

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO 1211 OF 2012

**IN THE MATTER OF THE ESTATE OF JOHN
WANG'OMBE MURAYA alias JOHN WANGOME MURAYA-
DECEASED**

FRANCIS MWANGI WANG'OMBE
APPLICANT

VERSUS

AGNES WACHUKA KARIUKI1ST
PROTESTOR

VIRGINIA WAITHIRA KAGI2ND
PROTESTOR

RULING

1. The matter relates to the estate of John Wang'ombe Muraya Alias John Wangome Muraya- Deceased. The dispute is a complete misnomer and a misunderstanding of the concept of succession. It must be remembered that the succession file relates to one deceased person per file. Unfortunately, relating to other deceased persons often crowds the real issues in controversy, dispersing the determination of the estate. Succession involves beneficiaries of the estate as covered in section 29 of the Succession Act and further elucidated in sections 35- 40 of the Law of Succession Act.

2. Therefore, a dispute falling outside the main deceased person must always be postponed to the relevant estate. In this connection, a dispute between a deceased beneficiary's heirs should never be used to derail succession of the deceased. This matter was filed in 2012. The chief indicated that the beneficiaries of the estate were;

- a. Loice Wanjiru Wang'ombe -Widow
- b. Gilbert Kariuki Wang'ombe -son
- c. Francis Mwangi Wang'ombe -son
- d. Gladys Wanjugu Wang'ombe daughter
- e. Joyce Wambui Kibui - daughter
- f. Rose Njeri Ndungu Daughter
- g. Jane Njambi Wang'ombe daughter

3. The deceased died intestate at the ripe old age of 94 years on 9.08.2004. He left behind two parcels of land, that is:

- a. Tetu/Thatha/113 measuring 5.4 hectares(13.3434 acres)
- b. Mweiga/block 5/muthuini/348 measuring 1,295 hectares (3.2 acres) acres)

4. Gilbert Kariuki Wang'ombe filed the succession cause, with the consent of the beneficiaries. Rose Njeri Ndungu died on 10.08.2017 at the age of 68 years before the completion of the cause. Gladys Wanjugu Wang'ombe died on 27.10.2012 , immediately after the filing of this cause on 16.10.2022. She was aged 82 years. Loice Wanjiru Wang'ombe, the Widow

died on 28.08.2016 at the ripe old age of 106 years. Gilbert Kariuki Wang'ombe, died at the age of 82 years on 01.06.2021.

5. From the initial list of 7 beneficiaries, only the following were surviving as at 05.06.2025: -
 - a. Francis Mwangi Wang'ombe -son
 - b. Joyce Wambui Kibui - daughter
 - c. Jane Njambi Wang'ombe daughter

6. The deceased widow's interest escheated and is not for discussion in this ruling. This leaves three deceased beneficiaries whose fate the court must address.
 - a. Gilbert Kariuki Wang'ombe (deceased)
 - b. Gladys Wanjugu Wang'ombe (deceased)
 - c. Rose Njeri Ndungu (deceased)

7. The cause was dismissed, but Francis Mwangi Wang'ombe applied for reinstatement. This was allowed on 23.07.2024. The widow of the late Gilbert Kariuki Wang'ombe (deceased) filed an application alleging that they were omitted and that only the sisters were included. They filed an application dated 2.10.2023 seeking inclusion. They are:
 - a. Eunice Kagure Kariuki, indicated as the first wife.
 - b. Agnes Wachuka Kariuki indicated as a second wife.
 - c. Virginia Waithira Kagi, indicated as a third wife.

8. Their children are not indicated. Later, the second and third widows of the deceased beneficiary appointed an advocate, and the first widow of late Gilbert Kariuki Wang'ombe(deceased) receded into the background.

Submissions

9. That the applicant submissions dated 14.10.2025. They submitted that filed the summons for confirmation of the grant dated 27th January 2025, outlined his deceased father's wish that his estate, which comprises L.R. No. Mweiga Block 5/Muthuini/348 And Tetu/Thatha/113 be distributed as follows: L.R No.Mweiga Block 5/Muthuini/348 be transferred to Francis Mwangi, while Tetu/Thatha/113 be transferred to Francis Mwangi Wang'ombe and Jane Njambi Wang'ombe, whereby Jane gets 2 acres, and Francis receives the remainder. The above mode of distribution had been proposed by the deceased, and he had actually settled the two beneficiaries in their respective portions. This mode of distribution necessitated the filing of the protest.

10. They concluded that the deceased had already distributed the estate, and that explains why some of the beneficiaries have renounced their shares, and that it is in the interest of justice that the estate be distributed as proposed in the affidavit in support of the summons for confirmation. There was no addressing the question of the beneficiaries who have not renounced the grant. The applicant did not also

proceed on the premise that there was no will in the estate. No other submissions were filed.

Analysis

11. Initially, the court directed that the case be heard via a viva voce hearing. On the hearing date, the court noted that there were virtually no factual disputes. Parties took directions to proceed by way of affidavit evidence. Parties filed short submissions on the application for confirmation of grant and the protest thereto.
12. The court did not find it necessary to have the widows included for reasons that will appear apparent shortly. They were, however, allowed to participate. They always caused comedy in court as they initially fought each other before becoming allies. Various beneficiaries filed various affidavits seeking to tilt justice to their side. The last daughter of the deceased filed an affidavit stating that the first gave her a portion of land parcel Tetu/Thatha/113, and she had no interest in Mweiga/Block 5/Muthuini/348. She stated that she had settled on the said parcel and developed a portion of it.
13. Joyce Wambui Kibui, a daughter, filed an affidavit dated 10.6.2025, renouncing the right to inherit. The children of the late Rose Njeri Ndungu(deceased) filed an affidavit renouncing their interest in the estate. Though they were not administrators, they were beneficiaries by virtue of their

mother, who survived the deceased but has since died, being a beneficiary.

14. This left the following beneficiaries who had not renounced their right to inherit.

- a. Gilbert Kariuki Wang'ombe (deceased)
- b. Gladys Wanjugu Wang'ombe(deceased)
- c. Jane Njambi Wang'ombe
- d. Francis Mwangi Wang'ombe

15. The applicant and the protestor are in agreement as to the place for inheritance by Jane Njambi Wang'ombe. However, they have excluded the estates of the late Gilbert Kariuki Wang'ombe (deceased) and Gladys Wanjugu Wang'ombe(deceased). The widows of the late Gilbert Kariuki Wang'ombe (deceased) made the application, which was treated as a protest.

16. There has been no renunciation of the rights of the two estates. It is irrelevant that Gladys Wanjugu Wang'ombe's estate has not protested. Until they renounce the right, the court finds that the estate is entitled to inherit. The widows of the late Gilbert Kariuki Wang'ombe (deceased) protested over who is to inherit. This is an idle question and of no concern to the estate of the late John Wang'ombe Muraya Alias John Wang'ome Muraya(Deceased).

17. The beneficiaries of the deceased who are entitled to an equal share of the estate are the late Gilbert Kariuki Wang'ombe(deceased), Jane Njambi Wang'ombe, Francis Mwangi Wang'ombe and Gladys Wanjugu Wang'ombe(deceased). The only properties of the estate left behind are Tetu/Thatha/113 measuring 5.4 hectares(13.3434 acres), Mweiga/block 5/Muthuini/348 measuring 1,295 hectares(3.2 acres), all totaling to 6.695 hectares(16.5433 acres). This makes each beneficiary get 4.1358 acres(1.67 hectares).

18. This leaves the question of the registration of the property of the two deceased beneficiaries. This court cannot complete succession for the estate of the late Gilbert Kariuki Wang'ombe (deceased)) as there is no gazetteement or filing of a succession cause in that respect. The three widows and their children are entitled to inherit. However, the list of the children was not given. I also note that one child was said to be staying with the second widow. the name is not given.

19. The next difficulty is the provisions of section 40 of the Law of Succession Act:

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses

according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

20. While addressing a question of inheritance where there are more than one house, the court of appeal [Omolo, O'Kubasu & Waki, JJ.A], in the case of **Mary Rono v Jane Rono & another** [2005] KECA 326 (KLR), posited as follows:

In this particular case however, I find no firm factual basis for making a finding that the daughters would be married. As shown by the undisputed facts above, all except one were unmarried or divorced in 1994 and were advanced in age. Eleven years later when this appeal was heard, there was no evidence that the situation had changed. It is also an undisputed fact that the deceased treated all his children equally and never discriminated between them on account of sex. It is a factor in my view that was not sufficiently considered although it resonates with the noble notions enunciated in our Constitution and international laws. The Respondents themselves clearly recognized and honoured the wishes of the

deceased when they proposed to give 14 acres of the land to each daughter of the deceased. I find no justification for the superior court whittling that proposal down to 5 acres to each daughter. More importantly, **section 40** of the Act which applies to the estate makes provision for distribution of the net estate to the *“houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.”* A *“house”* in a polygamous setting is defined in **section 3** of the Act as a *“family unit comprising a wife ... and the children of that wife”*. There is no discrimination of such children on account of their sex.

21. The dilemma relating to the life interest is well-captured in a section 37 of the Law of Succession Act as follows:

A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:

Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.

22. Section 35(1) and (2) provides for the creation of a life interest for widows as follows:

1. Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
 - a. the personal and household effects of the deceased absolutely; and
 - b. a life interest in the whole residue of the net intestate estate:
2. Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
3. A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

23. Consequently, the court cannot create a life interest for the widows without a proper succession matrix for the estate of the late Gilbert Kariuki Wang'ombe (deceased). The *raison d'être* for life interest was addressed by DN Musyoka J, in the case of **Tau Katungi v Margrethe**

Thorning Katungi & another [2014] KEHC 3226 (KLR),
as follows:

16. "*Life interest*" is not defined in the Law of Succession Act. Black's Law Dictionary, ninth edition, West, 2009, defines it as "*an interest in real or personal property measured by the duration of the holder's or another person's life.*"

In the context of *Section 35* it is an interest held by the surviving spouse during their life "*in the whole of the residue of the net interest estate.*" Its effect is that the surviving spouse first enjoys rights over the property and at his or her death the property passes to other persons. In the context of *Section 35*, the widow is entitled to enjoy rights over the residue of the net intestate estate, that is after taking away the chattels and settlement of liabilities, during her life time with the property passing to the children upon her demise or remarriage of she be a widow.

17. The effect of *Section 35(1)* is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children's right to the property crystallises upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net

estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated.

18. The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance. The other aspect is that life interest ties up with the concept of matrimonial property: the said property would in most part be property acquired during marriage and with the contribution of the surviving spouse. Direct devolution of such property to the children would deny the surviving spouse of enjoyment of their own property.

19. Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with as if it was their own. By virtue of *Section 37* of the Act, a

surviving spouse cannot during life interest dispose of any property subject to that life interest without the consent of all the adult children, co-trustees and the court. This is meant to safeguard the interest of the children who are the ultimate beneficiaries of the property the subject of life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children.

20. At life interest there is a convergence of the interests of the surviving spouse and those of the children. The device seeks to secure the interests of both. Where the deceased therefore is survived by both a spouse and children, the net intestate estate will not pass absolutely to either of the two categories of survivors during the life time of either. The holder of the life interest in this case is still alive, and has not remarried, she is therefore still entitled to the property at this time and the same cannot be conveyed to the children. Conversely, all the children of the deceased are still alive, consequently the widow cannot have the property absolutely to herself, but she is entitled to whatever income that derives from it.

24. It is not clear how many children each of the widows of the late Gilbert Kariuki Wang'ombe (deceased) has. All

three wives are alive; hence, that estate will have to be divided among the houses, according to the number of children in each house, adding any surviving wife as an additional unit to that number. The entire share of the estate of the late Gilbert Kariuki Wang'ombe (deceased) will be registered in the names of that estate.

25. We do not know whether the late Gladys Wanjugu Wang'ombe(deceased) left any children and or beneficiaries. Her share will therefore be registered in the names of the estate of the late Gladys Wanjugu Wang'ombe(deceased), pending succession in that estate.

26. It appears that each of the living beneficiaries has a preferred share in either Tetu/Thatha/113 or Mweiga/block 5/Muthuini/348. The court will treat the two units as one for the parties to agree on the carving out of shares, so that each of the four beneficiaries receives an equal share. There is no legal basis for excluding any of the four beneficiaries.

27. Regarding the estate of the deceased beneficiaries, the beneficiaries of that estate are entitled, as they must, to renounce. This does not benefit the beneficiaries of the deceased herein, but the beneficiaries of the estate of the late deceased heir. I noted that some of the widows indicated in court that they wished to reduce the estate of the late in favour of one of his brothers. This can only be done by all beneficiaries of the estate of the deceased. No

one can renounce a right on behalf of another. Renunciation is personal to the person renouncing. It does not affect the rights of those not renouncing.

28. I note that the administrator attempted to amass all the estate to himself, contrary to the principle to act reasonably. In the end, I find that the protest is merited. The estates of the late Gilbert Kariuki Wang'ombe (deceased) and the late Gladys Wanjugu Wang'ombe (deceased) must be included. Secondly, I decline to accept the administrator's proposal. In absence of any other method, the court reverts to the law. The four beneficiaries who have renounced their rights are entitled to inherit equally.

29. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say:

"It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

30. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR**, as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the

considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

31. The parties were cordial in spite of the heated debates and subterfuge from some. The best order to give in this matter is that each party to bear their own costs.

Determination.

32. In the end, the court makes the following orders:

a. The following beneficiaries who had not renounced their right to inherit, will share the properties herein equally.

a) Jane Njambi Wang'ombe.

b) Estate of the late Gilbert Kariuki Wang'ombe (deceased).

c) Estate of the late Gladys Wanjugu Wang'ombe(deceased).

d) Francis Mwangi Wang'ombe

b. The deceased left the following properties as the free property of the estate.

a) Tetu/Thatha/113 measuring 5.4 hectares (13.3434 acres),

b) Mweiga/block 5/Muthuini/348 measuring 1.295 hectares (3.2 acres).

c. The following either renounced or their right to inherit ceased to subsist, that is:

a) Loice Wanjiru Wang'ombe -Widow

b) Joyce Wambui Kibui - daughter

c) Rose Njeri Ndungu - Daughter

d. Consequently, the protest is allowed. The grant of letters of administration granted to Francis Mwangi Wang'ombe is hereby confirmed in the following manner:

a) Tetu/Thatha/113 measuring 5.4 hectares (13.3434 acres), Mweiga/block 5/Muthuini/348 measuring 1.295 hectares (3.2 acres), all totaling to 6.695 hectares (16.5433 acres) shall be taken as a unit and be divided into equal shares, with each of the four units of the beneficiaries getting about 4.1358 acres (1.67 hectares) and be registered as follows:

1. Francis Mwangi Wang'ombe

2. Jane Njambi Wang'ombe

3. Estate of the late Gilbert Kariuki Wang'ombe (deceased)

4. Estate of the late Gladys Wanjugu Wang'ombe (deceased)

e. In subdividing, the parties must ensure that subdivision is carried out in a way that respects permanent dwelling houses of the beneficiaries as far as possible.

f. Transmission be carried within 6 months. Beneficiaries who will not sign shall have the deputy registrar sign on their behalf.

g. Each party to bear its costs.

h. File is closed.

DELIVERED, DATED, and SIGNED at **NYERI** on this **19th** day of **January**, the year of our Lord **2026**. Ruling delivered physically in open court.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Muchiri wa Gathoni for the Protestors

No Appearance for the Administrator Applicant

Court Assistant - Michael