



**Njiru (Legal Representative of the Estate of James Njiru Njagi – Deceased) v Kinyua  
(Civil Appeal E009 of 2022) [2025] KEHC 14112 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14112 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E009 OF 2022  
EM MURIITHI, J  
OCTOBER 7, 2025**

**BETWEEN**

**MERCY WAIRIMU NJIRU (LEGAL REPRESENTATIVE OF THE ESTATE OF  
JAMES NJIRU NJAGI – DECEASED) ..... APPELLANT**

**AND**

**ALICE WAWIRA KINYUA ..... RESPONDENT**

*(Being an appeal from the Ruling delivered by Hon. A.K Itbuku  
(C.M) on 1/2/2022 at Kerugoya Succession Cause No. 38 of 1997)*

**JUDGMENT**

1. By an application dated 2052021, the Respondent herein, a daughter to Njagi Gituku, the deceased filed summons for revocation of the grant, on the ground that the Petitioner therein, namely Ruth Mabuti Njagi, her mother, died on 2382015, before she could finalize the administration of the estate. She listed herself, the Appellant herein, Jenifer Muthoni Kamau, Jane Wangeci Munyoki, Carolyne Wangui Njogu, Dennis Gitonga Muthoni, Joshua Kinyua Muthoni, Johnson Kinyua Wanjohi, Anthony Murimi and Ruth Wakuthii Wanjohi as the beneficiaries of the estate. She further proposed that L.R No. KabareNgiroche349 (hereinafter referred to as the estate property) be distributed as illustrated at paragraph 10 of the affidavit in support thereof.
2. The Appellant herein, the wife to James Njiru Njagi (now deceased), a son to the deceased, swore a replying affidavit on 2162021 in opposition to the application. She urged the court to issue letters of administration jointly to her and the Respondent herein, and prayed for the confirmation of the grant to remain as earlier on ordered by the court, where she was given 7.4 Acres while the daughters got 2 Acres.



3. In its impugned ruling, the trial court rendered thus;

“5. I have considered the applicant affidavits and submissions by Counsel. There is a preliminary issue who gets the Grant of Administration. The two parties represent opposing sides. There is no prejudice suffered to either side if they are made co-administrators. I hereby appoint the Applicant and Respondent joint administrators of the estate. 10. On the issue whether the distribution should be re opened I am of the considered view that circumstances have greatly changed. The two beneficiaries are now deceased. These are Ruth Mabuti and James Njiru. The parties before court did not get any share in the now revoked grant. They are presenting their claims afresh. I, accordingly hold that the court should consider the issue of distribution. The beneficiaries before court are children of the deceased represented by a widow of the son, The Respondent herein Alice Wawira Kinyua the Applicant, Jennifer Muthoni Kamau and children of Joyce Mutune and Mary Wajiku. Apart from being the widow of a son of the deceased, I have not seen any other reason for the Respondent to claim 7.4 Acres of the land, while each of the daughters get 0.5 acres. Her link to this estate is being married to a child of the deceased. The other beneficiaries are also children of the deceased. I am aware that what the Law of Succession requires in distribution of estate is not equality. It is more about equality and fairness. No evidence has been led to show that the daughters have other parcels of land elsewhere. In this case the provisions of Section 40(1) of the *Law of Succession Act* will apply. The estate will be distributed equally among the five units being the children of the deceased. The daughters of the deceased will be represented by their children as respective unit while the deceased son will be represented by the Respondent.”

### **The Appeal**

4. On appeal, the Appellant filed her memorandum of appeal on 24/2/2022 raising 7 grounds as follows:
1. The learned trial magistrate erred in law and fact in sitting on appeal over a ruling delivered by a court of concurrent jurisdiction delivered on 11<sup>th</sup> September, 2000, and purported to overturn the said Ruling.
  2. The learned trial magistrate erred in law and fact in holding that circumstances have greatly changed from the time of the initial ruling of 11/9/2000, yet nothing had changed as far as orders on distribution of the estate of the deceased were concerned.
  3. The learned trial magistrate erred in law and fact in failing to consider the grounds upon which summons for revocation of grant were founded, and that none of the daughters of the deceased ever challenged the mode of distribution either as proposed by the then petitioner or as ordered by the court, and the time taken before seeking to revoke the grant, and further failed to appreciate that the only reason for revocation of the grant was due to the death of the administrator, which could not interfere with the sharing of the property as earlier ordered by the court.
  4. The learned trial magistrate erred in law and fact in making an order prejudicial to the estate of James Njiru Njagi in that the eventual area size awarded to the said estate is even less than what the said deceased was to get had he not challenged the summons for confirmation of grant as filed by the then petitioner.
  5. The learned trial magistrate erred in law and fact in invoking the provisions of section 40 (1) of the *Law of Succession Act*, whereas the deceased herein had only one wife.



6. The learned trial magistrate erred in law and fact in holding that the parties before court did not get any share in the revoked grant, and that they are presenting their claims afresh, yet the ruling of 11<sup>th</sup> September, 2000 was very clear as to the beneficiaries and their respective shares, and the parties herein were beneficiaries in that ruling of 11<sup>th</sup> September, 2000 which ruling had been challenged in Embu HCCA No. 22 of 2000 and the appeal was later withdrawn on 27<sup>th</sup> June, 2014.
7. The ruling was against the pleadings, evidence and applicable legal principles.

### **Duty of the Court**

5. 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).

### **Oral Evidence**

6. PW1 Alice Wawira Kinyua, the Respondent herein adopted her affidavit filed on 2052021 as her evidence in chief. She testified that, “I’m a business lady at Kutus. The deceased was my father. I pray that KabareNgiroche349 be shared out as proposed under paragraph 10.”
7. On cross examination, she stated that, “The deceased had five children. One son and 4 daughters. My mother had objected to the proposed distribution. I do not know the proposal by my brother. We all objected. My mother appealed in Embu. I do not know about its withdrawal.”
8. In re-examination, she stated that, “When the succession case was done by mother, I was 15 years old. It was by my mother.”
9. DW1 Mercy Wairimu Njiru, and the Appellant herein adopted her replying affidavit as her evidence in chief. She testified that, “I’m from Kabare. I’m a farmer. Njagi Gituku is my father in law.”
10. On cross examination, she stated that, “I do not know whether land had been transferred. The land is still in the name of deceased. He had five children. I have a problem if the land is distributed to five children. The administrator died.”
11. In re-examination, she stated that, “The Court had said that the four daughters get 2 acres.”

### **Submissions**

12. The Appellant urges that the trial court was *functus officio* and it had no powers to sit on appeal over a previous ruling on distribution of the estate, and cites *Susan Wambura Miiri & 3 Others v Francis Miiri & 2 Others* (2015) eKLR and *Mburu Njoroge v Fredrick Mburu Njoroge* (2014) eKLR. She faults the trial court for improperly invoking the provisions of section 40 (1) of the *Law of Succession Act*, yet it was undisputed that the deceased had only wife namely Ruth Mabuti. She urges that the only reason for getting a fresh grant was to finalize the transmission process, rather than change the shares of the beneficiaries as earlier on ordered by the court.
13. The Respondent cites *Peter Kariuki v Attorney General* (2014) eKLR on the duty of the first appellate court. She urges that the estate property is still registered in the name of the deceased, and there is therefore room for equal distribution thereof, and cites *Stephen Gitonga M’murithi v Faith Ngira Murithi* (2015) eKLR and *Matter of the Estate of M’ngarithi M’mirithi Alias Paul M’ngarithi M’mirithi (Deceased)* [2017] eKLR.



## Analysis and Determination

14. Form the grounds of appeal, the issue for determination is whether the impugned ruling was grounded on law.

15. In its ruling dated 1192000 on the distribution of the estate property, the trial court (Hon. P.K. Sultan, R.M) rendered thus;

“After considering the translation of the purported will however, I noted that the deceased who seems to have signed the document did not provide any land for his daughters although the document did not say why. I believe I would be right to assume it was because they were married as claimed by Protestor. Section 35 (1) of the Succession Act shows how a deceased’s estate should be distributed where there is a surviving spouse and children. It shows that a spouse shall be entitled to personal and household effects of the deceased absolutely and a life interest in the whole residue of the net intestate estate. I note however that Petitioner in her evidence had said Protestor had threatened to kill her more than once. I noted also that Protestor in his evidence had said he should be given the land and he could give Petitioner a portion. I further noted Petitioners concern for her late daughter’s children and her fear that the others may be rendered homeless. Section 26, 27 and 28 of the Succession Act refer giving the Court discretion to make provision for a defendant. It would seem for Petitioner proposal that the land measures 9.40 acres. I would in the above circumstances order that it be distributed as follows. That the Petitioner Ruth Mabuti Njagi gets 2 acres out of the deceased’s estate to hold in trust for herself and any of her daughters whose marriages could breakdown and they be forced to go back home and that the remaining 7.4 acres be given to Protestor. This being because I found that the daughters herein were not entitled to the 1 each they had earlier been given. As it is, this portion given to may devolve back to the Protestor in future. The matter to be confirmed as stated. Ruth Mabuti - 2 acres in trust for her daughters. Protestor - James Njiru - 7.4 acres.”

16. Dissatisfied with that ruling, Ruth Mabuti Njagi, the deceased administrator lodged Embu High Court Appeal No. 222000, which was subsequently withdrawn as evinced by the order dated 2762014.

17. The death of the initial administrator, Ruth Mabuti Njagi, before the completion of the administration of the estate rendered the grant issued to her inoperative and useless, by dint of Section 76 (e) of the *Law of Succession Act*. The court is minded that the trial court vide the ruling of 1192000 had already distributed the estate property, and those orders remained in force, unless otherwise varied on appeal. The death of the initial administrator did not invalidate the decreed distribution by the trial court. Therefore, the trial court’s sole obligation was to appoint a new administrator, who would step into the shoes of the initial administrator to complete the transmission process, in accordance with the confirmed grant. Moreover, the trial court’s invocation of the provisions of section 40 of the *Law of Succession Act*, when it was succinctly clear that the deceased was a monogamist, was improper.

18. This court finds that the trial court’s re-distribution the estate property was tantamount to sitting on appeal over its earlier decision, which is an error of law and principle. The trial court was functus officio, in regard to that issue having already determined the issue, and there is, consequently, a basis to warrant this court’s interference with the decision of the court subject of this appeal.



## **Orders**

19. Accordingly, for the reasons set out above, the appeal is merited and it is accordingly allowed in the following terms:

1. The trial court's ruling dated 122022 in respect of the re-distribution of the estate property is hereby set aside.
2. The appointment of the Appellant and the Respondent as joint administrators of the estate is upheld.
3. The distribution of L.R No. KabareNgiroche349 shall remain as determined by the trial court in the ruling of 1192000.

20. There shall be no order as to costs.

Orders accordingly.

**DATED AND DELIVERED THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Nyaga for Mr. Maina Kagio for the Appellant.

Mr. Nyaga Gitari for the Respondent.

