



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

FAMILY APPEAL NO. E025 OF 2024

SABELLA KITHIRA MWAMBA.....

APPELLANT

VERSUS

LUCY MAKENA KIRORIA.....

....RESPONDENT

(An appeal from the Judgment of Hon. Edwin Nyaga Muriuki (S.P.M) in Githongo Succession Cause No. 63 of 2018 delivered on 6/11/2024)

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Principal Magistrate Hon. Edwin Nyaga Muriuki delivered on 6.11.2024 in Githongo Succession Cause No. 63 of 2018.

2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 13th November, 2024;

1. The Learned Trial Magistrate erred in law and fact by holding that the Respondent had proved that she was a child to NKANATA NJAU and therefore by extension a beneficiary of the deceased.
2. The Learned Trial Magistrate erred in law by failing to analyze the facts and evidence necessary for the Objector to prove her paternity vis a vis NKANATA NJAU.
3. The learned trial magistrate erred in law and facts holding that the deceased had declared the objector as his only surviving beneficiary, yet there was no such evidence led to prove such declaration.
4. The learned trial magistrate erred in law and facts by holding that the deceased had given 1000 stems of tea to the Respondent yet the said tea bushes were only transferred to the respondent in the year 2015 whereas the deceased died in the year 2012.

5. The learned trial magistrate erred in law by shifting the burden of proof to the Appellant by holding that the Appellant did not adduce any evidence to show that the respondent was not a child of NKANATA NJAU.

6. The judgment of the trial court is against the evidence, the law and authorities placed before that court.

Evidence at Trial

3. **Protestor's Witness 1 Lucy Makena**, the Respondent herein, adopted her statement dated 20/11/2020 as her evidence in chief and produced the list of documents evenly dated as exhibits. She told the court that her deceased father, namely Nkanata Njau, died in 2012, but her uncle, namely Kiroria Tutwerandu was indicated as her father in her Identity card, because he is the one who raised her. She was informed by her mother (now deceased) that Nkanata Njau was her biological father, and he used to visit her. Although she never lived with Nkanata, he paid for her school fees, and his name appeared in the school records as her father. It is possible

her mother might have told her Nkanata was her father, yet he was not, since she was mentally challenged. Nkanata gave her the tea bushes planted on Kanini Njau's land, to wit L.P 272. She did not call Kiroria, as a witness, because he was deaf and dumb. She utilized the tea bushes after the lease expired and her father left her the house on the land, though she never lived in it nor had any intentions of doing so. There was no meeting, minutes and/or an introduction ceremony conducted in accordance with Meru customary law during the lifetime of Nkanata showing that she was his daughter. She never applied for exhumation of the body of Nkanata for purposes of conducting a DNA test.

4. **Protestor's Witness 2 Gideon Mutwiri Buuri**, a retired assistant chief of Marimba Sub location adopted his statement dated 22/7/2022 as his evidence in chief. He attended the meeting where it was concluded that the Respondent was a daughter to Nkanata who would take his tea bushes upon the expiry of the lease. He never attended any meeting during the lifetime of Nkanata where the Respondent was introduced as his daughter,

and before Nkanata died, the tea bushes were being utilized by Beatrice Ntirindi. The Respondent's mother, namely Mucheke M'arandu (now deceased), who would have stated who her father was, and neither attended the meetings of 19/2/2013 and 2/5/2013. He was unaware if Nkanata lived or cohabitated with the Respondent's mother before she died.

5. **Protestor's Witness 3 John Kinoti** adopted his statement dated 20/11/2020 as his evidence in chief. He told the court that he attended the meetings of 29/2/2013 and 2/5/2013 and appended his signature on the minutes therefrom. The Respondent's father was Nkanata Njau although she lived with a brother to her mother, Mucece. He knew the family well as his home was $\frac{1}{2}$ a kilometer away from Nkanata's. No introduction ceremony was conducted to introduce the Respondent to the father and the family members, as is required in Meru Customary Law. In 2015, he wrote the letter to KTDA requesting for the membership number to be given to the Respondent. When Nkanata was sick, he called them and told them his

land should go to his only child, the Respondent and he died 3 months thereafter.

6. **Protestor's Witness 4 Jason Muriuki M'Imanene** also attended the meetings of 19/2/2013 and 2/5/2013 and appended his signature to the minutes therefrom. When Nkanata was sick, he informed them, in the presence of the Appellant, that his daughter, the Respondent was to get all his property and he was unaware whether any ceremony was ever conducted to introduce the Respondent to the family.
7. **Petitioner's Witness 1 Sabella Kithira Mwamba**, the Appellant herein, adopted her statement dated 28/4/2021 as her evidence in chief and produced the list of documents filed therewith as exhibits. She told the court that Karimi Njau, the deceased herein was her mother in law while Nkanata Njau was her brother in law. She never saw Mucece Mtwrandu, the Respondent's mother, living with Nkanata and the Respondent never lived on the land during the lifetime of Nkanata. No ceremony was conducted to introduce the Respondent to the family, and the allocation of the tea bushes to the Respondent was

done in 2015, long after the death of Nkanata in 2012. The Respondent was still in occupation of the land to date, and she was picking tea on the land vide allotment number 042 belonging to Nkanata. The sub chief issued the burial permit of Ntonina Kathambi, Nkanata's wife to the Respondent.

Submissions

8. The Appellant through the firm of Mwirigi Kaburu & Co. Advocates filed submissions dated 30/7/2025. Counsel faulted the trial court for disregarding the law in finding that the Respondent was beneficiary of the estate herein by virtue of being a child of Nkanata Njau, and cited **Re Estate of David Omare Kimori (Deceased) (Succession Cause 4 of 2020) [2023] KEHC 23286 (KLR) (28 September 2023) (Judgment), Re Estate of Kinyua Mwai (Deceased) (Succession Cause 678 of 2010) [2023] KEHC 340 (KLR) (26 January 2023) (Judgment), EMM v IGM & RMM Court Of Appeal Civil Appeal 114 OF 2012 and Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 Others (2014) eKLR.**

9. The Respondent through the firm of Thurania Atheru & Co. Advocates filed submissions dated 11/9/2025. Counsel contended that Nkanata Njau had expressly recognized the Respondent as his daughter and thus a beneficiary to the estate. Counsel prayed for dismissal of the appeal with costs, and cited **Re Estate of the late Annelies Anna Graff (2019) eKLR, Okello v Onyango (Succession Appeal E002 of 2022) [2023] KEHC 22828 (KLR) (28 September 2023) (Judgment) and Mbuthia Macharia v Annah Mutua & Another (2017) eKLR.**

Analysis and Determination

10. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.

11. In **Selle & another v Associated Motor Boat Co. Ltd [1968] EA**, the court held as follows: ***“This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they***

are that this court must 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 this respect.”

12. I have considered the appeal herein, the trial court’s judgment which is the subject of this appeal as well as the submissions by counsel.

13. From the grounds of appeal, the issue for determination is whether the Respondent proved by cogent evidence that she was a daughter of the deceased herein.

14. The Protestor’s Witnesses 3 and 4 affirmed that they attended the meetings held on 29/2/2013 and 2/5/2013 at which the Respondent was acknowledged as a daughter of Nkanata Njau. They confirmed that the meetings were convened by Protestor’s Witness 2, the retired assistant chief, and they duly appended their signatures to the minutes therefrom. It was their further testimony that although the Appellant was present at both meetings, she declined to sign the minutes. The witnesses were emphatic that upon falling ill, Nkanata summoned them

and orally bequeathed his property to his daughter, the Respondent herein, in the presence of the Appellant. Their said evidence was not meaningfully controverted by the Appellant. Indeed, the Appellant conceded that the Respondent was in occupation of the land and was equally picking tea therefrom using the allotment number registered in the name of Nkanata.

15. I am therefore satisfied that the Respondent discharged the burden of proof on a balance of probabilities that she was a daughter of Nkanata Njau and consequently a beneficiary to the estate of the deceased herein.

16. For the foregoing reasons, I find that the appeal is in want of merit and it is hereby dismissed. Each party to bear own costs of the appeal.

DATED AND DELIVERED AT MERU THIS 17TH DAY OF DECEMBER, 2025

S.M. GITHINJI
JUDGE

APPEARANCES:-

Mr. Mwirigi Kaburu for the Appellant.

Mr. Ngeera for the Respondent.

Mr. Mwirigi - I beg leave to appeal.

Mr. Ngeera - I wish the formal application be made for us to respond.

Mr. Mwirigi - The application can be made orally.

COURT:-

It is in the interest of justice that the sought for leave be granted.

The Appellant is granted 60 days leave to appeal.

S.M. GITHINJI
JUDGE
17/12/2025