



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

PROBATE & ADMINISTRATION NO.12 OF 2025

IN THE MATTER OF THE ESTATE OF:

BONIFACE KARIUKI MURAGE..... DECEASED

BETWEEN

GEORGE MACHARIA KARIUKI.....1ST ADMINISTRATOR/RESPONDENT

SIMON WANGARI KARIUKI..... 2ND ADMINISTRATOR/RESPONDENT

AND

JOSEPH KAMUHU KARIUKI1ST OBJECTOR

JOHN THEURI KARIUKI.....2ND OBJECTOR

TERESIAH MURINGI KARIUKI.....3RD OBJECTOR

RULING

1. Joseph Kamuhu Kariuki, John Theuri Kariuki and Teresiah Muringi Kariuki, the objectors in this case, opposed the distribution method proposed by the administrators. They have raised the following grounds:
 - a) The late Bonface Kariuki Murage had two wives: Jane Wangari Kariuki, the first wife, and Martha Wambui Kariuki, the second wife (deceased).
 - b) In this succession case, George Macharia Kariuki represents Jane Wangari Kariuki's family (the first family), while Simon Wangai Kariuki represents Martha Wambui Kariuki's (deceased) family (the second family).
 - c) Anthony Gachara Kariuki, from the second family, went missing sometime in October 2008 with no trace.
 - d) The deceased left behind a will by which he outlined how he wished his estate to be distributed among the beneficiaries upon his demise.

- e) under the will, the deceased distributed his properties to his 16 children and two grandsons.
 - f) The second family has not reached an agreement on the portion of land to be allocated to Anthony Gachara Kariuki.
2. The respondents disagreed with the objector and gave the following reasons:
- a) Faith Wangui Kariuki and Nancy Wanjiku Kariuki are trustees of the estate of Irene Nyawira Kariuki (deceased).
 - b) Joseph Kamuhu Kariuki and John Theuri Kariuki have been using threats and offensive language to intimidate us with the intention of denying us our rightful inheritance.
 - c) Joseph Kamuhu Kariuki has built structures on a plot allocated to Lydia Wangari Kariuki, with the intention of depriving Lydia Wangari Kariuki of her inheritance.
 - d) The objectors, Joseph Kamuhu Kariuki and John Theuri Kariuki, have delayed the succession process through constant disagreements, refusal to cooperate, and attempts to exclude us from our rightful inheritance.
3. Both parties agree that Boniface Kariuki Murage, the deceased in question, left a will. Neither side contests its validity. The objectors claim that the will allocates the entire estate, while the administrators maintain that land parcel Nyandarua/Simbara/1054 was only partially distributed.
4. The objectors have argued that land parcel Nyandarua/Simbara/1007 has been distributed contrary to the will of the deceased.
5. The issues for determination are:
- a) Whether the deceased distributed the entire parcel of land, Nyandarua/Simbara/1054, in his will.
 - b) If not, the question remains whether Anthony Gachara Kariuki, who disappeared sometime in October 2008, was entitled to a share of the undistributed estate.
 - c) Whether the land parcel Nyandarua/Simbara/1007 has been allocated against the wishes of the deceased.
6. Land parcel number Nyandarua/Simbara/1054 was registered in the name of Boniface Kariuki Murage, the deceased herein. The approximate area is 14.745 Ha, equivalent to 36.435 acres. Both parties in

their evidence agree that this parcel of land is the one the deceased referred to as “Simbara Farm, former plot number 54”. The deceased addressed the distribution of this parcel of land as follows:

I, Boniface Kariuki Murage, declare and solemnly write my last testament as hereunder:

Wambui’s Family

A) land distribution to follow with the following sequence, within Kaheho Simbara farm, former plot number 54, remainder of that sold to Joseph Kamuhu Murage, 8 acres, Godfrey Kamotho, 5 acres and Zachary Nganga, 3 acres.

- a) Charles Wanjuki - 4 acres (four)***
- b) Joseph Kamuhu – 4 acres (four)***
- c) Irene Nyawira – 1 acre (one)***
- d) Tabitha Muringi – 1 acre (one)***
- e) Lydia Wangari – 1 acre(one)***
- f) Simon Wangai – 4 acres (four)***
- g) John Theuri – 4 acres (four)***
- h) Rachel Nyagaki – 1 acre (one)***
- i) Faith Wangui – 1 acre (one)***
- j) Nancy Wanjiku – 1 acre (one)***
- k) Cecilia Nyaguthii – 1 acre (one)***

NB The last four, i.e., 8, 9, 10 and 11, shall be curved from the lower side of the Kaheho River next to Godfrey Kamotho's sold parcel of land.

7. Although the objectors claimed that the deceased's will had distributed the entire parcel of land Nyandarua/Simbara/1054, both parties agree that 18 acres of this land were still undistributed. The proviso to section 66 of the Law of Succession Act states:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

8. ***In re Estate of the Late Gasper Walele Mwanguwa (Deceased) (Succession Cause 355 of 2012) [2021] KEHC 9782 (KLR)*** Nyarangi, J. addressed the issue as follows:

With section 66 in place, it therefore follows that any unlisted property in a will can separately be dealt with as an intestate estate and be treated as if the deceased had not left a will. I do agree with

the petitioners that the properties omitted in the will are not lost. They will be listed separately be dealt with as an intestate estate hence separately distributed amongst all beneficiaries who are legally entitled the objector and her daughters inclusive. To that extent, omission of those properties if proved does not make the application for confirmation of the grant under the will incompetent. Therefore, I do not find that ground sustainable.

9. The objectors have raised concerns about the manner in which land parcel number Nyandarua/Simbara/1007 has been distributed. They argue that it was against their will. The deceased had allocated it to seven beneficiaries in percentage form. However, the administrators have distributed it to only three people. The first administrator/respondent admitted that this was their action, but stated it was done with the agreement of the other family members. Since the administrators have not rendered an account, this issue can wait until then to avoid mixing testate and intestate distribution issues.
10. If a person disappears and has not been seen or heard of for a period of seven years, an interested party may apply that they be declared dead. Section 118A of the Evidence Act, states as follows:

Where it is proved that a person has not been heard of or seen for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.
11. In this case, the family has not applied for Anthony Gachara Kariuki to be declared dead. He cannot be presumed to be dead. The administrators of the estate of Boniface Kariuki Murage are right to propose that he be apportioned some land.
12. The administrators in this matter are drawn from the two houses of the deceased. Distribution need not be equal, but it should be fair. The majority of the family members are in favour of the proposed distribution by the administrators. The only exception is objectors. Though in their grounds of opposition to the confirmation, they had indicated that the deceased had distributed the entire estate in his will, at the time of the hearing of the objection, they testified to an undistributed portion of land parcel number Nyandarua/Simbara/1054.
13. Courts will be very slow to overrule family decisions on the distribution of the estate unless unfair distribution is proved. This has not been done in this case. The objection is therefore dismissed, and the grant is hereby confirmed as proposed.

14. The administrators are given 60 days to distribute the estate and render accounts as provided for under section 83 (g) of the Law of Succession Act.
15. This being a family matter, each party will bear its own costs.

Delivered and signed at Nyandarua, this 17th day of December 2025

KIARIE WAWERU KIARIE

JUDGE