daughter.
  - i. Allan Ndungi Ng’ang’a – grandson.
2. The Estate of the Deceased is said to be comprise a single property referred to as Dagoretti/Kinoo/2781 measuring 1.010 Ha.
3. Eunice Wambui Kariuki, Mary Muthoni Mwangi, Grace Wangechi and Serene Wanjiku Ndung’u petitioned for letters of administration intestate in Kikuyu CMCC Succession Cause No. 62 of 2014. A joint grant was issued to them on 4<sup>th</sup> September 2014.
4. Mary Njeri Ng’ang’a and Lilian Gathoni Thuita filed an application dated 17<sup>th</sup> June 2015 seeking revocation of the grant. By consent, the grant was revoked on 25<sup>th</sup> June 2019 and a new grant was



issued to Grace Wangechi, Mary Njeri Ng'ang'a and Loise Nduta. Grace Wangechi filed an application for confirmation of grant which dated 24<sup>th</sup> July 2019. The grant was confirmed on 26<sup>th</sup> April 2021. Lilian Gathoni Thuita and Mary Njeri Nganga successfully challenged the confirmation and in ruling delivered on 18<sup>th</sup> July 2022, the Court set aside the orders confirming the grant and directed that the summons for confirmation of Grant dated 24<sup>th</sup> July 2019 be set down for hearing afresh.

5. Lilian Gathoni Thuita is the widow of a grandson of the deceased, Kenneth Thuita (Her father in law Geoffrey Ndungu, also deceased, is a son to the deceased herein). Her affidavit of protest is dated 26<sup>th</sup> July 2021. She is opposed to the mode of distribution by Grace Wangechi. She avers that the deceased distributed his property before he died. When Geoffrey Ndung'u died, a dispute arose between his children, Kenneth Thuita and Catherine Waruinga on the distribution of his estate. A meeting that was attended by the elders, the area chief and the deceased was held on 16<sup>th</sup> November 1998.
6. The deceased confirmed that he had allocated 5 acres of land in Dagoretti/Kinoo/801 to Geoffrey Ndung'u and 2 acres of land in Dagoretti/Kinoo/2881 to Kenneth Thuita Ndung'u. Richard Thuita who is also the deceased's grandson was allocated 2 acres of land. However, the deceased died before transferring the 2 acres to Kenneth Thuita. The transfer to Richard Thuita was done. She avers that her late husband built their house on his portion. The deceased lived on half of LR. Dagoretti/Kinoo/2881. Her proposal is that, she be allocated 2 acres of Dagoretti/Kinoo/2881 while ½ of Dagoretti/Kinoo/ 881 be shared equally between Eunice Wambui Kariuki, Mary Muthoni Mwangi, Grace Wangechi Njuguna, Loise Nduta Ndung'u, Mary Njeri Ng'ang'a, Grace Wanjiku and Allan Ndung'u Ng'ang'a.
7. Mary Njeri Ng'ang'a who is also a co-administrator of the estate filed an affidavit of protest dated 7<sup>th</sup> June 2023. She avers that LR No. Dagoretti/Kinoo/2781 forms part of the estate of the deceased and should be shared equally between the following identified beneficiaries: Mary Njeri Ng'ang'a, Eunice Wambui Kariuki, Mary Muthoni Mwangi, Grace Wangechi Njuguna and Loise Nduta Ndung'u.
8. She avers that Lilian Gathoni Thuita, Grace Wanjiku and Allan Ndung'u Ng'ang'a are the deceased's grandchildren and rank lower in the table of degree of consanguinity and are not entitled to a share of the deceased's estate unless they prove that they are dependants under Section 29 (b) and (c) of the [Law of Succession Act](#). None of them has filed an application for dependency claiming that they were being maintained by the deceased. She averred that Dagoretti/Kinoo/2781 was carved out of the mother property (20 acres) owned by the deceased. Before he died, the deceased gifted her husband, Evanson Nganga and Geoffrey Ndung'u 5 acres each. Grace Wangechi Njuguna, Eunice Wambui Kariuki, Mary Muthoni Mwangi and Loise Nduta Ndung'u were each allocated ¼ acre of the property.
9. She averred that before the deceased died, he made it clear that Mary Muthoni Mwangi, Eunice Wambui and Loise Nduta (his married daughters) were not entitled to a share of the remaining part of the estate because he had already gifted them a ¼ portion each. They sold their respective portions after obtaining their title deeds. She argued that she has maintained the deceased's property in good condition and is in possession of the original title.
10. She argued that in the event the court finds that they are entitled to the deceased's property, the property should be distributed according to how the deceased had distributed it when he was alive. In the alternative, the property should be distributed equally between Mary Njeri Ng'ang'a, Eunice Wambui Kariuki, Mary Muthoni Mwangi, Grace Wangechi Njuguna and Loise Nduta Ndung'u.



## Replying Affidavit.

11. Mary Muthoni Mwangi, Eunice Wambui Kariuki and Grace Wangechi opposed the protest filed by Mary Njeri Ng'ang'a vide a Replying Affidavit sworn on 3<sup>rd</sup> February 2022. They averred that the deceased gifted Mary's husband 5 acres of land. Her son was also gifted 2 ½ acres by the deceased. The deceased's wish was that, the remaining 2 ½ acres was to be shared between the remaining children(daughters) equally. Mary relinquished her claim against the estate and this was recorded in court. That the allegation that she is being disinherited from the deceased's estate is not true because her husband and son have 7 ½ acres from the deceased's estate. They argued that the administration process should be concluded owing to their age. That the protests are devoid of merit and the same should be dismissed with costs.

## Evidence

12. PW1, Grace Wangechi Njuguna testified on 31<sup>st</sup> October 2023. She stated that she was the deceased's daughter. They are eight siblings; there are only four surviving siblings. Her evidence was that, the only remaining asset is 2 ½ acres of land in Dagoretti, Kinoo. The land was originally 20 acres. The deceased subdivided the land and gave Geoffrey Ndung'u and Ngang'a 5 acres each. He also donated a portion of land to the church. The deceased remained with 5 acres of land. The deceased intended to give Nganga's son 1 acre. He however ended up getting 2 ½ acres which according to them, it was fraudulently obtained. The deceased died without resolving the issue. No one is residing on the 2 ½ acres. Lilian Gathoni Thuita and Mary Njeri Ng'ang'a received their share when the deceased was alive. The deceased wishes were that the remaining 2 ½ acres be shared equally between his daughters. She asked the court to adopt her proposal on the mode of distribution.
13. During cross- examination by Mr. Maina, she stated that the deceased's surviving children are Eunice Wambui, Mary Muthoni, Grace Wangechi and Loise Nduta. Mary Njeri Ng'ang'a is her sister in law. She was indicated as a beneficiary because she has an interest in the deceased's estate. Mary Njeri Ng'ang'a lives on the land allocated to her late husband. 5 acres of the land was donated to PCEA, Kisheshuru. They each received ¼ acre before the deceased died. They have since sold their shares. It is not true that the deceased stated that they should not get an additional share. They have excluded their two brothers' family because the deceased indicated that the remaining share should be shared by his daughters. According to her, the daughters should not be excluded from inheriting the remaining portion because they only got a ¼ acre each of the deceased's property.
14. During cross-examination by M/s Ng'ang'a, she stated that Geoffrey Ndung'u died before their late father. He had two wives. Kenneth Thuita is the son of her late brother Geoffrey Ndung'u. Lilian Thuita is the wife of the late Kenneth Thuita. She is not aware that the deceased's children had a land dispute. Kenneth Thuita was not gifted land. Geoffrey Ndung'u, his father was gifted land and was issued with a title. She is not aware that the deceased gifted all his grandchildren 2 acres of land each. No one lives on Kinoo/Dagoretti/2781. Their late father, lived on that parcel of land before he died. Kenneth Thuita died after the deceased had died. Lilian Thuita is a beneficiary of the estate of Geoffrey Ndung'u.
15. During re-examination by Mr. Gakaria, she stated that, they had a good relationship with the deceased and there was no reason for them to be discriminated by him. In the proposed mode of distribution, the brothers will get a bigger share. The succession cause here relates to the estate of their late and not their brother or nephew.



16. OW1, Mary Njeri stated that the deceased was her father in law. Her late husband was the deceased's first born. The deceased's children were; Joan Wairimu (deceased), Evanson Ng'ang'a (deceased), Geoffrey Ndung'u (deceased), Orphah Wanjiku (deceased), Eunice Wambui, Mary Muthoni, Grace Wanjiku and Loice Nduta. Her evidence was that the land in dispute is 2 ½ acres of Dagoretti/Kinoo/2781. The land was initially 20 acres. The deceased allocated his five daughters ¼ acre each when he was still alive. Grace Wangechi was gifted an acre. He gifted his grandchild Grace Wanjiku ¼ acre. Her late husband and her brother in law were each gifted 5 acres. Referring to the chief's letter dated 17<sup>th</sup> June 2014, she stated that Lilian is a daughter in law to her late brother in law. The names in the chief's letter are representatives of each child of the deceased. The affidavit of Grace Wangechi dated 24<sup>th</sup> July 2019 only lists the deceased's children who are alive. The deceased's daughters sold the land allocated to them. She lives on the land she was allocated. She has been taking care of the 2 ½ acre and has the original title deed which was given to her by her husband. Lilian Gathoni Thuita's claim that her husband was given 2 acres is not true. The land should be shared equally between the deceased's children.
17. During cross-examination by Ms. Ng'ang'a, she stated that Lilian Gathoni is entitled to a share. Richard Thuita, her grandson was allocated 2 acres of land. She is not aware that the deceased transferred 2 acres of land to Kennedy. She is not aware of the meeting held at the chief's office in 1998 where the deceased gifted 2 acres to his grandsons. Her family got a total of 7 acres.
18. During cross-examination by Mr. Gakaria, she stated that the 5 acres allocated to her husband is registered under her name. Before her husband died, he transferred the land to his children. She is claiming a share from the deceased's estate as a daughter in law. She does not have letters of administration in respect to her husband's estate. The house on the parcel of land is not occupied. She does not agree with the mode of distribution proposed by Grace. The property should be shared amongst the eight children.
19. In re-examination, she stated that no one complained when the land was transferred to her son, Richard Thuita. She is entitled to the share that would go to her late husband.
20. OW2, Lilian Gathoni Thuita stated that the deceased was her husband's grandfather. She asked the court to adopt her affidavit of protest sworn on 26<sup>th</sup> July 2021 as her evidence in chief. Her evidence was that, her husband Kenneth, predeceased the deceased. He was the son of Geoffrey Ndung'u who is also deceased. She is an administrator of her husband's estate. Her father in law was gifted 5 acres of land by the deceased. Her husband and Richard were each gifted 2 acres by the deceased. Richard was given his title because he was ready to build. Her husband is entitled to 2 acres in Dagoretti/Kinoo/2781. At the chief's office in 1998, the family was to resolve the conflict between Kenneth and his sister. The deceased was to allocate 2 acres to Samwel. Her family has 5 acres of land. The minutes of the meeting were recorded by the area chief. She asked the court to excise 2 acres for her late husband. The family can share the remaining ½ acre.
21. During cross examination by Mr. Maina, she stated that the meeting at the chief's office was that of Geoffrey Ndung'u. She was not present at that the meeting. Her husband was at the meeting. Referring to the minutes of the meeting, she stated that the 2 acres was not referred to. The deceased did not leave a will. The book where he had recorded the minutes disappeared after his death. Richard Thuita is cultivating on the farm. She lives next to the land in dispute. She lives on the land that was allocated to her husband. She built on the 2 ½ acres in 1994. It is not true that Richard is the only one who has built on that portion. The deceased pointed to them where to build. In her affidavit, she refers to Dagoretti/Kinoo/2881. She has built on that land.



22. During cross-examination, she indicated that a number of those who attended the meeting at the chief's are deceased. She cultivates the 5 acres that was allocated to her father in law. She has 4 children with her late husband. The administrators can distribute the estate but the distribution should be fair. The deceased asked them not to go to court in case there was any dispute. The other children of the deceased have a share of the estate.

### **Applicants/ Administrators Submissions.**

23. The applicants submitted that the objectors benefited from the deceased's estate by way of gift *inter vivos* and therefore, they should not benefit from the remaining share. In distributing the remaining 2 ½ acres, it was their submission that, Section 28 and 42 of the *Law of Succession Act* should be applied and those who already benefited from the estate should not be included in the distribution.
24. While quoting Article 27 of *the Constitution* which provides for equality and freedom from discrimination, the applicants submitted that the property should be shared equally between the surviving children of the deceased who are only girls since the boys had received their share.
25. The applicants challenged the legal capacity of the objector to claim from the deceased's estate. They argued that they had not taken out letters of administration of their late husbands' estate for them to sue in these proceedings. Also, that they are not beneficiaries or children of the deceased. They argued that the objectors have failed to prove dependency under Section 26 of the *Law of Succession Act*. In this case, they argued that the objectors have no priority over the deceased's estate. Priority is given to the spouse and children of the deceased. Reliance was placed on the decision of *In re Estate of Patrick Mwangi Wathiga*, Nyeri HC Succession Cause No. 343 of 2005.
26. It was their submission that the surviving daughters of the deceased are dependants as of right under Section 29 of the *Law of Succession Act*. The objectors on the other hand, need to prove that they are dependants of the deceased. They urged the court to allow the summons for confirmation of grant as prayed.

### **1<sup>st</sup> Protestor's Submissions.**

27. The 1<sup>st</sup> protestor submitted that she is the wife of the son of the deceased and she represents the interest of her late husband. She sought to rely on the decisions of *In the matter of the Estate of Karuri Magu (Deceased)*, Nyeri High Court Succession Cause No. 34 of 2013 and *In the matter of the Estate of the Late M'thigai Muchangi (Deceased)* Succession Cause No. 9 of 2018 where a daughter in law was recognized as a beneficiary representing her late husband's estate.
28. On how the estate should be distributed, it was submitted that the deceased gifted all his children before he died and it would only be fair that the remaining portion which is ½ an acre be distributed equally among all the beneficiaries. She urged the court to excise 2 acres and be given to Lilian Gathoni Thuita on behalf of the estate of her late husband who was to be given 2 acres by the deceased.

### **Analysis And Determination**

29. The issue for determination by this court is how the Estate of the deceased should be distributed. In determining that issue the following questions are pertinent?
- a. To whom did the deceased grant gifts *inter vivos*?
  - b. Who are the rightful beneficiaries of the Estate and what are their respective shares?
  - c. Who should pay costs of this suit?



30. It is not disputed that the deceased died intestate and that in his life time he carved out portions of a 20-acre parcel of land and gifted the following-
- a. Evanson Nganga (Son) 5 acres
  - b. Geoffrey Ndungu (Son) 5 acres
  - c. PCEA Church 5 acres
  - d.  $\frac{1}{4}$  acre each to his daughters
  - e. Richard Thuita (grandson)  $2\frac{1}{2}$  acres

31. He transmitted the parcels to the donees and titles were issued. The deceased retained  $2\frac{1}{2}$  acres that was subsequently registered as LR No. Dagoretti/Kinoo/2781. The only gift that is challenged is that allegedly made to Kenneth Thuita, a grandson to the deceased.

32. Section 42 of the *Law of Succession Act*, provides;

Previous benefits to be brought into account

Where-

- a. an intestate has during his lifetime or by will paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- b. it to any child or grandchild under the provisions of Section 26 or Section 35

That property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house

33. The question therefore is whether there is evidence of the deceased gifting 'Kennedy Thuita' It is the assertion of the widow, that she and husband constructed a home on the share gifted to him by the deceased and that this is where she lives with the consent of the deceased. Further she contends that a family meeting was convened where the issue was resolved in her favour. Unfortunately, these assertions were not backed by evidence. The meeting she refers to was not attended by the children of the deceased and the record shows the dispute was between her deceased husband and his sister Catherine Wairiga.

34. In re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR Nyamweya J (as she then was) explained gifts inter vivos as follows:

For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of. Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee.

35. In Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor's



subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.

36. This is in tandem with the reasoning in *Re Estate of Chesimbili Sindani (Deceased)* [2021] eKLR, where the High Court at Kakamega had to say:

...There was no gift inter vivos to any of the children of the deceased, and, therefore, the entire estate of the deceased comprises of free property available for distribution by the court in these confirmation proceedings. I am persuaded that the deceased had only licensed the sons to utilize certain assets, and as a result they had put up structures on those assets, any distribution of the assets ought to take into account those assets, and ensure that the particular sons are allocated shares in the parcels of land where they have put up structures.

37. Having found that the alleged gift was not perfected neither is there evidence that the deceased gifted his grandson Kenneth Thuita, this claim must fail.

The Second issue, is who are the rightful beneficiaries of the Estate.

38. It is not in dispute that the children of the deceased are; Joan Wairimu (deceased), Evanson Ng'ang'a (deceased), Geoffrey Ndung'u (deceased), Orphah Wanjiku (deceased), Eunice Wambui, Mary Muthoni, Grace Wanjiku and Loice Nduta. The 1<sup>st</sup> protestor as widow to Evanson Nganga is a daughter in law to the deceased, while the 2<sup>nd</sup> Protestor is the spouse of the deceased's grandchild.

39. Part V of the *Law of Succession Act*, Section 38 provides-

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 be equally divided among the surviving children.

40. The 1<sup>st</sup> Protestor is a daughter in law, while the 2<sup>nd</sup> protestor is a spouse to a deceased grandchild. Neither of them is a blood relative to the deceased. Their position at law was well articulated in the decision in *re Estate of Imoli Luhitse Paul (Deceased)* [2021] eKLR, where Hon. Musyoka J pronounced himself as follows:

I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the *Law of Succession Act*, there is not a single provision in the *Law of Succession Act*, or any other statute for that matter, which makes provision for any in-law. Consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. Their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. They can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the



estate of their parents. I must emphasize that grandchildren are not in that boat with such in-laws, and they claim from their grandparent's estate, not on behalf of their dead parents, but directly as grandchildren, children of such dead children, the share that ought to have gone to their parents.

41. Hon. W. Musyoka J, again, in the case of *In re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment), went even further by stating as follows:

One of the sons of the deceased is dead, and that is to say the husband of the protestor. I have mentioned section 41 above, in connection with how the share of a dead child of a deceased parent is to be handled. When a child of the deceased dies, and is survived by offspring, their entitlement is not extinguished or diminished. It should go to their offspring or to his/her estate. Section 41 says that the offspring step into the shoes of their dead parent, and take the share that is due to such dead parent. That share should be equal to the shares taken by the surviving children of the deceased. More importantly, section 41 talks of the offspring of the dead child of the deceased and not the spouse of the dead child. In intestate succession, the estate passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead in-law. The *Law of Succession Act* does not recognize them or their rights. Indeed, the *Law of Succession Act* does not even mention them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of administration intestate. Pursuing the interest due to her late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of section 45 of the *Law of Succession Act*.

42. Having disqualified the 1<sup>st</sup> and 2<sup>nd</sup> Protestor from having a claim to the estate in their own right, the rightful beneficiaries of the Estate are-

1. Estate of Evanson Ng'ang'a (deceased),
2. Estate of Geoffrey Ndung'u (deceased),
3. Eunice Wambui,
4. Mary Muthoni,
5. Grace Wanjiku
6. Loice Nduta.

The next issue for determination is what share of the Estate of the deceased is each beneficiary entitled to?

43. The only asset of the estate is Dagoretti/ Kinoo/ 2781 measuring 2 ½ acres The 1<sup>st</sup> protestor, Mary Njeri Nganga, who is also an administrator disqualifies the 2<sup>nd</sup> Protestor on the ground that as a spouse to the grandchild of the deceased she has no stake in the estate, when there are surviving children of the deceased.



44. With regards to the daughters of the deceased she contends that it was the expressed wish of the deceased, that the married daughters should not inherit. In the alternative she contends that should the court decide to give them a share the lions share should go to the estate of his deceased sons.
45. The 2<sup>nd</sup> protestor's proposal was hinged on the 'gift' to her deceased spouse, in which she submitted that only ½ an acre was available for distribution to the beneficiaries as her that she argues that her husband had been gifted 2 acres of the parcel of land. As stated above the alleged gift was not perfected and therefore that claim fails.
46. The Administrator seeks that the gift of 5 acres each to the deceased sons of the deceased should be factored in and therefore the remaining portion should be divided among the surviving daughters of the deceased.
47. The deceased died in 2003. The suit was filed in 2015 long after the *Law of Succession Act* had come into force in 1981. The Act does not discriminate between sons and daughters of the deceased, whether they are married or not. It treats all the children of the deceased equally. There is nothing in that law that suggests that the estate of an intestate should be shared out only amongst the surviving sons to the total exclusion of the surviving daughters. Indeed, there is nothing in that law which suggests that reference to child and children means or should be interpreted to mean male children. Under the provisions of the *Law of Succession Act*, no distinction is made between male and female children, nor between married and unmarried children. Succession law envisages equal distribution of the estate amongst all the children, regardless of their gender or marital status or age. That position comes out clearly in sections 35(5) and 38 of the *Law of Succession Act*, which state as follows:

“ 35. Where intestate has left one surviving spouse and child or children

1. ...
2. ...
3. ...
4. ...

5. Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

36. ....

37. ....

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.



48. These provisions should be read together with Article 27 of *the Constitution*, 2010, which envisages equal treatment of both men and women before the law in all spheres of life, including succession. For avoidance of doubt, Article 27 states:

“ 27.

- (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).
- (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
- (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
- (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

49. This position was well articulated in the Court of Appeal decision in *Mary Rono v Jane Rono & another* [2005] KECA 326 (KLR). The daughters of the deceased herein are therefore entitled to an equitable distribution of the Estate of the deceased. It is acknowledged that the sons of the deceased were recipients of 5 acres from the deceased in his life time, while the daughters each got a ¼ acre.

50. In *re Estate of Nkurumwa Ole Ntemel (Deceased)* [2024] KEHC 13805 (KLR) the Court underscored that in accordance with Section 42 of the *Law of Succession Act*, the Court in distributing the estate of an intestate was required to take into consideration the inter vivos gift to any of the beneficiaries. Hitherto, the 1<sup>st</sup> house has the biggest portion of land. Unless for special, but lawful reason-which has not been shown in these proceedings- the principle of equality will not favor equal sharing of the property the deceased reserved for himself, because in law, in an intestate estate, where the deceased, during his lifetime, had given or settled any property to or for the benefit of a child, grandchild or



house, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house. S.28 and 42 of the *Law of Succession Act*.

51. On this ground I find that the remainder of the estate should be shared between the remaining children of the deceased who happen to be girls. They got a smaller share than the two sons of the deceased.
52. In conclusion, the summons for confirmation of grant dated 24<sup>th</sup> July 2019 is allowed. For avoidance of doubt, it is determined that the estate of the deceased shall be distributed equally among Eunice Wambui Kariuki, Mary Muthoni Mwangi, Grace Wangechi Njuguna and Loise Nduta.
53. This being a family matter, there shall be no order as to costs.
54. Leave granted to appeal, any party exercising their right to appeal to do so within 30 days

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
3<sup>RD</sup> DAY OF OCTOBER 2025.**

**P. M NYAUNDI**

**JUDGE**

In the presence of:

Maina for Mary Njeri Administrator

Gakaria for Applicant

Fardosa Court Assistant

