REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

SUCCESSION APPEAL NO. E003 OF 2022

IN THE MATTER OF THE ESTATE OF FRANCISCAH WANJUGU GICHUKI (DECEASED)

MICHAEL MACHARIA GICHUKI……1ST APPELLANT

BERNARD MAINA GICHUKI……2ND APPELLANT

ISAIAH MURIITHI THIMBA……3RD APPELLANT

VERSUS

AGNES WAMBUI GICHUKI……1ST RESPONDENT

PURITY WANGARE GICHUKI……2ND RESPONDENT

LYDIAH NGIMA GICHUKI……3RD RESPONDENT

-AND-

ANGELIUS MWIHURI GICHUKI……ADMINISTRATOR

JUDGMENT

1. **Francesca Wanjugu Gichuki (Deceased)** died on 14th October, 2005. A grant of representation in respect of her

estate was issued to Angelus Mwihuri Gichuki on 24th April, 2017 and later confirmed on 17th February, 2020.

2. Through summons for revocation and/or annulment of grant, the Applicants sought revocation and/or annulment of the grant of letters of Administration dated 24th April, 2017 and the certificate of confirmation of grant dated 17th February, 2020. That any subdivision and/or transfer of LR. No. Marmanet/North Rumuruti Block II/1413 (Ndurumo), Laikipia/Marmanet/130 and Plot No. 31 Muthengera Trading Centre per the certificate of confirmation of grant dated 17th February, 2020 be revoked and set aside so that the properties revert to the deceased.

3. That the deceased be declared to have died testate and her estate be distributed as per the written Will dated 14th April, 2001. That **a grant of letters of Administration Testate do issue to Angelus Mwihuri Gichuki** and the same be confirmed per the Will dated 14th April, 2001.

4. The trial court presided by Obulutsa CM considered the application and reached a finding that minutes presented by the Applicants did not meet the threshold of being a written Will. That the ruling delivered on 17th February, 2020, was valid hence dismissed the application for want of merit. In the result the grant of letters of Administration issued on 24th April, 2017, and certificate of grant issued on 17th February, 2020, were to remain in force.

5. Aggrieved, by the ruling delivered on 25th August, 2022, the Appellants proffered an appeal on grounds that;

1) ***That the learned trial Magistrate erred in law and in fact in finding that the deceased did not leave behind a written Will and that the document dated 14th April,2001 did not constitute a valid written Will.***
2) ***That the learned trial Magistrate erred in law and in fact in failing to find that the deceased had prior to her demise distributed her assets and settled her four sons exclusively on L.R. NO. LAIKIPIA/ MARMANET/130 and that the land was fully occupied and not available for distribution to the Respondents.***
3) ***That the learned trial Magistrate erred in law and in fact in failing to analyze all issues for determination in the ruling delivered on the 25th August, 2022.***
4) ***That the learned trial Magistrate erred in law and fact in failing to distribute the estate of the deceased equitably.***

6. The appeal was disposed through written submissions. It is urged by the Appellants that the deceased had expressed her wishes on how her parcels of land ought to be subdivided. That none of her daughters were to inherit her land as they were happily married and the parcels of land

were for her sons. That the learned Magistrate erred in law and in fact by failing to read the Act and Rules together. That the deceased appended her signature at the end of the minutes. That the Respondents disapproved the Will on the basis that independent witnesses were not called. The deceased was under the influence and/or coerced to writing the minutes since they were not involved and were not provided for.

7. That the mental capacity of the deceased while expressing her wishes was not questioned. That the Respondents confirmed that they have never resided on the subject land. That Plot 130 is occupied by the Appellants. Philip is buried on Muthengera Plot and the Appellants are the ones using the land. The 1st Respondent having left in 1978 and the 2nd Respondent resides at Kite with her husband.

8. The Respondents submitted that when the Administrator petitioned for the letters of Administration he left out all Respondents in the cause making the court to believe that the estate only had sons to whom the estate was distributed. And when the Respondents moved to court the parties consented to the revocation of certificate of confirmation of grant, but on confirmation of the grant against the estate was only distributed to sons of the deceased. The Respondents gave their preferred mode of distribution and proposed that the estate be distributed equally. Therefore,

in a ruling dated 17th February, 2020 the trial court distributed the estate equally to all beneficiaries.

9. Through summons dated 4th May, 2021 the Appellants moved the court to revoke the grant that the deceased died intestate. The summons for revocation heard through oral evidence was dismissed on the ground that the deceased did not leave behind a valid Will.

10. That the document headed **"Francisca Wanjugu Gichuki Family Meeting"** was minutes for the meeting held on 14th April, 2001 but not a Will, as the deceased did not sign it. That the deceased did not leave either a valid written or oral Will.

11. I have considered the appeal, rival submissions and authorities cited. This is a first appeal, in the cited case of ***Abok James Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR*** the court stated that;

> ***"This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority versus Kuston (Kenya) Limited (2009) 2EA 212 wherein the Court of Appeal held inter alia that:-***

"On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence"

12. Grounds raised by the Appellants as correctly submitted by counsel for Respondents hinge on whether the deceased died testate. It is argued by the Appellants that there was a Will in existence left by the deceased.

13. **Section 3 of the Law of Succession Act (Act)** defines the Will as;

"Will" means the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II, and includes a codicil.

14. An individual's estate is usually well managed according to what the person prefers. Such instructions are acted upon when it comes to distribution of the estate. Where it is alleged that the deceased died testate, for the

Will to be considered valid same prerequisite must be made. This is provided for in **Section 11 of the Law of Succession Act** which stipulate thus;

> ***No written will shall be valid unless—(a)the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;(b)the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;(c)the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.***

15. The argument put forth by the Appellants is that the deceased expressed her wishes on how the estate was to be

distributed, namely to her sons and the daughters were to be excluded by virtue of having been married.

16. The basis of the argument was some minutes adduced in evidence. The document is captioned "Francisca Munjugu Gichuki's family meeting held on 14th April, 2001". It bears a list of those in attendance and the agenda of the meeting comprising seven agenda items. In the minutes, it is indicated that the Chairlady (deceased) stated that her three daughters who were happily married would not inherit any of her property, land inclusive.

17. Minutes in issue were for a family meeting. It confirmed that minutes form the record of the family discussions. There is no declaration that the document is the deceased's last Will. There is no clarity in the minutes as to whether the deceased intended to distribute her property upon death. The author of the minutes was not the deceased but her name is written purporting to be her signature. It is not clear if she did write her name and whether it was intended to confirm the authenticity of what was discussed and details about the meeting as such.

18. Further, if indeed the deceased left a Will written on 14th April, 2001, it defeats logic that the Petitioner approached the court in January, 2016 seeking issuance of grant of letters of administration intestate and concealed existence of the alleged Will. This would mean the Will is fraudulent or illegal. There was no transparency of justice.

19. The minutes of the meeting availed that purported to exclude daughters of the deceased from inheriting her property did not express testamentary intent hence not clear as to the distribution of the estate.

20. A question is posed as to whether this could have amounted to an oral Will? **Section 9 of the Law of Succession Act** states that;

> ***(1)No oral will shall be valid unless—***
>
> ***(a)it is made before two or more competent witnesses; and***
>
> ***(b)the testator dies within a period of three months from the date of making the will:***
>
> ***Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.***
>
> ***(2)No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by Sections 18 and 19.***

21. As correctly argued by counsel for the Appellants, it has not been suggested that as at 14th April, 2001, the mental

capacity of the deceased was in issue. However, the time limit within which the testator ought to have died was exceeded.

22. From the foregoing, it was not a misdirection on the part of the learned Magistrate in reaching a finding that the document, minutes of a meeting of 14th April, 2001, did not constitute a Will. For that reason, the appeal lacks merit. The ruling dated 25th August, 2022 is hereby upheld. Consequently, the appeal is dismissed in its entirety with costs to the Respondents.

23. It is so ordered.

Dated, signed and delivered virtually this 17th day of December, 2025.

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L.N. MUTENDE

JUDGE