

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 777 of 1985
IN THE MATTER OF THE ESTATE OF KIMARI GITERE
(DECEASED)

RULING

1. Pursuant to ruling delivered on 13th February 2025, **JEMIMAH JANE WACEKE KIMARI** the Administrator herein presented Summons for Confirmation of Grant dated 4th March 2025, under Section 71 of the Law of Succession Act. The deceased was polygamous and the Administrator proposes that the property be distributed as follows-

S/NO.	ASSETS	1 ST HOUSE	2 ND HOUSE
a)	LR.NO. Githunguri/Kiaria/273	Elizabeth Wacu Mwangi 2.174 acre Dina Wambui Kamau 2.174 acre Jemima Waceke Kimari 2.174 acre Edward Kimari Muturi 2.174 acre Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others 1.087 acre Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others 1.087 acre	Robert Mwangi 1.087 acre Judy Nyawira 1.087 acre Florence Wangui Kimari 2.17 acres Charity Waceke Kimari 2.17 acres Winnie Wanjiru Kimari 2.17 acre Ruth Njeri Kimari 2.17 acres,
b)	LR.NO. Gatamaiyu/Gachoiri/316	Elizabeth Wacu Mwangi 1.24 acre Dina Wambui Kamau 1.24 acre Jemima Waceke Kimari 1.24 acre Edward Kimari Muturi 1.24 acre Hellen Nyambura and Victor Mburu Kamau as	Robert Mwangi 0.62 Acres Judy Nyawira 0.62 acres Florence Wangui Kimari 1.24 acres Shem Kihoro Kimari 1.24 acres Winnie Wanjiru 1.24 acres Ruth Njeri Kimari 1.24 acres

		trustees for them and 2 Others 0.62 acre Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others 0.62 acre	
c)	Plot No. 28 Githunguri Market	1ST HOUSE Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others ¼ share Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others ¼ share	2ND HOUSE Winnie Wanjiru Kimari ½ share
d)	Plot No. 2 Gathanji	Edward Kimari Gitere ½ share	Shem Kihoro Kimari ½ share
e)	Plot No. 76 Githunguri	Jemima Waceke Kimari ½ share	Ruth Njeri Kimari ½ share
f)	LR.Githunguri/Kiaria/ T.236	Nil	Florence Wangui Kimari ½ share Robert Mwangi & Judy Nyawira ½ share jointly
g)	LR.Githunguri/Kiaria/ T.132	Nil	Winnie Wanjiru Kimari ½ share Charity Waceke Kimari ½ share
h)	LR.Githunguri/ Kiaria/T.3 .3	Edward Kimari Gitere Whole	Nil
i)	LR.Githunguri/ Kiaria/ T.133	Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others- Whole	Nil
j)	LR.Githunguri/ Githunguri /165	Elizabeth Wacu Mwangi 0.16 acre Dina Wambui Kamau 0.16 acre Jemima Waceke Kimari 0.5 acre Edward Kimari Muturi 0.16 acre	Robert Mwangi ¼ acre Judy Nyawira ¼ acre Florence Wangui 0.5 Acre
k)	LR. K. Githunguri/T.209	Jemima Waceke Kimari ½ share	Ruth Njeri Kimari ½ share
l)	ICDC Shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
m)	Rioki Estates	Edith Wamaitha ½ share	Charity Waceke ½ share
n)	Kiaria Co-operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
o)	Ndumberi Co-operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
p)	Breweries shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share

2. Three affidavits of Protest have been filed. **Charity Waceke Kimari** is a daughter of the deceased. She states that the proposed mode of distribution does not factor in gifts by the deceased person and the present occupation of parcels of land by the beneficiaries. She states that she is entitled to a share of **L.R. No. Gatamaiyu/ Gachoiri/316**. Further she contends that **Florence Kimari** has been allocated an unjustifiable large share of the estate.
3. She contests the allocation of a portion of **LR K Githunguri/ T.209** to **Ruth Njeri Kimari** (Now Deceased) as the property should be transmitted to the children of Joyce Wacu (Deceased). She avers that both that parcel and LR NO. Githunguri/ Githunguri/165 should be allocated to the children of Joyce Wacu Kimari (Deceased)- Judith Nyawira Wanjohi and Robert Mwangi Wanjohi. She reiterates that the parcels of land were gifted to the two by the deceased. Further she contends that **Shem Kihoro Kimari** was gifted 8.7 acres by the deceased and this should be factored into account. She urges that the Court proceed to distribute the estate as per the previous grant
4. **Judith Nyawira Wanjohi's** affidavit of protest is dated 14th

March 2025. She is a granddaughter of the deceased, she contends that the proposed mode of distribution does not incorporate gifts by the deceased and the current occupation of the land. As does Charity Waceke Kimari, she submits that parcels no. **LR K Githunguri/ T.209** and **LR NO. Githunguri/ Githunguri/165** were gifted to her mother Joyce Wacu (deceased); the parcels should be allocated to her and her brother. She contends that the 1st House is unfairly benefitting from assets that were allocated to the 2nd House.

5. **Winnie Wanjiru Kimari** is a daughter to the deceased, her affidavit of protest is sworn on 4th March 2024, she challenges the summons on essentially the same grounds as does Charity Waceke Kimari. The Administrator has sworn a further affidavit on 5th June 2025 and she proposes to adjust the mode of Distribution so that Charity Waceke Kimari is allocated 1-acre land out of LR Gatamaiyu/ Gachoiri/ 316 and adjusting the shares of the other beneficiaries so that they each get a share. She disagrees with the other proposals.

6. The summons was canvassed via written submissions. The submissions of the administrator are dated 9th October 2025 and reference is made to the decision in **the Matter of the**

Estate of Simiyu Wasike Walubengo (Deceased)
Succession Cause No. 17 of 2018 [2022] 12299 KLR on the distribution of the estate of a polygamous deceased person and the decision **In the Matter of the Estate of Mikirima Karingu (deceased) Succession Cause 167 of 1979 [2022] KEHC 3119 KLR** on the judicial principle that litigation must come to an end.

7. The protestors submissions are dated 1st September 2025 and the frame the following as the issues for determination-
- a) Whether the properties in dispute being; **LR K Githunguri/T.209** and **LR NO. Githunguri/ Githunguri/165** should be redistributed to other beneficiaries or should be distributed to Judith Nyawira and Robert Mwangi Wanjohi as the children of Joyce Wacu Kimari, and
 - b) Whether the distribution on the part of the 1st Household should be interfered with.
8. The submission restates the averments in the affidavits of protest so I need not set them out in detail here.

ANALYSIS AND DETERMINATION

9. This being a summons for confirmation, the issue for determination is how the net Estate of the Deceased should be divided among the rightful beneficiaries.
10. The parties are agreed on who the beneficiaries of the Estate are. The issue of the assets of the deceased available for distribution was resolved by the orders of Hon. Musyoka J on 18th December 2015. At this stage of the proceedings and in light of the decision delivered 13th February 2025, the question of whether the two contentious properties (**LR K Githunguri/ T.209** and **LR NO. Githunguri/ Githunguri/165**) comprise part of the estate of the deceased is not on the cards for deliberation.
11. The other issue is how the assets should be distributed, the 2nd House is adamant that the properties **LR K Githunguri/ T.209** and **LR NO. Githunguri/ Githunguri/165** should be vested in Judith Nyawira and Robert Mwangi Wanjohi. The substantive ground is that the parcel was gifted to their mum. As already stated a determination has already been made on this point.
12. This is a polygamous home; the applicable law is Section 40 of the Law of Succession Act provides-

40. Where intestate was polygamous

(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.

13. The Law requires that division of the net intestate estate shall, in the first instance, be among the houses according to the number of children in each house, adding any wife surviving him as an additional unit to the number of children. The surviving wife is an additional unit to the children.

14. In **Re Estate of John Musambayi Katumanga - (Deceased)** [2014] eKLR Musyoka J. stated as follows;

Section 40 was not designed for the circumstances of the instant estate, but it would appear more appealing for the purpose of the distribution of the said estate than Section 35. The spirit of Part V, especially Sections 35, 38, and 40, is equal distribution of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35 (5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms - the property “shall ... be equally divided among the surviving children.” Equal

distribution is envisaged regardless of the ages, gender, and financial status of the children.

15. On his part Hon. Joel Ngugi J. (as he then was) in **re Estate of Kamau Rungathu (Deceased) (Succession Cause 479 of 1994) [2022] KEHC 14417 (KLR) (31 October 2022) (Judgment)** was of the view that section 40 of the Law of Succession Act is meant to ensure the equitable distribution of the estate, and that he held as follows:

The literal interpretation of the above provision is that the estate is first distributed among the houses, depending on the number of children in each house, with any surviving spouse being an additional unit. Thereafter, the assets allocated to each house are distributed within the house in accordance with sections 35 to 38 of the Law of Succession.

16. In **Scolastica Ndululu Suva v Agnes Nthenya Suva [2019] eKLR**, the Court of Appeal recommended a case-to-case application of Section 40 of the Law of Succession Act stating

It is therefore evident that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account the factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.

17. The Court of Appeal further observed in *Jane Nyambura Ndungu v Beatrice Wangari Ndungu & 2 Others* [2021] eKLR:

Section 40 of the Law of Succession Act is not a magic pill that can be applied to resolve all issues pertaining to the distribution of a deceased person’s estate. In as much as section 40 LSA talks of “Equal Shares,” the distribution must also be equitable.

18. In distributing the Estate, the Court strives to achieve fairness and justice for the beneficiaries. The Protestor Judy Nyawira asserts that she and her brother have no interest in the estate apart from **LR K Githunguri/ T.209** and **LR NO. Githunguri/ Githunguri/165**. Her assertion that Ruth Njeri Kimari (now deceased) had no interest in those parcels of land is not controverted. With this in mind I will direct that the estate be distributed as hereunder-

S/ NO.	PROPERTIES	1STHOUSE	2ND HOUSE
a)	LR.NO. Githunguri/Kiaria/ 273	Elizabeth Wacu Mwangi 2.174 acre Dina Wambui Kamau 2.174 acre Jemima Waceke Kimari 2.174 acre Edward Kimari Muturi 2.174 acre Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others 1.087 acre Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others 1.087 acre	Florence Wangui Kimari 4.34 acres Charity Waceke Kimari 2.17 acres Winnie Wanjiru Kimari 2.17 acre Estate of Ruth Njeri Kimari 2.17 acres,
b)	LR.NO. Gatamaiyu/Gachoiri/ 316	Elizabeth Wacu Mwangi 1.24 acre Dina Wambui Kamau 1.24 acre Jemima Waceke Kimari 1.24 acre Edward Kimari Muturi 1.24 acre Hellen Nyambura and Victor Mburu Kamau as trustees for	Charity Wacheke 1.24 acres Florence Wangui Kimari 1.24 acres Shem Kihoro Kimari 1.24 acres Winnie Wanjiru 1.24 acres

		them and 2 Others 0.62 acre Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others 0.62 acre	Estate of Ruth Njeri Kimari 1.24 acres
		1ST HOUSE	2ND HOUSE
c)	Plot No. 28 Githunguri Market	Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others ¼ share Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 Others ¼ share	Winnie Wanjiru Kimari ½ share
d)	Plot No. 2 Gathanji	Edward Kimari Gitere ½ share	Shem Kihoro Kimari ½ share
e)	Plot No. 76 Githunguri	Jemima Waceke Kimari ½ share	Estate of Ruth Njeri Kimari ½ share
f)	LR.Githunguri/Kiaria/ T.236	Nil	Florence Wangui Kimari ½ share Estate of Ruth Njeri Half Share
g)	LR.Githunguri/Kiaria/ T.132	Nil	Winnie Wanjiru Kimari ½ share Charity Waceke Kimari ½ share
h)	LR.Githunguri/Kiaria/T.3	Edward Kimari Gitere Whole	Nil
i)	LR.Githunguri/Kiaria/ T.133	Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 Others- Whole	Nil
j)	LR.Githunguri/Githung uri/165	Elizabeth Wacu Mwangi 0.16 acre Dina Wambui Kamau 0.16 acre Jemima Waceke Kimari 0.5 acre Edward Kimari Muturi 0.16 acre	Robert Mwangi ½ a cre Judy Nyawira ½ acre
k)	LR. K. Githunguri/T.209	Jemima Waceke Kimari ½ share	Robert Mwangi and Judy Nyawira ½ jointly
l)	ICDC Shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
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n)	Kiaria Co-operative Shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
o)	Ndumberi Co-operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share e
p)	Breweries shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½

19. The administrator will finalise transmission of the Estate within 90 days.

20. Mention on 5th May 2025 to confirm compliance and take further directions
21. Party at liberty to appeal. The party exercising right of appeal to do so within 30 days
22. Each party to bear their own costs

It is so ordered.

SIGNED, DATED and DELIVERED VIRTUALLY at
NAIROBI this **13TH** day of **February, 2026.**

P. M NYAUNDI
HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant
Komen holding brief for Marubu for Protestors
Njoroge Baiya for Administrator