



REPUBLIC OF KENYA



**In re Estate of Jeremiah Munga Njeru (Deceased) (Succession Cause 3055 of 2007) [2025] KEHC 15948 (KLR) (Family) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15948 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 3055 OF 2007  
PM NYAUNDI, J  
NOVEMBER 7, 2025**

**RULING**

1. This succession cause relates to the Estate of Jeremiah Munga Njeru (hereinafter referred to as the deceased) who died intestate on 1<sup>st</sup> March 2007. The deceased was polygamous at the time of his death.
2. Ruth Maluki Munga, a Co Administrator herein has presented summons for confirmation of grant dated 12<sup>th</sup> April 2024, in which she enumerated the beneficiaries of the Deceased as;
  1. House.
    1. Mary Gathoni Munga – widow
    2. Jane Munga (deceased) survived by
      - a. Mary Wairimu Wanjira ..... daughter.
      - b. Joyce Wambui Wanjira ..... daughter.
    3. John Maina Munga – son.
    4. Joyce Wambui Kabuchwa – daughter.
    5. Nicholas Karoki Munga – son.
    6. Margaret Kirigo Munga – daughter.
    7. Nancy Wanjiku Munga – daughter.
    8. Cecilia Wakiru Munga –daughter.
  2. House.
    1. Ruth Kaluki Munga – widow.
    2. Mwangangi Munga –son.



3. Irene Wambui Munga –daughter.
  4. Reuben Njeru Munga – son.
  5. Harun Karuri Munga –son.
3. She enumerates the assets as-
- a. Ngandu ancestral home.
  - b. Title Number Kiine/ Thigirichi/ 656 (Kirinyaga Home).
  - c. Plot X-7 Kahawa West.
  - d. Certificate No.. 039- Ngi II Kugeria Jua-kali No.. 39).
  - e. Certificate No.. 038- Ngi II Kugeria Jua-kali No.. 38
  - f. Kahawa West Stall No.. 275.
  - g. Equity Building Society Share No.. 004-4240.
  - h. Post Bank Account No.. 4177.
    - i. Marika Ma Mathira Shares.
4. Her proposal is that the estate be distributed as follows;



Asset	Mode Of Distribution
1.ngandu Ancestral Land	To Be Transferred To Mary Gathoni Munga.
2.title Number Kiine Thigirichi /656 (kirinyaga Home)	To Be Transferred To Mary Gathoni Munga And Ruth Kaluki Munga On Behalf Of All Beneficiaries.
3.plot No. X-7 Kahawa West	To Be Transferred To Ruth Kaluki Munga
4.Certificate No.. 039 Ngei Ii (Jua Kali House No.. 39)	To Be Transferred To Mary Gathoni Munga And On Behalf Of The Deceased's First House.
5.Certificate No.. 038 Ngei Ii (Jua Kali House No.. 38)	To Be Transferred To Mary Gathoni Munga And Ruth Kaluki Munga On Behalf Of All Beneficiaries Of The Deceased.
6.marika Ma Mathira Shares	To Be Transferred To Mary Gathoni Munga And On Behalf Of The Deceased's House No.. 1.
7.kahawa West Stall No.. 275	To Be Transferred To Ruth Kaluki Munga And On Behalf Of The Deceased's House No.. 2
8.account No.. 004-420 Equity Building Society	Proceeds To Be Transferred To Mary Gathoni Munga And Ruth Kaluki Munga.
9.account No.. 4177-post Bank Pass Book	Proceeds To Be Transferred To Mary Gathoni Munga And Ruth Kaluki Munga.

5. In her supporting affidavit to the confirmation of grant, she avers that the mode of distribution is guided by the deceased's written instructions which were shared with both houses during his lifetime expressing his wishes on distribution of the estate. Before the deceased died, Mary Gathoni was residing in the ancestral land in Ngandu while she resided in Plot X Kahawa. Mary Gathoni is also in possession of Certificate No.. 039 Ngei II (Jua Kali House No.. 39) where she has been collecting rent. She was farming Certificate No.. 038 Ngei II (Jua Kali House No.. 38) but the first family interfered with her occupation. That all the beneficiaries of the 2<sup>nd</sup> house have consented to the mode of distribution. She urged the court to confirm the grant and distribute the estate as prayed.
6. The first family represented by the Co-Administrator, Mary Gathoni Munga, has also presented a Summons for Confirmation dated 21<sup>st</sup> Aril 2024. As there can only be a single summons for Confirmation on 13<sup>th</sup> May 2025, I directed that Summons dated 21<sup>st</sup> April 2024, would be treated as a protest.
7. She concedes that the deceased was survived by the beneficiaries as enumerated by her co administrator. On assets she enumerates them as-
  - a) Ngandu ancestral home.



- b) Thirigichi home Kirinyaga.
- c) Plot X-7 Kahawa West.
- d) Kambiti Makuyu.
- e) Ngei II Kugeria Jua-kali No.. 38/39.
- f) Kahawa West Stall No.. 275.
- g) Equity Building Society Share No.. 0044240.
- h) Post Bank Account No.. 4177.
- i) Marika Ma Mathira Shares.

8. She proposes that the Estate be distributed as follows;

Asset	Beneficiary	Share
1.ngandu Ancestral Home	Mary Gathoni Munga	Wholly
2.thigirichi Home Kirinyaga	Mary Gathoni Munga	Wholly
3.plot X-7 Kahawa West	Ruth Kaluki Munga	Wholly
4.kambiti Makuyu	Ruth Kaluki Munga	Wholly
5.Ngei Ii Kugeria Jua-kali No..38/39	Mary Gathoni Munga	Wholly
6.kahawa West Stall No.. 275	Ruth Kaluki Munga	Wholly
7.equity Building Society Share No.. 00444240	Ruth Kaluki Munga Marygathoni Munga	Equally
8.post Bank Account No.. 4177	Ruth Kaluki Munga Mary Gathoni Munga	Equally
9.mariika Ma Mathira Shares	Mary Gathoni Munga	Wholly

9. In the supporting affidavit in support of the confirmation of grant, she also avers that the above proposed mode of distribution is guided by the written instructions of the deceased and were shared with both houses during his lifetime expressing his wishes on the distribution of the estate. That all the beneficiaries of the 1<sup>st</sup> house have consented to the above proposed mode of distribution. She urged the court to confirm the grant and distribute the estate as prayed.
10. The summons for confirmation of grant was disposed of by way of written submissions.



### **1<sup>st</sup> House's Submissions.**

11. The submissions are dated 8<sup>th</sup> September 2025. It was their submission that this court should be guided by Section 40 of the *Law of Succession Act*, Cap 160 and the decision of Mary RoNo. v Jane RoNo. & ANo.ther [2005] KECA 326 (KLR) since the deceased was polygamous.
12. It was their submission that the deceased expressly stated in writing how the estate should be distributed. That Kiine/Thigirichi/656 (Kirinyaga Home) should devolve to the first house as stated by the deceased. The said property should be held in trust for all the beneficiaries by John Maina Munga (son to the deceased).
13. Relying on the Court of Appeal decision of Phoebe Mbeneka Kilonzo v. Priscilla Mumbua Kilonzo & Benard Muteti Mungata, Civil Appeal No.. E351 of 2021, It was further submitted that since the second house is benefiting from Plot X Kahawa and Kahawa West Stall No.. 275 which are developed compared to Ngei II Jua Kali 38 and Ngei II Jua Kali 30, the same should be allocated to the first house. In the event that the second house oppose this division, they should give up their sole claim to the two properties.

### **2<sup>nd</sup> House's Submissions.**

14. The submissions are dated 10<sup>th</sup> July 2025. It is their submission that the deceased expressly stated in writing that Title Number Kiine /Thigirichi /656(Kirinyaga Home) belongs to both his wives and all the children. They argued that since Ngandu is an ancestral home, it will be unfair for the first house to have two ancestral lands therefore, the same should be shared between the two houses.
15. Regarding Ngei II Jua Kali 38 and Ngei II Jua Kali 39, it was submitted that the deceased did No.t leave instructions how it should be distributed. That it would only be fair that the two properties be shared between the two administrators.
16. It was the 2<sup>nd</sup> house submission that Kambiti Makuyu is No.t the deceased's property. It belongs to Ruth Kaluki Munga and since it was No.t listed in the petition, it should No.t be introduced at this stage.
17. They asked the court to rectify Kahawa Stall 275 to read Kahawa Stall 274.

### **Analysis And Determination**

18. The issue for determination by this court is how the estate of the deceased should be distributed among the beneficiaries.
19. In a case of this nature where the deceased died intestate and was a polygamous man survived by two widows and children the anchor on distribution of his estate is Section 40 of the *Law of Succession Act* which primarily provides as follows;
  - (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 sections 35 to 38.



20. In *Scholastic Ndululu Sura v Agnes Nthenya Sura* [2019] eKLR, the Court of Appeal weighed in to that position, emphasising that the Court should endeavour to ensure that the distribution is fair, when it held as follows: -
- “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.”
21. I take Note of the fact that both parties are agreed that the deceased left written instructions expressing his wish on how his family would distribute the assets post his death. None of the parties suggest that written instructions presented should be equated to a Will as provided for under Part II of the *Law of Succession Act*. Admittedly, the Court may in determining the issue of how the estate is to be distributed ought to be guided by the discernible wishes of the deceased. Apart from the contested interpretations, it is evident that in his life time the deceased had settled the two houses on separate parcels of land.
22. This is reflected by the fact that to a large extent the two houses as represented by the proposals in the summons for confirmation and the protest are agreed on how the estate should be distributed. The point of divergence is
- a. The inclusion by the Protestors of Kambiti Makuyu as a part of the Estate
  - b. The proposal in the summons that the asset Certificate No.. 038 Ngei II (Jua Kali House No.. 38) be distributed to both the widows.
  - c. The proposal by the protestors that the Kirinyaga Home be distributed solely to Mary Muthoni Munga. In submissions this proposal is altered and it is suggested that the property be held by John Maina Munga, a son of the deceased in trust for all the beneficiaries.
23. On the inclusion of the Kambiti Makuyu, there is No. document availed to confirm that the asset belongs to the deceased, it is also Not sufficiently described and therefore unidentifiable. The same is excluded from the estate of the deceased.
24. On the distribution of Certificate No.. 038 Ngei II (Jua Kali House No.. 38), I agree that this being an adjacent plot to Certificate No.. 039 Ngei II (Jua Kali House No.. 39), it should be transmitted to Mary Gathoni Munga.
25. With regards to the Kirinyaga Home, having found that the deceased died intestate and had Not perfected the gift to any of the beneficiaries, it follows that this comprises part of his estate and should be distributed fairly among his beneficiaries. The same shall therefore be held by both widows in trust for all the beneficiaries in equal shares.
26. In summary, the Grant issued on 7<sup>th</sup> March 2008 is confirmed and the net estate of the deceased shall be distributed as follows:
- i. Ngandu ancestral land – Mary Gathoni Munga (Absolutely)
  - ii. Title Number Kiine Thigirichi/656 Kirinyaga- Mary Gathoni Munga and Ruth Kaluki Munga to hold in trust of all the beneficiaries jointly in equal shares. (children of the deceased as enumerated in paragraph 2 above).
  - iii. Plot X-7 Kahawa West- Ruth Kaluki Munga (Absolutely).
  - iv. Ngei II Kugeria Jua-Kali No..38- Mary Gathoni Munga Absolutely



- v. Ngei II Kugeria Jua-Kali No. 39- Mary Gathoni Munga Absolutely
  - vi. Kahawa West stall No.. 274- Ruth Kaluki Munga Absolutely
  - vii. Equity building society share No.. 00444240- Mary Gathoni Munga and Ruth Kaluki Munga in equal shares.
  - viii. Post Bank account No.. 4177- Mary Gathoni Munga and Ruth Kaluki Munga in equal shares.
  - ix. Mariika Ma Mathira Shares- Mary Gathoni Munga (Absolutely)
27. Certificate of Confirmation of Grant to issue accordingly.
28. Owing to the relationship between the parties there shall be No. order as to costs.
29. Leave to appeal is granted, any party exercising their right of appeal to do so within 30 days
- It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 7<sup>th</sup> DAY OF No.VEMBER, 2025.**

**M. NYAUNDI**

**HIGH COURT JUDGE**

In the presence of;-

Fardosa Court Assistant

Ms. Ng'ang'a for 2nd Family

RoNo. for 1st Family

