



REPUBLIC OF KENYA



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**In re Estate of Kigira (Deceased) (Succession Cause 319 of 2013)  
[2026] KEHC 3029 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3029 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 319 OF 2013  
CW GITHUA, J  
MARCH 5, 2026**

**IN THE MATTER OF THE ESTATE OF HENRY KARIUKI KIGIRA (DECEASED)**

**BETWEEN**

**SAMUEL KIGIRA KARIUKI ..... PETITIONER**

**AND**

**BENSON KIGIRA KARIUKI ..... PROTESTOR**

**JUDGMENT**

1. Henry Kariuki Kigira (hereinafter the deceased) died intestate on 5<sup>th</sup> July 2004. He was polygamous. He was married to two wives. The first wife was Risper Nunga, mother to the protestor while the second wife was Margaret Wangui, the petitioner's mother. Both wives are also deceased.
2. The children in the first house are:
  - (i) Benson Kigira Kariuki
  - (ii) Nahashon Mwangi Kariuki
  - (iii) Zabida Wambui Kihara
  - (iv) Nixon Muturi Kariuki
  - (v) Daniel Maina Wairimu
3. The children of the 2<sup>nd</sup> house are:
  - i) Samuel Kigira Kariuki
  - ii) Catherine Wairimu Kariuki



4. The court record shows that following Henry Kariuki's demise, the petitioner, Samuel Kigira Kariuki petitioned for grant of letters of administration to his Estate. In paragraph 6 of the Petition, he listed the assets comprising the Estate as follows;
- i. Land parcel No. LOC. 6/Giathaini/1265
  - ii. Land Parcel No. LOC.6/Giathaini/1163
  - iii. Land parcel No. LOC.18/Gachocho/113
  - iv. Land parcel No. LOC.18/Gachocho/1731
  - v. Plot No. 7/ Gatumbi Market.

He did not indicate that the Estate had any liability.

5. On 19<sup>th</sup> October 2011, the petitioner was issued with a grant of letters of administration of the deceased's Estate. He filed a summons for confirmation of the grant on 26<sup>th</sup> April 2012 in which he proposed distribution of the Estate as follows;
- (i) Land parcel No.LOC.6/Giathaini/1265 and LOC.6 Giathaini/1163 to be solely inherited by Samuel Kigira Kariuki.
  - (ii) Land parcel No.LOC.18/Gachocho/113 to be divided into two equal portions. One half to be shared by Samuel Kigira Kariuki and Catherine Wairimu Kihara in equal shares while the other half to be shared by children of the 1<sup>st</sup> house in equal shares.
  - (iii) LOC.18/Gachocho/1731 to be shared by children of the first house in equal shares.
  - (iv) Half portion of Plot No.7 Gatumbi Market to be shared by Children of the 2<sup>nd</sup> house while the other half portion to be shared by children of the 1<sup>st</sup> house.
6. On 24<sup>th</sup> December 2013, two children of the first house, namely, Benson Kigira Kariuki and Nahashon Mwangi Kariuki filed a protest disputing the mode of distribution suggested by the petitioner in the summons for confirmation of grant. The protestors proposed that all assets in the deceased's Estate be distributed amongst all his children in equal shares.
7. To counter the above proposal, the petitioner filed a further affidavit averring that it was the deceased's wish that his Estate be distributed according to his two households, that this could be inferred from the way he had settled his wives prior to his death. He proposed that the 1<sup>st</sup> house be allocated land LR No.18/Gachocho/1731 and half portion of land LR No. LOC.18/Gachocho/113 and Plot No.7 Gatumbi market; that the 2<sup>nd</sup> house be allocated two assets exclusively, namely land LR. Nos. LOC.6/Giathaini/1265 and LOC.6/Giathaini/1163 together with a half portion of LR No. LOC.18/Gachocho/113 and Plot No.7 Gatumbi market.
8. In paragraph 9 and 10 of the further affidavit, the petitioner claimed that the Estate had incurred debts from Edward Njuguna Kamanda and that to pay off the debts, the creditor should benefit from land No.LOC.6/Giathaini/1265. He however did not elaborate on the amount of the alleged debt and how it had been incurred.
9. The court record shows that on 26<sup>th</sup> November 2023, by consent of the parties, the protestor was appointed as a co-administrator of the Estate.

The court subsequently directed that the protested summons be disposed off by way of viva voce evidence. Hearing started before Hon. Waweru J on 3<sup>rd</sup> October 2016. The learned Judge heard two



witnesses who testified in support of the petitioner's case. I took over the hearing and heard the protestors' case on 12<sup>th</sup> June 2024.

10. In his evidence, the petitioner testified that prior to his death, the deceased told him that he had divided land LR No. LOC.18/Gachochi/113 comprising of 6 acres between his two wives equally; that he had given land LR No.18/Gachochi/1731 to the 1<sup>st</sup> wife and land LR. Nos. LOC.6/Giathaini/1265 and LOC 6/Giathaini/1163 to the 2<sup>nd</sup> wife; that Plot No.7 was to be shared equally by his two wives.
11. In cross-examination, PW1 stated that in 1990, the deceased had called a family meeting which was attended by some elders who included Samuel Nduati (PW2) to discuss how his Estate would be distributed upon his death; that although Land LR No. LOC.18/Gachochi/1731 had been given to the 1<sup>st</sup> wife, it had since been sold to 3<sup>rd</sup> parties. Contrary to the depositions made in his further affidavit, PW1 confirmed in his evidence that the deceased's Estate did not have any liabilities.
12. On his part, PW2 testified that in the 1990's, the deceased had called him for a meeting together with other elders; that in the meeting, the deceased expressed his wish regarding how he wanted his wives and children to share his properties. They also witnessed the division of his main parcel of land (LOC.18/Gachochi/113) into two equal portions. Each wife was given one portion. The wives were also given an equal portion of Plot No.7. The 2<sup>nd</sup> wife was additionally given LOC.6/Giathaini/1265 and LOC.6/Giathaini/1163 which she had allegedly bought using proceeds from the hotel established in Plot No.7 Gatumbi market.

According to PW2, the Estate ought to be distributed in accordance with the deceased's wishes.

13. On his part, the protestor testified that as the deceased's first born, the deceased had repeatedly told him that upon his death, all his assets were to be divided equally among all his children. He denied that parcel Nos. LOC.6/Giathaini/1265 and LOC.6/Giathaini/1163 had been bought by the 2<sup>nd</sup> wife. He maintained that the same belonged to the deceased's Estate since titles to both parcels were in the deceased's name. Further, he testified that all children of the deceased lived and utilized equal portions of land parcel No. LOC.18/Gachochi/113.
14. Under cross-examination, the protestor stated that each of the children should be allocated one of the seven rooms constructed in Plot No.7. He also claimed that LOC.6/Giathaini/1163 had been sold to a 3<sup>rd</sup> party but he did not offer any evidence to substantiate that claim.
15. After close of the hearing, both parties filed written submissions reinforcing the positions they had taken during the hearing. The petitioner's written submissions were filed on 11<sup>th</sup> March 2025 while those of the protestor dated 10<sup>th</sup> March 2025 were filed electronically on an undisclosed date.
16. Having carefully considered the protested summons and the evidence presented before the court as well as the parties' written submissions, I find that the only task this court was called upon to execute was distribution of the deceased's Estate.
17. I will start by addressing the allegation that the deceased, prior to his death had expressed his wish regarding how his assets would be distributed upon his demise. PW2 claimed that this was done in his presence in the 1990's. The protestor on the other hand claimed that as his first born, the deceased had told him how he wished to have his Estate shared upon his death. The witnesses were thus inferring that the deceased had made an oral will prior to his death.
18. For an oral will to be valid, it must satisfy the requirements of Section 9 (1) of the [Law of Succession Act](#) which stipulates as follows;

“No oral will shall be valid unless—



- (a) it is made before two or more competent witnesses; and
- (b) the testator dies within a period of three months from the date of making the will:

Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.”

19. . In this case, no evidence was adduced regarding the date on which the deceased expressed his alleged wish to the protestor. It is therefore not possible to determine whether the alleged wish was expressed within three months of his death or years before his death. There is also no indication whether the alleged oral will was made in the presence of any other person.
- As regards the wishes allegedly expressed to PW2 and other elders, there is evidence that this was allegedly done in the 1990’s. The deceased died on 5<sup>th</sup> July 2004 approximately 14 years later.
20. Given the foregoing, it is clear that the statutory prerequisites for a valid oral will were not met in this case. The petitioner was clearly aware of this fact and that is why he petitioned not for a grant of probate, but for a grant of letters of administration intestate. It is therefore my finding that the deceased had not made an oral will upon which this court could base distribution of his Estate.
21. Having found as I have above, I will now proceed to distribute the deceased’s estate. Before embarking on this task, I wish to note from the outset that allegations were made during the hearing that the petitioner had sold some of the deceased’s assets including Land parcel LOC.6/Giathiani/1163. It was also alleged that land parcel No.LOC.18/Gachocho/1731 had also been sold.
22. . The above allegations were however not backed by any evidence. The truth of the matter is that even if the allegations were true, such sales would amount to illegal transactions which were void abinitio. This is so because selling or dealing with assets of a deceased person before a grant was confirmed amounted to intermeddling with the deceased’s Estate which is a criminal offence under Section 45 of the [Law of Succession Act](#).
23. . There were also allegations that the 2<sup>nd</sup> wife had bought two of the assets in the Estate, namely parcel Nos. LOC.6/Giathiani/1265 and LOC.6/Giathiani/1163. Like in the allegations regarding sale of some properties, no evidence was availed to the court to substantiate this claim which was vehemently denied by the protestor.
24. . From the material placed before me, I am satisfied that the deceased’s Estate comprises of the assets listed in paragraph 4 of this judgement.
- As it is not disputed that the deceased’s two wives are deceased, it follows that the deceased is only survived by his seven children.
25. I have duly considered the modes of distribution suggested by both the petitioner and the protestor. In my view, the mode of distribution proposed by the petitioner is both unfair and unjust. If it was followed, the 2<sup>nd</sup> house, made up of only two children would inherit the lion’s share of the Estate leaving less than half of the Estate to be shared between five children of the 1<sup>st</sup> house.
26. I am more persuaded by the proposal made by the protestor because it is not only fair but it is also in tandem with the law applicable to the scenario currently prevailing in the deceased’s Estate.



The law governing intestate succession of Estates in which the deceased was survived by only children and no spouse is Section 38 of the *Law of Succession Act* which provides that;

“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.”

27. Given the foregoing, I find merit in the protest and it is hereby upheld.

Consequently, I order that each of the assets in the deceased’s Estate shall be divided amongst all his seven children in equal shares. Considering that it was not contested that all the beneficiaries live and utilize unofficially demarcated portions of land known as LOC.18/Gachocho/113, the share allocated to each beneficiary shall be aligned to the portion he or she is currently utilizing.

28. I also order that in the event that it will not be possible to equally share Plot No.7 Gatumbi market in view of the developments existing on the plot, the plot shall be sold and proceeds thereof shared equally among all the beneficiaries.

29. The grant issued herein shall be confirmed in terms of this judgement.

As this is a family dispute, each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 5<sup>TH</sup> DAY OF MARCH 2026.**

**HON. C. W. GITHUA**

**JUDGE**

In the present of:

Mr. Macharia for the protestors

Mr. Njogu for the petitioner

Ms. Susan Waiganjo, Court Assistant

