

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. E005 OF 2021
IN THE MATTER OF THE ESTATE OF OSCAR DUNCUN
BEUTTAH (DECEASED)

WINNIE CHIVENYO BEAUTTAH..... 1ST
APPLICANT
ELIZABETH WANJIRU GITHERE 2ND
APPLICANT

VERSUS

JELIOTH WANGUI JAMES BEUATTAH.....
RESPONDENT

JUDGMENT

1. Five years ago, Elizabeth Wanjiru Githere and Winnie Chivenyo Beauttah filed for a grant of letters intestate for the estate of their late father, who died on 21.1.2019. The application for grant was published in the Kenya Gazette on 21.05.2021. The grant was given on 26.07.2021. The petitioners are 60 and 67 years old, respectively.
2. Several properties were listed as registered in the names of the deceased. Given the unique nature of this matter, the court will provide a slightly more detailed timeline. The deceased's real estate constituted the following:

- a. Title number IR 210040, LR 3449/8(Original LR 3449/1/2) measuring 1.947 hectares was registered on 14.11.2018 (subdivision of IR 132395/1).
- b. Title number IR 210041, LR 3449/9(Original LR 3449/1/3) measuring 1.943 hectares was registered on 14.11.2018 (subdivision of IR 132395/1).
- c. Title number IR 210042, LR 3449/10(Original LR 3449/1/4) measuring 1.944 hectares was registered on 14.11.2018 (subdivision of IR 132395/1).
- d. Title number IR 210043, LR 3449/11(Original LR 3449/1/5) measuring 1.942 hectares was registered on 14.11.2018 (subdivision of IR 132395/1).
- e. Title number IR 92671, LR 3449/5(Original LR 3449/2/2) measuring hectares was registered on 1.10.1919 (survey plan 240538).
- f. Title number IR 206340, LR 3449/12(Original LR 3449/6/1) measuring hectares was registered on 2.10.2018 (subdivision of IR 92672/2).
- g. LR. No. Nyeri/Municipality B/III/26 was registered in 1978 but charged to the Consolidated Bank of Kenya, measuring 0.0548 ha.

3. The deceased died, leaving 4 issues, albeit with two of them being deceased, that is:

- a) Elizabeth Wanjiru Githere
- b) Winnie Chivenyo Beauttah

- c) George Njuguna Beuttah (Deceased)
- d) James Oscar Beuttah (Deceased)

4. It is noted that two of the deceased's children are deceased. However, they are survived by their own children, who, the Court was informed, are scattered across various parts of the world.
5. What raised a red flag was that within 2 months of the grant of letters of administration intestate, the petitioners sought to confirm the grant before the lapse of 6 months on the grounds that there were overheads to be catered for. Further, some children required school fees. They indicated that they intended to dispose of the properties to cater for two of the deceased's children, who predeceased him. The urgency evaporated immediately after the protest was filed.
6. Indeed, the application for confirmation was brought under a certificate of urgency to be heard during the vacation of 30.08.2021. It has now come to light that no one was required to pay school fees, and there are no overheads. The new reason given is that it is for better distribution. I cannot fathom how subdivision for sale is easier than subdivision for transfer. The administrators urged the Court to permit the sale of the entire estate, save for ten (10) acres.

7. The application for revocation was filed on 29.03. 2022. The application was to the effect that not all beneficiaries were involved, and not all their consents were obtained. It indicated that she was married to the deceased's son, James Oscar Beuttah, and had three issues, who are grandchildren of the deceased. They were born on 29.2.2004, 13.1.2010 and 8.1.2005. She included her marriage certificate, which shows they were married on 18.12.2004.
8. In response, the first petitioner indicated that:
- a. The late brother, James Oscar Beuttah (Deceased) had separated from the wife, Jelioth Wangui James Beuattah.
 - b. James Oscar Beuttah (Deceased) has 5 children
 - c. George Njuguna Beuttah (Deceased) had 2 children
9. These children are said to have been included in paragraph 6 of the affidavit. This may well be true, but there was no answer to the applicant's position that he was excluded. When I pointed this out to the administrator, it was indicated that there are other women. Of course, it is false to state that Jelioth Wangui James Beuttah was not a widow of the late James Oscar Beuttah (Deceased). It is true that she was not included. It is my wish that succession be carried out without the necessity of subterfuge, skulduggery, fraud, and underhand dealings.

10. The administrator, who is the deceased's daughter, sought to confirm the grant through an application dated 23/3/2023. The applicant has been adjourning the same due to the absence of Jelioth Wangui James Beuttah. She had filed a protest stating that she is the widow of the late James Oscar Beuttah (deceased) and the mother of Elizabeth Wanjiru Beuttah, Winfred Kirigo, and ASK.
11. She opposed the sale of the shares and the sale of LR 3449/5, LR 3449/9, LR 3449/10, LR 3449/11, and LR 3449/12. She proposed that it be shared equally among the beneficiaries so they can decide how to use their portion. Today, the applicant and the Protestor were absent. After reviewing the file, I noted that essentially there is no dispute, except the question of “whether to sell or not to sell LR 3449/5, LR 3449/9, LR 3449/10, LR 3449/11, and LR 3449/12.”
12. In this context, therefore, I vacated the order to have the matter heard via viva voce evidence and requested counsel to address me on the question of sale. It is unnecessary to set out the details of his arguments as they revolve around grandchildren. With respect to all the 14 properties of the deceased, there is no dispute as to who they belong to.
13. This being a succession matter, my duty is to give beneficiaries their shares. Sections 35, 38, and 40 guide accordingly. The sale is not one of the orders ordinarily

available for the parties. Except for the motor vehicle registration number. KBJ 230 D, the rest were either to be shared equally or sold.

14. The petitioners submitted as far as possible that the land falls for subdivision under sections 38 and 41 of the Law of Succession Act:

a. Section 38 of the law of succession provides as follows:

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.

b. Section 41 of the law of succession provides as follows:

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or

who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

15. The petitioners proceeded that the mode of distribution has been considered by all the grandchildren. It was only the protestor who objected. The petitioners submitted that the grandchildren stood in a more beneficial and superior position than the daughter-in-law. They submitted that it was no more efficacious to sell and let the grandchildren share. He did not, however, provide the court with an exhaustive list of the grandchildren eligible to benefit.
16. The court was urged to ignore the protestor as she had no right to protest. The petitioners posited that her children had consented to the sale. The grandchildren are entitled under the principles of representation.

Analysis

17. Being a succession matter, the heirs, in as far as they can be ascertained have agreed on the principles for sharing. The sharing is usually based on sections 35,38 and 40 of the Law of Succession Act.

18. The call recalls the duty and objective of the succession Arc is set out in sections 2 of the law of succession act as follows:

1. Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.
2. The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless, the administration of their estates shall commence or proceed so far as possible in accordance with this Act.
3. Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of this death is a Muslim, to the intent that in lieu of such provisions, the devolution of the

estate of any such person shall be governed by Muslim law.

4. Notwithstanding the provisions of subsection (3), the provisions of Part VII relating to the administration of estates shall, where they are not inconsistent with those of Muslim law, apply in case of every Muslim dying before, on, or after the 1st January, 1991.

19. There is no provision for multiple inheritance in one matter. There should also be one deceased per file. What the petitioners seek is for the court not only to conduct succession for the deceased herein, but also for the deceased beneficiaries. The court, therefore, will decide on three sub-issues: the beneficiaries, their entitlements, and whether to sell any part of the assets, and the relief to be given.

20. They seek to micromanage not only the shares from the deceased but also for the beneficiaries. I find that the deceased herein died intestate and left the following beneficiaries:

- (i) Elizabeth Wanjiru Githere
- (ii) Winnie Chivenyo Beuttah
- (iii) George Njuguna Beuttah (Deceased)
- (iv) James Oscar Beuttah (Deceased)

21. Though two of the children predeceased their fathers, there is no determinate list of beneficiaries to the estate of the deceased children. It is not the business of this court to carry out succession in those estates. The wives and children of the deceased sons should be able to settle their disputes there. **Nevertheless, I find and hold that the petitioners deliberately and with the intent to exclude some of the beneficiaries of the estate of their deceased brother.** The proposed sale is equally fraudulent as they had come to court, lying that they were selling to educate children, when in reality it is to exclude the widows of their brothers.

22. I did not believe for once the reasons given for failing to attend court. The court noted that the petitioners cannot, in the face of a date given for a hearing, attend a funeral of an unknown person and fail to attend court. The main reason I will still not order the sale, even if all known beneficiaries agree, is twofold. First, it is usually a shortcut to avoid payment of stamp duty. Secondly it is a way of failing to be accountable to the purchasers. If it is found that they are not even beneficiaries and the grant must be set aside, there is no way to go to the root of the title. Let the beneficiaries get their shares and deal from there. I will not be surprised if the succession is covered for illegal sales that may have already taken place.

23. The court will therefore treat all the grandchildren as a unit under their father or mother. The court was also informed that the grandchildren came from multiple women, whose identities the court was not told, and whether they are alive or deceased. At least, Jelieth Wangui James Beuattah is alive from the record. It is not clear whether the daughters-in-law are so, or whether they are other women or the mothers of the children. In this case, the court cannot determine the extent of the estate of the deceased children and their heirs.

24. It is true that Section 41 of the Succession Act provides for grandchildren to take their shares. This is the correct law, and it is not challenged. Unfortunately, the extent of those grandchildren and other beneficiaries is unknown. I found it to be duplicitous to require the widow of a deceased heir. It is therefore taken out letters before claiming, while submitting on the other side of the mouth that grandchildren do not need to have letters of administration. I hold that the succession act does not envision a scenario where the widow is a child of a lesser god. In the case of **Justus Thiora Kiugu & 4 others v Joyce Nkatha Kiugu & another** [2015] KECA 886 (KLR), the Court of Appeal [Visram, Koome, Odek, JJ.A, as they then were]posited as follows;

The distribution of an estate such as this one is not an easy task; we note there was an order that the estate be valued, nonetheless we do not see any

valuation report. The estate comprises of some developed assets, commercial assets, income generating assets and others not developed. It is obviously difficult for the court to distribute such an estate with mathematical precision as to the portions of shares to give to which beneficiary. This is why the Law of Succession made provisions for distribution of an intestate estate as per Part V of the Act. Section 35 of the Act provides:

“(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;

.....

Subject to the provisions of Section 41 and 42 and subject to any appointment or award made under this Section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow’s re-marriage; of the surviving spouse devolve upon the surviving child, if there be only one, or be equally divided among the surviving children”.

The learned Judge of the High Court did not need to attempt a distribution of the estate of the late M'Ikiugu M'Mwirichia when his widow, Joyce Nkatha Kiugu was alive. The Judge did not need to entertain protracted objection proceedings that raged on for over a decade. We cannot in any way blame the Judge, as he was allowing parties to express themselves; the parties were driving the proceedings in their own way by providing the court their own preferred modes of distribution of the deceased's estate.

We think we have said enough to demonstrate that there is no other legal way of distributing the deceased's estate other than the Law of Succession Cap 160.

25. A daughter-in-law is not a grandchild but the wife of a deceased dependent. Section 29 defines dependents 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;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children

whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

26. A daughter-in-law represents a deceased heir in the matter and subsumes the same position as the living daughters of the deceased. The consent of grandchildren is irrelevant to the hierarchy of representation; except for grandchildren whose mothers are deceased. In the case of **Yunes Kerubo Oruta & another v George Kombo Oruta & another** [2021] KECA 965 (KLR), the court posited as follows:

The cause was canvassed through written submissions orally highlighted by learned counsel for the respective parties, at the conclusion of which the learned trial Judge having analyzed the record applied the threshold in the case of *Re Estate of John Musambayi Katumanga (deceased)* [2014]eKLR to the rival positions and rendered himself as follows:

“Therefore, in the instant case the inclusion of Simon Ongati Kombo, Nicholas Orani Obinchi, Manuel Mandi Nyakundi, and Michael Ogega Ogega was

irregular, as such children, I suspect belonged to the deceased sons who are also deceased that is Andrew Obinchu and Tom Ogega. The said deceased sons are represented by their widows who are Rose Nyanchama Aencha and Emily Nyaboke Ogega who in accordance with the law of succession represent their deceased husbands and will therefore be entitled to the share which their deceased husbands would have benefited from the deceased estate. Thus by the inclusion of grandchildren of the deceased bearing in mind that the parents of the said grandchildren are also getting a share from the deceased's estate meant that some of the survivors of the deceased will get a bigger share of the deceased's estate than others without a justifiable reason, therefore, the grandchildren of the deceased in this case were not supposed to be listed as beneficiaries to the deceased's estate."

We affirm this position as in our view the conclusion is well-founded both on the law and facts.

27. What then is the position in law of Jelioth Wangui James Beuattah? She is the widow of the late James Oscar Beuattah (Deceased). Separation does not necessarily imply divorce. Further, separation is a judicial determination. It cannot be by word of mouth. Therefore, in the absence of divorce, she

remains a daughter-in-law of equal priority to the petitioners. In the case of **In re Estate of Gwonda Kebate, Kebate Kebate, Ondande Kebate & Onchere Kebate (Deceased) [2024] KECA 784 (KLR)**, the court of appeal [HM Okwengu, HA omondi & JM Ngugi, JJA] addressed the question of a daughter-in-law, where parties wrongly submitted that ailing to appreciate that the respondent, being a daughter-in-law, does not feature in the line of consanguinity in inheritance of the estate of her father-in-law.

3.... The respondent, Rose Bwari Ondieki ("Rose"), who was their daughter-in-law (in the sense that she had married Charles, the son of Ondande Kebate) applied for and obtained letters of administration [to the estate of Gwonda Kebate] and, in due course, the grant was confirmed on 19th March 2000, resulting in her taking Plot 2460 absolutely.

23. The appellants have brought their claim under section 39 of the Law of Succession Act, meaning that the deceased's brothers' cousins and their heirs would be entitled to the property in equal shares. Indeed, as observed by the learned judge, section 39 is not absolute and is subject to section 42 of the Law of Succession Act. Once the respondent's deceased husband was given the suit property by Gwonda, she was then entitled upon his demise to apply for letters of administration. It has come out from the record

that the appellants had their own parcels of land and were not dependent on the suit property. We, thus, agree with the learned judge that the appellants did not discharge their burden to show that the grant issued and confirmed to the respondent should be revoked as per the provisions of section 76 of the Law of Succession Act.

28. Therefore, by parity of reasoning, the deceased heir's wife stands in the same position he was at the very same level without conjoining her rights with those of the grandchildren. So long as their mother is in existence or even their stepmother, they must be reminded that they are a step below her in priority, but with rights that cannot be taken away.

29. It is therefore enough to provide for the estate of the deceased sons for the benefit not only of the deceased sons but also of the wives of those children, as a secondary step. The court notes that the deceased's sons' widows who are not yet remarried, if any, are entitled to a life interest under section 35 of the **Law of Succession Act**, which provides 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:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

30. By adopting such a shortcut, the grandchildren would effectively receive entitlements to the exclusion of their mothers, who have a prior claim to the estate of the deceased's sons. The other widows may not have lodged any protest, save for the present protestor, not necessarily because they lack a claim, but perhaps because the deceased herein was not their husband. In the circumstances, the most plausible question is not whether to address the grandchildren directly, but whether to address the estate of the deceased father. It is the grandchildren and their mother who will then decide what to do with the inheritance.

31. Though I have already answered the question obliquely, I must address it directly. Can the court order the sale of the estate? The power to order a sale is incidental, not plenary. It exists to facilitate lawful administration. All beneficiaries are entitled to their share of the estate. The duties of the

administrators are set out in section 83 of the Law of Succession Act as follows:

Personal representatives shall have the following duties

(a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;

(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective

beneficial interests therein under the will or on intestacy, as the case may be;

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

32. Section 55 referred to above reads as follows:

(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to

make any division of property, unless and until the grant has been confirmed as provided by section 71.

(2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death.

33. While discussing the kind of treatment the petitioner wishes that we treat the widow of the deceased brother, the court is aware of prior pronouncements, even in the current constitution, on the folly of discriminating against women. It does not really matter whether these were daughters, wives, or daughters-in-law. The very essence of treating them as strangers is anathema to goodness and a throwback to a bygone era. It is a reminder of things we wish to forget. It is this kind of reasoning that, on a very different pedestal, brings into focus the decision in **R v Amkeyo (1917) KLR 14 EALR 14**, Chief Justice Sir Robert Hamilton, who portrayed ignorance that is not worth quoting in the 21st century.

34. While addressing the rights of women over 20 years ago, the Court of Appeal, Waki JA, in the case of **Mary Rono v**

Jane Rono & another [2005] KECA 326 (KLR), posited as follows:

Is international law relevant for consideration in this matter? As a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties. In particular, it subscribes to the international Bill of Rights, which is the Universal Declaration of Human Rights (1948) and two international human rights covenants: the Covenant on economic, social and cultural rights and the Covenant on civil and political Rights (both adopted by the UN General Assembly in 1966). In 1984 it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination Against Women, in short,

◀ “CEDAW”. Article 1 thereof defines discrimination against women as: -

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental

freedoms in the political, economic, social cultural, civil or any other field.”

In the African context, Kenya subscribes to the African Charter of Human and Peoples’ Rights, otherwise known as the Banjul Charter (1981), which it ratified in 1992 without reservations. In Article 18, the Charter enjoins member States, *inter alia*, to: -

“.....ensure the elimination of every discrimination against women and also ensure the protection of rights of the woman and the child as stipulated in international declarations and conventions.”

In the context of those international laws, the 1997 amendment to section 82 of the Constitution becomes understandable.

35. The protestor stood in the same status as the petitioners when it came to the application for letters of administration. She cannot be treated less than her own children. It may be true that there were other grandchildren, but they should be considered in the respective deceased heirs' estates. I therefore decline to treat Jelioth Wangui James Beuattah, the deceased daughter-in-law, as a grandchild. She is a daughter-in-law who has stepped into her husband’s shoes, on the same footing as the petitioners.

36. The petitioners did not obtain her consent to apply for letters of administration and to the distribution of the estate.

37. Given the indiscretions the petitioners have already shown, I hereby revoke letters of administration that were granted to them. In lieu thereof, I issue letters of administration to:

- a. Jelieth Wangui James Beuattah.
- b. Winnie Chivenyo Beuattah.
- c. Elizabeth Wanjiru Githere

38. Given that the heirs are clearly ascertained, the grant shall be confirmed in the following manner. The four units below shall share the estate equally:

- a. Elizabeth Wanjiru Githere;
- b. Winnie Chivenyo Beuattah;
- c. The estate of the late George Njuguna Beuattah (deceased); and
- d. The estate of the late James Oscar Beuattah (deceased).

39. The four units above shall share the following movable properties or monies in the accounts and shares equally:

- (a) Motor vehicle Reg. No. KBJ 230D (Toyota Fielder)

- (b) Account No. 012040891100 – Standard Chartered Bank
- (c) Account No. 015240891100 – Standard Chartered Bank
- (d) Account No. 6652002376 – Ecobank
- (e) Shares with Kenya Electricity Generating Company PLC (KenGen)
- (f) Shares in Glen Thego Limited
- (g) Shares in Glen Thego Estate Limited

40. In respect of Motor Vehicle Registration No. **KBJ 230D (Toyota Fielder)**, its value shall first be ascertained and given to one of the heirs in specie. The beneficiary taking any such asset shall refund the others so as to achieve equality. This is the only plausible way to deal with the matter, as it strictly complies with the law.

41. In respect of the real estate, I direct as follows:

- a) Title number IR 210040, LR 3449/8(Original LR 3449/1/2) measuring 1.947 hectares (subdivision of IR 132395/1), be registered in the names of Elizabeth Wanjiru Githere, absolutely.
- b) Title number IR 210041, LR 3449/9(Original LR 3449/1/3), measuring 1.943 hectares, (subdivision of IR 132395/1) to be registered in the names of Winnie Chivenyo Beauttah absolutely.

- c) Title number IR 210042, LR 3449/10(Original LR 3449/1/4) measuring 1.944 hectares (subdivision of IR 132395/1 to be registered in the names of the estate of the late James Oscar Beuttah (deceased) absolutely.
- d) Title number IR 210043, LR 3449/11(Original LR 3449/1/5) measuring 1.942 hectares (subdivision of IR 132395/1). be registered in the names of the estate of the late George Njuguna Beuttah (deceased) absolutely.

42. The foregoing helps to avoid further subdivision of the said properties unnecessarily, given that they are equal. Any property falling on the respective parcels will move with the land. In respect of Title number IR 92671, LR 3449/5(Original LR 3449/2/2) measuring hectares (survey plan 240538), direct as follows:

- a. A portion measuring one (1) acre shall be carved out encompassing the gravesite and shall be registered jointly in the names of the four beneficiaries, for the benefit of the beneficiaries of the estate of the deceased herein. The said portion shall be noted in the register as a gravesite.

- b. The remainder of Title Number IR 92671, LR 3449/5 (Original LR 3449/2/2) (Survey Plan No. 240538) (after curving out one acre for the gravesite) and Title Number IR 206340, LR 3449/12 (Original LR 3449/6/1) (a subdivision of IR 92672/2) shall be treated as one unit and subdivided into four (4) equal portions. the beneficiary who takes Title Number IR 206340, LR 3449/12 (Original LR 3449/6/1), shall also take the portion of Title Number IR 92671, LR 3449/5 (Original LR 3449/2/2) (Survey Plan No. 240538 nearest to IR 206340, LR 3449/12.
- c. The four equal portions shall thereafter be distributed equally among the four beneficiary units, provided that the estate of the late James Oscar Beuttah (deceased), which has minors, shall be allocated the portion on which the main house stands.
- d. The subdivision should be such that the gravesite is accessible to all beneficiaries. Given that the widow of in the names of the late James Oscar Beuttah (deceased) that Jelioth Wangui James Beuttah .is available, she or a person she designates, shall be responsible for the user and maintenance of the gravesite and keeping it in repair.

e. LR. No. Nyeri/Municipality B/III/26 was registered in 1978 but charged to the Consolidated Bank of Kenya, measuring 0.0548 ha, and shall be registered in the names of the 4 units, who shall share it equally.

43. The entitlement of the estate late George Njuguna Beuttah and the late James Oscar Beuttah shall be registered in the names of the deceased beneficiaries. The beneficiaries of those estates and not the petitioners, herein shall file succession in respect of those estates.

44. Meanwhile, on registration of the entitlements, the county land registrar shall forbid dealings in respect of the estates of the late George Njuguna Beuttah and the late James Oscar Beuttah until succession in respect to the estates is concluded.

45. Any sale of any part of the estate from the date of the deceased herein and the date hereof is void for all purposes. What then is the effect of a void transaction? The same has no effect whatsoever. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is

sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

46. The subdivision plans shall be filed in court prior to approval for the court to be satisfied of propriety in view of the fact that 2 of the beneficiaries are deceased.

47. The protest is accordingly allowed. The next question is costs, which 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 if 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.

48. 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.

49. I note that this is a family matter, and some beneficiaries abandoned the proceedings and pursued their own frolics. In the circumstances, each party shall bear its own costs.

50. Before I depart, I note the undercurrents in the matter. I therefore direct that the deputy registrar will sign on behalf of the deceased beneficiary's estate for purposes only of having the same registered under the deceased's name. Parties should complete transmission by 12/8/2026.

Determination

51. I now make the following orders:

- a. The protest is accordingly allowed.
- b. I hereby revoke letters of administration that were granted to them. In lieu thereof, I issue letters of administration to:
 - a. Jelioth Wangui James Beuattah.
 - b. Winnie Chivenyo Beuattah.
 - c. Elizabeth Wanjiru Githere.
- c. Given that the heirs are clearly ascertained, the grant shall be confirmed in the following manner. The four units below shall share the estate **equally**:
 - a. Elizabeth Wanjiru Githere;
 - b. Winnie Chivenyo Beuattah;

- c. The estate of the late George Njuguna Beuttah (deceased); and
 - d. The estate of the late James Oscar Beuttah (deceased),
- d. The four units above shall share the following movable properties or monies in the accounts and shares equally:
- a. Motor vehicle Reg. No. KBJ 230D (Toyota Fielder)
 - b. Account No. 012040891100 - Standard Chartered Bank
 - c. Account No. 015240891100 - Standard Chartered Bank
 - d. Account No. 6652002376 - Ecobank
 - e. Shares with Kenya Electricity Generating Company PLC (KenGen)
 - f. Shares in Glen Thego Limited
 - g. Shares in Glen Thego Estate Limited
- e. In respect of Motor Vehicle Registration No. **KBJ 230D (Toyota Fielder)**, its value shall first be ascertained and given to one of the heirs in specie. The beneficiary taking any such asset shall refund the others so as to achieve equality. This is the only plausible way to deal with the matter, as it strictly complies with the law.
- f. In respect of the real estate, I direct as follows:

- a) Title number IR 210040, LR 3449/8(Original LR 3449/1/2) measuring 1.947 hectares (subdivision of IR 132395/1), be registered in the names of Elizabeth Wanjiru Githere, absolutely.
- b) Title number IR 210041, LR 3449/9(Original LR 3449/1/3), measuring 1.943 hectares, (subdivision of IR 132395/1) to be registered in the names of Winnie Chivenyo Beuttah absolutely.
- c) Title number IR 210042, LR 3449/10(Original LR 3449/1/4) measuring 1.944 hectares (subdivision of IR 132395/1) to be registered in the names of the estate of the late James Oscar Beuttah (deceased) absolutely.
- d) Title number IR 210043, LR 3449/11(Original LR 3449/1/5) measuring 1.942 hectares (subdivision of IR 132395/1) to be registered in the names of the estate of the late George Njuguna Beuttah (deceased) absolutely.
- g. Title number IR 92671, LR 3449/5(Original LR 3449/2/2) (survey plan 240538), is to be shared as follows:
 - a) A portion measuring one (1) acre shall be carved out, encompassing the gravesite, and shall be registered jointly in the names of the four beneficiaries, for the benefit of the beneficiaries of

the estate of the deceased herein. The said portion shall be noted in the register as a gravesite.

b) The remainder of Title Number IR 92671, LR 3449/5 (Original LR 3449/2/2) (Survey Plan No. 240538) (after curving out one acre for the gravesite) and Title Number IR 206340, LR 3449/12 (Original LR 3449/6/1) (a subdivision of IR 92672/2) shall be treated as one unit and subdivided into four (4) equal portions. The beneficiary who takes Title Number IR 206340, LR 3449/12 (Original LR 3449/6/1), shall also take the portion of Title Number IR 92671, LR 3449/5 (Original LR 3449/2/2) (Survey Plan No. 240538) nearest to IR 206340, LR 3449/12.

c) The four equal portions shall thereafter be distributed equally among the four beneficiary units, provided that the estate of the late James Oscar Beuttah (deceased), which has minors, shall be allocated the portion on which the main house stands.

d) The subdivision should be such that the gravesite is accessible to all beneficiaries. Given that the widow of the late James Oscar Beuttah

(deceased) Jelioth Wangui James Beuttah is available, she or a person she designates, shall be responsible for the use and maintenance of the gravesite and keeping it in repair.

- e) LR. No. Nyeri/Municipality B/III/26 was registered in 1978 but charged to the Consolidated Bank of Kenya, measuring 0.0548 ha, and shall be registered in the names of the 4 units, who shall share it equally.
- h. The entitlement of the estate of the late George Njuguna Beuttah and the late James Oscar Beuttah shall be registered in the names of the deceased beneficiaries. The beneficiaries of those estates and not the petitioners, herein, shall file succession in respect of those estates.
- i. On registration of the entitlements, the county land registrar, Nyeri, shall forbid dealings in respect of the estates of the late George Njuguna Beuttah and the late James Oscar Beuttah until succession in respect to the estates is concluded.
- j. Any sale of any part of the estate from the date of the deceased herein and the date hereof is void for all purposes.

- k. The subdivision plans shall be filed in court prior to approval for the court to be satisfied of propriety in view of the fact that 2 of the beneficiaries are deceased.
- l. Each party shall bear its own costs.
- m. The deputy registrar will sign on behalf of the deceased beneficiary's estate for purposes only of having the same registered under the deceased's name.
- n. The deputy registrar will sign on behalf of any beneficiary who is unwilling or unable or recalcitrant in signing transmission documents and approved subdivision plans.
- o. Parties should complete transmission by 12/8/2026.
- p. Directions on 22.10.2026 to confirm transmission.

DELIVERED, DATED and SIGNED at NYERI on this 11th day of February, 2026. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

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Court Assistant – Michael

ORIGINAL