



**In re Estate of Anthony Karugu Buri alias Anthony Karugu Buri (Deceased) (Family Appeal E008 of 2023) [2025] KEHC 14871 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14871 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
FAMILY APPEAL E008 OF 2023  
MA ODERO, J  
OCTOBER 22, 2025  
IN THE MATTER OF THE ESTATE OF ANTHONY KARUGU  
BURI ALIAS ANTHONY KARUGO BURI (DECEASED)**

**BETWEEN**

**GRACE NJERI KARUGU ..... APPELLANT**

**AND**

**GRACE WAMBURA KARUGU ..... 1<sup>ST</sup> RESPONDENT**

**LUCY NYAMBURA KARUGU ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH BURI KARUGU ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Before this Court is the Amended Memorandum of Appeal dated 9<sup>th</sup> June 2023 by which the Appellant GRACE NJERI KARUGU prays that the Lower Court’s decision be quashed, set aside with costs and that the estate of the Deceased be distributed evenly.
2. The Respondents GRACE WAMBUI KARUGU and JOSEPH BURI KARUGU opposed the appeal. The appeal was canvassed by way of written submissions. The Appellant filed the written submissions dated 24<sup>th</sup> January 2025 whilst the Respondents relied upon their written submissions dated 13<sup>th</sup> March 2025.

**BACKGROUND**

3. This succession cause relates to the estate of the late ANTHONY KARUGU BURI alias ANTHONY KARUGO BURI (hereinafter ‘the Deceased’) who died intestate on 27<sup>th</sup> April 2015. A copy of the Death Certificate Serial Number 0246163 was filed in Court on 28<sup>th</sup> August 2010.



4. The Deceased who was polygamous man was survived by two widows LUCY WAMBOI KARUGU and GRACE WAMBUI KARUGU. The Deceased also had a first wife named WANJIRA KIRERU with whom he had separated. The Deceased was also survived by several children.
5. The assets which comprised the estate of the Deceased were as follows:-
  - (a) Property known as LR NO. MAGUTU/RAGATA/606
  - (b) Property known as **LR NO. MUTHARA/THOME BLK 1/3949 (MATHIRA)**
6. Following the demise of the Deceased the Petitioners  
Lucy Wambui Karugu, Grace Wambui Karugu and Joseph Buri Karugu (the wives and son of Deceased) filed a Petition seeking Grant of letters of Administration Intestate.
7. On 28<sup>th</sup> September 2020 the Magistrates Court in Karatina issued letters of Administration jointly to Joseph Buri Karugu, Alice Gathigua Karugu and Monica Muthoni Karugu.
8. The three Administrators then filed a Summons for confirmation of Grant dated 9<sup>th</sup> March 2021 in which they proposed that the two properties left by the Deceased be distributed equally between the three (3) Administrators only.
9. The two widows of the Deceased Lucy Wambui Karugu and Grace Wambui Karugu filed an Affidavit of Protest dated 4<sup>th</sup> August 2021.
10. The Protest was heard in the Lower Court and vide a judgment delivered on 2<sup>nd</sup> May 2023 HON. V. S. KOSGEI Senior Resident Magistrate directed that the estate of the Deceased be distributed as follows;-  
Magutu/ragati/606

- a. Grace Wambui Karugu - 1<sup>st</sup> wife - 1.42 Acres
- b. Lucy Wambui Karugu - 2<sup>nd</sup> wife - 1.42 Acres
- c. Joseph Buri Karugu - Son - 0.25 Acres  
Mutara/thome/blk 1/3949 (mathira)
- a. Grace Wambui Karugu ..... 2.9 Acres
- b. Lucy Wambui Karugu ..... 2.9 Acres
- c. Patrick Maina ..... 2.9 Acres
- d. Alice Gathigia ..... 1 Acre
- e. George Mugo ..... 2.9 Acres
- f. Stephen Muraguri ..... 2.9 Acres
- g. Esther Nyaguthii ..... 2.9 Acres
- h. Nicholas Warutere..... 2.9 Acres
- i. Monica Muthoni ..... 1 Acre
- j. Martha Nyambura ..... 1 Acre
- k. Patrick Buuri ..... 2.9 Acres



- l. Felister Gathigia ..... 1 Acre
- m. Joseph Buri Karugu ..... 2.9 Acres
- n. Grace Njeri Karugu ..... 1 Acre

Kenatco Shares

- a. Grace Wambui Karugu and
- b. Lucy Wambui Karugu.....Shared equally

Safaricom Shares

- c. Grace Wambui Karugu And
- d. Lucy Wambui Karugu ----Shared equally

Ketraco Cointerconnector Powerline Wayleave Pay Outs

- e. Patrick Maina
- f. Alice Gathigia
- g. George Mugo
- h. Stephen Muraguri
- i. Esther Nyaguthii
- j. Nicholas Warutere
- k. Monica Muthoni
- l. Martha Nyambura
- m. Patrick Buuri
- n. Felister Gathigia
- o. Joseph Buri Karugu
- p. Grace Njeri Karugu ..... Proceeds to be shared equally

11. Being aggrieved by this decision the Appellant Grace Njeri Karugu (a daughter to the Deceased) filed this present appeal; which was premised upon the following grounds;-

- “ a. That the learned trial magistrate erred in law and in fact by failing to include the Appellant in the distribution of Land Parcel Number Magutu/Ragati/606.
- b. That the learned trial magistrate erred in law and in fact by failing to share land parcel number Mutara/Thome/BLK 1/3949 (Mathira) equally.
- c. That the learned trial magistrate erred in law and fact by discriminating the appellant based on gender.



- d. That the learned trial magistrate erred in law and fact by failing to be guided by Section 35 & 40 of the Succession Act and awarding some children bigger portions of land than others.
- e. That the learned trial magistrate erred in law and in fact by relying on an affidavit of protest dated 4/8/2021 in distributing the deceased estate instead of relying on the law.”

### **Analysis And Determination**

- 12. I have carefully considered this memorandum of appeal as well as the record of Appeal filed in this matter.
- 13. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see Peters -vs- Sunday post limited [1958] E.A 424]
- 14. In SELLE and Another -vs- Associated Motor Boat Company Ltd & Others [1968] 1 E.A 123 it was stated as
 

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”
- 15. Likewise in Gitobu Imanyara & 2 Others -vs- Attorney General [2016] eKLR, the Court of Appeal stated as follows:-
 

“An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
- 16. The parties are all in agreement that the Deceased herein died intestate on 27<sup>th</sup> April 2015. The names and identities of all the beneficiaries are agreed upon. The extent of the estate is also not in dispute.
- 17. As stated earlier the Deceased was a polygamous man but as can be gleaned from the record he had separated from his 1<sup>st</sup> wife. The Deceased therefore at the time of his demise had two (2) wives Lucy Wambui and Grace Wambui both of whom he had married under customary law.
- 18. The manner in which the estate of a Deceased who was polygamous ought to be distributed is set out in Section 40 of the *Law of Succession Act* Cap 160, Laws of Kenya 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.

- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in section 35 to 38.
19. Thus in accordance with Section 40 the estate of the deceased ought to be divided among the houses according to the number of children adding any wife to the surviving the deceased as a unit. As the 1<sup>st</sup> wife separated from the deceased, she does not feature herein. However this 1<sup>st</sup> wife had two children with the Deceased namely Joseph Buri and the Appellant Grace Njeri who remained in the home of the Deceased. The two therefore from one unit of the polygamous family under Section 40.
20. In Rono -v- Rono Civil Appeal No. 66 of 2002, where Waki J. A stated inter alia that:-
- “More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife and children of that wife”
21. From a clear reading Section 40 provides that ‘Houses’ are to be given priority in distributing the estate of a Deceased polygamous man. Where no spouse survives the Deceased then the estate is to be divided amongst the children.
22. Be that as it may the court is also under a duty to ensure that the estate is distributed fairly based on legal as well as factual considerations.
23. In the case of Douglas Njuguna Muigai v John Bosco Maina Kariuki & Another the court held as follows:-
- “...it is therefore evidence, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”
24. Similarly the Court of Appeal in *Scolastica Ndululu Suva vs. Agnes Nthenya Suva* [2019] eKLR on the applicability of Section 40 of the Law of Succession stated thus:-
- “In *Mary Rono vs Jane Rono & another* (supra), Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that the discretion must be exercised judicially on sound legal and factual basis.... It is therefore evident, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.” [Own emphasis]
25. The Appellant herein argued that as a beneficiary of the Deceased’s estate she had been left out as the decision of the lower court did not make any allocation to her out of Magutu/Ragati/606 yet she actually resided on that parcel of land.



26. However I do note that the trial court did make provision for the Appellant as she was allocated 1 acre out of Mutara/Thome Blk 1/3494. Further it is clear that the 1<sup>st</sup> House which includes the Appellant was given a share of Magutu/Ragati/606 through Joseph Buru the brother to the Appellant who was allocated 0.25 Acres.
27. Therefore the Appellants claim that she was omitted in the distribution of the estate is not factual.
28. I am satisfied that the lower court did apply the principles of distribution of a polygamous estate as set out in Section 40. None of the beneficiaries was left out in the distribution of the estate. Accordingly I find no merit in this appeal and the same is dismissed in its entirety. Each party to meet their own costs.

**DATED IN NYERI THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

