

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE 2399 OF 2015

IN THE MATTER OF THE ESTATE OF PETER KARIUKI KIMANI
(DECEASED)

ALICE MUTHONI KARIUKI **ADMINISTRATOR/APPLICANT**

VERSUS

FRANCIS MBUGUA KARIUKI **ADMINISTRATOR/PROTESTOR**

JUDGEMENT

1. Peter Kariuki, the Deceased herein, was a man of property and a patriarch who, in his lifetime, seemingly managed to straddle two parallel lives. He maintained a first house in the verdant coffee belts of Mang'u, Kiambu County, and a second house in the high-altitude plains of South Kinangop, Nyandarua County. In his life, his presence acted as the bridge between these two distinct geographical and familial realities. In death, that bridge has collapsed, leaving a chams of silence now filled with the cacophony of litigation.
2. The matter before this Court is the determination of the Summons for Confirmation of Grant dated 24 May 2021. The Applicant, representing the second house, seeks to have the estate distributed and the administration

concluded. However, this Application is met with a vehement Affidavit of Protest sworn by the Protestor, a scion of the first house.

3. The Protestor's protest is not merely a disagreement over arithmetic; it is an existential challenge to the composition of the Deceased's family. He seeks to prune the family tree by alleging that the Applicant and her brother are strangers to the estate, born of another man, and never accepted by the Deceased. Conversely, the Applicant seeks to include them, relying on the doctrine of psychological fatherhood and the long history of the Deceased's conduct. Furthermore, the parties are locked in a territorial struggle over specific parcels of land – specifically NGENDA/NYAMANGARA/1326 – representing a battle for legitimacy and a foothold in the Deceased's ancestral home.

Brief Background

4. To appreciate the depth of acrimony that permeates this cause, it is necessary to traverse the factual history that has brought the parties to this impasse.
5. The Deceased died intestate on 31 January 2015. He was a polygamist who maintained two distinct households during his lifetime.
6. The Deceased married Edith Wanjiru Kariuki decades ago. She survives him as a widow. Together, they were blessed with 6 children: Martin Wainaina Kariuki (deceased), Ann Watiri Kariuki, Gabriel Kimani Kariuki, Joseph Ng'oro Kariuki, Francis Mbugua Kariuki (the Protestor herein), and Henry Kagiri Kariuki. This family is settled in Mitero, Mang'u Location, Kiambu County.
7. In 1990, the Deceased entered into a union with Eunice Wanjeri, who passed away on 5 April 2014, predeceasing the Deceased by barely a year. She had

2 children prior to her union with the Deceased: Alice Muthoni Kariuki (the Applicant) and Simon Waweru Kariuki. Following her union with the Deceased, she bore two biological daughters with him: Christine Watiri Kariuki and Pauline Wangari Kariuki. This family was settled in Mutonyora, South Kinangop, Nyandarua County.

8. The administration of the estate was initially fraught with confusion, leading to the filing of separate causes. These were eventually consolidated. A Rectified Grant of Letters of Administration Intestate was issued on 18 June 2018, appointing the Applicant and Protestor herein, representing the second and first houses, respectively. The joint administration was intended to safeguard the interests of both households. However, as the evidence reveals, the relationship between the Administrators has been characterised by suspicion, lack of cooperation and accusations of intermeddling.
9. A significant aspect of the history involves the managed of the rental income generated by the estate's properties in Githurai and Juja. The record indicates that on 24 October 2016 and subsequently on 5 April 2017, this Court issued orders directing that rental income be collected by professional agents to ensure accountability. Specifically, Jomwan Agencies was appointed to collect the rent.
10. However, as detailed in the evidence herein, these orders were flouted. The widow of the first house, Edith Wanjiru, unilaterally terminated the services of Jomwan Agencies on 31 December 2018 and proceeded to collect the rent in cash, effectively excluding the second house from any benefit derived from the income-generating assets of the estate for a period of nearly 7 years. This backdrop of non-compliance and intermeddling looms large over the current proceedings.

Summons for Confirmation

11. The Applicant filed the Summons for Confirmation of Grant dated 25 May 2021. Through her Affidavit in support and subsequent Proposed Mode of Distribution dated 19 September 2023, she advanced the following core propositions:

- (i) Beneficiaries – The Applicant asserts that the estate has 11 Beneficiaries, excluding the deceased wife Eunice. She includes herself and her brother, Simon Waweru as children of the Deceased, arguing that they were taken into the family and maintained by the Deceased prior to his death.
- (ii) Assets - The Applicant identifies the assets of the estate, notably excluding the land in Mutonyora (Nyandarua), asserting that these titles are registered in the sole name of her late mother, Eunice Wanjeri, and thus form a separate estate not available for distribution here.
- (iii) Distribution – The Applicant proposes that the distribution be based on units (children and widow), resulting in an 11-share split. Regarding the specific assets, the Applicant claims PLOT NGENDA/NYAMANGARA/1326 for the second house, and proposes that GITHURAI PLOTS (1940 & 1942) be allocated to the second house. The Applicant seeks equal distribution of all shares and monies held by agents.

The Protest

12. The Protestor filed his Affidavit of Protest on 16 June 2021, raising fundamental objections that strike at the heart of the Applicant's legitimacy. He contends that Alice Muthoni and Simon Waweru are strangers to the estate. He argues that they are not biological children and that the Deceased never voluntarily assumed permanent responsibility for them. He seeks to

limit the beneficiaries of the second house to only Christine Waitiri and Pauline Wangari.

13. The Protestor argues that the lands in Mutonyora, Nyandarua, though registered to Eunice Wanjeri, were purchased by the Deceased. He insists that these must be brought into the hotchpot of the estate and counted as the second house's share, thereby reducing their claim to Kiambu assets.
14. The Protestor subtly argues for a distribution that favours the first house, relying on an alleged oral Will of the Deceased that the first house should inherit all properties in Mang'u, including the disputed Plot 1326, while the second house should be restricted to Nyandarua. He proposes that Plot 1326 be allocated to the first house citing its geographical proximity to their homestead in Mitero.

The Evidence

15. The matter proceeded for hearing by way of *viva voce* evidence on 7 May 2025. The Court had the opportunity to observe the demeanor of the witnesses and test the veracity of their sworn Affidavits.
16. PW1, the Protestor, testified as the sole witness for the Protestor's case. He adopted his Affidavit in Protest. In his testimony, he maintained that Alice Muthoni and Simon Waweru were not educated by the Deceased and were already adults when their mother married the Deceased. He emphasized that all lands in Kiambu belong to the 1st wife, and the 2nd wife was given land in Nyandarua.
17. In cross examination, the Protestor made several critical admissions that significantly weakened his Protest. He admitted visiting the second family in Nyandarua during the Deceased's lifetime. He admitted that the Deceased introduced the second family, including the Applicant, as his family.

18. Regarding the disputed Mutonyora land, the Protestor admitted that he had no evidence to show that the Deceased purchased the land. He acknowledged that the Eulogy, which was prepared by the elders, listed Alice Muthoni and Simon Waweru as children of the Deceased. He admitted that he saw the document and did not dispute it. The Protestor confirmed the existence of Chief's letters dated 2015 and 2022 validating Alice Muthoni and Simon Waweru as beneficiaries of the Deceased.
19. DW1, the Applicant, narrated her history with the Deceased. She stated that she was 11 years old and Simon Waweru was 7 years old, when their mother married in Deceased in 1990. She testified that she attended school and it was the Deceased who paid their fees. She did not know any other man as father.
20. Regarding the assets, PW1 stood firm that the Mutonyora lands belong to her mother's estate. On distribution, she highlighted the disparity in value, noting that the first house occupies nearly all the ancestral land in Mitero. PW1 testified that she seeks PLOT 1326 as a foothold for the second house in the Deceased's ancestral home, stating, *"If they want to claim that the Githurai plots are more valuable, then let us have the valuation certificates."*
21. DW2, John Mwangi Macharia, is a former agent of Jomwan Agencies. He confirmed collected rent of approximately Kshs 250,000/= per month from the Githurai/Juja properties between 2015 and 2018. He testified that his services were terminated by Edith Wanjiru Kariuki, the 1st widow, *via* a letter date 31 December 2018 because she wanted the cash directly.

Analysis & Determination

22. Upon a thorough review of the pleadings, the evidence on record, and the submissions of counsel, the following issues crystallize for determination:
- (i) Whether Alice Muthoni Kariuki and Simon Waweru Kariuki are beneficiaries of the Estate of Peter Kimani Kariuki;
 - (ii) What constitutes the inventory of the free estate of the Deceased available for distribution?
 - (iii) What is the applicable mode of distribution under Section 40 of the Law of Succession Act?

Beneficiaries of the Estate

23. The Protector's protest is anchored on the assertion that Alice Muthoni and Simon Waweru are not the biological children of the Deceased and thus have no claim to his estate. He relies on the fact that they were born before the union of their mother with the Deceased.
24. Section 29 of the Law of Succession Act defines a dependent to include:
- (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, grandparents, 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.
25. Furthermore, section 3(2) of the Act elaborates on the definition of a child.

References in this Act to "child" or "children" shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility. (emphasis added)

26. This provision enshrines the doctrine of the 'psychological father' in Kenyan law. It recognises that parenthood is as much a social construct as a biological one. Acceptance and the assumption of parental responsibility create a succession right equal to that of a biological offspring.
27. The evidence before this Court overwhelmingly supports the Applicant's case. The Applicant and her brother were minors, aged 11 and 7 years, when the Deceased married their mother. They lived under his roof in South Kinangop. The Applicant testified that the Deceased paid their school fees. The Protestor offered no evidence to rebut this, other than a bare denial.
28. The Applicant produced her national Identity Card, which bears the name "Kariuki" as her surname. A passport issued in 2012, during the Deceased's lifetime, also bears his name. In the African customary context, the bestowal of a name is a significant act of acceptance. One does not simply acquire the name of a patriarch without his express consent or acceptance.
29. Perhaps the most telling evidence is the Eulogy. The funeral program is a document that is usually prepared by the family elders during a time of reflection. The Protestor admitted in cross examination that he saw it and did not dispute it at the time. The eulogy lists Alice Muthoni and Simon Waweru as children of the Deceased. The Chief of Mang'u has twice confirmed, in 2015 and 2022, that they are recognised as the children of the Deceased. To

deny them now, when assets are on the table, is an act of convenient revisionism that this Court will not entertain.

30. I, therefore, find and hold that Alice Muthoni Kariuki and Simon Waweru Kariuki were taken into the family of the Deceased as his own. He assumed permanent responsibility for them, gave them his name, and educated them. They fall squarely within the definition of children under Section 3(2) and dependants under Section 29 of the Act. This ground of the protest is dismissed.

Inventory of the Estate

31. The Protestor lists 5 acres land at Mutonyora and 2 plots in Mutonyora as assets of the Deceased. He claims that the Deceased bought them, or bought them with his brothers, and settled the second house there. The Applicant vehemently opposes this, and produced Title Deeds for Nyandarua/Mutonyora/1764, 1765, and South Kinangop/8505, registered in the name of Eunice Wanjeri Wangari.
32. Sections 24, 25 and 26 of the Land Registration Act confer absolute proprietorship to the registered owner. The sanctity of the title deed is a cornerstone of our land law. The register is conclusive evidence of ownership.
33. While the Protestor claims that the Deceased bought these lands, he did not provide any evidence of the same. Furthermore, this is a succession cause for Peter Kimani Kariuki. It is not a dispute over matrimonial property where contribution might be argued to establish a beneficial interest. Even if the Deceased provided funds, without a declaration of trust of a successful claim under the Matrimonial Property Act during their lifetimes, land registered in the name of Eunice Wanjeri forms part of her estate, and not the Deceased's.

To include them here would be to administer the estate of Eunice Wanjeri within the estate of the Deceased, which is legally impermissible.

34. For this reason, the properties in Mutonyora/South Kinangop registered in the name of Eunice Wanjeri are excluded from the inventory of the Estate of Peter Kimani Kariuki.
35. Regarding the rental income, DW2 providing chilling testimony regarding the management of the estate. He collected approximately Kshs 250,000/= per month. He was ordered by the Court to account for it. However, his services were terminated by Edith Wanjiru in 2018 and remitted cash to her. On cross examination, the Protestor stated that he did not know how much was collected by the Agency. The money was used for repairs and the balance remitted to his mother, Edith Wanjiru.
36. This constitutes intermeddling under section 45 of the Act. The widow and the Protestor have appropriated estate funds to the exclusion of the second house. The approximate being Kshs 250,000 x 12 months x 6 years = **Kshs 18 million**
37. While the Applicant asks for these monies to be distributed, the reality is that the cash is likely spent. However, equity acts *in personam*. The Court cannot ignore that the first house has enjoyed a significant distinct benefit to the detriment of the second house for several years. This inequity must be balanced in the distribution of the remaining assets.
38. Regarding motor vehicle KAA 61A, the Protestor claims that this is a personal household item under section 35, and that the same should go to the widow. The Applicant claims that it is an asset for distribution.

39. Given the Protestor's testimony that the car is old and the lack of a current valuation report suggesting significant residual value, this Court is inclined to treat it as a personal effect. It shall be deemed as a household item for the use of the 1st widow, Edith Wanjiru, and excluded from the general pool for distribution.
40. Based on the pleadings and consensus in the filed documents, the free estate available for distribution comprises of the following:
- (i) Ngenda/Nyamangara/1444 – 1 acre
 - (ii) Ngenda/Nyamangara/1326 – 1 acre
 - (iii) Ngenda/Mitero/T. 12 – Plot
 - (iv) Ngenda/Mitero/T. 103 – Plot
 - (v) Ngenda/Mitero/T. 104 – Plot
 - (vi) Githurai/Tinganga/1940 – Commercial Plot
 - (vii) Githurai/Tinganga/1942 – Commercial Plot
 - (viii) Share of Plot in Umoja Juja (with 33 rental houses)
 - (ix) Shares of Ngenda/Nyamangara/1875 – 0.67 acres
 - (x) Shares in Kengen, Absa and Safaricom
 - (xi) Funds held by Agents (Kiambumbi and Castleland) and Joint Accounts

Distribution of the Estate

41. The Deceased died intestate and polygamous. The distribution is governed by section 40 of the Act, which provides:

"Where an intestate has married more than once... 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”

42. In ***Re Estate of Kipketer Arap Rotich (Deceased)*** [2023] KEHC 23690 (KLR), the Court stated thus:

*“On the how the estate of the deceased should be distributed, based on the fact that the beneficiaries are not in agreement on the mode of distribution this court is duty bound to distribute the estate of the deceased as prescribed under section 40 Law of Succession Act given that the deceased was polygamous and died intestate, however, the court should also take into account the factual circumstances of this case. In the court of appeal case of *Scolastica Ndululu Suva v Agnes Nthenya Suva* [2019] eKLR the court observed 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."*

43. The Court acts on equity. As noted in the cited case, the Court retains a residual direction to ensure the distribution is just and equitable, taking into account the factual circumstances. The factual circumstances herein are:

- (i) The first house has exclusively benefited from the Jomwan Agencies rental income for years;
- (ii) The first house occupies the ancestral land in Mitero;
- (iii) The second house was settled in Nyandarua but as established, those lands are not part of this estate;

- (iv) There is animosity, thus preventing joint ownership of single titles.
44. The Court must apply the 7/11 vs 4/11 ratio (based on the units in each house), tempered by specific nature of the assets to ensure a clean break between these feuding families.
45. Ngendo/Nyamangara/1444 contains family graves. Both parties agree that this property should go to the first house.
46. Ngendo/Mitero T.12, T.103 and T.104- Both parties agree that these should go to the first house.
47. Ngenda/Nyamangara/1326 is the crux of the dispute. The Protestor argues that it is located in Mang'u/Mitero, close to the first house's residence and that the Deceased wanted the first house to have all Mang'u lands. The Applicant argues that the first house already has Plot 1444 and 3 Mitero Plots (T.12, T.103 and T.104). to give them 1326 as well would completely exclude the second house from the father's ancestral home.
48. While the Protestor's argument about geographical consolidation makes practical sense, succession is also about belonging. However, forcing the second house into a hostile neighbour situation with the first house on Plot 1326 might be unwise if value can be realised elsewhere.
49. Looking at Githurai Plots (1940 and 1942), these are commercial, with rental units. The Applicant proposes taking these two plots. The Protestor concedes them to the second house but only because he thought the second house had only 2 units (children).
50. If the first house takes Plot 1444 and Plot 1326 (both agricultural/residential, 1 acre), plus the Juja Umoja land (33 houses), plus the Mitero plots, they will

receive the lion's share of the immovable assets. The Juja Umoja land alone, with 33 rental units, is a massive asset.

51. To balance this, and to cure the injustice of misappropriated rent, I find that equity favours the second house taking the commercial plots in Githurai (1940 and 1942) absolutely.
52. Regarding Plot 1326, given the high tension, it is better allocated to the first house to consolidate their holdings in Mang'u, provided the second house is fully compensated via the Githurai plots and the shares. This achieves a geographical clean break: the first house retains the ancestral seat in Kiambu (Mang'u/Juja) and the second house takes the commercial assets in Githurai.
53. With respect to the Juja Umoja land, the Applicant proposes this goes to the first house. The Protestor agrees. It contains 33 rental units. Awarding this high value asset to the first house further justifies awarding the Githurai plots to the second house to maintain the 7/11 vs 4/11 value ratio.
54. The shares and any monies held by agents should be distributed strictly according to the units; 7/11 to the first house and 4/11 to the second house.
55. Accordingly, this Court makes the following orders:
 - (i) The Protest is hereby dismissed.
 - (ii) It is hereby declared that the dependants of the estate of the Deceased herein are:

1st House (7 Units): Edith Wanjiru Kariuki (Widow), Martin Wainaina Kariuki (Estate of), Ann Watiri Kariuki, Gabriel Kimani Kariuki, Joseph Ng'oro Kariuki, Francis Mbugua Kariuki, Henry Kagiri Kariuki.

2nd House (4 Units): Alice Muthoni Kariuki, Simon Waweru Kariuki, Christine Watiri Kariuki, Pauline Wangari Kariuki

- (iii) The Grant of Letters of Administration Intestate issued on 18 June 2018 is hereby confirmed. The estate shall be distributed as follows:

	Asset	Mode of Distribution
1	Ngendo/Nyamangara/1444	1 st House (absolute)
2	Ngendo/Nyamangara/1326	1 st House (absolute)
3	Ngendo/Mitero/T.12	1 st House (absolute)
4	Ngendo/Mitero/T.103	1 st House (absolute)
5	Ngendo/Mitero/T 104	1 st House (absolute)
6	Land in Umoja Juja (with 33 houses)	1 st House (absolute)
7	Plot Githurai/Tinganga/1940	2 nd House (absolute)
8	Plot Githurai/Tinganga/1942	2 nd House (absolute)
9	Share of Ngenda/Nyamangara/1875	Shared between 1 st and 2 nd House in the ratio 7:4
10	Motor vehicle KAA 617A	Edith Wanjiru Kariuki
11	Shares in Kengen, ABSA Bank and Safaricom	To be shared equally among all 11 beneficiaries
12	Funds held by Kiambumbi/Castleland	To be shared equally among all 11 beneficiaries
13	Funds in joint Barclays Account	To be shared equally among all 11 beneficiaries

- (iv) The Administrators are directed to execute all necessary documents to effect these transfers within 90 days from the date hereof. In

default, the Deputy Registrar is authorised to sign the necessary transfer forms upon application by any Beneficiary.

- (v) Each party shall bear their own costs.
- (vi) Leave to appeal is granted.

DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Administrator/Applicant: Ms Nyaga h/b Mr. Okatch

For the Administrator/Protestor Mr. Maina

Court Assistant: Lucy Mwangi