

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CASE NO. 10 OF 2017

IN THE MATTER OF THE ESTATE OF M' IKIUGU M'

RINTAUGU - (DECEASED)

JULIUS MBAABU IKIUGU

.....PETITIONER

-VERSUS-

EZABELLA KATHURE MWIRIGI 1ST

OBJECTOR

DANIEL GATOBU

OBJECTOR

MWORIA C. KIRERA

APPLICANT/INTERESTED PARTY

JUDGMENT

1. The deceased herein died on 5th September 2015.

2. After a long dispute, this court appointed the three administrators herein on 20th June 2022. What remains now is the distribution of the estate.
3. The deceased had seven (7) children, some are deceased but left their own children. The spouse is also deceased. The deceased left the following property:
 - a) Kibirichia/Kibirichia/2761
 - b) Kibirichia/Kibirichia/2762
 - c) Kibirichia/Kibirichia/2763
 - d) Kibirichia/Kibirichia/2764
 - e) Kibirichia/Kibirichia/2765
 - f) Kibirichia/Kibirichia/2798
 - g) Kibirichia/Kibirichia/2300
 - h) Tharaka/Tunyai/665
 - i) Tharaka/Tunyai/666
 - j) Tharaka/Tunyai/667
 - k) Tharaka/Tunyai/668
 - l) Tharaka/Tunyai/669

4. The principles and the law governing the distribution of the estate herein is as set out under section 38 of the Law of Succession Act. It provides as follows:

Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

5. It has been reiterated by the superior courts that when it comes to the distribution of an estate of a deceased person, the children, male and female, have equal rights. It matters not that a daughter of the deceased is married or not.
6. In the estate of ***in Re Estate of Mutethia Thakan (Deceased) (2024) KEHC 4425 (KLR)*** the court held as follows:-

“The principle of equal distribution of the estate of the deceased to his children has now in upheld and entrenched in our jurisprudence. The Court of Appeal in binding decisions has held that women should not be denied their rights to inheritance. In *Douglas Njuguna Mungai -v- Jolin Bosco Maina Kariuki & Another (2014) eKLR* the Court of Appeal held that;

“That -fully under *the Constitution* of Kenya 2010 all these rights are enshrined and they cannot be derogated against, they are ‘jus cogens’. The general rules of International Law also form part of the Law of Kenya. See Article 2(5) of *the Constitution*. The yoke and burden of discrimination should not be worn by female gender any more, *the Constitution* set it apart.

Further the Court of Appeal referring to the decision of *Rono-v- Rono* on none discrimination on grounds of sex held as follows-

“It would appear from the totality of the submissions made before us and the stance adopted by appellants all through this protracted litigation that the kernel of their disenchantment lies in the fact that their sister Florence, a married daughter of the deceased, became not only a beneficiary but also an administratrix of the estate. That much was clear from Mr. Kioga’s resort to Meru Customary Law which stipulated as captured by Dr. E Contran in his Restatement of customary Law. Vol. 2 page 30. Daughters receive no share of the estate. In the absence of sons, the heirs are the nearest paternal relatives of the deceased namely father, full brothers, half-brothers and paternal uncles with greatest respect such full throttled patriarchy that flies in the face of current conceptions of what is fair and reasonable cannot stand scrutiny; not least because it is plainly discriminatory of and itself and its effects. It is anachronistic and misplaced

not withstanding that it was the norm for a fact majority of Kenya's communities. This court has long accepted that a child is a child, none being lesser on account of gender or the circumstances of his or birth. Each has a share without shame or fear in the parents' inheritance and may boldly approach to claim it. What *Rono-v- Rono* decided about the prohibition of discrimination of sex under the retired Constitution applies with yet another greater force under the current progressive Constitution."

See also *Stephen Gitonga M'Murithi -v- Faith Murithi (2015) eKLR* where the Court of Appeal held that failure to accord equal distribution of the estate (to sons, daughters and widows) is a violation of Section 38 of *the Constitution* by discriminating against the married daughters of the deceased.

Guided by these binding decisions, it follows that distribution of administrator which

discriminated against the daughters of the deceased should not be entertained by this court.”

7. Nevertheless, parties may agree between themselves as to how the estate is to be shared and some beneficiaries will willingly accept lesser shares. That is upon them to agree. If the court is not seized of such an agreement, then the estate is to be shared equally.
8. Even though the principle appears to be straightforward, it is at times very difficult to implement especially where the property in question is vast and scattered. Such is the situation herein. It is also not clear how the parties have settled on the ground. Some parcels of land, though in the same area or locality, are not equal in size.
9. Looking at the estate, I think that the best way is to have each beneficiary get an equal share of the land at Kibirichia and an equal share of the land at Tunyai. The land parcels taken as a whole appear large enough to be shared without affecting their productivity potential.

10. Therefore, I direct that the said properties be aggregated and each beneficiary to get an equal share in size. That is basically what each administrator has proposed.
11. That means that each beneficiary will get 1/7 of the total acreage of the land at Kibirichia and 1/7 of the total acreage of the land at Tunyai.
12. The problem that I have stated earlier will be solved once the actual occupation on the land is confirmed. I therefore direct that the parties seek the services of the County Surveyors in Meru and Tharaka Nithi to proceed to distribute the land as ordered.
13. The proposed sub-division to be availed in court for adoption before any further action is taken.
14. The parties to share the costs of the exercise.

Dated, signed and delivered at Meru this 19th day of January 2026.

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**H. M. NYAGA
JUDGE**