



REPUBLIC OF KENYA



KENYA LAW
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**Wachira v Kariuki (Succession Appeal E001 of 2022)
[2025] KEHC 15632 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION APPEAL E001 OF 2022
DKN MAGARE, J
OCTOBER 30, 2025
IN THE MATTER OF THE ESTATE OF WACHIRA KABUGU (DECEASED)**

BETWEEN

GEOFFREY MWANGI WACHIRA APPELLANT

AND

CHARITY WANGUI KARIUKI RESPONDENT

(An appeal from the Ruling and Order dated 15.12.2021 by Hon. K.M. Njalale, Principal Magistrate in Karatina SPMCSUCC Cause No. 134 of 2019)

JUDGMENT

1. This is an appeal from the Ruling and Order dated 15.12.2021 by Hon. K.M. Njalale, Principal Magistrate in Karatina SPMCSUCC Cause No. 134 of 2019.
2. The Memorandum of Appeal dated 11.1.2022 raised 3 grounds of appeal as follows:
 - a. The learned magistrate erred in law and fact in disinheriting the Appellant of his share of the estate.
 - b. The learned magistrate erred in law and fact in failing to appreciate that the Appellant was a child of the 1st house of the deceased.
 - c. The learned magistrate erred in law and fact in failing to appreciate the evidence tendered as to who were the children of the deceased.



Pleadings

3. The Respondent petitioned the lower court and was issued with the Grant of Letters of Administration Intestate dated 2.7.2020. By way of summons for confirmation of grant dated 31.8.2021, the Respondent sought for an order that the said grant be confirmed.
4. In opposition to the summons for confirmation of grant, the Appellant filed his sworn Affidavit of Protest dated 24.9.2020 by which it was materially deposed as follows:
 - a. The Appellant was not aware of the succession process until September 2020 when he obtained the application for confirmation of grant.
 - b. The Appellant is son of the Deceased's 1st wife, one Gachambi.
 - c. The Respondent is from the Deceased's 2nd wife, one Wachuka Wachira and has a brother Gerald Wachira Wamai and a sister Naomi Wambui Ngure.
 - d. The Deceased had stated how the property, Iriaini/Gatundu/129 should devolve: 1st house 2.41 acres, 2nd house 2.41 acres and the deceased's sister Wandeto Kabugu) 1 acre.
5. Samuel Wachira Mwangi and John Gathagu Mwangi also filed their joint affidavit of protest dated 7.10.2020 by which it was deposed in material as follows:
 - a. The deceased was their grandfather.
 - b. Iriaini/Gatundu/129 measured 5.881 acres.
 - c. The deceased also held the property in trust for his unmarried sister Wandeto Kabugu.
 - d. The house of Gachambi had only one beneficiary who is the Appellant.
 - e. The house of Wachuka had 4 beneficiaries namely:
 - i. Wachuka Wachira - widow
 - ii. Gerald Wachira Wamai - son
 - iii. Naomi Wambui Ngure - daughter
 - iv. Charity Wangui Kariuki - daughter
 - f. Wandeto Kabugu was survived by one son, Mwangi Wachira who is also deceased but survived by:
 - i. Mary Gathigia Mwangi - grandchild
 - ii. John Gathagu Mwangi - grandchild
 - iii. Joesia Wanjiku Mwangi - grandchild
 - iv. Pauline Muthoni Mwangi - grandchild
 - v. Samuel Wachira Mwangi - grandchild
 - vi. Luka Tambo Mwangi - grandchild
 - vii. Joseph Mwangi Wambui - great grand child
 - viii. Mary Wanjiru Wambui – great grandchild



- ix. Susan Wamuyu Wambui – great grandchild
 - g. The deceased's estate therefore ought to be shared equally in 3 units for the 1st house, 2nd house and Wandeto's house.
6. The Respondent filed her further affidavit in answer to the protests as follows:
- a. The deceased had granted Wandeto Kabugu, his sister 1 acre out of Iriaini/Gatundu/129 which her family was utilizing to date.
 - b. The house of Wandeto had a son Joseph Mwangi Irungu who is deceased.
 - c. Geoffrey Mwangi Wachira and Gerald Wachira Wamae have their own land which is ancestral namely Iriaini/Gatundu/548 and Iriaini/Gatundu/549 respectively.
7. The lower court considered the matter and, in its ruling dated 15.12.2021, distributed the deceased's estate; Iriaini/Gatundu/129 as follows:
1. Wachuka Wachira - 0.9762 acres
 2. Gerald Wachira Wamae - 0.9762 acres
 3. Naomi Wambui Ngure - 0.9762 acres
 4. Charity Wangui Wachira - 0.9762 acres
 5. Wandeto Kabugu - 1 acre
8. Aggrieved, the Appellant lodged a memorandum of appeal hence this appeal.

Submissions

9. The Appellant filed submissions dated 17.7.2025. It was submitted that the Appellant was a child of the polygamous deceased and the court erred in completely disinheriting him from the estate of the deceased.
10. It was also submitted that the 1st house of the deceased was completely disinherited by disinheriting the Appellant.
11. The Respondent on her part also filed undated submissions. It was submitted for the Respondent that they distributed property to the entire estate of the deceased including the Appellant.
12. It was further submitted that the acreage of the deceased's estate was 5.881 acres and in the lower court's impugned ruling, only a total of 4.9048 acres was distributed leaving out a deficit of 0.9762 acres which was meant for the Appellant.
13. It was also submitted that Section 40 of the [Law of Succession Act](#) applied to these proceedings and the appeal should be allowed to incorporate the equal share of the Appellant.
14. During the hearing parties suggested that each of the children gets 1.2 acres. However, Respondent was opposed to a life interest being created over her share.

Analysis

15. The issue for determination is whether the Appellant was disinherited from his entitled share in the estate of the deceased.



16. On dependants, the Law of Succession Act (Cap 160) defines who is a dependant at Section 29 as follows:-

- “(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

17. The Appellant maintained he was a son of the 1st house of the deceased. This court notes that this is not a disputed fact. It clearly appears from the record of appeal and a perusal of the lower court file that indeed the Appellant was an undisputed heir of the deceased and the only son and child of the 1st house and whose mother was deceased.

18. Therefore the Appellant had satisfied the legal burden that he was the son of the deceased, which fact was not denied and it was clearly an oversight for the lower court to leave him out of inheritance. It was a reversible error of fact which this court has duty to correct. The Court of Appeal in the case of *Mbuthia Macharia v Annah Mutua & another* [2017] eKLR discussed the burden of proof and stated thus:-

The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden.

19. The Appellant had the option of seeking review of the ruling in the lower court but having opted to appeal to this court, I have to set aside the distribution by the lower court with a view to including the Appellant as a beneficiary. Individual shares is the best mode of distribution of the estate for finality. However, I have considered the size of 1 acre to be held by Samuel Wachira Mwangi and John Gachagu Mwangi in trust for the listed other 7 others. There is basis for so holding in trust because individual shares will mean each dependant gets 0.1111 acres. Therefore, as granted by the lower court and which is not disputed, Samuel Wachira Mwangi and John Gachagu Mwangi shall hold the portion of 1 acre out of the estate to be registered in their joint names for themselves and in trust for the listed 7 others.

20. This has been conceded that it was inadvertent. The parties concede that the appellant should get 1.2 acres. The court does not have any issue on this. The only question is what to do with the other beneficiaries’ shares.

21. The entire land measures 2.38 hectares, comprised of some piece of earth, known as Iriaini/Gatundu/129. The agreed sharing does not however add to the total of 2.38 hectares. The parties agreed that:

- a. 1 acre (0.4047) Ha to go to the estate of the late Wandeto Kabugu (deceased).
 - b. 1.2 acres (0.5340 Ha)
- Sub-total = 0.9387 Ha
- Balance as per the search = 1.86 hectares (4.716 acres)



22. The only way of equalizing and implementing the order agreed upon is to strictly adhere to the provisions of Section 40 of the *Law of Succession Act*, having regard of the interest of justice and implementing the parties' views. Wachuka Wachira, aged 96, deserves to have her interests safeguarded while ensuring that another protracted dispute is avoided. The three children will have the remainder of the estate equally. The three children sharing equally are the following:
- a. Gerald Wachira Wamae
 - b. Naomi Wambui Ngure
 - c. Charity Wangui Wachira

Determination

23. Therefore, in the upshot, I make the following orders:
- a. The appeal is merited and is allowed.
 - b. The Ruling and Order of the lower court dated 15.12.2021 is set aside and substituted with an order distributing the estate of the deceased, being Iriaini/Gatundu/129 as follows:
 - i. Geoffrey Mwangi Wachira - 0.5674 hectares
 - ii. Gerald Wachira Wamae, Naomi Wambui Ngure and Charity Wangui Wachira will share 1.38 hectares equally.
 - iii. Wachuka Wachira, shall have a life interest subject to (d) below.
 - c. The administrator, given the circumstances on the ground, shall occupy her share in spite of any life interest of Wachuka Wachira.
 - d. The award to the estate of the deceased's sister, the late Wandeto Kabugu (deceased) shall remain, that is, will retain the 1 acre share as ordered by the lower court as it was not part of the appeal herein.
 - e. Each party to bear their own costs.
 - f. Transmission by 30.04.2026.
 - g. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 30TH DAY OF OCTOBER 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Mwangi for Ms. Kiminda for the Appellant

Respondent present

Court Assistant – Michael

