



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Stanley M'Muthamia Mbogori (Deceased) (Succession Cause 048 of 2022) [2024] KEMC 118 (KLR) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEMC 118 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
SUCCESSION CAUSE 048 OF 2022  
AT SITATI, SPM  
JULY 29, 2024**

**BETWEEN**

**M'IKIARA MBOGORI ..... PETITIONER**

**AND**

**GRACE KARAMANA ..... PROTESTOR**

**JUDGMENT**

1. By a summons for confirmation of grant dated 22<sup>nd</sup> May, 2023 supported by the affidavit of the petitioner, the administrator identified the following as beneficiaries:
  - A. Sarah Nkatha(Deceased) – First Wifemother to
    - i. M'Ikiara M'Mbogori - son
    - ii. Johnson Murianki Muthamia – son
    - iii. Silas Muthamia Mbogori –son
    - iv. Rhoda Gatwiri – daughter (deceased) survived by 2 sons: Elias Gichuru and Zakayo MUTHEE
  - B. Esther Muregi(Deceased)– Second Wifemother to:
    - i. Edward Kirimi – deceased -son
    - ii. Isaac Kaburu - son
    - iii. Mwenda Kirimi -son
    - iv. Mugambi Kirimi -son
    - v. Karimi Kirima- daughter



- vi. Kanyiri Kirimi – daughter
  - vii. Mutua Kirimi - son
  - viii. Kagwiria Kirimi – daughter
  - ix. Salome Nyoroka Muthamia – daughter
  - x. David Kimathi Muthamia - son
- C. Margaret Kainda(Deceased) – Third Wifemother to
- i. Jasper Bundi Muthamia – deceased – son – but survived by Catherine Bundi (widow) and Kinyua Bobu Martin (son).
  - ii. Jane Naitore Muthamia – daughter
  - iii. Charles Gitonga Muthamia (deceased) – son- survived by Mercy Maitha Elijah (widow), Stella Kagendo Gitonga, Lawi Mutuma Gitonga, Violet Wambugi Gitonga and Anne Kathambi Gitonga.
  - iv. Fridah Mwari – daughter
  - v. Nicholus Koome Muthamia – son
  - vi. Wilson Kinoti Stanley - son
2. In paragraph 4 the same summons for confirmation, the administrator proposed the following mode of distribution:
- 1. Abothuguchi/Mariene/1231: Equally between Salome Nyoroka, Silas Muthamia Mbogori and Fridah Mwari Muthamia.
  - 2. Abothuguchi/Mariene/1359 – Equally between Mercy Maitha Elijah, Kinyua Bobu Martin and Wilson Kinoti Stanley.
  - 3. Abothuguchi/Mariene/1227 – wholly by Silas Muthamia Mbogori
  - 4. Abothuguchi/Mariene/1228 – wholly by Johnson Murianki Muthamia.
3. In support of the Summons was the Consent Form 38 signed by Johnson Murianki, Silas Muthamia, Fridah Mwari, Wilson Kinoti, Kinyua BoB Martin. Those who did not sign the consent were Salome Nyoroka and Mercy Maitha Elijah.

### **Protests Against The Summons For Confirmation**

4. On 23<sup>rd</sup> August, 2023 Grace Karamana filed an affidavit of protest dated 22<sup>nd</sup> August, 2023 challenging the proposed distribution. Her advocates were C.B. Mwongela & Company. In the protest, she told the court that she was the widow of Edward Kirimi who himself was a son to the deceased Stanley Muthamia Mbogori. Her protest was that there was a pending appeal at the Meru ELC Appeal No. E065 of 2021 Grace Karamana v Fridah Mwari & M’ikiara M’mbogori which appeal was challenging the judgement in Githongo SPM ELC No.18 of 2018 – Fridah Mwari v M;ikiara Mbogori & Grace Karamana in which the trial magistrate cancelled the title deed L.R. Abothuguchi/Mariene/1231 which had been registered in the name of her deceased husband Edward Kirimi and ordering that the said title reverts to the estate of the now deceased Stanley Muthamia M’Mbogori.



5. The protestor deposed that earlier in Meru High Court Succession No.298 of 2003 the Judge had adjudged that L.R. Abothuguchi/Mariene/1231 belonged to the now deceased Edward Kirimi. She deposed further that the said judgement was never challenged and remains in force to date. In support of her deposition, she provided the following annexures as exhibits: Letter dated 26/07/2022 by the chief of Mariene location. Judgement dated 08/11/2012 in Meru High Court Succession Cause No. 298 of 2003 in the Matter of the Estate of Edward Kirimi (deceased). Memorandum of appeal in Meru ELC Appeal No. E065 of 2021 ; Grace Karamana v Fridah Mwari & M'Ikiara M'Mbogori.
6. Accompanying the protest were the written witnesses statements filed on 9<sup>th</sup> February, 2024 of the following witnesses:
  - i. Grace Karamana: in summary, she told the court that the deceased Stanley Muthamia subdivided his land equally to his sons before his demise with Edward Kirimi getting 1231 where he settled his 3 wives and children. She added that he never sold his share. She added that the deceased Stanley Muthamia was buried on 1231.
 

After she testified, she was cross-examined and the following came to light:  
She was the widow of Edward Kirimi and had filed the appeal to the Meru Superior ELC Court in Appeal E065 of 2021 but lost the appeal. She admitted that both the superior and subordinate courts ordered her out of 1231. She admitted that both the superior and lower courts ordered that her deceased husband Edward Kirimi's names be cancelled from 1231 and the estate reverts to the deceased Stanley Muthami's names. She admitted that she had no proof that her deceased husband's share was 1233. She insisted that her husband never sold his share but that it was her father-in-law who had sold it without her husband signing on the sale agreement. On being shown the sale agreement dated 26/05/1999 she admitted that her husband was indeed the vendor while the purchaser was Jonah Gitonga Ngeera. She admitted knowledge of the contents of LDT 20 of 2002 between Rodah Gatwiri and Stanley Muthamia stating that the final orders in the case required that the 3 wives (including her husband's mother) equally share 1231. In re-examination, she told the court that she never signed as a spouse on the subject transaction between her husband and Jonah Gitonga Ngeera.
  - ii. Salome Nyoroka in summary told the court that she had an inheritance in 1231 and that her share on 1231 should be gifted to the protestor and her children since they had lived on it for over 50 years.
 

In cross-examination, she told the court that she would not take up any share in 1231 leaving it to the children of her deceased brother Edward Kirimi. She termed Jonah Ngeera as a complete stranger to her.
  - iii. Jonah Ngeera Gitonga told the court in his witness statement that he purchased 0.75 Acres of 1226 from the deceased Stanley Muthamia and not from Edward Kirimi.
 

On cross-examination, he admitted signing as a purchaser in the sale agreement dated 26/05/1999 saying that he bought 1226 from the family of the deceased. He affirmed that Edward Kirimi signed on this sale agreement.

In re-examination, he told the court that the transaction was between himself and Edward's father.
  - iv. Francis Kobia on his part told the court that he also bought 1 Acre of 1226 from the deceased Stanley Muthamia and not from Edward Kirimi.



In cross-examination, he told the court that he in turn bought from Jonah Ngeera after the said Ngeera had purchased it from Stanley Muthamia (deceased) but admitted that he had no proof of the transaction between himself and Ngeera.

- v. David Kimathi Muthamia : in summary he told the court that he was one of the 6 sons of the deceased Stanley Muthamia and that Edward Kirimi was his brother. He added that each son was granted 1.75 Acres to each of the 6 sons leaving L.R. 1226 which he then sold then moved to live together with Edward Kirimi on 1231. Contrary to the petitioner's assertions, he pointed out that it was the petitioner who had sold his own portion.

In cross-examination, he told the court that their father had 6 sons and 6 daughters and that he gifted all the 6 sons their respective shares before his demise.

He denied that 1231 was reserved for the 3 wives and 6 daughters but admitted that the courts had ordered that 1231 do revert to the deceased father Stanley Muthamia's name.

He pointed out that 1226 was initially for Edward Kirimi but he exchanged it with his father Stanley Muthamia to take 1231 instead of 1226. After the father took 1226, the father sold it.

### **The Petitioner's Response To The Protest**

7. The petitioner, who was represented by Otieno C & Company Advocates, opposed the protest by filing 4 witnesses' statements vide a list of documents dated 19<sup>th</sup> February, 2024 containing the statements of M'Ikiara M'Mbogori, Johnson Muriangi Muthamia, Silas Muthamia and Fridah Mwari.
8. In his witness statement, the petitioner M'Ikiara M'Mbogori told the court that their deceased father subdivided his land and gave all their sons their shares and reserved 2 ½ acre comprised in Abothuguchi/Mariene/1231 to his 3 wives and daughters. He added that his now deceased brother Edward Kirimi had been given 1226 then moved to occupy 1231 where his mother was staying with their father. He stated that the deceased Edward Kirimi's children can stay and live on 1231 on Salome Nyoroka's portion since Salome Nyoroka had no interest in the reserved land and that the remainder portion be shared equally amongst the 3 widows and daughters as per the wishes of their father. He challenged the statements of Jonah Gitonga Ngeera terming him as interested in the subject land 1226 which he possesses.
9. In cross-examination, he told the court that 1231 belonged to their deceased father. He admitted that he signed on the sale agreement when ½ acre share meant for Edward Kirimi was sold by their father with the concurrence of Edward Kirimi himself.
10. On his part Johnson Muriangi Muthamia who a son to the deceased Stanley M'Muthamia M'Mbogori affirmed that just a day before their father died, he shared out his land to his sons. That Edward Kirimi was gifted 1226 and the remainder 1231 reserved to the daughters and wives.
11. He later learnt that Edward Kirimi had sold his entire inheritance but his widow Grace Karamana wrongfully included 1231 as part of her deceased husband's estate. He affirmed that 1231 actually was reserved to the daughters and wives. In his statement, he added that as of the present time, the children of Edward Kirimi (deceased) were occupying Salome Nyoroka's share since they were landless when their father sold his entire inheritance in 1226. He pointed out that that Grace Karamana's appeal in Meru ELC E065 of 2021 was dismissed on 9<sup>th</sup> November, 2023. In his father evidence, he told the court that Francis Kobia was never a purchaser of any land from their father. No questions were asked in cross-examination.



12. On his part, Silas Muthamia told the court that their deceased father subdivided his land as follows: Abothuguchi/Mariene/1225 – David Kimathi Abothuguchi/Mariene/1226 – Edward Kirimi but he sold it Abothuguchi/Mariene/1227 – Silas Muthamia Abothuguchi/Mariene/1228 – Johnson Murianki Abothuguchi/Mariene/1229 – M’ikiara M’Mbogori Abothuguchi/Mariene/1230 – Nicholas Koome Abothuguchi/Mariene/1231 – reserved to the wives and daughters
13. Accompanying the witnesses’ statements were a List of documents dated 27<sup>th</sup> May, 2024 containing: Copy of agreement dated 26/05/1999 Copy of judgement dated 9/11/2023 In Meru ELC E065 of 2021. Copy of green card Copy of decrees dated 14/04/2003 and 21/06/2021 Copy of official search

### **Reply By Protestor To The Petitioner’s Response**

14. The protestor Grace Karamana countered the response by the petitioner by filing a further witness statement. It contained 11 paragraphs.
15. In summary, she told the court that her now deceased husband was bequeathed L.R Abothuguchi/Mariene/1231 as opposed to Abothuguchi/Mariene/ 1226. She deposed further that Abothuguchi/Mariene/1226 was actually sold to Jonah Gitonga Ngeeraby her father-in-law vide a sale agreement dated 26/05/1999 witnessed by the petitioner M’ikiara Mbogori. The protestor added that in the event the court finds otherwise (i.e. that the deceased Edward Kirimi was not bequeathed 1231 as per her deposition), then it should redistribute the estate of Stanley M’uthamia under section 40 of the Law of Succession Act and urged the court not to permit their displacement from 1231 to render them destitute and homeless. She produced the following additional documents vide a list of documents dated 29<sup>th</sup> May, 2024 as exhibits: Green card Abothuguchi/Mariene/1226 Search certificate Abothuguchi/Mariene/1227 Search certificate Abothuguchi/Mariene/1228 Search certificate Abothuguchi/Mariene/1231 Search certificate Abothuguchi/Mariene/1359
16. The duty of this Honourable Court is to determine the mode of sharing of the deceased’s estate. In making that determination, the court noted that there were undisputed and disputed issues.

### **Undisputed Issues**

1. These proceedings relate to the estate of Stanley M’Muthamia Mbogori who died on 18<sup>th</sup> January, 2016 aged 92 years as per the death certificate issued on 20<sup>th</sup> December, 2021.
2. As per the chief’s letter dated 14/02/2022 the total number of surviving beneficiaries of the deceased Stanley Muthamia were 13 individuals in total as follows:
  - A. Children Of Sarah Nkatha (Deceased) :  
M’ikiara M’Mbogori – son Johnson Murianki Muthamia – son Silas Muthamia Mbogori – son Rhoda Gatwiri – daughter (deceased) survived by 2 sons: Elias Gichuru and Zakayo Muthee
  - B. Children Of Esther Muregi (Deceased) – Second Wife:  
Edward Kirimi – deceased – son survived by Grace Karamana (widow), Isaac Kaburu ( son), Mwenda Kirimi (son), Mugambi Kirimi (son), Karimi Kirima (daughter), Kanyiri Kirimi (daughter), Mutua Kirimi (son) and Kagwiria Kirimi (daughter) Salome Nyoroka Muthamia – daughter David Kimathi Muthamia - son
  - C. Children Of Margaret Kainda (Deceased) – Third Wife:  
Jasper Bundi Muthamia – deceased – son – but survived by Catherine Bundi (widow) and Kinyua Bobu Martin (son). Jane Naitore Muthamia – daughter Charles Gitonga Muthamia (deceased) –



son- survived by Mercy Maitha Elijah (widow), Stella Kagendo Gitonga, Lawi Mutuma Gitonga, Violet Wambugi Gitonga and Anne Kathambi Gitonga. Fridah Mwari – daughter Nicholas Koome Muthamia – son Wilson Kinoti Stanley – son

3. The said deceased had 3 wives who were Sarah Nkatha, Esther Muregi and Margaret Kainda. All are deceased.
4. At Paragraphs 46 and 48 of the judgement in Meru ELC Appeal E065 2021 Grace Karamana v Fridah Mwari & M'ikiara M'Mbogori upheld the trial magistrate's judgement which cancelled the ownership of Edward Kirimi's title deed over LR. Abothuguchi/Mariene/1231 and reverted it to the estate of the deceased Stanley M'muthamia Mbogori (Deceased). No appeal is pending against the said appellate judgement.

### **Disputed Issue For Determination**

18. How should the deceased estate be shared out, more specifically Abothuguchi/Mariene/1231?

### **Determination**

#### **How Should 1231 Be Shared Out**

19. From the bundle of search certificates produced in court by the protestor vide her further affidavit dated 29<sup>th</sup> May, 2024, it was proved that as of 15<sup>th</sup> May, 2024 the following land parcels were still registered in the names of the deceased Stanley M'muthamia Mbogori contrary to the petitioner's assertions that he had transferred them to his sons: Green card Abothuguchi/Mariene/1226 (but the search certificate shows Abothuguchi/Kariene/1226) Search certificate Abothuguchi/Mariene/1227 Search certificate Abothuguchi/Mariene/1228 Search certificate Abothuguchi/Mariene/1231 Search certificate Abothuguchi/Mariene/1359 (but the search document shows Abothuguchi/Katheri/1359)
20. Therefore, based on the current status of all the land parcels in question, the court finds as a fact that these form part of the estate of the deceased because there is no documentary proof to show that he transferred any of these parcels either to his sons, wives or any third parties. They are still in the names of Stanley M'Muthamia Mbogori as his net estate.
21. The law on how the estate is to be distributed for a deceased polygamous man is section 40 of the [Law of Succession Act](#) which provides as follows:
  40. Where intestate was polygamous
    - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
22. In making the distribution under section 40 above the court is required to consider previous gifts under section 42 of the same Act:
  42. 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) property has been appointed or awarded 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.

23. The question that arises is whether or not there had been any previous gifts by the deceased person Stanley M’Muthamia to any of his children or grandchildren or house. In his affidavit in support of the Summons for Confirmation plus the testimony of Silas and the Protestor, the petitioner told the court that his father had allotted as gifts to his sons the following properties: Abothuguchi/Mariene/1225 – David Kimathi Abothuguchi/Mariene/1226 – Edward Kirimi but he sold it Abothuguchi/Mariene/1227 – Silas Muthamia Abothuguchi/Mariene/1228 – Johnson Murianki Abothuguchi/Mariene/1229 – M’Ikiara M’Mbogori Abothuguchi/Mariene/1230 – Nicholas Koome Abothuguchi/Mariene/1231 – reserved to himself (Stanley), the wives and daughters
24. The protestor did not challenge the above gifts except for 1226 and 1231. That being so, the court finds that it was true that the deceased set apart as gifts from the following parcels of land to his sons and these gifts shall be upheld with the effect that the donees thereto shall have no further claim to the remainder part of the estate as per the wishes of the deceased: Abothuguchi/Mariene/1225 – David Kimathi Abothuguchi/Mariene/1227 – Silas Muthamia Abothuguchi/Mariene/1228 – Johnson Murianki Abothuguchi/Mariene/1229 – M’Ikiara M’Mbogori Abothuguchi/Mariene/1230 – Nicholas Koome
25. This left 1226 and 1231 for determination by this court.
26. From the sale agreement dated 26<sup>th</sup> May, 1999 Edward Kirimi and his father Stanley collaborated to sell 1226 to Gitonga Ngeera. This eventually led to the complete disinheritance of Edward Kirimi since he repeated the process leading to the evaporation of what he had and became destitute. This change of circumstances forced some extra-ordinary events.
27. It appears that after selling this 1226, Kirimi and his family moved into 1231 as per the tested evidence on record by Grace Karamana, Salome Nyoroka and the petitioner. He moved into 1231 while the father was alive meaning that when the said Edward Kirimi’s family moved into 1231 it was with the knowledge of his father Stanley who saw that they had become landless. Like the biblical a prodigal son, Edward Kirimi squandered his inheritance while he and his father were both alive but was taken back by his father into 1231 while the father was still alive. he had wasted his share with the participation of his father and it was the same father who restored him albeit on a reduced acreage.
28. A change of circumstances for a prodigal son was discussed in the case of Jimmy Musotsi Molenje v Samuel Molenje Dalidi [2016] eKLR (C. Kariuki J.) - In The Matter Of The Estate Of The Late Musa Molenje Dalidi (Deceased)-where the learned Judge had this to say at para. 19:
29. The court must have seen the plight of Lois as deponed to in her affidavit. It is true that Lois had indicated a lack of interest in the deceased estate but her circumstances changed like the prodigal son and she opted to go back to his father the deceased herein to seek refuge.”
30. And just like the biblical older son, the beneficiaries who had not sold their shares convulsed at the return of the prodigal son but the father as the final say upheld the return of the prodigal son because life was more important than lost property. In the result the court, therefore, cannot order a removal of the prodigal son Edward Kirimi’s family from 1231 since their occupation of the same was with the express approval of the now deceased father after the said Edward squandered his 1226 with the participation of the father. He sold his share with his father’s participation unlike the son who stole his father’s estate properties who was underserving of restoration– see para. 22 of the judgement in



Thika Coffee Mills Limited v Muthara (Civil Appeal E269 of 2021) [2024] KEHC 7004 (KLR) (6 June 2024)(Kizitio Magare J.).

31. It is important to point out further that the father Stanley had made a valiant attempt to lock out the daughters and wives out of 1231 by registering the same in the name of the prodigal son only but the daughters challenged this successfully since the Land Disputes Tribunal had directed the father not to exclude the daughters. It appears that the father who was then in his eighties and from the old generation, wanted to perpetuate the Meru customary law position where daughters and widows were excluded from land holding.
32. The daughters' success was that the courts ruled that parcel 1231 should revert from the prodigal son Edward Kirimi to the estate of Stanley M'Muthamia in MeruELC AppealE065 of 2021 and Githongo SPM ELC 18 of 2019 so that the daughters could be counted too as potential beneficiaries. Now that 1231 has been adjudged to be the deceased estate, the same shall be divided Equallyamongst the following:
  - i. Rhoda Gatwiri – daughter (deceased) survived by 2 sons: Elias Gichuruand Zakayo Muthee.They will hold jointly their share.
  - ii. Karimi Kirima- daughter
  - iii. Kanyiri Kirimi – daughter
  - iv. Kagwiria Kirimi – daughter
  - v. Salome Nyoroka Muthamia – daughter – she swore that her portion could go to her deceased brother Edward Kirimi.
  - vi. Jane Naitore Muthamia – daughter
  - vii. Fridah Mwari – daughter
  - viii. Edward Kirimi's widow Grace Karamana and her children.
33. A certificate of the confirmation of grant is hereby issued in the following shares:-Abothuguchi/Mariene/1225 – David Kimathi wholly.Abothuguchi/Mariene/1226 –was sold to third parties – Kobia and Ngeera.Abothuguchi/Mariene/1227 – Silas Muthamia wholly.Abothuguchi/Mariene/1228 – Johnson Murianki wholly.Abothuguchi/Mariene/1229 – M'Ikiara M'Mbogori wholly.Abothuguchi/Mariene/1230 – Nicholas Koome wholly.Abothuguchi/Mariene/1231: equally to Rhodah Gatwiri's surviving children ( Elias & Zakayo), Salome Nyoroka Muthamia (whose portion will go to the family of Edward Kirimi deceased –Grace), Jane Naitore, Fridah Mwari and Edward Kirimi's estate (survived by his widow & children).Abothuguchi/Katheri/1359 – Equallybetween Mercy Maitha Elijah, Kinyua Bobu Martin and Wilson Kinoti Stanley as proposed by the administrator and consented to by the beneficiaries.

Right of appeal is 30 days.

**DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 29<sup>TH</sup> DAY OF JULY, 2024**

**HON.T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Present

Miss Anguche For The Protestor



Petitioner

Protestors

Beneficiaries

Ronny Court Assistant

