



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. E005 OF 2025

IN THE MATTER OF THE ESTATE OF JAMES KINYUA KARANI (DECEASED)

HELLEN KINYUA KARANI.....1ST PETITIONER

BRIAN MUNENE KINYUA.....2ND PETITIONER

VERSUS

CATHERINE WANJIKU GICHIMU.....

RESPONDENT

RULING

[1] The Petitioners filed summons for confirmation of grant dated 2/2/2024, wherein they listed themselves, Brian Munene Kinyua and Tasha Wangechi as the beneficiaries of the estate and proposed at paragraph 6 of the affidavit in support thereof how L.R. No.s MUTIRA/KATHARE/586, 1850, 2094, 1636, 1755, 1407, 1105, MWERUA/KAGIO/4858, INOI/KERUGOYA/3361, MUTIRA/KIRIMUNGE/1923, 1924, Cash in Faulu Bank in Account Number 1007274738, Cash in Co-operative Bank of Kenya held in Account numbers 0116567495800 and 01109567495800 and Cash held in Equity Bank Account Number 0764718684 (*hereinafter referred to as the estate properties*) ought to be distributed.

[2] The Protestor filed her affidavit of protest on 8/3/2024 faulting the Petitioners for omitting L.R. No. MUTIRA/KATHARE/1782 and KIMMI Housing Co-operative Society shares from the schedule of estate properties, and made her own proposal at paragraph 10 thereof.

Submissions

[3] The Petitioners urge that, as the personal representatives of the estate, they are permitted to be trustees for the minor as opposed to the Respondent. They fault the Respondent for failing to prove that L.R No. MUTIRA/KATHARE/1782 and Bingwa

Sacco Shares, allegedly left out, are estate properties, and cite *re Estate of Samwel Kiprono Soi alias Kiprono Soi (Deceased) [2025] KEHC 4068 (KLR)*.

- [4] The Protestor prays to be permitted, in the best interests of her daughter, to hold the properties in trust for her, and cites *J-NGNJA v DO & another (Family Appeal E002 of 2024) [2024] KEHC 7599 (KLR) and Re Estate of Timothy Kiok Kinyamal (Deceased) [2024] KEHC 5944 (KLR)*. She cites *Humphrey Gitau Njoroge v Francis Boro Njoroge [2016] eKLR, Estate of Stone Kakhuli Muinde(Deceased) (2016) eKLR, Re Estate of Kamau Macharia (DECEASED)[2025] KEHC 20 (KLR), Re Estate of Shahid Pervez Butt (Deceased)[2022] EKLR and Nyidha v Nyidha & Another (Succession Appeal E012 OF 2023) [2024] KEHC 8314 (KLR) (5 July 2024) (Judgment)* in urging for an equal distribution of the estate properties.

Analysis and Determination

- [5] The singular issue for determination is how the estate properties ought to be distributed.
- [6] The Protestor has demonstrated that L.R No. MUTIRA/KATHARE/1782 is registered in the name of the deceased, as evinced by the exhibited certificate of official search dated 16/8/2022. She has equally exhibited a certificate awarded by KIMMI Housing Co-operative Society Limited to the deceased on 18/3/2021.
- [7] The deceased herein, James Kinyua Karani died intestate on 14th July, 2021 survived by Hellen Nduku Kinyua, Victor Muriithi Kinyua, Brian Munene Kinyua and Tasha Wangechi (minor). Whereas the Protestor seeks equal distribution of the estate properties among the 4 beneficiaries, it is apparent that the Petitioners have allocated themselves bigger portions to the detriment of the Protestor's daughter.
- [8] The general rule is that where a deceased was survived by a spouse and children, his estate is to be distributed in accordance with section 35 of the Law of Succession Act, which provides that -

“(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. (5) Subject to the provisions of sections 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, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

[9] Nonetheless, there is concurrence by the parties that the surviving spouse should receive defined shares of the estate properties as opposed to a mere life interest. It is undisputed that the 1st Petitioner’s children and the child of the Protestor are all children of the deceased, and thus equally entitled to inherit his estate.

[10] The bone of contention is between the Petitioners on one hand and the Protestor on the other hand as to who should hold the minor’s share of the properties in trust. Section 84 of the Law of Succession Act is succinctly clear that:

“Where the administration of the estate of a deceased person involves any continuing trusts, whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall, unless other trustees have been appointed by a will for the purpose of the trust, be the trustees thereof.”

[11] A Personal Representative is defined under Section 3 of the Act to mean the executor or administrator, as the case may be, of a deceased person. In ***re Estate of Julius Mimano (Deceased) [2019] KEHC 10103 (KLR)***, the Court (W. Musyoka J) said:

“58. The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the Law of Succession Act. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of

intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries. 59. Secondly, personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the Trustee Act. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”

[12] While it is trite that the Petitioners, as the personal representatives, are ordinarily the most appropriate to act as trustees for the minor herein unless mismanagement and waste is demonstrated, the paramount consideration in all matters pertaining to children remains the best interests of the child, pursuant to Article 53 (2) of the Constitution.

[13] In view of the Petitioners’ proposed mode of distribution, which is manifestly inequitable and skewed towards disinheriting the minor herein, the Court is persuaded

that the Respondent is better suited to act as her trustee. The Court finds that the Protestor's protest sworn on 8/3/2024 has merit and it will be allowed.

ORDERS

[14] Accordingly, for the reasons set out above, the Grant issued to Petitioners on 21/8/2023 is hereby confirmed as proposed by the Protestor at **paragraph 10 of her affidavit of protest sworn on 8/3/2024.**

[15] There shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF FEBRUARY 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Otieno for Mrs. Makworo for Petitioner.

Mr. Kathigiu for Mr. Magee for the Protestor.

Ms. Catherine Wanjiku Protestor.