

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 7 OF 2010

**IN THE MATTER OF THE ESTATE OF WANGARI KARUKU
WATHIAI (DECEASED)**

AGNES NYAMBURA

NANCY NJOKI

PATRICK

IROWA.....ADMINISTRATORS

VERSUS

BENSON KARUKU WATHIAI.....

OBJECTOR

RULING

1. The matter was initially scheduled for ruling on 12th November 2024 on the applications dated 4th February, 2022, 7th March, 2022 and 19th July 2022 (Summons for revocation of grant). However, this court in the process of working on the ruling found some gaps in relation to the properties belonging to the estate of the deceased which are to be distributed among the beneficiaries.
2. For the said reasons the court directed the administrators herein to avail in court copies of title deeds together with current official searches for all the parcels of land falling under the estate of the deceased together with bank statements, share certificates and logbook. Additionally, they were to give an inventory of properties that have been

sold from the estate, the names of beneficiaries who sold them and to whom they were sold to. This was to enable this court reach a just and fair decision in relation to the distribution the deceased's estate.

3. When the matter up for mention on 11th February 2025, counsel for the applicant informed the court that they had not complied with the court orders but had instead tried to settle the matter out of court. There was some back and forth between the counsel for the parties and the court in the end directed that all the parties together with their counsel have a sit down and try and resolve the administrators' issues.
4. The matter was mentioned severally without any much progress on the settlement discussions but finally on 30th June 2025 the parties herein recorded a consent where they agreed that there shall be no contest on the legitimacy of the listed beneficiaries and that they were all agreeable to the administrators' proposed mode of distribution. The same was adopted as an order of the court. They also identified two issues which they wanted the court to determine and they agreed to file written submissions on the same.

Administrators' submissions

5. The said submissions were by filed by Waruiru Karuku & Mwangale Advocates and are dated 24th October, 2025. Counsel gave a brief introduction and background of the case and identified two issues for determination.
6. The first issue is whether the applicant Benson Wathiai Karuku and his sister Hellen Wangari Karuku comprising the

2nd household of James Karuku Wathiai are direct beneficiaries to the estate of the deceased or should inherit through their deceased father. Counsel submitted that the objector's failure to distinguish between the deceased's personal assets and those held under life interest from Benson's estate undermined their claim. Further, the properties, including key assets like Section 58, remain tied to Benson's estate, precluding direct claims by the objector without adhering to the succession framework established for the original owner. In addition, all the assets in the grant of the deceased are in the names of the late Benson Karuku Wathiai.

7. The court's attention was drawn to the decision in the **Matter of the Estate of Veronica Njoki Wakagoto (deceased) [2013] eKLR**, where the court stated that properties subject to life interest do not become the absolute property of the life tenant, and any attempt to distribute them as such would contravene the Act. Thus, the deceased here could not alienate or bequeath Benson's properties beyond her lifetime use.
8. Counsel further submitted that for the objector to qualify as a direct beneficiary under Section 29(b) of the Act, proof of dependency on the deceased must be shown. That no such dependency on Benson, who died in 2003 was shown. He made reference to the decision in **Jane Nyambura Ndungu v Beatrice Wangari Ndungu & 2 others [2021] KECA 1017 (KLR)**, the Court of Appeal held as follows;

"Dependency must be proved by concrete evidence...mere allegations are insufficient."

9. Counsel submitted that the doctrine of life interest under Section 35 of the Law of Succession Act mandates that upon termination, the estate devolves pursuant to the provisions of Section 41, where grandchildren share equally in their parent's portion. In **Christine Wangari Gachigi v Elizabeth Wanjira Evans & 11 others [2014] eKLR**, the Court of Appeal affirmed as follows'

"The estate... shall be distributed to the children of the deceased."

10. See also **Re Estate of Mary Karugi Mwangi (Deceased) [2018 KEHC 3481 (KLR)]**.

11. Counsel asserted that grandchildren do not have automatic standing to petition or claim in a grandparent's estate without first obtaining representation for their parent's administered estate. Additionally, that the objector had not petitioned for letters of administration for James Karuku Wathiai's estate, rendering their current application defective, as Section 82 vests powers to deal with estates solely in administrators, not unappointed heirs. He placed reliance on the decision in **re Estate of Alamin Said Ali (Deceased) [2024] KEHC 8782 KLR** where the court held that locus standi is conferred only upon grant holders.

12. Counsel asserted that under Section 38, the estate devolves to children equally, and grandchildren are not direct beneficiaries in the absence of proven dependency. In **Re**

Estate of Prisca Ong'ayo Nande (deceased) [2020]

eKLR, Musyoka J. held that

"a court may revoke a grant... but unproven claims do not confer status," requiring evidence.

13. The second issue is whether the objector and his sister Hellen Wangari Karuku, comprising the 2nd House of James Karuku Wathiai, are entitled to inherit the matrimonial home at Section 58 or whether the said house should be held in trust for the entire family. Counsel submitted that the section 58, matrimonial home, has undergone significant developments from 2008 to 2025, funded collectively by the family through rental income from other estate properties and direct contributions from beneficiaries. Thus, any exclusive inheritance by the objector is profoundly inequitable and contrary to the principles of fairness in succession law.

14. Counsel further asserted that Section 58 home originated from Benson Karuku Wathia's estate, subject to the deceased's life interest under Section 35, which extinguished in 2008, causing reversion to all children, precluding any exclusive entitlement by the objector and his sister as grandchildren. Reference was made to the decision in **Tau Kakungi v Margrethe Thorning Katungi [2014] eKLR**, where the Court clarified that life interest properties remain family heritage, not disposable by the surviving spouse beyond use, and upon termination, devolve to heirs without fragmentation, aligning with the intent to preserve intergenerational equity.

15. Counsel further placed reliance on the decision in **Re Estate of Ngaruhiya Kamau (deceased) [2025] KEHC 4303 (KLR)** where the court held that widows are allowed to do the distribution but emphasized reversion to children. He submitted that section 39 of the Law of Succession Act positions grandchildren as heirs only through their deceased parents and they could not directly inherit assets like matrimonial homes. He added that the said house should be held in trust for the entire family including the objector in order to preserve unity, prevent displacement, and ensure equitable access, aligning with judicial discretion under section 40 of the Law of Succession Act for family's wide benefits.

16. In conclusion, counsel submitted that the evidence and law unequivocally demonstrate that the objector and his sister are not entitled to inherit Section 58 house exclusively, as it originated under life interest, has been collectively developed, lacks exclusive dependency basis and necessitates a trust for family preservation.

1st house submissions

17. The said submissions were by filed by Wachira Wanjiru & Company Advocates and are dated 10th October, 2025. Counsel gave a brief background and facts of the case and submitted on the two issues for determination.

18. The first issue is whether the objector (the applicant in the application for revocation dated 4th February 2022) and his sister Hellen Wangari Karuku, comprising the 2nd household of James Karuku Wathiai are direct beneficiaries to the

estate of the deceased or should inherit through their deceased father. Counsel submitted that the 1st household of the late James Karuku Wathiai lost the parent the 2nd household lost, they were equally taken care of by the same grandparents. Thus, it is only fair that everyone gets an equal share as proposed as opposed to the one faction seeking sympathy and unjust allocation at expense of the others.

19. The second issue is whether the objector (applicant in the application for Revocation dated 4th February, 2022) and his sister Hellen Wangari Karuku comprising of the 2nd household of James Karuku Wathiai are entitled to inherit the matrimonial home at Section 58 or whether the said house should be held in trust for the entire family. Counsel submitted that it matters not that any party has settled elsewhere, has a job, is financially stable or is otherwise disadvantaged independently, what matters is that everyone is entitled to an equal share of what is due to them. He placed reliance on the Court of Appeal decision in **M’Murithi v Murithi (Civil Appeal 3 of 2015) [2015] KECA 347 (KLR)** where the court held as follows;

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried”

20. In conclusion, counsel submitted that since all parties had agreed to a proposed mode of distribution it was just and fair that the same be upheld.

Objectors submissions (2nd House)

21. These were by filed by Mutai & Company Advocates and are dated 6th October, 2025. Counsel also gave a brief background of the case and identified two issues for determination.

22. The first issue is whether the objector (the applicant in the application for revocation dated 4th February 2022) and his sister Hellen Wangari Karuku, comprising the 2nd household of James Karuku Wathiai are direct beneficiaries to the estate of the deceased or should inherit through their deceased father. Counsel submitted that the objector and his sister are dependants of the deceased under Section 29 (b) of the Law of Succession Act.

23. The second issue is whether the objector and his sister Hellen Wangari Karuku, comprising the 2nd house of James Karuku Wathiai are entitled to inherit the matrimonial home at Section 58. Counsel submitted that upon demise of the objectors' grandparents, the said home ceased being matrimonial property and it was now an asset of the estate for inheritance. As seen at paragraph 8 of the supporting affidavit, the objector and his sister currently reside in Block 15/65 within Nakuru Town at Section 58 which was their grandparents' home.

24. Further, that is where they have always resided with their now deceased grandparents ever since their father passed

on in 2002. They have no alternative home as they have been living there from their tender years, unlike the administrators and other beneficiaries who are already settled elsewhere. He urged the court to exercise its discretion in the objectors favour and accordingly grant the house in quo for their benefit.

25. Lastly, he urged the court to set aside an asset of the estate for subsequent settlement of costs arising and due to estate, including legal fees.

Analysis and Determination

26. I have considered the two issues identified for determination and the submissions by the respective parties.

27. Regarding the first issue, whether the objector (Applicant in the application for Revocation dated 4th February 2022) and his sister Hellen Wangari Karuku, comprising the 2nd household of James Karuku Wathiai are direct beneficiaries to the Estate of the deceased or should inherit through their deceased father.

28. It is not in dispute that the objector herein and his sister Hellen Wangari Karuku are grandchildren of the deceased and that they were raised by the deceased and her husband (deceased) in the section 58 house from the time their father died while they were still of tender age. The administrators and the 1st house are opposed to the said house being bequeathed to them. They argue that they are not direct beneficiaries to the estate and they should only inherit through their parent.

29. In the case of **Cleopa Amutala Namayi v Judith Were Succession Cause 457 of 2005 [2015] eKLR**, Mrima J observed thus:

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparentsThe argument behind this position 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 to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren’s own parents are dead...” (Emphasis mine)

30. Similarly, in the case of **Re Estate of Florence Mukami Kinyua (Deceased) (2018) eKLR** Matheka J stated:

“A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parents’ share in the estate of the grandparents. This was stated in Re Estate of Wahome Njoki Wakagoto [2013] eKLR where it was held:- Under Part V, grandchildren have no 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."
(Emphasis mine)

31. Considering the law and the above cited authorities, there is no doubt the objector and his sister do not require to take out letters of administration to intervene in the estate of their late grandmother or grandfather, where their own parent is deceased. In addition, other than from the said case law, the provisions of section 39 of the Law of Succession Act makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Further, section 41 of the said Act is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

32. For the said reasons, it is my considered view that the objector and his sister Hellen Wangari Karuku are direct beneficiaries to the estate of the deceased and ought not inherit through their deceased father who pre-deceased the deceased herein.

33. The second issue is whether the objector (Applicant in application for Revocation dated 4th February 2022) and his sister Hellen Wangari Karuku, comprising the 2nd house of James Karuku Wathiai are entitled to inherit the matrimonial home at Section 58 or whether the said house should be held in trust for the entire family.
34. As noted earlier, it is not in dispute that the objector herein and his sister Hellen Wangari Karuku are grandchildren of the deceased and that they were raised by the deceased in the section 58 house from an early age. It follows that the applicants, being direct grandchildren and beneficiaries of the deceased by virtue of their father having pre-deceased the deceased herein, are entitled to a share of the estate under Section 38 of the Law of Succession Act.
35. Additionally, it is my view that the claim by the objectors' is legally strong because their parent is also deceased, allowing them to inherit their parent's rightful share of the estate directly. Further, the fact they were raised in the section 58 house since they were young and the other beneficiaries do not dispute that fact, strengthens their claim as dependants under Section 29 of the Law of Succession Act. Furthermore, being maintained by the deceased immediately before her death establishes a basis for a "legitimate expectation" concerning the distribution of the estate, particularly regarding the section 58 house.
36. Consequently, it is my finding that the objector Benson Kariuki Wathiai and his sister Hellen Wangari are entitled to inherit the matrimonial home at Section 58, Nakuru.

37. This being a family matter, I shall not issue any order as to costs.

38. Orders accordingly.

Delivered virtually, dated and signed this 16th day of December, 2025.

H. I. ONG'UDI
JUDGE