



REPUBLIC OF KENYA



In re Estate of M'Ithiri Rwanyaki alias Ithiri s/o Ruanyaki - Deceased (Succession Cause 157 of 1994) [2025] KEHC 17603 (KLR) (25 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 157 OF 1994
HM NYAGA, J
NOVEMBER 25, 2025
IN THE MATTER OF THE ESTATE OF M'ITHIRI RWANYAKI ALIAS
ITHIRI S/O RUANYAKI- DECEASED**

BETWEEN

GERRALD MWITI KIUGU PETITIONER

AND

RAEL MWARANIA RESPONDENT

RULING

1. The deceased died in 1974.
2. By a Petition dated 24/5/1994, the Petitioner/Respondent applied for Letters of administration intestate. He listed the following as having survived him: -
 - a. Himself – Grandson
 - b. Joseph Mwirebua alia M'Mwirebua M'Ithiri – son
 - c. Reuben M'Ngaruti – Son
 - d. Rael Mwarania – Grand-daughter
3. The only asset listed in the affidavit supporting the petition was land parcel No. Abothuguchi/Katheri/740, measuring approximately 3.5 acres in size.
4. The said Joseph M'Mwirebua filed a cross-petition dated 30/8/1994 and an objection the making of a grant of even date.
5. The court record shows that the matter was referred to a panel of elders. The determination by the panel was subsequently adopted by the court and a grant was issued to the Petitioner on 12/4/2000. A



- certificate of confirmation of grant was issued on 11/4/2000, ordering the distribution of land Parcel No. Abothuguchi/Katheri/740 between the Petitioner and the said Joseph M'Mwirebua in equal shares.
6. Nothing much happened regarding the estate until the filing of the application dated 13th July, 2023, which sought the following orders:
 - a. Spent
 - b. That the Honourable court be pleased to revoke the grant of letters of administration grant and the confirmed grant issued to GERRALD MWITI KIUGU in this succession cause and the subject title deeds to wit; L.R.No. Abothuguchi/Katheri/3514 & 3515 to revert to L.R.No Abothuguchi/Katheri/740 which was in the name of the deceased herein.
 - c. That the Honourable court be pleased to issue an order of injunction barring the Petitioner/ Respondent evicting or disturbing the Objector/Applicant from utilizing the portion she is currently occupying on L.R.No Abothuguchi/Katheri/3514 which is a subdivision of L.R.No Abothuguchi/Katheri/740 pending hearing and determination of this application inter partes.
 - d. That the Honourable court be pleased to issue an order of inhibition, inhibiting any dealings in respect to L.R.No Abothuguchi/Katheri/3514 & 3515 and any subsequent subdivisions if any pending hearing and determination of this application inter partes.
 - e. That the Honourable Court be pleased to issue an order directing the land register to revoke all title deeds in respect to L.R.No. Abothuguchi/Katheri/3514 & 3515 and the same to revert to L.R.No Abothuguchi/Katheri/740 which was registered in the name of the deceased herein.
 - f. That the honourable court be pleased to grant any other order as shall meet the ends of justice
 - g. That costs of the application be borne by the Petitioner/Respondent
 7. The application is propped by the grounds set out on its face and is supported by the affidavit of Rael Mwarania sworn on even date.
 8. In a nutshell, the applicant's case is that the Petitioner/Respondent is his brother, and that they are both grandchildren of the deceased, by virtue of being children of M'Ikiugu Ithiri, a son to the deceased. That the petitioner had listed her as one of the beneficiaries, although he never involved her when he filed the petition.
 9. The applicant further states that she has resided on the subject property all her life. That the Petitioner ought to have had their father's share of land Parcel Abothuguchi/Katheri /740 shared between themselves equally, but instead he had it registered in his sole name. That the Petitioner has kicked her out of the land that she has been occupying, on the ground that she is a woman.
 10. The applicant thus seeks a revocation of the grant to ensure that she gets her rightful share of the estate.
 11. In response, the Petitioner swore an affidavit on 5/10/23. He averred that the subject matter, being LR. No. Abothuguchi/Katheri/740 was the subject of ELC cases No. 11 of 2021 and ELC 8 of 2020, which were all dismissed. That the matter has been determined by a court of competent jurisdiction and therefore he has obtained an indefeasible title. That litigation has to come to an end, since he acquired the title to the property legally.
 12. The summons for revocation of the grant proceeded to hearing by way of viva voce evidence.



13. The Applicant reiterated the contents of her affidavit. She clarified that her quest herein was to get her share of the estate, which the Petitioner kept to himself.
14. On the ELC Case, she stated that the court at Githongo dismissed her suit and advised her to seek orders before the Succession Court. That right now she is living on rented property, having been evicted from her land.
15. Joseph M’Mwirebua was PW2. He confirmed that the Petitioner and the Applicant were the children of his brother, M’Ikiugu M’Ithiri(now deceased). He added that the land in question was divided equally between him and his late brother. That the Petitioner and the applicant were to share their father’s share.
16. PW3 was Wilson Riungu, the son to the applicant. He stated that his mother lived on her father’s land until she was evicted.
17. In his evidence, the Petitioner acknowledged that the applicant was his sister. He denied taking his sister’s share of land as alleged. He stressed that his grandmother had stated that the land in question was to be divided between him and his uncle Joseph (PW2). That the applicant’s suit against him at Githongo Court was dismissed. That Rael lives on her son’s land and not on the suit land as alleged. He admitted that the applicant did not give her consent to him filing the Petitioner in court. That she did not renounce her inheritance.
18. Parties filed submissions which I have considered, but will not rehash them.
19. It is not in dispute that the deceased was the registered owner of Land Parcel No. Abothuguchi/Katheri/740. He was survived by two sons Joseph M’Mwirebua and M’Ikiugu M’Ithiri. The two parties herein are the children of his deceased brother, M’Ikiugu M’Ithiri.
20. From the evidence the said parcel of land was shared equally between Joseph M’Mwirebua and the petitioner. The applicant has made it clear that her interest is in the share that her father was to get, and which she and the Petitioner were to share.
21. The deceased died in 1974, before the enactment of the Law of Succession Act. Therefore, the law applicable is as set out in Section 2 of the Law of Succession Act which provides as follows:-
 2. Application of Act (2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.
22. There is ample jurisprudence on the administration of estates of person who died before the commencement of the Act. The well settled law is that if that even in such cases, all children, boy or girl, married or unmarried ought to be treated equally.
23. In the estate of Re Estate of Peter Gathogo (deceased) 2020 eKLR which in turn cited Re Nduati Mbutia (deceased) (2015)eKLR where it was held as follows :-

“ Thus, whereas this cause was filed under the Law of Succession Act and the procedure therein applies thereto, the distribution of the estate of the deceased herein is not governed by the Law of Succession Act of 1972 but by written laws and customs applying at the time of the



death of the deceased. As observed by Musyoka J. in *Re Nduati Mbuthia (Deceased)* (2015) e KLR:

“Section 2(2) of the *Law of Succession Act* defines the application of the *Law of Succession Act* with respect to persons who died before the said Act commenced on 1st July 1981. The provision is categorical that the substantive provisions of the said Act are not applicable to the estates of persons who died before the said Act commenced. The substantive provisions of the Act are those governing devolution or distribution of the estate of the dead person, whether such person died testate or intestate. These provisions are to be found in Parts II, III, IV, V and VI of the *Law of Succession Act*. The substantive law of Succession for estates of persons who died before 1st July 1981 is not found in Parts II, III, IV, V and VI of the *Law of Succession Act*, but in the written laws and customs that applied at the date of the death of the person in question.”

The parties herein did not attempt prove the Kikuyu customary inheritance law but such is documented, and is notorious for the fact, in Eugene Cotran’s *Restatement of African law, Kenya Volume 2: The Law of Succession 1969* (London, Sweet & Maxwell). The Kikuyu customary law of inheritance provided that only sons of the deceased person could inherit his land. However, if a daughter remained unmarried past the marriage age, the “Muramati”, usually the eldest son of the deceased, could allocate a piece of land for her use during her lifetime. Thus, succession was based on the patriarchal system and favoured male beneficiaries over females. This is patently discriminatory and, in a period, post the promulgation of the 2010 Constitution cannot be upheld. For Article 10(2)b) of *the Constitution* includes among national values and principles the values and principles of human dignity, equity, social justice, inclusivity, equality, human rights, protection of the marginalized and non-discrimination.

Under Article 27 discriminatory practices are outlawed as all persons are declared equal before the law. Both men and women are entitled to equal treatment and equal benefit of the law and their right to equal opportunities in political, economic cultural and social spheres is guaranteed. Indeed, any customary practice or law that is inconsistent with these provisions is void to the extent of the inconsistency, by dint of Article 2(4) of *the Constitution*.”

24. In the estate of in *Re Estate of Mutethia Thakan (Deceased)* (2024) KEHC 4425 (KLR) the court held as follows:-

“The principle of equal distribution of the estate of the deceased to his children has now in upheld and entrenched in our jurisprudence. The Court of Appeal in binding decisions has held that women should not be denied their rights to inheritance. In *Doughlas Njuguna Mungai –v- Jolin Bosco Maina Kariuki & Another* (2014) eKLR the Court of Appeal held that “That –fully under *the Constitution* of Kenya 2010 all these rights are enshrined and they cannot be derogated against, they are ‘jus cogens’. The general rules of International Law also form part of the Law of Kenya. See Article 2(5) of *the Constitution*. The yoke and burden of discrimination should not be worn by female gender any more, *the Constitution* set it apart. Further the Court of Appeal referring to the decision of *Rono-v- Rono* on none discrimination on grounds of sex held as follows-It would appear from the totality of the submissions made before us and the stance adopted by appellants all through this protracted litigation that the kernel of their disenchantment lies in the fact that their sister Florence, a married daughter of the deceased, became not only a beneficiary but also an administratrix



of the estate. That much was clear from Mr. Kioga’s resort to Meru Customary Law which stipulated as captured by Dr. E Contran in his Restatement of customary Law. Vol. 2 page 30. Daughters receive no share of the estate. In the absence of sons, the heirs are the nearest paternal relatives of the deceased namely father, full brothers, half-brothers and paternal uncles with greatest respect such full throttled patriarchy that flies in the face of current conceptions of what is fair and reasonable cannot stand scrutiny; not least because it is plainly discriminatory of and itself and its effects. It is anachronistic and misplaced not withstanding that it was the norm for a fact majority of Kenya’s communities. This court has long accepted that a child is a child, none being lesser on account of gender or the circumstances of his or birth. Each has a share without shame or fear in the parents’ inheritance and may boldly approach to claim it. What Rono-v- Rono decided about the prohibition of discrimination of sex under the retired Constitution applies with yet another greater force under the current progressive Constitution.” See also Stephen Gitonga M’Murithi –v- Faith Murithi (2015) eKLR where the Court of Appeal held that failure to accord equal distribution of the estate (to sons, daughters and widows) is a violation of Section 38 of *the Constitution* by discriminating against the married daughters of the deceased. Guided by these binding decisions, it follows that distribution of administrator which discriminated against the daughters of the deceased should not be entertained by this court. There is no doubt that by dint of Section 2(2) of the *Law of Succession Act* the applicable Law is Meru Customary Law as the deceased died before the *Law of Succession Act* came into force. However the court will shun the custom which discriminates women on account of gender and marital status and is inconsistent with any written law. The administrator distributed 0.15 of an acre to the three married daughters while the sons got 1.8 acres each. This was no doubt discriminatory and total injustice.”

25. I fully concur with the reasoning and findings of the courts in the said decisions.
26. It appears like the Respondent relied on the Meru customary law, which historically excluded daughters from inheriting their father’s land. These are historical chains of discrimination that the superior courts have repeatedly castigated. Although they were applicable back then, they are out of place in the modern world. All children have to be treated equally and that is not negotiable. The courts cannot condone such customs, which infringe on the fundamental rights of a section of the society. The parties were bound to abide by the principles set out under Section 39 of the Act, which provides as follows:-
 39. Where intestate has left no surviving spouse or children
 - (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
 - (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.



27. Since the father to the Petitioner/Respondent and the Applicant was deceased, the two stepped into his shoes and were supposed to share his portion equally. This is in line with the finding of the court in re Estate of Wahome Njoki Wakagoto (2013) eKLR.
28. It is quite evident that the Petitioner divided the deceased's land equally, and kept his father's share to himself, despite acknowledging that he had a sibling.
29. The Petitioner claims that this was in line with his grandmother's wishes. This argument cannot succeed because the estate did not belong to his grandmother. There was no will, written or oral left by his grandfather, who was the registered owner of the land. Therefore, as an instate estate, he was obliged to provide for his sibling, the applicant. Clearly, that did not happen.
30. The applicant further states that since the court at Githongo dismissed the applicant's suit his title is indefeasible.
31. The court at Githongo was right to dismiss the suit filed as a land case, as the right forum was the Succession Court.
32. The Petitioner also stated that the Applicant is guilty of laches. That cannot be an excuse to deny the applicant of her right. This court has the power to turn back the clock, to ensure that Justice is done. The court cannot allow the Petitioner to benefit from his own acts of deceit and discrimination against his own sister.
33. Having looked at the matter, I am inclined to give the applicant her rightful share of the estate.
34. The applicant had sought the revocation of the entire grant but that would affect the share of Joseph M'Mwirebua, her uncle, who has his rightful share. Therefore, any orders that are to issue ought to be in respect to the share that the Petitioner took.
35. The record shows that land parcel Abothuguchi/Katheri/740, was sub-divided into two parcels of land, Parcel No. 3514 and Parcel No. 3515. The latter belongs to Joseph M'Mwirebua and ought not to be affected by the orders herein.
36. In respect to land Parcel No. Abothuguchi/Katheri/3514, the transmission to the Petitioner alone, to the exclusion of the applicant will have to be revoked.
37. I therefore issue the following orders: -
 - a. The grant herein is revoked but only in respect of Land Parcel No. Abothuguchi/Katheri/3514.
 - b. The title issued to the Petitioner in respect to Land Parcel No. Abothuguchi/Katheri/3514 is hereby canceled/ revoked.
 - c. The said Parcel No. Abothuguchi/3514 is to be distributed between the Petitioner and the Applicant equally.
 - d. The County Surveyor, Meru shall sub-divide the said land with each party to bear the costs of the sub-division for their respective portions.
 - e. The Petitioner is to sign all the requisite documents and if after notice he fails to do so, the same to be executed by the Deputy Registrar.
 - f. The County Surveyor is at liberty to seek police supervision if necessary to carry out the exercise.



g. A mention date shall be given for compliance.

DATED, SIGNED & DELIVERED AT MERU THIS 25TH DAY OF NOVEMBER, 2025.

H. M. NYAGA

JUDGE

