



REPUBLIC OF KENYA



**In re Estate of Michael Gachehe Mbui (Deceased) (Succession Cause  
78 of 2016) [2026] KEHC 695 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 695 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 78 OF 2016  
DKN MAGARE, J  
JANUARY 28, 2026  
IN THE MATTER OF THE ESTATE OF MICHAEL GACHEHE MBUI (DECEASED)**

**BETWEEN**

**CHRISTABEL WANGUI ..... APPLICANT**

**AND**

**JANE NJAMBI KARINGU ..... 1<sup>ST</sup> RESPONDENT**

**GACHANJA GACHIHI ..... 2<sup>ND</sup> RESPONDENT**

**JAMES NDERITU GACHIHI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased died quietly on 11.10.1991, in Muruguru, in Nyeri County. He left behind several beneficiaries. Damaris Wairimu Gachihi applied for letters of administration intestate and declared the following beneficiaries in Nairobi HC P&A 511 of 1995:
  - a. Bernard Willy Mbue
  - b. Margaret Muthoka
  - c. Geoffrey Weru Gachihi
  - d. Robert Mathenge Gachihi
  - e. Wilson Karimi
  - f. David Gachanja Gachihi
  - g. James Ndiritu
  - h. Lucy Njeri



- i. Jane Njambi Karingu
2. While filing the cause, there were only three persons who signed Form 38, that is, Geoffrey Weru Gachihi, Wilson Karimi and Lucy Njeri. Letters of Administration were issued to Damaris Wairimu Gachihi on 26.09.1995.
3. On 24.10.2011, David Gachanja Gachihi, James Ndiritu, and Jane Njambi Karingu sought to substitute Damaris Wairimu Gachihi, since the administrator was deceased. This application was allowed. The administrators sought to confirm the grant. There was a change in beneficiaries, with Elizabeth Wangui Gachihi taking the lion's share of the property; there was also a nephew introduced, namely Martin Muchemi.
4. One Ndirithu Gikaria filed a protest saying that he bought 6 acres from Bernard Willy Gachihi. Elizabeth Wangui Gachihi filed a further affidavit dated 21.07.2014.
5. As the matters were proceeding, the court ordered that the file be transferred to Nyeri. Another application for confirmation dated 3.4.2017. Other heirs died, resulting in more persons becoming recipients of the suit property. Thereafter, summons dated 11.09.2019, seeking the following orders:
  - a. The grant of letters of administration intestate issued to the respondents on 7.12.2011 and subsequently confirmed on 2.5.2017 be revoked.
  - b. The applicant be appointed as a sole administrator of the estate of [Michael Gachehe Mbui(deceased)] and be issued with a grant of letters of administration.
  - c. In the alternative and without prejudice to the foregoing, the court appoints the applicant and the respondents as joint administrators to the estate of the deceased.
  - d. The respondents herein are ordered to produce a full and accurate inventory of assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the day of the ruling of the court on this issue and render the account in such time as the court shall stipulate.
6. They stated that the deceased had 17 beneficiaries. They were set out as follows:
  1. Widow A Muchiru Gachihi Mbui
    - a. Wilson Karimi Gachihi (Deceased)
    - b. Christabel Wangui
    - c. Rose Nyaguthii
    - d. Ruth Njambi
    - e. Tabitha Muthoni
    - f. Joseph Wanjohi
    - g. Joyce Wairimu
  2. Widow B -Damaris Gachihi -(Deceased)
    - a. Bernard Willy Gachihi (deceased)
    - b. Margaret Gathoni(deceased)
    - c. Robert Mathenge Gachihi(deceased)



- d. Geoffrey Weru
  - e. Wilson Karimi
  - f. David Gachanja Gachihi
  - g. James Nderitu Gachihi
  - h. Lucy Njeri
  - i. Jane Njambi
7. The applicant posited that the summons for confirmation was dismissed by Musyoka J, with an order that all beneficiaries be included.
  8. In the judgment whoever way parties are sharing settlement areas and grounds should be taken into consideration. The court must also make a definite finding on other beneficiaries and dependents. The respondents did not comply with Justice Musyoka's order.
  9. It was her case that her mother ranked in priority to the respondents; hence, the proceedings were defective for her non-inclusion. She stated that titles have not yet been distributed to third parties.
  10. Gachanja Gachihi filed a replying affidavit dated 21.11.2019. He stated that the deceased was not polygamous. He stated that the deceased married the applicant's mother in 1949 and was divorced in 1960. By that time, the deceased had given birth to the late Wilson Karimi Gachihi. The duo divorced, and Wilson Karimi Gachihi(deceased) went with the mother.
  11. The applicant's mother was subsequently remarried and gave birth to the applicant and 5 other children named in the application. Wilson Karimi Gachihi(deceased) had no child and was not married. He stated that the rest live in Meru, where the applicant's mother was married but did not live with them. It was stated that the applicant's mother was alive and living happily.
  12. The applicant's mother filed a further affidavit dated 12.2.2020. She stated that she is the deceased's widow. She stated that the replying affidavit is full of falsehoods. She stated that it is false that she was divorced. She stated that she was married in 1949 but has never divorced the deceased. She retained the names on her identity card as evidence of her continued relationship.
  13. She stated that even for argument's sake, she falls in the rubric of former wives, if the arguments were true. She stated that she had visited the property and that it was the same as before the distribution. She annexed the searches to show that the properties were in the beneficiaries' names. She stated that nothing stops the court from nullifying the titles.
  14. Subsequently, the deponent died on 5.5.2020, at the old age of 91 years. Parties proceeded with the hearing using various statements that were filed. Before proceeding to the case, the court is circumscribed by the decision of Musyoka J, in this matter, where he held as follows:
    - (a) That the confirmation application dated 4<sup>th</sup> April 2014 is not properly grounded, at least on the proposed distribution, for the reasons that I have given here above, and I shall therefore dismiss it;
    - (b) That the administrators shall bring a fresh confirmation application wherein they shall address all the matters that I have raised in the judgment herein;
    - (c) That all the persons beneficially entitled to a share in the estate, including Lucy Njeri Gachihi, shall be provided for unless they have waived or renounced their rights thereto;



- (d) That the claim by Ndiritu Gikaria cannot be secured from the estate of the deceased herein, for it lies elsewhere, and he is therefore not entitled to be provided for from the estate of the deceased;
- (e) That the estate comprises of property situated at Aguthi of Nyeri County, consequently I do hereby order that the cause herein be transferred to the High Court of Kenya at Nyeri for final disposal; and
- (f) That there shall be no order as to costs.

### Submissions

15. The appellant filed submissions dated 5.08.2024. They raised only one issue. They submitted that the applicants met the requirements of section 76 of the *Law of Succession Act*. They submitted that the court's powers are discretionary. Reliance was placed on the case of *In re Estate of Eston Nyaga Ndirangu (Deceased) [2021] KEHC 5065 (KLR)*.
16. Further reliance was placed on section 2 of the *Law of Succession Act* in relation to a wife. The section therein states as follows:

“wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and “widower” shall have a corresponding meaning;
17. Further reliance was placed on section 29 of the *Law of Succession Act*, in the definition of the dependant. It provides as follows:

For the purposes of this Part, “dependant” means-

  - (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
18. The appellant submitted that they were born within wedlock and as such children within the meaning of section 118 of the *Evidence Act*. The same states as follows:

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.
19. It was their position that the proceedings to obtain the grant were defective for failure to disclose the existence of the first house’s matriarch, who was married in 1949. The only explanation for the failure to disclose her was that she was divorced and moved to Meru. However, they submit that the marriage is not disputed.
20. The applicant submitted that evidence from the Respondent showed that she was a daughter. It was her submissions that, she was born when between the marriage and death, meant that she was conclusively a daughter of the deceased.
21. She stated that she graduated from PCEA Muruguru school in 1965, debunking her birth and upbringing in Meru. The court needs to add that this also removes doubt that she was born before 1960. They submitted that the said house ought to have been included. Reliance was placed in sections 40 and 66 of the *Law of Succession Act*, including ruling 26 of the Probate and Administration Rules. It was stated that the applicants ought to prove only one of the three disjunctive terms of section 76 of



- the *Law of Succession Act*. They submitted that the Respondents knew of the marriage of the matriarch but fraudulently failed to disclose.
22. The existence of the children was known, including the applicant's dowry negotiators in their Muruguru home. They sought the application and order for the filing of a fresh summons for confirmation of grant.
  23. The respondents filed submissions which they indicated were in respect of an application dated 11.09.2006, a date they question on the basis that it appears to precede the filing of the suit. No such date is reflected anywhere on the court record. In any event, the issue raised is purely technical and does not go to the substance of the matter, and is therefore of no consequence, being properly addressed by the maxim *de minimis non curat lex*, which holds that the law does not concern itself with trifles.
  24. They stated that the applicant did not expressly refute the claim that the applicant's mother moved to Mikinduri in Meru, where she remarried and had five more children. She stated that the applicant's testimony remains uncorroborated even where the mother died of Covid-19. She stated that the applicant did not seek to have the rest of the children joined to the proceedings. They stated that the deceased got remarried to one Mung'ora, and the dowry was refunded to Michael Gachehe. According to her the act the succession act, came into force in 1981 hence the deceased cannot qualify to be a former wife.
  25. They submitted that the applicant did not rebut the claim that his mother relocated to Mikinduri, Meru County, where she remarried and had five children, and that his testimony remained uncorroborated despite her death from Covid-19. They further contended that the applicant failed to join the other children to the proceedings. It was also submitted that the deceased remarried one Mung'ora, that dowry was refunded to Michael Gachehe, and that, since the *Law of Succession Act* came into force in 1981, the deceased cannot qualify as a former wife under the Act.
  26. The court was invited to rely on the evidence of Serah Wanjiku Wanjohi. They concluded that the summons for revocation of the grant was without merit and should be dismissed.

### **Evidence**

27. The matter proceeded in regard to hearing on the objection of proceedings by Nderitu/ the objection was decided on 25.11.2026.
28. The summons for revocation was heard before Muya J, who was then transferred. He heard all witnesses before the matter was referred to me after the transfer of my predecessor. PW1 was Christabel Wangui. She adopted her statement.
29. On cross-examination, she stated that she was the daughter of the deceased, born in 1948. She stated that the deceased had two wives that is, Muchiru Gachihi Mbui -(Deceased) and Damaris Gachihi -(Deceased). She stated that Gachanja was the son of the first widow. He filed the petition without including the mother.
30. She stated that she was married to Wahinya, hence her name. She was born in the 1960s. She stated that her father paid the dowry. She stated that she was born in Nyeri. She stated that the deceased died over 30 years ago. He stated that there was subdivision after confirmation. She stated that the petitioners lied that she was not a daughter of the deceased. She learnt that her father learned of success when she visited the respondents in Nyeri.



31. It was then indicated that the second witness died. The court allowed the adoption of the deceased widow's statement. The respondents sought to call a witness to rebut the evidence of a witness whose statement was denied.
32. Gachanja Gachihi was the first defence witness, though indicated as PW2. He was a retired teacher and stated that he filed a replying affidavit dated 21.11.2019, and statements dated 27.09.2023 and 29.09.2023. He stated that the applicant should have challenged P&A HC No. 511 of 1995. They stated that the settlement is in accordance with the father's wishes. He stated that the beneficiaries have sold their portions of land. He stated that the applicant is not entitled to apply for revocation because the mother was divorced from the father in 1960.
33. He stated that the deceased was married to Mungora. He stated that the applicant was mischievous because she was from Meru.
34. On cross-examination, he stated that Christabel was born in Meru and was not the deceased's daughter. He stated that Muchiriu Gachihi was the father's wife. He was shown a newspaper cutting depicting Christabel as the father's daughter, but he disagreed. He stated that he did not get the consent of Muchiriu Gachihi before filing the cause.
35. He also did not seek a consent of the applicant. He stated that the applicant was born in 1958, after the divorce in 1960. He did not include Muchiriu Gachihi, as she was already married elsewhere.
36. She also stated that she was not aware that Christabel schooled in Nyeri. He stated that the applicant had a child, Karimi, who was given 4 acres. He said that they have transferred their land to buyers and their children. It is a nice piece of ironical evidence. Why give 4 acres to a stranger's son?
37. PW3 was Serah Wanjiku Wanjohi. She did not know the applicant before court. She stated that the deceased was from her clan. She came to know the deceased in 1976 when she moved to Nyeri. She left Meru after marriage to Ikamba Clan. She stated that the applicant is not the deceased's daughter. She stated that Damaris's wife of the deceased told the witness that she was the mother of Karimi. on cross examination, she stated that she talked to Damaris, after 1976 about a clan and not family.
38. Parties highlighted their submissions. Parties filed skeleton submissions to address section 93 of the [Law of Succession Act](#).

## Analysis

39. The matter proceeded fully before another court. It is difficult to know the demeanor of the witnesses. In any case, the court is in a position to evaluate the evidence in an objective manner having regard to the empirical facts and circumferences of the case. Such difficulties were addressed in the case of *Sugut v Jemutai & 3 others* (Civil Appeal 110 of 2018) [2023] KECA 202 (KLR) (17 February 2023) (Judgment) Kiage JA stated as doth:

I have carefully considered those rival submissions by counsel in light of the record and the bundles of authorities placed before us. I have done so mindful of our role as a first appellate court to proceed by way of re-hearing and to subject the entire evidence to a fresh and exhaustive re-evaluation so as to arrive at our own independent conclusions. See Rule 29(1) of the Court of Appeal Rules 2010; *Selle Vs Associated Motor Boat Co* [1968] EA 123). I do accord due respect to the factual findings of the trial court out of an appreciation that it had the advantage, which we do not, of having seen and heard the witnesses as they testified. I am, however, not bound to accept any such findings if it appears that the judge failed to take any particular circumstance into account or they were based on no evidence



or were otherwise plainly wrong. I note from the record before us that the learned Judge may not have been in a fully advantageous position in that regard having taken up the case when it was already half-way heard. Her conclusions on the evidence and findings of fact were therefore from a reading of what was recorded by the previous judge.”

40. The burden of proof in these cases is based, like all civil matters, on a balance of probabilities. This is not a criminal trial. It is a civil trial where the court has to find for one part or another on a balance of probabilities. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru, J in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526 as follows:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

41. This was further enunciated in the case of *Palace Investments Limited v Geoffrey Kariuki Mwenda & Dollar Auctions* [2015] KECA 616 (KLR), where the Court of Appeal [J Karanja, GG Okwengu, CM Kariuki, JJA] stated as follows:

The burden of proof is placed upon the appellant and is to be discharged on a balance of probabilities. Denning J. in *Miller –vs- Minister of Pensions* [1947] 2 ALL ER 372 discussing the burden of proof had this to say:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘We think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

42. In the case of *Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae)* [2017] KESC 42 (KLR), the supreme court [Maraga, CJ & P, Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki and Lenaola, SCJJ] posited as follows regarding the burden of proof:

The common law concept of burden of proof (onus probandi) is a question of law which can be described as the duty which lies on one or the other of the parties either to establish a case or to establish the facts upon a particular issue.<sup>46</sup> Black’s Law Dictionary<sup>47</sup> defines the concept as “[a] party’s duty to prove a disputed assertion or charge....[and] includes both the burden of persuasion and the burden of production.” With that definition, the next issue is: who has the burden of proof?

The law places the common law principle of onus probandi on the person who asserts a fact to prove it. Section 107 of the *Evidence Act*, Cap 80 of the Laws of Kenya, legislates this principle in the words: “Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist ...



43. The trouble for the witnesses is that it is important that they say the truth. However, what the court is not prepared to deal with is lying witnesses. The first defence witness does not know the applicant as her sister. However, in an extremely condescending manner, he proceeds to state that her daughter was already provided for. He maintains that there was a divorce in 1960. However, he stated that the applicant was born in 1958, after the divorce in 1960 (a very good way of calculating time). He did not have regard that the applicant was born before 1960.
44. The second defence witness, though identified as PW3, was a witness for hire. She has no idea of the family. She came into the picture in 1976. She maintains that Karimi is a daughter of Damaris, even on the face of the clear admission by the co-administrator that she is the applicant's daughter. Such evidence reminds me of the lamentations by CB Madan, in the case of N vs. N [1991] KLR 685. as follows:

Parties and Counsel ought to give the courts some credit that the courts are not manned by morons who can be easily duped into believing all manner of incredible stories with little or no iota of truth. It is these kinds of allegations that Madan, J (as he then was) had in mind when in N vs. N [1991] KLR 685 when he expressed himself in the following terms:

I wish people would not tell me absurd and unbelievable lies. I feel disappointed if a lie told in court is not reasonable imitation of the truth and is not reasonably intelligently contrived. I wish people who tell lies before me would respect my grey hair even if they consider that my intelligence is not of high order. I wish the witness had not told me the most stupid of his lies, which both disappointed and made me feel intellectually insulted.

45. Having agreed that the late Muchiru Gachihi Mbui was married to the deceased, a divorce decree was the next item on the table. None was brought out. The evidence of Serah Wanjiku Wanjohi was bogus and of no use for events occurring between 1949 and 1976. At least for the applicant, it was clear she was born before 1960, in circumstances that, even if there was a divorce in 1960, would not apply to her. It was also clear that the applicant's child was recognized as a granddaughter. It is thus clear that at least the first son and the applicant were parties who ought to have been recognized.
46. The difficulties were that the other children did not lay claim to the estate. However, the mother's evidence, which was ordered to be produced by dint of section 35 of the *Evidence Act*, maintained that she was married to the deceased. It appears she was not living in that land, but this has nothing to do with being a dependent.
47. Section 76 of the *Law of Succession Act* provides as follows:
- A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-
- (a) that the proceedings to obtain the grant were defective in substance;
  - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-



- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.
48. Revocation for grant was discussed in the case of *Ansazi Gambo Tinga & another v Nicholas Patrice Tabuche* [2019] KECA 803 (KLR), where the court of appeal [Visram, Karanja & Koome, JJ.A] posited as follows:
- (17) As stated by this Court above and as rightly pointed out in *Re Estate of Shongo Omedo* [2018] eKLR; persons with locus standi to seek revocation of grant includes any person with a right or expectancy to the estate. It therefore follows that an ‘interested person’ under Section 76 does not only envision the heirs enumerated under Section 66 of the Act; rather, it includes a person who can show an interest in the estate. Consequently, the allegation that the respondent lacked the locus standi to seek revocation of grant herein, fails.
49. In this case, the applicant showed that she is the daughter of the deceased. So was the deceased widow, Muchiri Gachihi Mbui and Wilson Karimi Gachihi (Deceased). There were children born within wedlock. However, the other children were silent on their claims. In this matter, the case was limited to finding whether there was material non-disclosure. It is enough that the applicant and the mother were not disclosed. Whether the brothers were to be disclosed or not is a matter that the court will adjourn to confirmation. In the circumstances, I find that there was a failure to disclose, making the grant untenable. In the end, the same is revoked.
50. The next issue is what to do with the titles that have been issued. Parties relied on section 93 of the *Law of Succession Act*. There was fraud involved in failing to disclose the applicant’s mother and other siblings; the respondents are thus enjoying the fruit of a poisoned chalice. Section 93 of the *Law of Succession Act* provides as follows:
- (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted, shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
  - (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.
51. There is no evidence of sale produced. The transfers were allegedly to grandchildren. These are gratuitous transfers. Therefore, all subdivisions are hereby canceled. The properties shall revert to the deceased’s name.
52. Given the revocation, there needs to be an administrator or administrators of the case. The court has discretion in appointing which beneficiaries as administrators. In the case of *Eva Naima Kaaka & Stella*



Seiyan Kaaka v Tabitha Waithera Mararo [2018] KECA 762 (KLR), the court of appeal [Nambuye, Kiage & MURGOR, JJ.A] posited as follows:

Section 48 of the *Law of Succession Act* provides that the court shall have final discretion as to the person or persons to whom a grant of letters of administration shall in the best interests of all concerned be made. In this regard the lower court ordered that Waithera be included as a co administrator of the deceased's estate together with Naima and Stella Seiyan, the appellants. Whilst we agree with the appointment of Waithera as co-administrator herein, the appointment shall be with the caveat that it is for purposes of representation of the minor child's interest and to act as the child's trustee.

53. In the circumstances, I shall appoint the representatives and the applicant as co-administrators. The co-administrators shall apply for confirmation within 60 days. Other than the three named persons, the applicant, Muchiru Gachihi Mbui, and Wilson Karimi Gachihi (Deceased) the rest of the Muchiru Gachihi Mbui (deceased's) children will have to participate at the confirmation level; otherwise, no evidence was placed on their existence.
54. The titles for the following properties and their subdivisions are and any subsequent subdivision or transfer are hereby revoked and to revert to the deceased's name:
- a. Aguthi/Muruguru/1197
  - b. Aguthi/Muruguru/1198
  - c. Aguthi/Muruguru/1200
  - d. Aguthi/Muruguru/1201
  - e. Aguthi/Muruguru/1202
  - f. Aguthi/Muruguru/1203
  - g. Aguthi/Muruguru/1204
  - h. Aguthi/Muruguru/1205
  - i. Aguthi/Muruguru/1667/50
  - j. Plot at Ndaiga
  - k. Gakawa/block1/guret/885
  - l. Coffee factory
  - m. Shares at KPCU
55. 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.
56. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR), 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.
57. Given the nature of the relationship between parties, each party shall bear their own cost.

### **Determination**

58. In the upshot, I make the following Orders:
- a. Summons dated 11.09.2019 is allowed. The grant of letters of administration intestate issued to the respondents on 7.12.2011 and subsequently confirmed on 2.5.2017 are hereby revoked.
  - b. The court hereby appoints Christabel Wangui and Jane Njambi Karingu as administrators.
  - c. The administrators or any of them to file for summons for confirmation of grant within 60 days.
  - d. The title deeds in respect of the deceased properties, and any subsequent subdivision, are hereby revoked. The tiles to the properties comprised Aguthi/Muruguru/1197, Aguthi/Muruguru/1198, Aguthi/Muruguru/1200, Aguthi/ Muruguru/ 1201, Aguthi/ Muruguru/ 1202, Aguthi/Muruguru/1203, Aguthi/Muruguru/1204, Aguthi/Muruguru/1205, Aguthi/Muruguru/1667/50, a plot at Ndaiga, and Gakawa/Block 1/Guret/885 Shares at KPCU and the Coffee factory do revert to the names of the deceased
  - e. Each party to bear their own costs.
  - f. Directions to be issued after the ruling.

**DELIVERED, DATED AND SIGNED AT NYERI, VIRTUALLY ON THIS 28<sup>TH</sup> DAY OF JANUARY, 2026. JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Ms. Nanjala for the Respondent.

Mr. Ndichu for the Applicant.

Court assistant: Michael

