



REPUBLIC OF KENYA



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**In re Estate of Mwangi (Deceased) (Succession Cause E104 of 2021)
[2026] KEHC 2248 (KLR) (Family) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E104 OF 2021
PM NYAUNDI, J
FEBRUARY 27, 2026
IN THE MATTER OF THE JULIUS MAINA MWANGI (DECEASED)**

JUDGMENT

1. Vide summons for Confirmation of Grant dated 29th October 2021, the applicants herein seek that the grant of letters of administration issued to them on 13th May 2021 be confirmed. In joint affidavit sworn on even date it is submitted that the following are the beneficiaries of the Estate-
 - a. Naomi Wanjiru -Daughter
 - b. Faith Wangeshi Maina Daughter
 - c. Lucy Wambui Maina-Daughter
 - d. Joseph Githaiga Maina- Son
 - e. Lucy Nduta Gitahi
 - f. NMM-Son (Minor)
2. It is proposed to distribute the assets of the deceased in the manner below-



Beneficiary/ Defendant	Property	Share
Lucy Nduta Gitahi & NMM	Deposits in Equity Bank Account No. 0840xxxxxxxx	Share equally the deposits
Joseph Githaiga Maina	Motor Vehicle Registration No. KAN 664X	Full Ownership
Joseph Githaiga Maina & Faith Wangeshi Maina	Plot Kayole Junction	Equal Shares/ Joint ownership
Lucy Wambui Maina & Naomi Wanjiku Maina	Plot Matopeni	Equal Shares/ Joint ownership
Joseph Githaiga Maina Faith Wangeshi Maina Lucy Wambui Maina Naomi Wanjiku Maina	Plot K.C.C (Kenya Cooperative Creameries)	Equal Shares/ Joint ownership
Joseph Githaiga Maina	Autospares business in Eastleigh	Full ownership

3. This proposal on distribution is opposed by Lucy Nduta Gitahi a beneficiary (Protestor).
4. The matter proceeded by viva voce evidence.
5. PWI James Githaiga Maina, he is a son of the Deceased and Co Administrator of the Estate of the Deceased. He reiterated the averments in the affidavit in the summons for confirmation as to the beneficiaries, assets and mode of distribution of the estate of the deceased. He stated that he currently resides on the Plot Kayole Junction and therefore it is not true to say that it cannot be identified. He states that the protestor has concealed the title to the property. He states that the Protestor has cohabited with the deceased from 2018, but he does not recognise her as a wife to the deceased.
6. The plot at Kayole has two houses. He resides in one and the protestor and her son reside in the other one. The houses were built before the protestor came to live on the land.
7. He stated that his father had bought the plot No. Ruiru East Block 2/ KIU/ T 840 but he died before it was transferred to his name.
8. On cross examination he stated that he did not know the relationship of the Protestor and Nathan Mwangi with the deceased. He confirmed that the letter from the Chief Kayole North Location identified the protestor as a wife by virtue of cohabitation and Nathan as a son. He does not know the amount of money in the equity account. He stated that the Auto spares shop had to close after the death of the deceased, it was not a going concern. He has not undertaken valuation of the estate.
9. On reexamination he reiterated that the protestor had withheld title to estate assets. He further stated he had not run the auto spares shop and repeated that the deceased and the protestor had not formalised their marriage.



10. RWI Lucy Nduta Gitahi, is the protestor herein. She stated that she is the spouse of the deceased. She resides at The Kayole Plot which is her matrimonial home. She contests the proposed mode of distribution. She states that the administrators have allocated to themselves the prime properties of the estate and allocated to her and her son, a disproportionately small share. She asserts that the properties have not been valued.
11. On cross examination she stated she did not have a marriage certificate to prove her marriage to the deceased, neither did she have witnesses or other documentary evidence of the marriage. She stated she had surrendered to the administrators the titles that she had in her possession. She stated that she jointly developed the plot at Kayole with the deceased. At the time of his death she was living at Kayole. The first administrator had sold the auto spare business, in her estimation it was worth Kshs 12 million. Her proposed mode of Distribution is that the 2 administrators share the plot at Matopeni. The mother of the deceased to get the car and she to get the plot at Kayole absolutely.
12. At the close of the hearing, parties were directed to file submissions. The Administrator's submissions are dated 8th October 2025. The following are the issues framed for determination
 - a. Who are the rightful beneficiaries of the estate of the deceased herein?
 - b. Which properties form part of the Estate of the Deceased herein?
 - c. Which mode of the distribution should be adopted in distributing the properties of the Estate of the deceased?
 - d. Who should bear the cost and expenses incurred by the Administrators/ Petitioners in the administration of the estate of the deceased herein?
13. As relates to the beneficiaries, he submits that although the protestor was not a spouse of the deceased, she can be included as a beneficiary as she cohabited with him. He therefore submits that the beneficiaries are-
 - a. Naomi Wanjiru -Daughter
 - b. Faith Wangeshi Maina Daughter
 - c. Lucy Wambui Maina-Daughter
 - d. Joseph Githaiga Maina- Son
 - e. Lucy Nduta Gitahi
 - f. NMM-Son (Minor)
14. The assets of the deceased are said to be
 - a. Deposits in Equity Bank Account No. 0840xxxxxxxx
 - b. Motor Vehicle Registration No. KAN 664X
 - c. Plot Kayole Junction
 - d. Plot Matopeni
 - e. Plot K.C.C (Kenya Cooperative Creameries)
 - f. Autospares business in Eastleigh (Sold so no longer in existence)



15. He challenges the protestors contention that the Plots at Ruiru and Kayole do not comprise the estate of the deceased.
16. On distribution, he submits that the proposal he has made in the summons for confirmation is fair as it aligns with Section 40 of the *Law of Succession Act* on mode of distribution for polygamous homes and the Court of Appeal decision in *Rono v Rono & Another* [2005] eKLR.
17. On costs, it is submitted that the administrators be reimbursed the costs of administering the estate.
18. The protestor's Submissions are dated 3rd October 2025. The issues for determination are framed as-
 - a. What is the relation between the deceased and the Respondent?
 - b. What properties form the deceased's estate?
 - c. Is the proposed mode of distribution fair?
19. On the 1st issue it is submitted that the Chief's letter resolves this issue, as the Chief recognized her as wife. Reference is made to the decision in *Re Estate of Jacob Gikombi Njochomba (Deceased)* [2023] KEHC 3196 (KLR) on the usefulness of the chief's letter in succession matters. In any event it is submitted that the cohabitation is not denied and the cohabitation was as man and wife. The protestor had a son with the deceased.
20. It is stated that the only assets that comprise the estate available for distribution are-
 - a. Deposits in Equity Bank Account No. 0840xxxxxxxx
 - b. Motor Vehicle Registration No. KAN 664X
 - c. Plot No. B-170 Kayole Matopeni Squatters & Police Station Resettlement Scheme.
 - d. Plot No 1000/2 Kariobangi South K.C.C Village Development Self Help Group
 - e. Autospares business in Eastleigh (Sold so no longer in existence)
 - f. Residential Property in Kayole Junction.
21. She submits that the administrators failed to establish that the Ruiru Plot comprises the estate of the deceased. It is submitted that the Kayole Junction Property has not been defined in a way that will facilitate transmission. She concedes that it belongs to the deceased and that she and the 1st administrator reside there in the two houses that have been constructed there.
22. She contests the proposal by the administrators on distribution as no valuation has been conducted of the estate. She is in agreement that the applicable section is Section 40 of the *Law of Succession Act* and refers to the decision in *Re Estate of John Musambayi Katumanga- deceased* [2014]eKLR and *Rono v Rono (Supra)*

Analysis and Determination

23. Having considered the pleadings, evidence adduced, submissions filed herein and the relevant law, I deduce the issues for determination to be-
 - a. Who are the rightful beneficiaries of the Estate of the Deceased?
 - b. What are the assets of the Estate of the Deceased available for distribution?
 - c. How should the Estate be distributed?



- d. Arising from (a), (b) and (c) above what are the consequential orders?
24. Who are the rightful beneficiaries of the Estate of the Deceased?
- The parties are agreed on the beneficiaries except for the protestor. Her inclusion is contested on grounds of her marital status with the deceased. The administrators are prepared to admit her as a beneficiary on the basis of the cohabitation which in their view did not amount to a marriage. At the same time, they ask the Court to treat the deceased as a polygamous man and distribute the estate in accordance with Section 40 of the Law of Succession Act. They are therefore approbating and reprobating on this issue. The appellants counter and argues that the cohabitation, having a child together and recognition by Chief are evidence of marriage.
25. The Supreme Court in MNK v POM & Anor Petition No. 9 of 2021 whilst stating that the doctrine of presumption of Marriage was on its death bed laid out the strict parameters within which a presumption of marriage can be made as-
- a. The parties must have lived together for a long period of time.
 - b. The parties must have the legal right or capacity to marry.
 - c. The parties must have intended to marry.
 - d. There must be consent by both parties
 - e. The parties must have held themselves out to the outside world as being a married couple.
 - f. The onus of proving the presumption is on the party who alleges it.
 - g. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
 - h. The standard of proof is on a balance of probabilities
26. Likewise in the case of MWK -VS- AMK [2017] eKLR Hon. Justice Joel Ngugi (as he then was), in discussing the concept of a presumption of marriage stated as follows:-
- Since then, our case law has been consistent in following the English common law in requiring that a presumption of marriage arises only when a person proves two factual predicates; -
- a. Quantitative element – namely the length of time the two people have cohabited with each other; and
 - b. Qualitative element – namely acts showing general repute that the two parties held themselves out as husband and wife. Factors tending to demonstrate these qualitative elements include whether the parties had children together, whether the community considered the two as husband and wife, whether the two carried on business jointly or whether they took a loan jointly, whether the two held a joint bank account and so forth.
27. On the facts before me, I find that the protestor was a wife of the deceased. The beneficiaries of the Estate are therefore
- a. Naomi Wanjiru -Daughter
 - b. Faith Wangeshi Maina Daughter
 - c. Lucy Wambui Maina-Daughter
 - d. Joseph Githaiga Maina- Son



- e. Lucy Nduta Gitahi
 - f. NMM-Son
28. What are the assets of the Estate of the Deceased available for distribution? Again, the parties are agreed on most of the properties except for the plot in Ruiru and the Kayole Plot. It is not disputed that the Ruiru Plot is in the name of 3rd Party. There is nothing before the Court to show that the interest of the deceased in the plot had crystallised. I therefore find that the asset is not available for distribution. The administrators are at liberty to complete the transfer and then present the asset for distribution at a later date.
29. Although the Protestor contends that the Kayole plot has not been sufficiently described. There is clarity as to where it is, she and the 1st administrator are residing on the land. For this reason, I find that, it is an estate asset available for distribution.
30. Consequently, I find the following to be the assets of the deceased available for distribution-
- a. Deposits in Equity Bank Account No. 0840xxxxxxxx
 - b. Motor Vehicle Registration No. KAN 664X
 - c. Plot No. B-170 Kayole Matopeni Squatters & Police Station Resettlement Scheme.
 - d. Plot No 1000/2 Kariobangi South K.C.C Village Development Self Help Group
 - e. Residential Property in Kayole Junction.
31. How should the Estate be distributed?
32. The deceased died intestate the relevant provisions are found at Part V of the *Law of Succession Act* and specifically Section 40 and Section 35. The Court of Appeal decision in *Koech & another v Chemutai & 2 others* [2022] KECA 1309 [KLR] whose facts are almost similar to the current case found that Section 40 of the *Law of Succession Act* is applicable. It emphasized that the application of Section 40 must safeguard the constitutional principles of equality, equity and non- discrimination.
33. The apparent incongruence between Section 35 and Section 40 of the Act can be safely addressed by the application of Article 27 of *the Constitution* of Kenya, 2010 which provides-
- Article 27: Equality and freedom from discrimination.
- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
 - (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.



(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause [4]

34. In the Koech Case cited above the Court took time to inquire into the historical context of Section 40 observing thus-

35. The history of section 40 of the Succession Act can be deduced from the Report of the Commission on the Law of Succession 1968 as cited by Lenaola, J [as he then was] In re Estate of John Muia Kalii- [Deceased] [2008] eKLR:

“In customary law, on the other hand, the matter is complicated by the rules of division amongst the “house” by which there is an equal division amongst the “houses” irrespective of the number of children in each” house”. We believe this rule to be highly unfair and discriminatory...

We think that is necessary, for the purpose of determining beneficial interests, to make a division of the net estate between the “houses”. This accords with customary law and will work out well in practice since the property of each “house” is normally treated as independent and separate from the other. As to the mode of division, we have already stressed that the present system of equal division irrespective of the number of children in each “house” is inequitable. We believe that the fairest division would be one based on the number of children in each “house” but also adding to the number of children, the wife as an additional dependent especially to cater for the wife who has no children.

36. The best way to resolve the matter is to proceed to distribute the estate in accordance with Section 35, having determined that under Section 40 of the Act, the children are entitled to equal share of the estate.

37. Accordingly, the Estate shall be distributed as follows-



Beneficiary/ Defendant	Property	Share
Lucy Nduta Gitahi & NMM	Deposits in Equity Bank Account No. 0840xxxxxxxx	Share equally the deposits
Joseph Githaiga Maina	Motor Vehicle Registration No. KAN 664X	Full Ownership
Joseph Githaiga Maina & Lucy Nduta Gitahi	Plot Kayole Junction	To hold Jointly in trust for all the beneficiaries in equal shares: - a. Naomi Wanjiru Daughter b. Faith Wangeshi Maina Daughter c. Lucy Wambui Maina-Daughter d. Joseph Githaiga Maina- Son e. Lucy Nduta Gitahi f. NMM-Son
Joseph Githaiga Maina & Lucy Nduta Gitahi	c. Plot No. B-170 Kayole Matopeni Squatters & Police Station Resettlement Scheme.	To hold Jointly in trust for all the beneficiaries in equal shares: - a. Naomi Wanjiru - Daughter b. Faith Wangeshi Maina Daughter c. Lucy Wambui Maina-Daughter d. Joseph Githaiga Maina- Son e. Lucy Nduta Gitahi f. NMM-Son
Joseph Githaiga Maina & Lucy Nduta Gitahi	d. Plot No 1000/2 Kariobangi South K.C.C Village Development Self Help Group Cooperative Creameries)	To hold Jointly in trust for all the beneficiaries in equal shares: - a. Naomi Wanjiru - Daughter b. Faith Wangeshi Maina Daughter c. Lucy Wambui Maina-Daughter d. Joseph Githaiga Maina- Son e. Lucy Nduta Gitahi f. NMM-Son

38. The administrators ask for a refund of the costs of administration, the same will be met out of the rental income of the estate, noting that the same to be deducted from the proceeds of sale of the Auto spare parts business and the rent collected to date.
39. What then are the consequential orders?
- a. The Grant is confirmed and Certificate will issue
 - b. The beneficiaries of the estate are as enumerated in paragraph 27 above
 - c. The assets of the estate are those enumerated in paragraph 30 above



- d. The estate shall be distributed as per paragraph 37 above
 - e. The Administrators will finalise distribution of the Estate within 6 months from the date hereof
 - f. This being a family matter each party will bear their own costs.
40. Parties at Liberty to Appeal. The party exercising their right of appeal to do so within 30 days.
- It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27th DAY OF FEBRUARY 2026.

P. M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

Muriithi for Administrators

Chege for Beneficiary (Lucy Nduta)

