



In re Estate of Ngaara gathuri alias Ngara Gathuri (Deceased) (Succession Cause 549 of 2012) [2026] KEHC 1327 (KLR) (9 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 549 OF 2012
DKN MAGARE, J
FEBRUARY 9, 2026
IN THE MATTER OF THE ESTATE OF NGAARA
GATHURI ALIAS NGARA GATHURI (DECEASED)**

BETWEEN

TERESA WANGUI NGARA PETITIONER

AND

ALICE WANGARI NGUNJIRI 1ST PROTESTOR

PHILIP KAROKI GATHURI 2ND PROTESTOR

JUDGMENT

1. The Petitioners lodged the Summons for Confirmation of Grant dated 8.11.2019 by which they sought to confirm the grant dated 19.2.2016.

Evidence

2. PW1 was Alice Wangari Ngunjiri. She relied on the affidavit of protest and testified that the deceased was her father-in-law. She was widowed to the deceased's son, Kiama Gathuri Ngara, who is deceased. The tribunal had ruled that the land be divided into 3 equal portions. The land was divided into 3 portions. However, titles were yet to be out. It was her case on cross-examination that her husband was given LR Gikondi/Kiirungi/1027. She lived on the parcel of land.
3. PW1 was Julia Wanjugu Karoki. She also relied on the affidavit of protest. The deceased was her husband's brother, Philip Karoki. Her husband was to be given 0.9 acres. He was to be given LR Gikondi/Kiirungi/1028. The estate had since been divided. On cross-examination, she testified that there was a coffee plantation and she continued to cultivate the land.
4. DW1 was Simon Karoki Ngara. He relied on the statement sworn on 7.2.2022. He testified that the deceased was his father. The deceased divided Parcel No. 334 into 3 portions: 1027, 1028, and 1028.



All were registered in the deceased's name. There were beacons. The deceased, according to him, did not give 1027 and 1028 to the Protestors as alleged.

5. On cross-examination, he testified that the deceased had 5 children. It was his case that he did not know whether Parcel No. 334 was ancestral or how the deceased obtained it. The parcels 1027, 1028, and 1029 were registered in his father's name in 2007. He also testified that the Mûkûrwe'inî court stated that the dispute would be solved in the succession.

Submissions

6. The Protestors filed submissions dated 5.7.2022. It was submitted that the affidavit of protest dated 18.12.2019 was merited. It was further submitted that the land parcel No. 334 was held in trust by the deceased for himself and his 2 brothers. Reliance was placed on Section 71 of the [Law of Succession Act](#), based on which it was submitted that this court had powers to discharge, vary, or set aside an injunction.
7. They also cited inter alia In the Matter of the Estate of James Muiruri Kamau HCSUCC No. 1 of 2002, based on which it was contended that a firstborn brother would hold land in trust for the younger brothers and sisters under Kikuyu Customary Law.
8. It was submitted that costs were at the discretion of the court. They cited Section 27 of the [Civil Procedure Act](#).
9. The Petitioner did not file submissions.

Analysis

10. The deceased had two brothers, Kiama Gathuri Ngara and Karoki Gathuri who ought to get 0.9 acres each as decided by the Land Disputes Tribunal in 1997 and adopted by the Magistrate Court.
11. The Protestors questioned the Confirmation of Grant. It was their case that the deceased's two brothers were being disinherited. In principle, they challenged the process leading to the confirmation of the grant and distribution of the property as proposed by the Petitioner. The issue for determination is whether the protest should be allowed and the mode of distribution suggested by the Petitioner set aside. Section 51 of the [Law of Succession Act](#), requires a person seeking to administer the estate of a person who died in 1980 to comply with section 51(2)(g) of the [Law of Succession Act](#) and Rule 7(1)(e) of the Probate and Administration Rules, which require disclosure of all the children of the deceased.
12. A perusal of the summons for confirmation of grant dated 7.7.2021 reveals that the Protestors or their predecessors in title were not included as beneficiaries. The Petitioner did not dispute this fact and, in his testimony, maintained that the exclusion was deliberate because the parcel ought only to be distributed to the deceased's heirs. He listed 5 children of the deceased. According to him, the deceased's brothers were not heirs of the deceased. Further, the position of the Petitioner was that the deceased died when he had already subdivided the suit premises into 3 portions but the subdivided portions were not intended to be registered in the name of the deceased and his 2 brothers. They were to be registered in the name of the deceased as sole proprietor.
13. That said, it was imperative for the Protestors to state with certainty and prove why Kiama Gathuri Ngara and Karoki Gathuri, who were brothers of the deceased, ought to have benefited from the estate of the deceased, and more so in equal shares with the deceased. In *Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:

“As a general proposition under Section 107(1) of the [Evidence Act](#), Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the



affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

14. The Protestors satisfied their burden of proof to the required standard. It was an undisputed fact that the court in *Múkúrwe’ini PMCCSUCC No. 8 of 2018* delivered a judgment dated 21.5.2019 declaring a trust in respect of parcel No. Gikondi/Kiirungi/334. The effect of this declaration of trust was that the Deceased herein would hold the said parcel on his behalf and on behalf of his two brothers - Karoki Gathuri and Kiama Gathuri. It was also the common position of the parties that the said judgment settled the matters, and there was no appeal pending or determined.

15. The Petitioner was thus expected to demonstrate on a balance of probabilities that the assertions in the affidavit of protest were such that they did not shift the scales of justice against adopting his mode of distribution as opposed to the Protestors’ suggested mode of distribution. The question then is what amounts to proof on a balance of probabilities. *Kimaru, J in William Kabogo Gitau –vs- George Thuo & 2 Others [2010] 1 KLE 526* stated that:

“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.”

16. Nonetheless, this court has to establish a basis to revoke the grant and interfere with the mode of distribution proposed in the certificate of confirmation of grant as urged by the Protestors. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession 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.



17. The said grounds also impute a process of confirmation of a grant that is marred with nondisclosure of material facts and is defective. It is now the correct position as it is not disputed that a trust existed and has been determined by a court of law.
18. It does not matter that the deceased intended the whole of LR No. Gikondi/Kiirungu/334 to be registered in his own name or in the name of his successors in title to the exclusion of his brothers on whose trust he held the title. The fact that LR No. Gikondi/Kiirungu/334 was trust property and the delineated title Nos LR No. Gikondi/Kiirungu/1027, 1028 and 1029 emanating therefrom through subdivision was crucial and ought to have been disclosed at the earliest opportunity to this court, failing of which rendered the process of the summons for confirmation of grant defective and questionable for material nondisclosure.
19. The law governing applications for confirmation of grant is section 71 of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. The proviso to section 71, as read together with Rule 40(4), is that the administrator applying for distribution must satisfy the court that they have properly ascertained the persons beneficially entitled to a share in the estate and have properly ascertained the shares due to such beneficiaries. The effect of it is that the court then incurs a duty to be satisfied, before it confirms the grant, that the administrator asking for confirmation, has properly ascertained the persons beneficially entitled to a share in the estate and the shares due to such beneficiaries.
20. The Protestors demonstrated the grounds upon which the proposed mode of distribution should be interfered with. The Petitioner fronted a blanket attempt to the proverbial clutching at a straw in the estate of the deceased, without evidence as to what constituted the free estate of the deceased. The property held on behalf of the deceased's brothers was not free property for the deceased's estate. The estate was attempting a claim on uncharted waters. I allow the protest.
21. Prior to his death, the deceased had obtained land control board consent on 6.7.2007 for subdivision into 3 portions, each of 0.370 ha. Each of the deceased and his 2 brothers is occupying their own portions as confirmed by the survey, as follow:
 - a. LR Gikondi/Kiirungi/1027 – Kiama Gathuri Ngara
 - b. LR Gikondi/Kiirungi/1028 – Philip Karioki Gathuri and
 - c. LR Gikondi/Kiirungi/1029 – Teresa Wangui Ngara
22. A trust was declared in Múkûrwe'inî PMC ELC Case No. 5 of 2018 vide the judgment dated 21.5.2019. That judgment is final and in rem.
23. Therefore, Kiama Gathuri Ngara is entitled to LR Gikondi/Kiirungi/1027 while Philip Karoki Gathuri is entitled to LR Gikondi/Kiirungi/1028 per the court order. The land does not belong to the estate of the deceased and thus does not form part of the deceased's free property. The only property that is free property of the deceased is LR Gikondi/Kiirungi/1029.
24. Kiama Gathuri Ngara and Philip Karoki Gathuri have been left out of the succession when they have been shown that they have an identifiable judicial determination to their two parcels of land.
25. Therefore, the identified beneficiaries and shares should be as follows:

Kiama Gathuri Ngara - LR Gikondi/Kiirungi/1027- 0.9 acres

Philip Karoki Gathuri - LR Gikondi/Kiirungi/1028 - 0.9 acres



Teresa Wangui Ngara - LR Gikondi/Kiirungi/1029 - 0.9 acres

26. Based on the above disposition, the affidavit of protest dated 18.12.2019 is merited. The distribution proposed therein is right and just and takes into account the trust that existed and has been adjudicated.

Determination

27. In the upshot, I make the following orders:
- a. The Protest dated 18.12.2019 is merited and is allowed.
 - b. A Certificate of Confirmation of Grant be and is hereby issued in terms of paragraph 16 of the Affidavit of Protest dated 18.12.2019 as follows:
 - a. Kiama Gathuri Ngara - LR Gikondi/Kiirungi/1027 - 0.9 acres
 - b. Philip Karoki Gathuri - LR Gikondi/Kiirungi/1028 - 0.9 acres
 - c. Teresa Wangui Ngara - LR Gikondi/Kiirungi/1029 - 0.9 acres
 - c. The protestors shall have costs of Ksh 45,000/=.
 - d. 30 days stay of execution.
 - e. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 9TH DAY OF FEBRUARY, 2026.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Kathigui for the Protestors

Maina for the Protestor

Court Assistant – Matiko

