



REPUBLIC OF KENYA



**In re Estate of Esther Munyiva Musau - Deceased (Succession Cause
2 of 2017) [2025] KEMC 105 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEMC 105 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
SUCCESSION CAUSE 2 OF 2017
YA SHIKANDA, SPM
MAY 12, 2025**

**IN THE MATTER OF
GRISHO KANYINGI MUSAU PETITIONER**

RULING

1. The application for determination is dated 22/2/2022 brought by the Administrator of the estate of the deceased herein. It seeks confirmation of the grant issued to the Petitioner on 27/3/2017. The application was supported by an affidavit sworn by the Petitioner. The initial affidavit indicated that the entire estate of the deceased comprising of parcels of land was to be transmitted in the name of the petitioner to hold in trust for all the beneficiaries. Confirmation of the grant herein has been delayed by the fact that the other beneficiaries have not been keen on attending court over the years. One of the beneficiaries is said to have died before the grant was confirmed. On 22/7/2024 the court directed that the name of the deceased beneficiary be removed and the same be substituted with his heirs.
2. On 16/12/2024 when the matter came up before me, I perused the record and directed the Administrator to file a further affidavit stating which beneficiary was deceased and further state to whom his share shall devolve. I further directed that the affidavit once filed, be served upon the survivors of the deceased beneficiary and an affidavit of service be filed. On 20/1/2025 four beneficiaries including the Administrators attended court. I perused the record and realised that no documents had been filed to prove that the deceased was the owner of the parcels of land in issue. I directed the Administrator to file copies of recent search certificates in respect of the parcels of land as he had explained that the title deeds were lost.
3. On 19/2/2025 the Administrator filed some search certificates and explained that the land at Makindu was unregistered. I directed him to bring a letter from the relevant Lands Registry to prove ownership of the same by the deceased but he failed to do so. On 28/4/2025, the Administrator attended court and stated that he was not receiving any support from the other beneficiaries. He urged the court to exclude the unregistered parcel of land from the distribution. I agree that indeed, the Administrator



has been a lone ranger in these proceedings. The other beneficiaries are aware of the proceedings but have not bothered to ensure that the matter is concluded and put to rest.

4. The Administrator filed a further affidavit indicating that the share of the deceased beneficiary John Kithome Musau would devolve upon his widow Syokwaa Kithome Musau. So far, there is evidence by way of recent search certificates to show that the deceased herein owned the following parcels of land:
 1. Land parcel No Makueni/Kiou/1333 measuring 0.54 Ha;
 2. Land parcel No Makueni/Kiou/1423 measuring 1.86 Ha;
 3. Land parcel No Makueni/Kiou/981 measuring 5.4 Ha; and
 4. Land parcel No Makueni/Kiou/987 measuring 0.09 Ha.
5. I have looked at the proposed mode of distribution of the estate of the deceased and found that there is a confusion as to the proposed mode of distribution of the estate of the deceased. In the initial affidavit in support of the application for confirmation of grant, it was deposed that the entire estate comprising of the above-named parcels of land would devolve upon the Administrator to hold in trust for all the beneficiaries. Later on 26/10/2023 the Administrator filed a schedule of distribution proposing a different mode of distribution. It is worth noting that in the new schedule of distribution, land parcel number Makueni/Kiou/1423 was left out. The schedule also indicates wrong acreages of the parcels of land. In the circumstances, I am unable to ascertain which mode of distribution is being proposed.
6. Furthermore, the record indicates that one Katule Musau, a daughter of the deceased herein was left out during the distribution. It is indicated that she is married. There is an unfortunate trend of daughters being disinherited from the property of their deceased parents simply because they are married. All children of a deceased person whether male or female are entitled to share in the estate of their deceased parents in equal measure as their male counterparts. It does not matter that the daughter is married. Unless the daughter expressly renounces her right to inheritance, she is entitled to a share of the estate of the deceased. That is the law.
7. Article 27 of the [Constitution](#) of Kenya provides in part as follows:
 - (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).” (Emphasis supplied)
8. Article 21(2) of the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#), popularly known as the Maputo Protocol provides that women and men shall have the right to inherit, in equitable shares, their parents' properties. The Protocol was ratified by Kenya and as such, it forms part of the law of Kenya pursuant to Article 2(6) of our [Constitution](#). The same applies to the [UN Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#).



Section 38 of the *Law of Succession Act* 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 shall be equally divided among the surviving children.”

9. To buttress this point, in the authority of *In Re Estate of Solomon Ngatia Kariuki (Deceased)* [2008] KEHC 506 (KLR), the court held as follows:

“The *Law of Succession Act* does not discriminate between the female and male children or married and unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father’s estate. The justification of this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because they are likely to enjoy the inheritance of their husband’s side of the family.

10. It should however be noted that when the *Law of Succession Act* came into force in 1981, it ousted the application of customary law in inheritance disputes, save for a few narrowly defined exceptions. Those exceptions are inapplicable to the circumstances of this case however. In any event if we were to invoke and enforce such a custom it will fly in the face of the provisions of section 3 of the *Judicature Act* which bars expressly the application of customary law in circumstances where it would be repugnant to justice and morality and inconsistent with an Act of parliament. That view was echoed and reiterated by the court of appeal in the case of *Rono v Rono* [2006] eKLR. In any event it is not also lost on me that Kenya as a country is a signatory of numerous international instruments and covenants that expressly forbid discrimination based on gender. One such instrument is of course the convention for the elimination of all forms of discrimination against women (CEDAW). To uphold the protestor’s father’s, brothers’, sisters’, petitioner’s and objector’s decision to disinherit her merely because she was married will not only be repugnant and or repulsive to justice and morality but will also be tantamount to abrogating the international instruments on discrimination that Kenya as a country is a signatory to. I refuse to endorse such outright discriminative piece of customary law. It is my considered view that a daughter whether married or not is entitled to inherit his father’s estate as a daughter. It matters not that she is married and that she may inherit as well from her husband’s side. If the enactors of the *Law of Succession Act* had not intended such result, they would have specifically stated so in the Act. To deny a daughter inheritance merely because of her marital status is being naive and flies in the face gender equity and equality. We shall not be in sync with the modern trends in the world.” (Emphasis supplied)

Disposition

11. The upshot of the above considerations is that the grant cannot be confirmed at this stage. Let the Administrator file a further affidavit containing a proper proposed mode of distribution of the estate of the deceased. The proposal should contain all the parcels of land aforementioned and proved to be owned by the deceased as well as the share of the daughter of the deceased or her written renunciation of her right. If the beneficiaries are not willing to attend, they should file a written consent to the proposed mode of distribution. It is unfortunate that the matter has taken ages but we cannot circumvent the law for the sake of expediency.



DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 12TH DAY OF MAY, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

HON Y.A. SHIKANDA

