



REPUBLIC OF KENYA



**In re Estate of Simon Anampiu M'Murugu - Deceased (Succession Cause 91 of 2011) [2025] KEHC 16164 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16164 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 91 OF 2011  
HM NYAGA, J  
NOVEMBER 6, 2025**

**IN THE MATTER OF THE ESTAE OF SIMON ANAMPIU M'MURUGU – DECEASED**

**BETWEEN**

**PETER MTAIYA M'ANAMPIU ..... PETITIONER**

**AND**

**FLORENCE MUKETHI M'ANAMPIU ..... 1<sup>ST</sup> RESPONDENT**

**ELIAS GITONGA M'ANAMPIU ..... 2<sup>ND</sup> RESPONDENT**

**SUSAN MUKOMWATHI M'MWITHIMBU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me if an application dated 17/1/2025 which seek, the following orders: -
  - a. Spent.
  - b. That pending the hearing and determination of this application the respondents be barred from selling, charging or whatsoever interfering with the subject suit properties being LR. No. Nyaki/Munithu/4317, 4318, 4319, 4320, 4321, 4322, 4323, 4324, 4325 and 4326 all emanating from LR. Nyaki/Munithu/290 which forms part of the deceased's estate.
  - c. That the Honourable court be pleased to cancel the titles LR. Nos. Nyaki/Munithu 4317, 4318, 4319, 4320, 4321, 4322, 4323, 4324, 4325 and 4326 all emanating from LR. No. Nyaki/Munithu/290 before the Meru District Land Registrar in respect of that the Meru Land title number Nyaki/Munithu/290 and to revert back to the deceased's name for distribution as per the mediation agreement settlement.



- d. That the Honourable court be pleased to nullify the mutation registered dated 20<sup>th</sup> March, 2024 before the Meru District Land Registrar in respect of that Meru Land title number Nyaki/Munithu/290.
  - e. That the Honourable court be pleased to order that the Meru District Land Surveyor carry out fresh subdivision with respect to land title number Nyaki/Munithu/290 in strict compliance with the certificate of Confirmation of Grant.
  - f. That the Honourable court be pleased to issue such other or further orders in the interest of justice.
  - g. That the costs of this application be provided for.
2. The gist of the application is that as per the certificate of confirmation of the grant herein, the parties / beneficiaries were to share the land in question, Nyaki/Munithu/290, equally. That some beneficiaries engaged a private surveyor who came up with sub-divisions that were contrary to the grant.
  3. The applicant further states that the Mutation Form prepared by the said private surveyor purported to give some beneficiaries larger shares than others. That the parties had already filed a mediation settlement agreement where they agreed to divide the land into 6 equal portions. That the District Surveyor had already established that the private surveyors report was faulty.
  4. The applicant thus sought that the titles/sub-divisions in existence be cancelled and new sub-divisions be created as prayed.
  5. In response, the 2<sup>nd</sup> respondent swore an affidavit on 29/4/2025. In a nutshell, he stated that the issues raised now have already been determined by the court and the applicant has not appealed against the decision. That the sub-divisions were done in accordance with the grant and each beneficiary got 1.172 Hectares.
  6. That owing to the nature of the land, it was impossible for the land to be divided into 6 equal portions. That the sub-division was also made to accommodate the settlement on the ground.
  7. The respondent further states that the real reason for the application is because the applicant does not want to accommodate Florence, despite the family agreeing on the manner they were to settle on the ground, so that each beneficiary had access to the tarmac road.
  8. The respondent further states that allowing the application will leave a trail of destruction of property and create confusion.
  9. The respondent urged the court to dismiss the application.
  10. The advocates for the parties made oral submissions which I will not rehash. They basically reiterated their clients' positions.
  11. This matter clearly demonstrates that although the law provides for beneficiaries to be entitled to equal shares in an estate the term "equal" itself is not easy to define.
  12. On 28<sup>th</sup> February, 2024, this court issued a further rectified grant in respect to the estate of the deceased herein. The grant was to the effect that the six (6) beneficiaries named therein would share land Parcel No. MNYAKI/Munithu/290 equally. 3 other beneficiaries were to share Land Parcel No. NYAKI/KITHOKA-MWANIKA/26 in the manner set out in the said Certificate of Confirmation of Grant.



13. It is on record that even after the grant was rectified, its implementation on the ground has been plagued by disputes among the beneficiaries. The dispute appears to stem from the fact that some parties are already settled on the land Parcel No, Nyaki/Munithu/290.
14. The bone of contention is whether the parties ought to get one equal portion of land or get two or more portions, but end up getting equal acreage.
15. This cause also raises an important issue concerning the confirmation of grant. It is common for parties as to ask the court to confirm a grant in a certain manner, only for them to come back to ask the court to either review or rectify the grant, owing to factors that arise post the confirmation and during the implementation.
16. In my view, before the parties came to court for Confirmation of Grant, they should have the precise details of how they wish the property to be distributed, since they are the ones who have full knowledge of how they, for example, occupy the land in question. It would thus be ideal for parties to have draft maps, prepared by experts when they come to seek Confirmation of the Grant. That's why the Law gives the administrator, reasonable time, of six (6) months, and more, to seek confirmation of a grant.
17. Clearly, like in this case, no such maps were done prior to the confirmation of the grant. The dispute now arose at the implementation stage.
18. It is also to be pointed out that the court has a duty to ensure that land, especially that situated in agricultural areas like in the present case, is not fragmented into sub-divisions that may turn out to be uneconomical in terms of production. Therefore, the court will only allow such fragmentation if the sub-divisions created are still capable of being utilized productively.
19. In the present case, it is evident that there is a clamor by one party, the applicant, to have all the portions created from Nyaki/Munithu/290 be equal in size and touch the tarmac and the forest. While this proposal appears reasonable, it can only be done if the land's width, shape, or topography is capable of such demarcation, without the undesirable fragmentation referred to earlier on.
20. The court is not an expert on sub-division of land. It relies on the opinion of the experts who include the surveyors and land registrars. While such opinion may not bind the court, it is highly valued if made in an impartial and independent manner.
21. It is noted that the property in question was sub-divided, but not into 6 equal portions. The mutation form created 10 parcels of land. As a result, some beneficiaries ended up with two portions of land. These were:-
  - a. Peter Mtaiya(Applicant) who got parcel 4326 measuring approximately 0.372 Hectares and Parcel No. 4321 measuring approximately 0.80 Hectares.
  - b. Susan Mukwomwathi who got Parcels No. 4317 and 4323 measuring 1.072 Hectares and 0.10 Hectares respectively.
  - c. Benjamin Kanyinyiu who got Parcels No. 4318 and 4324 measuring 0.972 Hectares and 0.20 Hectares respectively
  - d. Florence Mukethi who got Parcels No. 4320 and 4325 measuring 1.072 Hectares and 0.10 Hectares respectively.
22. All the beneficiaries, whether they got one portion or two, ended up getting a total of 1.172 Hectares.



23. If I get Mr. Mutuma correctly it is only the applicant who is affected, but clearly that is not the position. There are others affected and they have no issue with the sub-division.
24. The land has already been sub-divided and the new titles are out. The requisite consent by the Land Control Board was given. It is my view that the applicant is trying to drag the rest of the beneficiaries back to the drawing board, which is undesirable. His proposal said to be anchored on the mediation settlement agreement, but even if that was the case, it would still require the input of a professional, for the reasons that I gave earlier.
25. It is thus my view that, the parties ought to settle on the land as per the titles issued.
26. Therefore, the parties are directed to go to the lands and have the beacons of the sub-divisions pointed out to them, if that has not been done already. Each beneficiary, will meet the costs of his/her portion/ sub-division.
27. In conclusion, the application dated 17/1/2025 is dismissed but there shall be no orders as to costs.

**SIGNED, DATED AND DELIVERED AT MERU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**H.M. NYAGA**

**JUDGE**

