



**In re Estate of Gladis Muguru Gakinya alias Gladys Muguru Gakinya
alias Glasys Muguru Gakinya (Deceased) (Succession Cause E018 of 2024)
[2025] KEHC 16034 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE E018 OF 2024
RM MWONGO, J
NOVEMBER 5, 2025**

**IN THE MATTER OF THE ESTATE OF GLADIS MUGURU GAKINYA ALIAS
GLADYS MUGURU GAKINYA ALIAS GLASYS MUGURU GAKINYA (DECEASED)**

BETWEEN

TERESIA WANGUI GAKINYA ADMINISTRATOR

AND

CATHERINE MARIGU NJERU 1ST APPLICANT

BRIAN GAKINYA MURANGI 2ND APPLICANT

JUDGMENT

Introduction and Background

1. The deceased died on 02nd August 2002. The administrator as the Deceased's daughter petitioned for a grant of letters of administration in her estate. The same was issued on 08th August 2018. The administrator then filed summons for confirmation of grant dated 28th June 2021, accompanied by a supporting affidavit proposing a mode of distribution.
2. According to the summons for confirmation of grant, the deceased was survived by her children who are:
 1. Pauline Nyawira Gakinya (deceased)
 2. Teresa Wangui Gakinya
 3. Mary Wairimu Gakinya (deceased)
 4. Catherine N.G. Gakinya



5. Harrison Murangi Gakinya (deceased)
 6. Jane Wanja Gakinya
 7. Alice Wanjiku Mbugua
 8. James Irungu Gakinya
 9. John Gikandi Gakinya
3. The following are the named dependants of the deceased:
1. Stephen Murangi Gakinya
 2. Ann Sheila Wambui
 3. Gladis Wambui Murangi
 4. Brian Gakinya Murangi
4. The administrator proposed that the estate be distributed as follows:
1. Land Parcel No. Gaturi/Weru/3941 measuring 0.41Ha to be inherited equally by: Teresa Wangui Gakinya, Catherine N.G. Gakinya, Jane Wanja Gakinya, Alice Wanjiku Mbugua, Ann Sheila Wambui, Stephen Murangi Gakinya, Brian Gakinya Murangi and Gladis Wambui Murangi.
 2. Land Parcel No. Gaturi/Weru/3940 measuring 0.56Ha be inherited equally by Teresa Wangui Gakinya, Catherine N.G. Gakinya and Jane Wanja Gakinya
 3. Land Parcel No. Nyeri/Waraza/1421 measuring 1.94Ha be inherited by James Irungu Gakinya
 4. Land Parcel No. Nyeri/Waraza/1422 measuring 1.94Ha be inherited by John Gikandi Gakinya
 5. Land Parcel No. Nyeri/Waraza/1423 measuring 1.94Ha be inherited by
 - i. Brian Gakinya Murangi and Gladis Wambui Murangi- 1.16ha
 - ii. Stephen Murangi Gakinya- 0.78Ha
 6. Land Parcel No. Nyeri/Waraza/1424 measuring 1.94Ha be inherited by
 - i. Stephen Murangi Gakinya- 0.38Ha
 - ii. Alice Wanjiku Mbugua- 0.78Ha
 7. Land Parcel No. Nyeri/Waraza/1425 measuring 1.16Ha be inherited by
 - i. Alice Wanjiku Mbugua- 0.38Ha
 - ii. Ann Sheila Wambui- 0.78Ha
 8. Land Parcel No. Nyeri/Waraza/1426 measuring 1.16Ha be inherited by
 - i. Ann Sheila Wambui- 0.38Ha
 - ii. Jane Wanja Gakinya- 0.78Ha
 9. Land Parcel No. Nyeri/Waraza/1427 measuring 0.10Ha be inherited jointly by: Teresa Wangui Gakinya, Catherine N.G. Gakinya, Jane Wanja Gakinya, Alice Wanjiku Mbugua, Ann Sheila



Wambui, Stephen Murangi Gakinya, Brian Gakinya Murangi, Gladis Wambui Murangi, James Irungu Gakinya and John Gikandi Gakinya

10. Land Parcel No. Nyeri/Waraza/1428 measuring 1.16Ha be inherited by
 - i. Jane Wanja Gakinya- 0.38Ha
 - ii. Catherine N.G. Gakinya- 0.78Ha
11. Land Parcel No. Nyeri/Waraza/1429 measuring 1.16Ha be inherited by
 - i. Catherine N.G. Gakinya- 0.38Ha
 - ii. Teresa Wangui Gakinya- 0.78Ha
12. Land Parcel No. Nyeri/Waraza/1430 measuring 1.26Ha be inherited by
 - i. Teresa Wangui Gakinya- 0.38Ha
 - ii. Ann Sheila Wambui
 - iii. Catherine N.G. Gakinya
 - iv. Jane Wanja Gakinya jointly 0.88Ha
 - v. Stephen Murangi Gakinya
 - vi. Teresa Wangui Gakinya
13. East African Breweries Ltd Shares A/C No. 00170250 to be inherited equally by Teresa Wangui Gakinya, Catherine N.G. Gakinya, Jane Wanja Gakinya, Alice Wanjiku Mbugua, Ann Sheila Wambui, Stephen Murangi Gakinya, Brian Gakinya Murangi, Gladis Wambui Murangi, James Irungu Gakinya and John Gikandi Gakinya

The Protests

5. For the Protestors, the 1st protestor filed an affidavit of protest stating that she is the widow of the late Harrison Murangi Gakinya, a son of the deceased. With him she said she has 2 children namely Brian Gakinya Murangi (2nd Protestor) and Gladis Wambui Murangi.
6. The 1st Protestor also had a signed authority to act for her daughter Gladis Wambui Murangi. She stated that her late husband died on 16th August 2003 and he was buried on land parcel number Gaturi/Weru/3941 where she also lives. That 2 of her sisters-in-law took out a grant in the estate of her deceased husband vide Nyeri High Court Succession Cause No. 336 of 2011 without informing her and her children.
7. She moved that court to have the matter transferred to Embu High Court, and then filed summons for revocation of the grant in Nyeri, but it was never determined. It was her argument that the distribution proposed is discriminatory and it has disinherited her. That if the summons for confirmation is allowed, she is likely to face eviction from the place she calls home. She stated that she has already suffered eviction once in the hands of her in-laws who took away her husband's property parcel number Embu/Municipality/112 in the presence of her neighbours. She urged the court not to allow the proposed distribution and that the revocation pending before the Nyeri court to be determined first.



Replying Affidavit to Protest

8. The administrator filed a reply to the protest stating that indeed her brother died and he was buried on land parcel number Gaturi/Weru/3941. That the 1st protestor is not a wife of her deceased brother but the children he sired with the protestor have been duly provided for in the estate. She stated that land parcel number Gaturi/Weru/3941 belongs to the deceased herein and the reason why Harrison Murangi Gakinya was buried on that land is that he was living at a rented house as at the time of his death. This does not mean that the 1st protestor has a right to that land.
9. It was her averment that there is indeed a case before Nyeri High Court in the estate of Harrison Murangi Gakinya and not the deceased herein, but it is taking its legal course and will be determined before that court. She described the 1st protestor's contestation of the mode of distribution as ambiguous as it did not disclose any discrimination or inequality promoted by the proposed mode.
10. She stated that the children of her deceased brother have taken his place in all the properties he would have inherited and this is exhibited in the mode of distribution. That the portion of Gaturi/Weru/3941 that should have been inherited by Harrison Murangi Gakinya will be inherited by his children Brian Gakinya Murangi and Gladis Wambui Murangi and it will be hived off for them where their father is buried.

The Hearing

11. The matter was heard *viva voce*.
12. PW1 was Catherine Marigu Njeru. She stated that she is the widow of the late Harrison Murangi Gakinya with whom she had 2 children: Brian Gakinya Murangi (co-protestor) and Gladis Wambui Murangi. She was surprised to learn that her sisters-in-law did not recognize her as the widow but they recognized her children and allocated property to them. She stated that when the deceased died, he left her living on parcel number Gaturi/Weru/3941. Now, she said, the administrator wants to remove her from that land through the summons for confirmation. That her husband was also buried on the said land but the administrator is now plotting to disinherit her. She stated that the administrator acknowledged her as her brother's widow in the land tribunal case no. 37/2019.
13. In cross-examination, she stated that she was served with the summons for confirmation of grant which indicated that her children would take up the share of the estate that would have been given to their father. She stated that she did not know that the administrator and her 2 sisters bought land from their mother before she died.
14. Neither she nor her children were consulted on distribution of the estate. She said that parcel number Gaturi/Weru/3941, which is where her main concern is, was never transferred to her but that is where she lives. Before the death of her husband, she was using the whole piece of land but now, her children are being given just a fraction of it and that is where she has an issue.
15. RW1 was Teresia Wangui Gakinya the Administrator. She stated that she wished to rely on the supporting affidavit to the summons for confirmation and her further affidavit as evidence-in-chief. On cross-examination, she stated that PW1 was the mother to Brian Gakinya Murangi and Gladis Wambui Murangi but she is not her brother's widow. That the eulogy of the late Harrison Murangi Gakinya indicated that he was cohabiting with PW1. That PW1 started living on parcel number Gaturi/Weru/3941 in 2016 without anyone's permission. She stated that she and her sisters purchased parcel number Gaturi/Weru/3940 and 3941 from their late mother but there are no sale agreements to prove this.



Parties' Submissions

16. The parties filed their written submissions in the matter.
17. The Protestors relied on the case of *In re Estate of the Late M'thigai Muchangi (Deceased)* [2020] KEHC 904 (KLR). The 1st Protestor argued that she has been living on parcel number Gaturi/Weru/3941, a fact that the administrator conceded. It was her proposal that she be added as a beneficiary to the properties given to her children in place of her deceased husband.
18. The administrator submitted that the 1st protestor did not produce any proof that she was married to the late Harrison Murangi Gakinya. She stated that the 1st protestor is not entitled to a part of the estate according to section 41 of the *Law of Succession Act*. She relied on the case of *In re Estate of Francis Andachila Luta (Deceased)* [2022] KEHC 16900 (KLR). That the 1st protestor was living on parcel number Gaturi/Weru/2119 but when her house burned down, she moved to Gaturi/Weru/3941 but this does not mean that she is entitled to inherit it.

Issues for Determination

19. The issue for determination is whether the 1st protestor is entitled to inherit parcel numbers Gaturi/Weru/3941 and Nyeri/Waraza/1423 alongside her 2 children Brian Gakinya Murangi and Gladis Wambui Murangi in equal shares.

Analysis and Determination

20. The 1st protestor's case is that she will be disinherited if the proposed mode of distribution by the administrator is to be applied by the court. She claimed that she is the widow of late Harrison Murangi Gakinya who is a son of the deceased. In light of section 107 of the *Evidence Act*, it was incumbent upon the 1st protestor to prove that she was a wife to the deceased beneficiary.
21. Section 3 of the *Law of Succession Act* provides the following definitions:
 - “spouse” means a husband or a wife or wives recognised under the *Marriage Act* (No. 4 of 2014)
 - “wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and “widower” shall have a corresponding meaning;
22. In her testimony as PW1, the 1st protestor stated that she was married to the late Harrison Murangi Gakinya and together, they had 2 children, Brian Gakinya Murangi and Gladis Wambui Murangi. Both children are recognized by the administrator and the rest of the family. The 1st protestor referred to succession proceedings before the High Court in Nyeri in Succession Cause No.336 of 2011. She stated that she had applied for revocation of the grant in that estate and requested for transfer of the file to Embu High Court. According to her, the applications had not yet been determined.
23. RW1, the administrator, submitted that the proceedings in Nyeri High Court Succession Cause No.336 of 2011 concerned the estate of late Harrison Murangi Gakinya. This Court took the liberty of perusing that file and discovered that the petitioner therein is Catherine N.G. Gakinya, a sister of the deceased therein.
24. There are several ways for the 1st protestor to prove that she was the wife of the late Harrison Murangi Gakinya for purposes of succession; either in terms of the *Marriage Act*, or by obtaining a grant of letters of administration in his estate. If this was established, the court would have been at liberty to



entertain her claim as a wife and beneficiary of the part of the estate of the deceased that would have been allotted to her late husband.

25. In the case of *Joan Franciska Ondari v Aboshiro William Tumbo* [2017] KEHC 6348 (KLR), it was held as follows:

“The applicant and the petitioner being daughters in law of the deceased do not feature anywhere in the table set out in the second schedule made under Rule 7(1)(e)(iii) of the Probate and Administration Rules 1980. They come in as beneficiaries through their late husbands who were sons to the deceased. Their respective claim to the estate of the deceased is thus pegged on their late husbands’ interest and in that case, it would be presupposed that they already have grants of letters of administration respecting the estates of their late husbands and if they do not have them, it is doubtful whether any of them was legally entitled to apply for the grant respecting their late father-in-law.” [Emphasis added]

26. Whilst it is quite probable that the 1st protestor was married to the late Harrison Murangi Gakinya, proof of this must be established in this case on a balance of probabilities before she can claim her right as a daughter-in-law of the deceased in place of her late husband. In this case, this has not been established.

27. As for her children with the late Harrison Murangi Gakinya, they have been named as dependants of the deceased. This position has not been contested and provision has been made for them in the estate through the mode of distribution proposed. The deceased herein died on 02nd August 2002 while the late Harrison Murangi Gakinya died on 16th August 2003. Thus, he did not predecease the deceased herein, his mother. It means that the children of the late Harrison Murangi Gakinya will inherit from the estate of the deceased as her dependants and not as her grandchildren per se because their father survived their grandmother.

28. The logic behind this position is that grandchildren can only inherit directly from their grandparents in the place of their deceased parents if their parents predeceased their grandparents. It was held as such in the case of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR) where Musyoka J. held:

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant’s mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant’s deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased.” [Emphasis added]

Conclusions and Disposition

29. The sum total of the discussion herein is that the 1st protestor’s claim over the deceased’s estate is misplaced as there is lack of proof of her marriage to the late Harrison Murangi Gakinya. On the other hand, the provision made for Brian Gakinya Murangi and Gladis Wambui Murangi as dependants of the deceased herein, being uncontested should be exercised as proposed.



30. In the result, the protest lacks merit and it is hereby dismissed. Consequently, it is hereby ordered that the summons for confirmation of grant be allowed and a certificate of confirmation of grant be issued in the terms proposed under paragraph 5 of the supporting affidavit to the summons for confirmation dated 28th June 2021.

31. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 5TH DAY OF NOVEMBER, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Fatuma W. for Petitioner
2. Ndorongo for Protestors
3. Francis Munyao - Court Assistant

