



**In re Estate of Monica Wamaitha Kihara (Deceased) (Probate & Administration  
805 of 1994) [2025] KEHC 16423 (KLR) (Family) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16423 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
PROBATE & ADMINISTRATION 805 OF 1994**

**H NAMISI, J**

**NOVEMBER 14, 2025**

**BETWEEN**

**TERESIAH WANJIKU NJOROGE ..... OBJECTOR**

**AND**

**IRENE WAMBUI KIMANI ..... RESPONDENT**

**JUDGMENT**

1. Succession is not merely a legal process; it is the final, and often painful, act of closing a person's earthly affairs. It is the mechanism by which a life's work is passed on to the next generation. In an ideal world, this is a matter of quiet consensus and familial accord. When that consensus fails, however, the solemn duty falls upon the Court to impose a just and final order, guided by the cold letter of the law and the warm hand of equity. This particular succession cause represents a generational failure of a family to find peace. The Deceased died on 30 September 1993, over 3 decades ago. This file has languished in the corridors of justice, outliving many of the original protagonists. It has seen the Deceased's sons take up the mantle of administration, only to pass on themselves, leaving their widows to continue the dispute. One of those widows was subsequently removed by this Court for misappropriation of the very estate she was entrusted to protect. Now, the Deceased's daughters have taken up administration. They have appeared before this Court, advanced in age and frail in health, seeking to finalise this matter within their lifetimes. They are opposed by their sister-in-law, the widow to one of their late brothers. The Court's duty, therefore, is not just to the living, whose infirmity was apparent on the record, but to the memory of the Deceased, whose estate has remained unquiet for 31 years. Justice delayed is justice denied, and this Court must now cut the Gordian knot of this familial dispute.
2. The matter for determination is the Summons for Confirmation of Grant dated 4 July 2022, brought by the present Administrators, which is vigorously opposed by the Affidavit of Protest dated 30 August 2021.



## Brief History

3. The factual and procedural history is long and convoluted, and a clear summary is necessary to contextualise the present dispute.
4. The Deceased died intestate on 30 September 1993. She was one of two wives of the late James Kihara Njoroge, the Patriarch, whose own substantial estate was probated in Nairobi High Court Succession Cause No 40 of 1985. It is undisputed that the assets comprising the Deceased's estate emanate from the distribution of the James Kihara Njoroge's estate, which he intended to be divided between his two houses.
5. The Deceased was survived by 6 children, who are the rightful dependants and beneficiaries under section 29 of the *Kenya Law of Succession Act 1972*. These are:
  - i. Irene Wambui Kimani - Administrator
  - ii. Caroline Wambui Kihara – Administrator
  - iii. Margaret Wanja Thiongo
  - iv. Alice Wanjiku Munyui (deceased)
  - v. John Njoroge Kihara (deceased, represented herein by his widow, Teresiah Wanjiku Njoroge, the Protestor)
  - vi. Ngugi Kihara (deceased, represented by his children, Monicah Wamaitha Ngugi and Kelvin Kihara Ngugi, who are consenting beneficiaries)
6. The administration of this estate has followed a winding and tortuous path. A Grant of Letters of Administration was first issued to the Deceased's two sons, John Njoroge Kihara and Ngugi Kihara, on 1 August 1994. The Deceased's daughters, including the current Administrators, gave their consent for their brothers to administer the estate.
7. Ngugi Kihara passed away, and his widow, Rachel Wanjiru Ngugi, was joined as an Administrator. She, too, has since passed away, and her estate's interests are now represented by her children and her mother, Dorcas Wairimu Kamau.
8. John Njoroge Kihara also passed away, and his widow, Teresia Wanjiku Njoroge, was appointed as an Administrator. By a Ruling of this Court delivered on 24 October 2019, the Grant held by Teresiah Wanjiku Njoroge, was revoked. The Court found that she had misappropriated the estate. That same Ruling ordered the cancellation of various titles that had been fraudulently transferred from the Deceased's name.
9. On 7 June 2021, a fresh Grant was issued to the current Administrators, Irene Wambui Kimani and Caroline Wambui Kihara, the Deceased's daughters.
10. It is this new grant that the Administrators now seek to confirm via the Summons dated 4 July 2024. This application is supported by a Further Affidavit sworn on 14 June 2024 and a consent to confirmation dated 14 June 2024. The consent is signed by all surviving beneficiaries and the representatives of the house of Ngugi Kihara. The only beneficiary who has refused to sign is the Protestor, Teresiah Wanjiku Njoroge, representing the house of John Njoroge Kihara. Her objection is what necessitated the viva voce hearing on 30 July 2024.



## The Hearing

11. The Court heard testimony from two witnesses; the 1<sup>st</sup> Administrator and the Protestor.
12. PW1- Irene Wambui Kimani, adopted her Affidavits as her evidence. She testified that the family had held numerous meetings to agree on distribution, but the Protestor refused to sign any consent. Her evidence centres on two themes: the source of the properties and the justification for the proposed distribution.
13. PW1 testified that all the properties in the estate of the Deceased emanated from her father. He had an oral Will stating that his estate was to be divided between his two wives, Monica (the Deceased herein) and Cecilia, for each to distribute to her children.
14. PW1 confirmed the proposal in the Further Affidavit. She explained that the distribution was not equal because it accounted for significant gifts inter vivos, which had already been received by the two sons' houses, as required by law. She testified that Teresiah Wanjiku Njoroge's house had received and sold the Juja Farm, 25 acres, and Kabete Muthumu 301. Similarly, Ngugi's wife, Rachel, had received and sold Changamwe property, MN CR 27302, for Kshs 2.8 million.
15. On cross examination, PW1 confirmed that following the ruling delivered in 2019, the Kiambu property titles had been reverted to the Deceased's name, but the Mombasa Land Registrar claimed he could not find the relevant titles. She admitted that she had no documentary proof for her claim that the property known as Kabete 2361 was clan land.
16. When challenged on the inequality of the proposed distribution, PW1 provided the core justification for the Administrators' application. She stated that when coming up with the proposal, they considered that their sister-in-law, the Protestor, had already taken the Juja Farm, which, today, would be more expensive than the property known as THREE COINS.
17. On her part, DW1, Teresiah Wanjiku Njoroge, adopted her Affidavit of Protest as her evidence. Her protest is founded on two main limbs: first, that certain key assets are not free property of the Deceased, and second, that the proposed distribution is unfair and discriminatory.
18. Regarding Kabete Kibichiku 2361, DW1 claimed that this was not clan land but the property from her husband's grandfather's estate (Gacheru Muhonu). It was, therefore, not part of the estate of the Deceased.
19. DW1 claimed that Juja Farm (Plot 108) was bought by James Kihara Njoroge in her husband's name in 1969, when her husband was 17 years old and was never owned by the Deceased. Further, DW1 claimed that Plot No 29 Wangige belongs to her husband, and not the Deceased.
20. Regarding the distribution, DW1's primary legal objection was that the Deceased's daughters are not entitled to inherit. She testified that the late James Kihara Njoroge, their father, died in 1984 and left a Will, which stated that only the boys were to inherit. She further opined that the daughters have been married for more than 50 years, and should not be coming back to take properties. She protested that the daughters were taking what she considered to be prime commercial properties in Mombasa's central business district, which she estimated to be valued at Kshs 300 million and Kshs 200 million, while she had been left with the rural properties in Kabete. DW1 also protested being given only half of Kabete 277, which she described as her matrimonial property for 45 years.
21. On cross examination, the Protestor's testimony was evasive and replete with material contradictions. After claiming that Kabete 277 was her matrimonial home, the witness admitted that she got it from



the Grant of her husband, and that her husband had, in turn, received it from his mother, the Deceased. This is a direct admission that the property is part of the Deceased's estate.

22. Regarding Plot 29 Wangige, DW1 admitted that the property is currently registered in her name and that of her son, and that the family's co-wife, Cecilia, occupies the 2<sup>nd</sup> floor. This admission fatally undermines any claim of exclusive ownership.
23. After claiming that Juja Farm & Kabete 2361 were gifts, DW1 admitted that she had no document to prove any such gift inter vivos.
24. When pressed, DW1 admitted that she not filed any proposal on how the estate should be distributed. When asked if she would object to all properties being pooled and divided equally, her response was very telling: "These ones were given to my husband directly. I do not want him to share with his sisters."
25. On the 3 COINS property, DW1 was confronted with her own Affidavit sworn on 26 February 2004 in Mombasa Succession Cause No 32 of 2003, in which she had deponed that the THREE COINS property, Mombasa Block XXII 118, was the property of Rachel Wanjiru Ngugi, wife to Ngugi, and not the Deceased's. DW1 was unable to explain the contradiction.
26. The position of the house of Ngugi Kihara was presented through the Affidavit of Dorcas Wairimu Kamau and submissions by Mr. Kamothe for the Beneficiaries. Their position is that the THREE COINS property is not free property of the Deceased. They presented a 1994 Affidavit of Assets sworn by the Protestor's husband, which did not list the said property. In an Affidavit sworn in 1995 by Mugo Njoroge, the Executor of the estate of James Kihara Njoroge, states that the property was in the name of Ngugi Kihara. The Green Card attached shows that the property was transferred to Rachel Ngugi (wife to Ngugi Kihara) as a trustee for her children in 1997, who then used this title to secure a loan for development. Despite all this, the Beneficiaries consent to the Administrator's proposed distribution because it correctly indicates THREE COINS, as an advancement to their house, which should be retained.

### **Analysis & Determination**

27. Having considered the Summons, the voluminous Affidavit evidence, the testimonies and submissions of the parties, this Court frames the following issues for determination:
  - i. Whether the Protestor's claim that the Deceased's daughters are excluded from inheritance by virtue of their marriage has any basis in law.
  - ii. Whether the properties known as Kabete Kibichiku 2361, L.R. No. 10090 108 (Juja Farm), and Plot No. 29 Wangige constitute "free property" of the Deceased available for distribution.
  - iii. Whether the property known as 'Three Coins' (Mombasa Block XXII 118) constitutes "free property" of the Deceased available for distribution.
  - iv. Whether the absence of a consensus and a formal valuation report is fatal to the Summons for Confirmation.
  - v. Whether the proposed mode of distribution is fair and lawful, and how the net intestate estate of the Deceased should be distributed.

### **The Right of Daughters to Inherit**

28. The Protestor's case is animated with her belief that only boys were to inherit and that her sisters in law, being married for more than 50 years, have no claim. This position is legally indefensible. It is a



repugnant and archaic viewpoint that has been explicitly extinguished by both statute and *akn ke act 2010 constitution The Constitution*.

29. Article 27(3) and (4) of *akn ke act 2010 constitution The Constitution* is unequivocal. It provides that women and men have the right to equal treatment and prohibits discrimination, direct or indirect, on the ground of sex or marital status.
30. Second, even before the 2010 Constitution, the *akn ke act 1972 14 Law of Succession Act*, which applies herein, at section 38 governs intestate succession where, as is the case herein, a deceased leaves children but no spouse. It states:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall... devolve upon the surviving child... or shall be equally divided among the surviving children.”
31. The Act makes no distinction between male or female, married or unmarried children. The principle was authoritatively settled by the Court of Appeal in *Mary Rono vs Jane Rono & another* [2005] KECA 326 (KLR), which held that any customary law that discriminates against daughters is repugnant to justice and morality and is ousted by the Act. This was reiterated in *M’Murithi vs Murithi* [2015] KECA 347 (KLR), where the Court of Appeal stated thus:

“Applying the above principles to both the learned trial Judges’ reasoning and distribution, it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the *akn ke act 1972 14 Law of Succession Act* by discriminating against the married daughters of the deceased. See *Rono versus Rono & another* [2008] 1KLR (G&F) 803.”
32. The Protestor’s foundational legal argument is, therefore, rejected. The Deceased’s daughters are rightful beneficiaries entitled to inherit from their mother’s estate on an equal legal footing with her son. This ground of protest is dismissed.

### **Juja Farm, Kabete 2361 and Wangige 29**

33. The Protestor claims that these 3 properties were gifts inter vivos to her husband and thus do not form part of the Deceased’s free property as defined by section 3.
34. The burden of proof rests squarely on the Protestor. Section 107 of the *akn ke act 1963 46 Evidence Act* provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The Protestor has failed to discharge this burden. A person alleging a gift inter vivos must prove clear and unequivocal intention and a complete transfer by the donor. The Protestor provided no deed of gift, no transfer document and no credible evidence. To the contrary, her testimony collapsed on cross examination. She admitted that Kabete 277 came from the Deceased; Kabete 2361 was ancestral, but had no proof of a gift to her husband; Wangige 29 was registered in her own name and shared with co-wife, Cecilia; Juja Farm was bought by James Njoroge Kihara for the house, not as a personal gift to her 17-year-old husband.
35. PW1’s testimony that these properties devolved from the late James Njoroge Kihara’s estate to the Deceased’s house for her children is far more credible and consistent. Furthermore, these properties were the subject of the 2019 revocation Ruling, which has not been overturned. The Ruling found that the properties belonged to the estate of the Deceased and were wrongfully transferred. A party cannot use a confirmation hearing to re-litigate a matter that is res judicata. This ground of protest is dismissed.



### **Status of 3 COINS, Mombasa Block XXII 118**

36. This asset presents the opposite problem. The Administrators have listed it as estate property, but the consenting Beneficiaries and the Protestor's own Affidavit contend that it is not. In this instance, the Beneficiaries have discharged their evidential burden by presenting overwhelming evidence that the property is registered in the name of Rachel Ngugi, as trustee.
37. This Court's jurisdiction is limited to distributing the free property of the Deceased. In re Estate of Atibu Oronje Asioma (Deceased) [2022] KEHC 11046 (KLR), the Court stated:
- “The probate court only distributes assets that are undisputedly owned by the deceased. Assets that are unencumbered or the subject of ownership disputes are not undisputedly owned by the deceased, and are not available for distribution by the court until the encumbrances are removed or the ownership disputes resolved. Property available for distribution is defined in section 3 of *akn ke act 1972 14 Law of Succession Act* as the free propriety of the deceased.”
38. The evidence herein clearly shows that Three Coins, and its associated property MN CR 27302 Changamwe, do not form part of the net intestate estate of the Deceased. They were advancements made to the house of Ngugi Kihara. This finding, however, does not remove them from the succession equation. It merely moves their consideration from section 38 to section 42 of the Act.

### **Lack of Consensus and Valuation**

39. The Protestor argues that the Summons must fail for lack of consensus and want of a valuation report.
40. The Protestor is the source of the lack of consensus. The law does not permit a single, unreasonable dissenter to hold an entire estate hostage. The very purpose of a contested confirmation hearing is for the Court to adjudicate the dispute and impose an order where consensus has failed. This objection is without merit.
41. The demand for valuation is disingenuous. A valuation is a tool for the court, not a mandatory prerequisite, especially where the application of the hotchpot principle under section 42 is clear. The Protestor demands valuation for the prime Mombasa properties but provides none for the 25-acre Juja farm that she has already sold. PW1's testimony that the Juja farm was more valuable than THREE COINS was not credibly rebutted. The Protestor cannot seek equity without doing equity. This objection is a transparent delay tactic and is dismissed.

### **Mode of Distribution**

42. A consensus having failed, this Court must distribute the estate. The starting point is section 38 of the Act: equal division among the 6 children. However, section 38 is explicitly made subject to section 42, which requires that any advancements or gifts inter vivos given by the intestate to a child, grandchild or house, shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house. This is the principle of hotchpot. Its purpose is to ensure equity and prevent a beneficiary from double-dipping – receiving a large advancement during the deceased's life and then claiming an equal share of the remainder.
43. The Protestor's demand for equal distribution is a demand to double-dip. She seeks an equal share of the remaining assets after her house has already benefitted from the Juja Farm, Kabete 2361 and Kabete 301. This is precisely the inequity Section 42 was designed to prevent.



44. The Administrators' proposed distribution, as detailed in the Further Affidavit and consented to by every other Beneficiary, is a masterful application of section 42. It allocates to the House of John Njoroge (the Protestor) the very properties they have always possessed, developed and claimed – Juja Farm, Kabete 2361, Kabete 301, Wangige 29 and half of the matrimonial home Kabete 277.
45. It allocates to the House of Ngugi Kihara the properties they have always possessed – THREE Coins, Changamwe and the other half of the matrimonial home.
46. It then fairly distributes the remaining un-advanced properties among the 4 daughters, who have waited patiently for 3 decades while their brothers' families benefited from the estate.
47. This proposal is not only fair; it is the most accurate and equitable application of the *akn ke act 1972 14 Law of Succession Act* to the complex facts of this case. After 31 years, this dispute must now come to an end.

### **Disposition**

48. To that end, I make the following orders:
  - i. The Affidavit of Protest sworn by Teresiah Wanjiku Njoroge on 30 August 2021 is hereby dismissed;
  - ii. The Summons for Confirmation of Grant dated 4 July 2022 as clarified by the Further Affidavit of 14 June 2024 is hereby allowed;
  - iii. The Grant of Letters of Administration Intestate issued to Irene Wambui Kimani and Caroline Wambui Kihara on 7 June 2021 is hereby confirmed.
  - iv. Each party shall bear their own costs
  - v. Leave to appeal is granted.

**DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Protestor: Mr. Irungu

For Administrators: Ms Muthee h b Kirimi

For Beneficiaries: Mr. Keiro h b Kamotho

Court Assistant: Lucy Mwangi

