



**In re Estate of Nyaga Mwaranjau (Deceased) (Succession Cause
572 of 2013) [2025] KEHC 17713 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 572 OF 2013
RM MWONGO, J
NOVEMBER 26, 2025
IN THE MATTER OF THE ESTATE OF NYAGA MWARANJAU (DECEASED)**

BETWEEN

JAMES NJAGI NYAGA ADMINISTRATOR

AND

MBOGO NJUURI 1ST PROTESTOR

CHARITY MBEERE NJAGI 2ND PROTESTOR

JUDGMENT

1. The deceased died on 26th May, 1999. His brother, Mbogo Njuuri petitioned for letters of administration of the deceased's estate on 30th September, 2013. A grant intestate was issued on 7th February, 2014. On 27th November, 2014 the grant was confirmed.
2. On 22nd July, 2020, a motion was filed in which it was alleged that the deceased had left a Will dated 5th April, 1994. Simultaneously, a summons for revocation of grant was filed. The grant issued on 7th February 2014 was revoked and, by consent, a fresh grant was issued to Jones Njagi Nyaga on 15th March, 2023. The Court did not indicate anything concerning the alleged Will, and the fresh grant was in fact issued intestate.
3. The administrator filed summons for confirmation of grant dated 08th May 2023, accompanied by a supporting affidavit proposing a mode of distribution.

Summons for confirmation of Grant

4. According to the summons for confirmation of grant, the deceased was survived by the following:
 1. Mbogo Njuuri



2. Patrick Njiru Nyaga
 3. James Njagi Nyaga
 4. Charity Mbeere Nyaga
 5. Jane Muthoni Nyaga
 6. Diprora Gitiri Gichovi
 7. Nancy Kori Nyaga
 8. Lucy Wambogo (deceased)
 9. Salvatory Mugo Njuuri (deceased)
 10. Samuel Ngoroi Nyaga (deceased)
5. The administrator proposed that the estate be distributed as follows:
1. Land Parcel No. Ngandori/Kiriari/900 to be inherited by Patrick Njiru Nyaga;
 2. Land Parcel No. Ngandori/Kiriari/935 to be inherited by:
 - i. James Njagi Nyaga- 1.6Ha
 - ii. Nancy Kori Nyaga- 0.40Ha
 3. Land Parcel No. Ngandori/Kiriari/898 to be inherited by
 - i. Charity Mbeere Njagi- 0.60Ha
 - ii. Diprora Gitiri Gichovi- 0.20Ha
 - iii. Jane Muthoni Nyaga- 0.20Ha
 - iv. Grace Wanja Gikombo, Martin Munyua Gikombo, Peter Mugambi Gikombo- 0.20Ha jointly

Affidavits of Protest

6. The 1st protestor deposed in the affidavit of protest that the proposed distribution is unfair and one property was excluded. He proposed that the properties should be listed and distributed as follows:
1. Land Parcel No. Ngandori/Kiriari/900 to be inherited by Mbogo Njuuri (whole);
 2. Land Parcel No. Ngandori/Kiriari/935 to be inherited by:
 - i. James Njagi Nyaga- 2 Acres
 - ii. Patrick Njiru Nyaga- 2 Acres
 - iii. Nancy Kori Nyaga- 1 Acre
 3. Land Parcel No. Ngandori/Kiriari/898 to be inherited by
 - i. Charity Mbeere Njagi- 2 Acres
 - ii. Diprora Gitiri Gichovi- ½ Acre
 - iii. Jane Muthoni Nyaga- ½ Acre



4. Plot No. 14 Mbuvari Market to be inherited;
 - i. Charity Mbeere Njagi
 - ii. James Njagi Nyaga jointly
 - iii. Patrick Njiru Nyaga
7. The 2nd protestor stated that she is the widow of the late Moses Njeru Nyaga who is a son of the deceased herein. She protested not being included or consulted in the proceedings. She also stated that her late husband and his brothers James Njagi Nyaga and Patrick Njiru Nyaga were supposed to inherit equal shares in the estate of the deceased which consists of properties listed in the affidavit in support of summons for confirmation. Further, that Plot no.14 Mbuvari Market, sacco shares, cows and water gauge should be included. She urged the court to distribute the whole estate in equal shares amongst the sons of the deceased.

Replying Affidavit to Protest

8. In response to the 1st protestor's assertions, the administrator stated that he did not include Plot no. 14 Mbuvari Market because it is co-owned by 4 families, one of which was that of the deceased. That some of the grandchildren of the deceased whose parents were dead, refused to appear before court to declare their interests in the properties and so they had to be excluded. He stated that the properties were distributed according to the wishes of the deceased.

The Hearing

9. The protests were heard viva voce.
10. PW1 was the 2nd protestor who stated that she is widow of the late Moses Njeru Nyaga, the eldest child of the deceased. She stated that during his lifetime, her husband occupied 3 acres of Parcel No. Ngandori/Kiriari/898 being the share that he was given by the deceased. That Patrick Njiru Nyaga occupied Parcel No. Ngandori/Kiriari/900 which measures 3 acres while James Njagi Nyaga occupied Parcel No. Ngandori/Kiriari/935 measuring 5 acres.
11. She stated that after the death of her husband, his brother James Njagi Nyaga started encroaching on her husband's land leaving her with 1½ acres of the land. That her husband died in December 2007 leaving her with 4 children. In cross-examination, she stated that her late husband's brothers do not live on the land they took away from her but they farm it. She stated that she reported the matter to the police but nothing was done.
12. PW2 was Elisha Mbogo Njururi who stated that he bought Parcel No. Ngandori/Kiriari/900 from a deceased son of the deceased herein for a sum of Kshs.1,000/= . That he paid the purchase price to one Jackton Mbiti who is a member of the deceased's clan. He opposed distribution of that named property. On cross-examination, he stated that when he bought the land, he was working in Meru and the land was registered in his father's name. he doesn't have any paperwork to show that he bought the land but it was given to him through a court process.
13. RW1 was James Njagi Nyaga who testified that he is the youngest child of the deceased. That in 1994, the deceased called his family and charged one of them to care for him. He then gave him all his title deeds and bank documents to keep but some of them were being held by PW2. In that same year, the deceased informed his family that he wanted to subdivide his land and give it to his children; that is, to 2 who were in Ruguru location and to 7 in Mbuvoire location.



14. He stated that the deceased wrote a Will before an Advocate and he gave him a copy of it. In 1998, the deceased subdivided his land but no titles were issued. When PW2 moved see the subdivided land, they chased him away and RW1 applied for revocation of the grant that had been earlier issued to PW2. In cross-examination, he stated that he was not alive when the can subdivided land in the 1950's. That the ones given land in Ruguru were Elisha Mbogo, Salvatore Mugo and Kathiru Njiru Njuuri. He stated that all the properties named in the summons for confirmation belong to the deceased and he had title documents to prove it.
15. He denied that PW1 was married to the late Moses Njeru, a son of the deceased but the family let her marry him with her 4 children. He stated that the late Moses Njeru had been given 3 acres of land by the deceased but PW1 took the land away. He denied having taken any land from PW1. That PW1 was involved in obtaining the grant that was issued to PW2 and that was revoked. That PW2's mother is different from RW1's mother. He stated that it was the deceased who subdivided the land by himself.
16. RW2 was Njururi M. Mbue, a family friend. He stated that the deceased had 2 wives: the mother of PW2 and the late Mugo, and the mother of the other named children. That when the mother of PW2 died, her children were left under the care of the deceased's other wife. The deceased had land in Kiaweru and another one in Kiamwangi. He gave PW2 the land in Kiamwangi and it measured 9 acres. PW2, Mugo and Kariuki were to share the land. The land in Kiaweru measures 11 acres and it was intended to be for 8 of the deceased's children and he left RW1 in charge of his siblings and the property. RW1 has 4 acres of the land while the other siblings have smaller portions.

Parties' Submissions

17. The 2nd protestor filed submissions stating that the deceased had intended to allocate his properties to his sons as follows:
 - Parcel No. Ngadori/Kiriari/898 measuring 3 acres to Moses Njeru Nyaga (deceased)
 - Parcel No. Ngandori/Kiriari/900 measuring 3 acres to Patrick Njiru Nyaga
 - Parcel No. Ngandori/Kiriari/935 measuring 5 acres: 3 acres to James Njagi Nyaga
18. She urged the court to distribute this estate in the manner that she has proposed.

Issues for Determination

19. The central issue for determination is how the estate of the deceased should be distributed.

Analysis and Determination

20. From the pleadings and testimony, it is not disputed that the beneficiaries of the estate of the deceased are the following:
 1. Mbogo Njuuri
 2. Patrick Njiru Nyaga
 3. James Njagi Nyaga
 4. Charity Mbeere Nyaga being the wife of the deceased's son late Moses Njeru Nyaga (dcd)
 5. Jane Muthoni Nyaga
 6. Diprora Gitiri Gichovi



7. Nancy Kori Nyaga
 8. Martin Munyua Gikombo and Peter Mugambi Gikombo being the sons of Lucy Wambogo (deceased)
 9. Salvatory Mugo Njuuri (deceased) whose children are: Jacinta Muthoni Mugo, Amos Mugambi Mugo, Agate Mukami Mugo, Elias Murimi, Venanzia Wanyaga and James Murithi Mugo
 10. Samuel Ngoroi Nyaga (deceased) whose children are: Erick Peter Nyaga Ngoroi and John Mwangi Ngoroi (not interested in the estate)
21. The approach taken by the parties and cemented in their submissions clearly discloses that no cognizance of the alleged Will of the deceased is taken thus no pursuit of probate. Perhaps the parties did not feel that the Will could be proved having been written way back in 1994, and obtaining witnesses may be impossible. In any event, no party has sought that it be proved or that it be relied upon in its terms. No deed of variation thereof nor written disclaimer were put forth. As such, the question of the Will is deemed to be altogether abandoned. Thus, the matter proceeds intestate.
 22. In these proceedings, all these beneficiaries appeared in person before the Judge. The court noted that Erick Peter Nyaga Ngoroi and John Mwangi Ngoroi were not interested in the estate of the deceased and they would not be claiming anything.
 23. Accordingly, they shall not be taken into account in distribution. The administrator disclosed that Plot No. 14 Mbuvari Market was not wholly owned by the deceased since he co-owned it with 4 other families. This argument was not contested neither is there any contrary evidence before court. This means that the deceased's estate is made up of the following properties:
 1. Land Parcel No. Ngandori/Kiriari/900
 2. Land Parcel No. Ngandori/Kiriari/935
 3. Land Parcel No. Ngandori/Kiriari/898
 4. The portion of Plot No.14 Mbuvari Market that belonged to the deceased
 24. As earlier noted, grant had been initially issued to Mbogo Njuuri but it was revoked by this court. By the time of revocation, Mbogo Njuuri had already inherited Land Parcel No. Ngandori/Kiriari/900 wholly and the interest was registered in his name according to the copy of green card provided as evidence. Since the grant under which the property was transmitted has since been revoked, the property so transmitted must be registered to the name of the deceased for redistribution under the new grant.
 25. The mode of distribution proposed by the 2nd protestor is untenable in the eyes of *the Constitution* because she proposes that the property of the deceased be inherited only by the sons of the deceased. If that were permitted, one of the properties will be given to her late husband and by extension, to her. This mode of distribution is discriminatory and goes against Article 27 of *the Constitution* which provides for equality and freedom from discrimination.
 26. From the evidence adduced, it is clear that the deceased had 2 wives who are both deceased. One had 2 children and the other one had 8 children. Some of the deceased's children are also dead and, in their places, their children stand in and are named. In the case where the deceased was polygamous,



the applicable intestate provision for distribution purposes is section 40 of the [Law of Succession Act](#) which provides:

- “(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.”

27. In the absence of the wives of the deceased, the estate should be distributed amongst the children of the deceased according to their houses. The witnesses indicated that there is a distribution that was envisioned by the deceased before his death. However, since there has been no probate of the alleged Will, this matter remains an intestate succession. Accordingly, distribution will be governed by the intestacy provisions of the [Law of Succession Act](#).
28. PW2 claimed that he bought Parcel No. Ngandori/Kiriari/900 which was registered in the name of the deceased since he was working away from home. RW1 contended that the deceased left him in charge of the other siblings before he died. Both PW2 and RW2 testified that the deceased’s children from the first wife be given Parcel No. Ngandori/Kiriari/900 which measures 9 acres which is where they have been living. Regardless, the court must apply section 40 of the [Law of Succession Act](#) and attain an equitable distribution. In *Scolastica Ndululu Suva v Agnes Nthenya Suva* [2019] KECA 1053 (KLR), it was held:

“It is therefore evident that although Section 40 of the [Law of Succession Act](#) provides a general provision for distribution of the estate of a polygamous deceased person, the court has the discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

29. In the case of the deceased children of the deceased, the parties have disclosed the children of these deceased beneficiaries, and they have been named. These grandchildren of the deceased have the right to inherit in the place of their parents who are deceased. In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR) Musyoka J. held:

“...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...”

Conclusion and Disposition

30. Under Section 40 of the [Law of Succession Act](#), all the children of the deceased are counted as units in the estate. therefore, distribution should be as follows:



Land Parcel No. Ngandori/Kiriari/900	<p>To be inherited in equal shares by:</p> <ol style="list-style-type: none"> 1. Mbogo Njuuri 2. Patrick Njiru Nyaga 3. James Njagi Nyaga 4. Charity Mbeere Nyaga being the wife of the late Moses Njeru Nyaga (dcd) 5. Jane Muthoni Nyaga 6. Diprora Gitiri Gichovi 7. Nancy Kori Nyaga 8. Martin Munyua Gikombo and Peter Mugambi Gikombo being the sons of Lucy Wambogo (deceased) (jointly) 9. Salivatory Mugo Njuuri (deceased) whose children are: Jacinta Muthoni Mugo, Amos Mugambi Mugo, Agate Mukami Mugo, Elias Murimi, Venanzia Wanyaga and James Murithi Mugo (jointly)
Land Parcel No. Ngandori/Kiriari/935	<p>To be inherited in equal shares by:</p> <ol style="list-style-type: none"> 1. Mbogo Njuuri 2. Patrick Njiru Nyaga 3. James Njagi Nyaga 4. Charity Mbeere Nyaga being the wife of the late Moses Njeru Nyaga (dcd) 5. Jane Muthoni Nyaga 6. Diprora Gitiri Gichovi 7. Nancy Kori Nyaga 8. Martin Munyua Gikombo and Peter Mugambi Gikombo being the sons of Lucy Wambogo (deceased) (jointly) 9. Salivatory Mugo Njuuri (deceased) whose children are: Jacinta Muthoni Mugo, Amos Mugambi Mugo, Agate Mukami Mugo, Elias Murimi, Venanzia Wanyaga and James Murithi Mugo (jointly)
Land Parcel No. Ngandori/Kiriari/898	<p>To be inherited in equal shares by:</p> <ol style="list-style-type: none"> 1) Mbogo Njuuri 2) Patrick Njiru Nyaga



	<p>3) James Njagi Nyaga</p> <p>4) Charity Mbeere Nyaga being the wife of the late Moses Njeru Nyaga (dcd)</p> <p>5) Jane Muthoni Nyaga</p> <p>6) Diprora Gitiri Gichovi</p> <p>7) Nancy Kori Nyaga</p> <p>8) Martin Munyua Gikombo and Peter Mugambi Gikombo being the sons of Lucy Wambogo (deceased) (jointly)</p> <p>9) Salivatory Mugo Njuuri (deceased) whose children are: Jacinta Muthoni Mugo, Amos Mugambi Mugo, Agate Mukami Mugo, Elias Murimi, Venanzia Wanyaga and James Murithi Mugo (jointly)</p>
<p>The portion of Plot No. 14 Mbuvari Market that belonged to the deceased</p>	<p>To be inherited in equal shares by:</p> <p>1) Mbogo Njuuri</p> <p>2) Patrick Njiru Nyaga</p> <p>3) James Njagi Nyaga</p> <p>4) Charity Mbeere Nyaga being the wife of the late Moses Njeru Nyaga (dcd)</p> <p>5) Jane Muthoni Nyaga</p> <p>6) Diprora Gitiri Gichovi</p> <p>7) Nancy Kori Nyaga</p> <p>8) Martin Munyua Gikombo and Peter Mugambi Gikombo being the sons of Lucy Wambogo (deceased) (jointly)</p> <p>9) Salivatory Mugo Njuuri (deceased) whose children are: Jacinta Muthoni Mugo, Amos Mugambi Mugo, Agate Mukami Mugo, Elias Murimi, Venanzia Wanyaga and James Murithi Mugo (jointly)</p>

31. In light of the foregoing, the protest lacks merit and it is hereby dismissed. The mode of distribution proposed in the supporting affidavit to the summons for confirmation of grant cannot succeed either.
32. In the result, it is hereby ordered that the deceased's estate be distributed according to paragraph 30 of this judgment, and a certificate of confirmation of grant be issued forthwith. It is further ordered that the Land Registrar Embu do revert registration of Land Parcel No. Ngandori/Kiriari/900 to the name of the deceased herein for purposes of redistribution of the same according to the Certificate of Confirmation of Grant pursuant to this judgment.



33. In light of the nature of these proceedings, liberty is granted to the parties to, within forty-five (45 days) of the date hereof, agree in a single written instrument to a mode of distribution that they consider will better meet their need, and to file the same before Court within the said 45 days. In the event that no such variation agreement is filed, the orders of the Court shall be implemented as is.

34. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 26TH DAY OF NOVEMBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

James Njagi Nyaga – Petitioner

Charity Mbeere – Protestor

Court Interpreter – Sylvia (Kimbeere/Kiswahili)

Francis Munyao - Court Assistant

