



**In re Estate of Samuel Marete M'Mukungu (Deceased) (Succession Cause
166 of 2021) [2024] KEMC 102 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEMC 102 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
SUCCESSION CAUSE 166 OF 2021
AT SITATI, SPM
JULY 26, 2024**

IN THE MATTER OF THE ESTATE OF SAMUEL MARETE M'MUKUNGU (DECEASED)

BETWEEN

RODAH WANJA SAMUEL MARETE 1ST PETITIONER

JAMES KIBITI MARETE (NOW DECEASED) 2ND PETITIONER

AND

FAITH MWARI MBAE & OTHERS PROTESTOR

JUDGMENT

1. On 6th July, 2021 the joint Administratices Rodah and Faith filed the Summons for the Confirmation of Grant together with its supporting affidavit containing the following proposed distribution:
 - A. Abothuguchi/417
 - i. 40ftX80ft = Julia Mukami.
 - ii. 40ftX80ft = jointly by Elvis Mwenda Kibiti and Doreen Nkatha Kibiti as survivors of Jane Kathure Kibiti.
 - iii. 40ftX80ft= Faith Mwari Mbae.
 - iv. 40ftX80feet= Faith Mwari Mbae.
 - v. 40ftX80ft = jointly by Georgina Kaangi Mugambi, Moreen Karwitha and Risper Kinya.
 - vi. 40ftX80ft= Silas Murithi Marete.
 - vii. 40ftX80ft= Mary Nkirote Samuel.



- viii. 40ftX80ft=Ernest Muthomi Murithi.
 - ix. 40ftX80ft=Stephen Mwongera Marete.
 - x. 40ftX80ft= Monica Nkirote Kinyua.
 - xi. 40ftX80ft=Joseph M’Ringera and Patrick Mwenda jointly.
 - xii. Remainder = Equally between Rodah Wanja Marete and Faith Mwari Mbae.
- B. Ntima/Ntakira/2036
- i. 25ftX85ft=Faith Mwari Mbae.
 - ii. 25ftX85ft = Rodah Wanja Marete.
 - iii. Remainder = Equally between Rodah Wanja Marete and Faith Mwari Mbae.
- C. Ngobeti/Supuko Block 5/26: Julia Mukami.
- D. Nanyuki/Marura Block 8/Nturukuma/535: Equally between Rodah Wanja Marete and Faith Mwari Mbae.
- E. Plot Nturukuma/2291 = Stephen Mwongera Marete. The remaining part to be shared Equally between Rodah Wanja Marete and Faith Mwari Mbae.
- F. Plot No.9 Kithirune = wholly to Rodah Wanja.
- G. Motor Vehicle Crv Reg. No. KAU xxxP= wholly to Rodah Wanja Marete.
- H. Cooperative Bank Account No. 01123xxxxx00 = wholly to Rodah Wanja Marete.
- I. Sacco Account No. 804 =** Equally to Rodah Wanja Marete and Faith Mwari Mbae.
- J. Equity Bank Account No. 014*xxx4615 = Equally to Rodah Wanja Marete and Faith Mwari Mbae.
2. The proposed distribution was contested by an affidavit of protest dated 9th February, 2023 by Silas, Faith and Nkirote who proposed the following distribution:-Upper side near the market Abothugguchi/Kithirune/417 be shared Equally in the size of 50feet by 100feet as to

Silas Murithi MareteMary NkiroteStephen MwongeraMonica NkiroteFaith MwariJulia MukamiEarnest Muthoni MurithiJane Kibiti as widow of James KibitiGeorgina KaangiPatrick Mwenda and Joseph Kaimenyi M’Ringera jointly – 1 plot.

On the lower side: Rodah Wanja to have a life interest while the rest have an Equal share as follows : Julia Mukami, Faith Mwari, Jane Kibiti, Georgina Kaangi Mugambi, Silas Murithi, Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua. Balance to the petitioner Rodah Wanja Ntima/ Ntakira/2036- 2 line buildings : 12 rooms to Julia Mukami, Faith Mwari, Jane Kibiti and Georgina Kaangi thereafter the 6 remaining rooms to Silas Muritjhi, Nkirote Samuel, Stephen Mwongera Marete, Monica Kinyua and Rhoda Wanja to have a life interest. Balance of the undeveloped portion to be shared Equally between the houses. Abothuguchi/Kithirune/2559 to be shared Equally between Maureen Karwitha Kirimi And Risper Kinya Kirimi. Land parcel Ngobeti/Supuko Block 5/26 to go to Julia Mukami Marete. Land parcel no Nanyuki/Marura Block 8/535 : half share in Equal portions to Julia Mukami. Faith Mwari, Jane Kibiti and Georgina Kaangi Mugambi then half share in Equal portions to Silas Murithi Marete, Nkirote Samuel, Stephen Mwongera Marete, Monica



Nkirote Kinyua and Rhoda Wanja Marete to have a life interest. Kithirune/9 – Silas Marete Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua Equally and then Rhodah Wanja to have a life interest. Land parcel Nanyuki/Marura Block 8/2291 to be shared Equally between Julia Mukami, Faith Mwari, Silas Murithi Marete, Jane Kibiti, Georgina Kaangi, Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua. Abothuguchi/Kithirune/3139 : to Julia Mukami, Faith Mwari, Nkirote Samuel and Monica Nkirote Kinyua. Cooperative Bank Account 01100023xxxx00: wholly to Rhoda Wanja. Equity Bank account 0140101xxxx15: Equally to Julia Mukami, Faith Mwari, Silas Murithi Marete, Jane Kibiti, Georgina Kaangi, Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua. Yetu Sacco account 10xxx54 Equally to Julia Mukami, Faith Mwari, Silas Murithi Marete, Jane Kibiti, Georgina Kaangi, Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua. Motor vehicle KAU 256P wholly to Rhoda Wanja.

3. Later, on 21st July, 2023, the parties recorded the following consent on Distribution:
 1. Land parcel Abothuguchi/Kithirune/2559 be distributed in terms of the paragraph 11C of the affidavit of the protest sworn by the protestor on 9th February, 2023 To Wit: Land Parcel Abothuguchi/Kithirune/2559 to be shared Equally between Maureen Karwitha Kirimi And Risper Kinya Kirimi.
 2. Land parcel Ngobeti/Supuko Block 5/26 to go to Julia Mukami Marete as per paragraph 11D of the same affidavit/protest.
 3. Land parcel no Nanyuki/Marura Block 8/535 to be distributed in terms of the affidavit of protest paragraph 11E sworn on 9/2/2023 to wit: Land parcel Nanyuki Marura 1531: half share in Equal portions to Julia Mukami. Faith Mwari, Jane Kibiti and Georgina Kaangi Mugambi Land parcel Nanyuki Marura 1531: half share in Equal portions to Silas Murithi Marete, Nkirote Samuel, Stephen Mwongera Marete, Monica Nkirote Kinyua and Rhoda Wanja Marete.
 4. Land parcel Nanyuki/Marura Block 8/2291 to be shared as per paragraph 19G of the affidavit of protest sworn on 9/20223 to wit Equally between Julia Mukami, Faith Mwari, Silas Murithi Marete, Jane Kibiti, Georgina Kaangi, Nkirote Samuel, Stephen Mwongera and Monica Nkirote Kinyua.
 5. Motor vehicle Reg. KAU xxxP to go Rhoda Wanja as per paragraph 11(L) of the affidavit of protest sworn on 9/2/2023.
 6. Protest hearing to proceed only on the undistributed assets namely: Land parcel Abothuguchi/Kithirune/417. Ntima/Igoki/2036LR Abothuguchi/Kithirune/3139 Plot No. 9 Kithirune Market Monies In Cooperative Bank Account No. 01100023xxxx00 Monies In Equity Bank Account No. 0140101xxxx15 Shares In Yetu Sacco Account 10xxx54
4. The consent was signed by the following: Miss Kinyanjui Advocate for the petitioner Mr. Basilio Advocate for the protestors Silas Murithi Marete Jane Kathure Mwirichia Monica Nkirote Faith Mwari Mbae Nkirote Samuel Julia Mukami Marete

The Protestors' Case

5. The protestors adopted their protest dated 9th February, 2023 as evidence. During the cross-examinations the following came to light: Their father made some distribution during his lifetime. The handwritten minutes were not of the deceased as Faith Mwari was unfamiliar with his handwriting. Ntima/Ntakira/2036 had a developed side and undeveloped side. On this one the first house had 12 rooms while the second house had 6 rooms. Monica was an adopted child and



dependant of the deceased. Georgina was the widow of Ignatius who was a brother of Faith. The deceased subdivided Abothuguchi/Kithirune/440 and gave his sons Stephen (3140), Ignatius (2556), 2 daughters of Ignatius (2559) and 3139 to Faith but 3139 was never transferred to Faith by the deceased. 417 had an upper and lower side. There is a timber house with 3 rooms, and a parking shed for the vehicle. There were tea bushes on 3139 which Stephen and Georgina are utilizing.

6. In re-exam Faith affirmed that 3139 was reserved to the daughters. Silas affirmed that all beneficiaries should take a share in Kithirune/417.

The Petitioner's Case

7. Rhodah Wanjah adopted her affidavit in support of the summons for confirmation and her further affidavit of 13/12/2023 and 4/11/2023. In cross-examination, the following came to light: Monica was entitled to a share Ngobit land measured 12 acres and gifted to the daughters. Her son James Kibiti withdrew some monies from the bank account but the amount was unknown. Jocelyn died childless. The Cooperative Bank Account was Rhodah's but the other accounts could be inherited by the children.

8. On 21ST March, 2024 the court ordered the production of the bank account records to confirm the status of the funds since there was an allegation of intermeddling with of the Cooperative and Equity Banks accounts. This was ordered under section 45 of the [*Law of Succession Act*](#), where it is provided as follows:

45. No intermeddling with property of the deceased person.

- (1). Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person
- (2) Any person who contravenes the provisions of this section shall -
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b). be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

9. On 5th July, 2024 the court upon the application of the petitioner made the following orders:

- “1. The errors in the account numbers are hereby corrected as follows: Equity Bank Account Number 0140101xxxx16 shall be and is hereby corrected to read and reflect Equity Bank Account Number 0140101xxxx15. Yetu Sacco Account Number 8xxx4 shall be and is hereby corrected to read and reflect Yetu Sacco Account Number 10xxx54.
2. The Administratrix Rodah Wanja Samuel Marete is hereby ordered to extract the court consent and follow up on the extraction of the bank and Sacco accounts then file and serve the same within the next 7 days.
3. Judgement stood over to 26th July, 2024



10. In compliance with the said orders, the petitioner filed: Yetu Sacco account statement for account 10xxx54 showing that as of 5/1/2024 the account has 1, 869, 083.75 and a balance of the sum Kshs 1. 927, 008.05 as of 27th January, 2024. Equity account had Kshs 328, 297.04.
11. From these documents, it was not easy to tell if there has been intermeddling with the funds in the accounts prior to these stated dates because the accounts were not extracted to cover the period from the date of the demise of the deceased to the date when the query of intermeddling was raised. Be that as it may.

Issue for Determination

12. The duty of the court is to find the appropriate mode of distribution to the remaining properties: Land parcel Abothuguchi/Kithirune/417.Ntima/Igoki/2036LR Abothuguchi/Kithirune/3139Plot No. 9 Kithirune Market Monies In Cooperative Bank Account No. 01100023xxxx00 Monies In Equity Bank Account No. 0140101xxxx15 Shares In Yetu Sacco Account 10xxx54
13. There is no dispute as to the identity of the beneficiaries. The deceased was polygamous and survived as follows:
 - A. Gladys Karegi Marete (deceased) who was mother to- Julia Mukami – daughter- James Kibiti –son – deceased survived by widow Jane Kibiti- Faith Mwari – daughter- Josyleen Gaceri – daughter – deceased – no dependants- Ignatius Kirimi Marete - deceased
 - B. Rhoda Wanja Marete mother to:- Silas Murithi Marete- son- Nkirote Samuel – daughter- Joseph Mwirigi – son – deceased – no dependants- Stephen Mwongera – son- Monica Nkirote – daughter
14. Being polygamous brought the application of section 40 of the Law of Succession Act into view:
 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.
15. 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.
16. That being so and having weighed all the contestations by the parties, the court makes the following considered orders:



1. The alleged minutes of the deceased are rejected because the handwriting and signature of the maker of the document was not subjected to forensic examination by a document examiner as required by section 70 of the *Evidence Act*.
2. On the undisputed properties which were distributed as per the wishes of the deceased during his lifetime and adopted by the consent of the parties the court adopts the earlier consent recorded by the parties on 21st July, 2023 in the following terms
 - i. Land parcel Abothuguchi/Kithirune/2559 be distributed in terms of the paragraph 11C of the affidavit of the protest sworn by the protestor on 9th February, 2023 To Wit: Land Parcel Abothuguchi/Kithirune/2559 to be shared Equally between Maureen Karwitha Kirimi and Risper Kinya Kirimi. This is fair because as a joint owner and on the principle of survivorship of the registered owners, Abothuguchi/Kithirune/2559 should in law devolve to the joint registered survivors - Moreen Karwitha and Risper Kinya Kirimi as the registered survivors.
 - ii. Land parcel Ngobeti/Supuko Block 5/26 to go to Julia Mukami Marete as per paragraph 11D of the same protest:
 - iii. Land parcel no Nanyuki/Marura Block 8/535 to be distributed in terms of the affidavit of protest paragraph 11E sworn on 9/2/2023 to wit: Land parcel Nanyuki Marura 1531: half share in Equal portions to Julia Mukami. Faith Mwari, Jane Kibiti and Georgina Kaangi Mugambi while land parcel Nanyuki Marura 1531: half share in Equal portions to Silas Murithi Marete, Nkirote Samuel, Stephen Mwongera Marete, Monica Nkirote Kinyua and Rhoda Wanja Marete.
 - iv. Land parcel Nanyuki/Marura Block 8/2291 to be shared as per paragraph 11G of the affidavit of protest sworn on 9/2/2023 to wit: Equally to Julia Mukami. Faith Mwari, Silas Murithi Marete, Jane Kibiti, Georgina Kaangi Mugambi, Nkirote Samuel, Stephen Mwongera Marete, Monica Nkirote Kinyua.
 - v. Motor vehicle Reg. KAU xxxP to go Rhoda Wanja as per paragraph 11(L) of the affidavit of protest sworn on 9/2/2023.
 - vi. Equal sharing of Land parcel Abothuguchi/Kithirune/417 by all beneficiaries inclusive of the widow Rhodah Wanja as an extra unit.
 - vii. Equal sharing of Plot No. 9 Kithirune Market by all the beneficiaries inclusive of the surviving widow Rhodah Wanja.
 - viii. Ntima/Ntakira/2036 shall be shared Equally by all the living beneficiaries counting the surviving widow as an extra unit.
 - ix. it would thus be fair that Abothuguchi/Kithirune/3139 be shared Equally by the widow Rhodah Wanja Alongside the daughters Julia Mukami, Faith Mwari, Nkirote Samuel And Monica Nkirote Kinyua since they received no gifts from the deceased under section 40 as read with section 42 of the *Law of Succession Act*. This is because during his lifetime, the deceased gifted properties only his sons as follows and the court upholds the gifts: Abothuguchi/Kithirune/3149 To Stephen Mwongera Abothuguchi/Kithirune/523 to Silas Murithi Marete Nkuene/Uruku/107 had been gifted to James Kibiti Marete (now deceased). His widow Jane Kibiti survives him. Abothuguchi/Kithirune/2556 to Ignatius Kirimi Marete



- ix. Equity Bank Account was in the sole name of the deceased shall be shared Equally by all beneficiaries who survived the deceased from both houses inclusive of surviving widow Rhoda Wanja as an extra unit under section 40 of the *Law of Succession Act*.
- x. Yetu Sacco Account was in the sole name of the deceased shall be shared Equally by all beneficiaries who survived the deceased from both houses including the surviving widow Rhodah.
- xi. Cooperative bank account wholly to Rhoda Wanja since there was no protest to this being inherited wholly by Rhodah Wanja as a joint account holder with the deceased.

17. A certificate of the confirmation of grant is hereby issued. File closed. Right to appeal of 30 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 26TH DAY OF JULY, 2024

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Miss Kinyanjui Adv For The Petitioner

Mr. Basilio Adv For The Protestor

Petitioner

Beneficiaries – Silas, Faith

