



**In re Estate of Daniel Murambi Amiani alias Daniel Murambi Amiani S/O Amiani (Deceased)
(Succession Cause 122 of 2021) [2025] KEHC 15322 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 122 OF 2021**

JN KAMAU, J

OCTOBER 28, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL MURAMBI
AMIANI ALIAS DANIEL MURAMBI AMIANI S/O AMIANI (DECEASED)**

BETWEEN

GLADYS INYANJE PETITIONER

AND

EDWARD AMIANI OBJECTOR

AND

CENTRIC MURAMBI MAGOTSWE INTERESTED PARTY

AND

**STEVE KHAZALWA AMIANI (SUBSTITUTING HENRY AMIANI
MURAMBI) RESPONDENT**

AND

IAN KONZERANI MAGOTSWE INTERESTED PARTY

RULING

1. In their Notice of Motion dated 12th July 2018, the 1st and 2nd Interested Parties herein sought to be enjoined in the cause herein as dependents and that the court review and/or set aside its Ruling made on 27th June 2018 with a view to identifying their rightful share of the land parcel No Tiriki/Serem/1(hereinafter referred to as the “subject land”).
2. The 1st Interested Party swore an affidavit in support of the said application on his own behalf and on behalf of the 2nd Interested Party herein. They averred that they were brothers and that the deceased, who died on 19th March 1986, was their grandfather by virtue of being the father to their late father,



David Magotswe Amiani. They pointed out that the deceased was polygamous and had five (5) wives namely, Zipporah Amiani (deceased), Esther Khayanje Amiani (deceased)(their grandmother), Resper Amiani, Susan Amiani (deceased) and Dorcas Amiani.

3. They stated that they survived their late father, David Magotswe Amiani and had occupied the subject land which had been allocated to him during his lifetime by the deceased herein. They pointed out that one, Henry Amiani, had invaded their portion of the subject land and was constructing a pit latrine and cultivating. He averred that this was disinheriting them of their late father's portion that had been distributed to the house of their late grandmother as per the Ruling that was delivered by Njagi J on 27th June 2018.
4. They argued that Henry Amiani was not their late grandmother's son and was, therefore, not entitled to get a share from their portion. They asserted that the said Henry Amiani's share was from the house of Zipporah Khalenya Amiani who occupied the share of his mother one Sophia who the deceased deserted. They added that the said Ruling was clear to that effect.
5. They asserted that Henry Amiani had never lived on the said subject land as he stayed on his land at Kaptienyi Village and that it was only after the delivery of the said Ruling that he forcibly threatened to enter the portion allocated for them. They added that the said Henry Amiani was taking undue advantage over them as they were orphans and vulnerable and had no voice.
6. They urged the court to enjoin them to this cause as dependents to their late grandmother's portion so that their respective shares could be identified from the estate of the deceased. They pointed out that as the Co-Administrator, Zipporah Amiani had died during the pendency of the proceedings rendering the Grant inoperative and useless, it was in the interest of justice that a new administrator be appointed by this court to jointly administer the estate of the deceased in a fair and a just manner in order to cater for the interest of all the beneficiaries. They added that the current Petitioner who was substituted in place of their late grandmother Esther Khayanje Amiani also passed on during the pendency of this matter.
7. They averred that they had made this application in good faith and timeously to protect and safeguard the interest of their late father whose estate was likely to be intermeddled and wasted by the said Henry Amiani. They urged the court to take into consideration that the beneficiaries should not be moved from where they had settled physically on the ground during distribution.
8. They were emphatic that they stood to suffer irreparable losses and damage unless this court intervene and restrain the said Henry Amiani from invading their portion.
9. Right from the onset, this court noted that the said Henry Amiani died during the pendency of the application herein. He had since been substituted by his son, Steve Khazalwa Amiani, and the Respondent herein. However, before he had died, he swore an Affidavit in response to the application herein on 12th September 2018. The same was filed on even date.
10. He averred that through the Ruling of this court of 27th June 2018, he had been awarded a portion of land measuring 1.06Ha out of the subject land and that he had always used the said portion of land. He admitted that the 1st and 2nd Interested Parties were sons of the late David Magotswe Amiani who was the son of the late Esther Khayanje Amiani who, in the said Ruling, was awarded a portion of land measuring 3.85Ha of the subject land.
11. He was, therefore, categorical that the Interested Parties would get their shares from the said portion of their grandmother which he had no interest in. He denied that he had neither interfered nor intended to interfere with the same. He added that his portion of land as allocated by court was clearly separated



by road from the portion of land that was allocated to grandmother of the Interested Parties and was emphatic that there was no encroachment at all.

12. The Interested Parties' Written Submissions were dated 25th April 2025 and filed on 28th April 2025 while those of the Respondent were dated and filed on 9th April 2025. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

13. The Interested Parties submitted that the Ruling that was delivered on 12th June 2018 should be amended to capture and reflect the correct living beneficiaries and/ or heirs. They argued that most of the beneficiaries were now deceased and hence, the Grant that was issued was useless and inoperative. They asked that the court appoints new administrators to administer the deceased's estate. They reiterated the averments in their affidavit and argued that there was an error apparent on the face of the said Ruling as the late Henry Amiani ought to have been given his portion from the portion of the late Zipporah Khalemya Amiani and not from their late grandmother's portion.
14. They contended that they were dependents within the meaning of Section 26 of the [Law of Succession Act](#) Cap 160 (Laws of Kenya). They placed reliance on the case of [Re Estate of Albert Musyoka Mueti \(Deceased\)\[2020\]eKLR](#) where the applicants were declared dependents of the deceased under Section 26 of the [Law of Succession Act](#). They urged the court to allow their application.
15. On his part, the Respondent submitted that the Ruling was clear that the estate of the deceased was to be shared out to the beneficiaries through their mothers/houses. He argued that the Interested Parties' late grandmother's house was awarded 3.85Ha of the subject land which status should remain. He averred that enjoining the Interested Parties in the case would bring in specific grandchildren of the estate and which would cause confusion with endless disputes and thereby delay the finalisation of this Succession Cause that began in 1995.
16. He asserted that the administrators would implement the orders that were given in the said Ruling and that the Interested Parties shares would be identified and given to them. He argued that the application herein had no merit and was meant to delay the finalisation of this Succession Cause. He urged the court to issue a fresh grant in terms of the orders made on the said Ruling and that the children of each house re-group and have their respective shares given to them. He was emphatic that by doing that, the Interested Parties would get their share and not be left out. He added that quite a number of beneficiaries had died but that the Ruling took care of that occurrence and specifically directed that the Certificate of Confirmation of Grant would be amended to capture the correct living beneficiaries.
17. Notably, the law does not bar grandchildren from inheriting their deceased parents. Although grandchildren may not inherit directly, the share of their parents in a deceased's estate must be bequeathed to them. This court had due regard to the case of [Re Estate of Wahome Njoki Wakagoto \[2013\]eKLR](#) where it was held that a grandchild was a direct heir to the estate of the grandparent where his or her parent predeceased the grandparent. The grandchildren got into the shoes of their deceased parents and took their parents' share in the estate of their grandparents.
18. It was not in dispute that the 1st and 2nd Interested Parties were grandchildren of the deceased herein having been the sons of one of the sons of the deceased. A perusal of the Ruling of 27th June 2018 by Njagi J. indicated that the Learned Judge rendered himself as follows:-

“ 18. During the confirmation proceedings on 1st August 2013, the estate of the deceased was distributed in accordance with the houses. At the time of confirmation, there were some spouses still alive. As of now it appears to be



one spouse, Resper, surviving. It is not clear whether Zipporah, the Petitioner is still alive. All the same the estate should be distributed in accordance with the houses.

19. The Grant of 1st August 2013 was confirmed by consent of the parties. Each beneficiary was to inherit through his or her mother...It is then not true that the Objector and other beneficiaries were left out of the distribution of the estate.
 20. It has been established that Henry Amiani had his own mother called Sophia who had deserted the deceased and got married elsewhere. Nobody has complained that Henry is not a son to the deceased. Though he was said to have built his home outside the land in contention, there was no suggestion that the land he has built on was given to him by the deceased. Henry therefore cannot be denied inheritance of his father's estate. He was given the share of his mother. There is thereby no justification in the contention that Henry should be catered for from the share of Zipporah. He was entitled to inherit the share of his mother.”
19. Having said so, the court in the above-mentioned decision had dealt with the issue of Henry Amiani's distributed portion of the estate extensively and it would be contrary to the doctrine of res judicata for this court to delve in the arguments relating to the same issue as had been raised by the Interested Parties who claimed that he ought to have been catered for from the share of the house of Zipporah Amiani. In the event the Interested Parties were aggrieved by the said Ruling, they ought to have lodged an appeal against the same.
 20. This court also noted that according to the said Ruling, the Interested Parties' grandmother's house (Esther Khayanja Amiani), had been taken care of in terms of distribution and the Learned Judge had affirmed the same. He had noted that she was given the largest share of 3.85Ha because of the number of children in her house. In the mind of this court, the Interested Parties' interests on their shares of their deceased's father estate had also been considered. To state otherwise would be to sit on appeal of a decision of a court of equal status to this court.
 21. In the premises, Njagi J proceeded to revoke the Grant issued on 5th August 2015 and urged the parties to apply for a fresh grant to provide for the distribution of the estate in accordance with the said Ruling.
 22. In the circumstances, the Interested Parties failed to demonstrate reasons for reviewing and /or setting aside the Ruling of the court dated 27th June 2018 as far as the distribution of the deceased's estate was concerned. However, as to whether the late Henry Amiani encroached on their portion of land was an issue that needed to be subjected to scrutiny. As that did not come out well through parties' affidavit evidence, it was this court's considered view, that there was need to carry out a survey of the impugned portion of land belonging to the Interested Parties to establish whether the late Henry Amiani encroached on the same and/or whether or not he had attempted to construct a pit latrine on the said portion of land as the Interested Parties had alleged.

Disposition

23. For the foregoing reasons, the upshot of this court's decision was that the 1st and 2nd Interested Parties' Notice of Motion application dated and filed on 12th July 2018 was partly merited in respect to Prayer No (3) only.



24. It is hereby directed that the parties herein do commission a survey of the subject forming the estate of the deceased herein by the Sub-County Surveyor, Vihiga and a Report be filed in this court within sixty (60) days from the date of this Ruling to enable this court address Prayer No (2) of the said application.
25. It is hereby further directed that this matter will be mentioned on 2nd February 2026 for further orders and/or directions.
26. As this was a family cause, this court deviated from the general principle that costs follow events so as to preserve the family ties and directs that each party bears its own costs.
27. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF OCTOBER 2025.

J. KAMAU

JUDGE

