



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL APPEAL NO. E032 OF 2022

ESTHER WAMBUI KWIRIGA.....APPELLANT

VERSUS

ONESMUS

NYAGA

GICHObI.....

.....RESPONDENT

(Being an appeal from the judgment delivered by Hon. Wanjiru M.N (R.M) on 1/4/2022 at Gichugu Succession Cause No. 91 of 2018)

JUDGMENT

- [1] On 20/6/2018, the Appellant herein, a grand-daughter of the deceased, petitioned for grant of letters of administration intestate in respect of the estate of Gichobi Kiruchu alias Gicobi Kirugu, which was subsequently issued to her on 30/11/2018. On 3/7/2019, she filed summons for confirmation of grant where she proposed that **L.R No. BARAGWE/GUAMA/383 (henceforth called the estate property)** be shared equally in 5 portions as proposed at paragraph 5 of the affidavit in support thereof.
- [2] The Appellant swore an affidavit in response to the protest on 13/8/2019.
- [3] On 22/7/2019, the Respondent filed an affidavit of protest in opposition to the proposed mode of distribution as well as the listed beneficiaries. He listed himself, Njeru Gichobi (deceased son) and Lucy Wanjoka Gakuhi (deceased daughter) as the only direct beneficiaries of the deceased, and proposed that the estate property wholly devolves to him. According to him, Benson Nyaga Mbomu, Esther Wambui Kwiriga, Nancy Waguama Mithamo, Joseph Muchira Githenge and Michael Miriithi Gucing'a were not grand children of the deceased, and the children of Lucy Wanjoka Gakuhi (deceased) namely Charity Muthoni Ndege, Njeru Ndege, Patrick Gichobi Ndege, Francis Njogu Ndege, Rose Wambura Ndege, Edward Gakuru Ndege and Josphine Njoki Ndege, had inherited from the estate of their father namely Ndege Njeru.

Statements

- [4] Njoka Gatumo filed his statement on 4/10/2019 urging that the deceased herein, who was well known to him, had 2 wives namely Waruguru Gichobi and Wanjira Kingetho. He asserted that the Appellant belonged to the 1st house while the Respondent belonged to the 2nd house.
- [5] Joseph Muchira, a son to Wanjira Gichobi and the deceased herein, filed his statement on 13/3/2020 in support of the Appellant's proposal.
- [6] The Appellant equally filed her statement on 13/3/2020 in support of her proposal.
- [7] Patrick Ngure Gachau filed his statement on 20/2/2020, urging that the estate property ought to devolve wholly to the only surviving son of the deceased, the Respondent. To the best of his knowledge, the deceased had only one wife, namely Ruguru Gichobi, the Respondent's mother.
- [8] His sentiments were echoed by John Magondu Gutu vide his statement filed on even date.
- [9] In its impugned judgment, the trial court rendered thus;

“The petitioner and her siblings are entitled to the Plot No. 3B Kavote which was already given to their mother during the lifetime of the deceased. The protestor has not laid claim to this property. The petitioner’s mother already benefited in the lifetime of the deceased with a prime plot of land within the Kavote township. The fact that this was hidden from the court by the petitioner until when the case was being concluded, other facts that have continued to remain hidden only to be revealed upon the courts prodding and the contradictory evidence tendered during the hearing of this case provides sufficient ground for revocation of the grant issued to the petitioner. The grant of letters of administration issued on 30/11/2018 is revoked. The estate consisting of land parcel no. BARAGWE/ GUAMA/383 shall devolve to the protestor Onesmus Nyaga Gichobi wholly being the only surviving son of the deceased ad the court having found that grandchildren cannot inherit directly from their grandparents as is depicted through this petition.”

The Appeal

- [10] On appeal, the Appellant filed her memorandum of appeal on 27/4/2022 raising 9 grounds as follows:

1. *The learned trial magistrate erred in law and fact in revoking a grant and proceeded to distribute the properties left behind by the deceased without appointing new administrators.*
2. *The learned trial magistrate erred in law and fact in making a finding that for a grand-child to the deceased, whose parents are also deceased, to inherit the properties of the grand parent, he has to have been maintained by the deceased prior to his demise.*
3. *The learned trial magistrate erred in law and fact in that while she recognized the appellant's mother as a child of the deceased, proceeded to give the lion's share of the estate to the protestor, while the petitioner received only $\frac{1}{3}$ of plot number 3B Kavote.*
4. *The learned trial magistrate erred in law and fact in making a finding that the place of burial of a spouse determines the marital status of that person, whether married or divorced.*
5. *The learned trial magistrate erred in law and fact in making a finding that the appellant's mother received as a gift inter vivos plot number 3B, whereas the said plot is still in the name of the deceased together with 2 other owners, and the entitlement of the deceased is only $\frac{1}{3}$ share.*
6. *The learned trial magistrate erred in law and fact in making a finding that a child of the deceased who fails to claim his inheritance and later dies, weakens and/or vitiates the legal rights of entitlement of that deceased son or daughter through his or her children.*
7. *The learned trial magistrate erred in law and fact in making a finding that plot number 3B Kavote is a prime plot without any evidence in support of that finding.*
8. *The learned trial magistrate erred in law and fact in giving the whole of land parcel number Baragwe/Guama/383 to the Respondent excluding all other beneficiaries.*
9. *The findings of the learned trial magistrate were against the pleadings, the evidence and the applicable legal principles.*

Duty of the Court

[11] This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and

arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others [1968] E.A. 123*).

Evidence

[12] **Protestor's Witness 1 Onesmus Nyaga Gichobi**, the Respondent herein testified that, *"Gichobi Kiruchu is my father. He is deceased. He died in 1989. The deceased had a family. He had one wife who is my mother. She is called Ruguru Gichobi. I was born in 1947. My mother died in 1993. My father was the first one to die. My mother had 3 children, Njeru Gichobi, Lucy Wanjoka, I am the third born. Njeru Gichobi is deceased. Lucy Wanjoka is also deceased. I was born in 1947 in Guama sub location. I was raised on the deceased's land. Its parcel Baragwe/Guama/383. Since 1947 I have been living on that land with my parents Njeru Gichobi and Lucy. There was no other parent. I came to know Esther Wambui when she filed succession cause. She has never lived on my father's land. My father didn't have any other land. I don't know Wanjira Kingethe. I have read the pleadings of Esther Wambui. She has proposed that the land be distributed into 5 portions between 1, Lucy Wanjiku, Grace Wanjoka, Muriko. The children of the deceased who is alive is Onesimus Nyaga. I don't know Gacinga. Esther Wambui claims that she is the grandchild to the deceased. They have never been raised by the deceased. They have never depended on the deceased. The land should be given to me. I am the one who should be given the land, the application should be dismissed. Esther is not a child to the deceased."*

[13] On cross examination, he stated that, *"My father had one wife. I don't know Wanjiru Kingethe. I was born in 1947 since then I didn't hear of a person called Wanjiru Kingethe. I didn't sign the consent to the making of grant of letters of administration. This is my signature, it's on the affidavit in protest of confirmation of grant. I didn't sign the consent to the making of grant of letters of administration. The chief called me. I saw his letter. I object to the contents thereto. Gichobi Kiruchu is deceased. Muchira claims that Gichobi is his father even his ID card he has the name of Kithenge who is not Gichobi. When I was born I didn't see the other alleged wife. I don't know Benson Nyaga and Esther Wambui. I came to know about them when this cause was being filed. I signed a document at the chief's camp when it was alleged*

that my father had 2 names, his names are Gichobi Kiruchu. I have not reported to the authorities that my signature was used in some pleadings.”

[14] In re-examination, he stated that, *“The signature is not mine. I have just seen it today. I was not aware of the document that is why I didn’t report to the authorities. I am the only surviving child of the deceased. Njeru Gichobi is deceased. He didn’t have children. Lucy Wanjoka is married. She had children. They live at their father’s land. They don’t have a claim from their grandfather’s land.”*

[15] **Protestor’s Witness 2 John Magondu Gutu**, testified that, *“I know Gichobi Kiruchu. I knew him for a long time ago. I was born in Guama. I came to know him when I was 20 years old. I know Onesmus Nyaga. He is the son to Gichobi Kiruchu. Gichobi had 3 children whom I knew. The wife of Gichobi Kiruchu passed on. I don’t recall her name. Onesmus Nyaga lives on the deceased land. He lives there alone. Gichobi Kiruchu didn’t have another wife. I do wish to also rely on my statement filed on 20/2/2020.”*

[16] On cross examination, he stated that, *“I knew Gichobi Kiruchu when he was 20 years. I only know of Nyaga Gichobi as his only son. I don’t know if he had another wife. I don’t know the children of the first wife.”*

[17] **Petitioner’s Witness 1 Esther Wambui Kwinga** testified that, *“I am 40 years old. I am a farmer. I do reside at Kavote. I recorded my statement on 12/3/2020. I do wish to rely on it. Gichobi Kiruchu is my grandfather. He is my maternal grandfather. My mother is called Grace Wanjoka Gichobi. My grandfather had 2 wives. The first wife is called Wanjira Gichobi, Wanjira Gichobi is my grandmother. The 2nd wife is called Waruguru Gichobi. Wanjira Gichobi had three children namely grace Wanjoka (my mother), Kariuko Gichobi and Joseph Muchira. Grace Wanjoka is deceased. She died in 2003. My grandmother Wanjira Gichobi died a long time ago. Wanjira Gichobi was buried at their home at Mwea when they separated with the husband. She was home at her father’s land. Her father had 2 parcels of land at Mwea and Karumande. We were raised on the land of Gichobi Kirucho. This is the land that belongs to our grandfather. When my mother passed on she was buried at her father’s land. My mother was given a plot and she was told to live at the plot she lived on plot 3b Kavote. The plot was owned by several people. Both Mwangi and Njeru Chomba owned the plot. They had found a company. My mother was told to reside at the plot and a house could be built for her. My mother was buried on the land belonging to Gichobi Kiruchu. My grandmother was chased away by my*

grandfather. I don't know when this took place. The 2nd grandmother was married after my grandmother was chased away. I know the 2nd wife to the deceased. She has 3 children. I know their names they are Njeru Gichobi, Wanjoka Gichobi and Onesimus Nyaga. The 2nd wife had 3 children one of them died the people who are alive are Wanjoka Gichobi and Onesimus Nyaga. My grandfather had 2 wives. I know Onesimus. He lied to the court why he claimed that he does not know us. I do object to the protestor's mode of distribution. The land should be inherited by 5 children Nancy, Grace Wanjoka, Kariuko Gichobi, Joseph Muchira, Onesimus Nyaga, Wanjoka Gichobi. Grace Wanjoka, Kariuko Gichobi and Wanjoka Gichobi are now deceased. They left behind children. Grace Wanjoka left behind Benson Nyaga, Nancy Waguama, Esther Wambui, Kariuko left behind one child called Patrick Mureithi. Wanjoka is the child of the 2nd wife. I know her as Wanjoka Gichobi, she left behind 7 children. I don't know their names. Waruguru Gichobi died. She was buried at her husband's land. She was buried at the land of Gichobi who is the husband. When my grandmother was being buried Onesimus and his other siblings were around."

[18] On cross examination, she stated that, "I am 40 years old. I am married. I got married in 1998. I am called Esther Wambui Kwinga. Kwinga is my husband's name. My mother was given a place to reside on by my grandfather. This was a plot. Before my grandfather died he was preparing a place to build for my mother. This is plot 3B Kavote. It belonged to my grandfather. I have not included the plot in the list of assets. I don't have anything to show that plot 3b belonged to my grandmother. I didn't see my grandmother. I don't know the year she died. I however know where she was buried. I was told where she was buried. I was shown the burial site. I didn't attend the burial. What I have told the court is what I have been told. I and my mother have never lived on the disputed land. We lived at the plot. Our grandfather maintained my mother. My mother died in 2013. My grandfather Gichobi died in 1989. I did attend the burial of my grandfather. My mother claimed her share from Onesimus Gichobi. She went before the chief. I don't have the minutes from the chief. I am claiming what my mother ought to have been given. I don't have letters of administration or grant over the state of my mother."

[19] In re-examination, she stated that, "My mother was given a plot temporarily as her house was being built. The plot was co-owned by other people. The land is registered in the name of the deceased Gichobi Kirucho."

[20] **Petitioner's Witness 2 Njoka Gatumo** testified that, *"I am 80 years old. I am a farmer. I am from Onjiru clan. I know Gichobi Kirucho. I have known him all my life. Gichobi Kiruchu was from Onjiru clan. We belong from the same clan. We used to eat together. Gichobi Kiruchu has 2 wives. The first wife is called Wanjira Gichobi. The 2nd wife is called Waruguru Gichobi. I know the 1st wife. I was an adult when she was being married. The 2nd wife was married when the 1st wife was still at the home of the deceased. By then Mau-mau war had not commenced. The 1st wife had 3 children Wanjoka, Joseph I don't know the 3rd child. By then I was in prison. The 2nd wife was also known to me. The 2nd wife had 3 children namely Njeru (1st born), Wanjoka and Nyaga. The 2 wives are now deceased. Gichobi Kiruchu was buried on his land Baragwe/Guama/383. The 1st wife died, I can't recall where she died. When I left prison, I found out that they had died. The 1st wife was buried on the land of Gichobi same as the 2nd wife. I know Grace Wanjoka. I don't know the children of Grace Wanjoka. When I went to prison I left Grace residing on the land at Guama. Grace Wanjoka was buried on land 383. I didn't attend the ceremony. She was buried by the chief on land 383. The deceased had 2 wives."*

[21] On cross examination, he stated that, *"I am 80 years old. I do recall all the events that took place. I can't recall the year when Gichobi married the 1st and 2nd wife. I don't recall when demarcations were done. I have land I was given by the clan. I cannot recall when the clan gave me land. The deceased had 2 wives. I was in detention in 1951. In 1951 the deceased had 2 wives. We were given land after the Maumau war. By this time the lands had not been subdivided and demarcated. I don't know when the 1st wife was buried. I didn't attend the ceremony. I was not around. I was in detention. I was released when I was released was relocated to another land. I don't recall when I was released. When I was released they started the process of demarcation. When the lands were being demarcated the 1st wife was not alive. The 2nd wife was alive. The children of the 1st wife is Grace Wanjoka. She was married at Gatugura. She had children. She had 3 children with the husband. They separated. I can't recall when they separated. I don't know the name of the husband of grace when they separated she returned home. When Grace was chased away Gichobi was still alive. She returned to the plot belonging to Gichobi. Gichobi purchased the plot with another person called Bathi and Njeru Chomba. Gichobi had a share to the plot. Grace didn't reside on land 383. She lived at the plot. I don't know why she lived at*

the plot and not land 383. The property of Gichobi should devolve to the children of Gichobi. The 2 children survived Gichobi from the first wife.”

[22] In re-examination, he stated that, *“The plot is at Kavote. Grace is the child of Gichobi. The children of Grace should inherit the property of the deceased. Grace separated with the husband when Gichobi was still alive.”*

[23] **Petitioner’s Witness 3 Joseph Muchira**, testified that, *“I am a farmer. I do reside at Ntogonye. Gichobi Karucho is my father. My mother is called Wanja Gichobi. My mother had 3 children. They are Kariuko Gichobi, Joseph Muchira and Wanjoka Gichobi Grace. I am 72 years old. My father had 2 wives. My mother was the first wife. The 2nd wife is Waruguru Gichobi. My mother was chased away by our father. We used to reside on the deceased land. By that time the land had not been demarcated. By that time, I was small child when my father chased my mother away. When my mother was chased away I and Kariuko went with our mother. My mother took us to our fathers’ home at Murinduko Mwea. My sister remained with my father. Grace Wanjoka resided at Guama. She was given a plot to reside on by our mother. Our father had a plot. The plot still exists. The plot was jointly owned by other people. The 1st wife was buried at Mwea at his father’s land. Waruguru Gichobi is also deceased. She was buried on our father’s land. Grace was given a plot by my father. She is deceased. She was buried on our fathers shamba. This is where the 2nd wife was buried. The sub chief was told to oversee the burial of Grace at our father’s land. Grace had 3 children. They are Waguama, Wambui and Nyaga. The 2nd wife also had children namely Nyaga, Njeru and another lady. I don’t recall her name. Onesimus Nyaga is the child of the 2nd wife. Onesimus knows me well. When our father died I attended the burial. When Grace was being buried Onesimus ran away he however knew that Grace was being buried on our father’s land. Our fathers land should be shared with all the children of Gichobi.”*

[24] On cross examination, he stated that, *“I am 72 years old. I don’t have my ID and in court. My ID card has the names Joseph Muchira Kithenge. My statement doesn’t have the name Kithenge. I forgot to include it. I knew Gichobi was my father when he called me. He came to our home. By then I had taken the name Kithenge as a surname. My mother was not married to Kithenge. She never re-married. Kithenge is someone I know I used his name to take an ID card. Kithenge didn’t marry my mother. Grace is my sister. She is deceased. She wasn’t married. She had three children. I don’t know their father (Father to “Grace children). Kithenge didn’t*

receive my sister's bride price. When my mother was being chased away I was an infant. I was breast feeding. I am the 3rd born. I used to visit my sister. I used to visit Gichobi. Gichobi had a plot. I have the minutes for the plot. It shows that the plot is owned by a company. Gichobi has a share to the plot. My sister used to reside on the plot even today her children still resides on that plot. The plot has not been included in these proceedings. Grace was buried on my father's land. The police and chief oversaw the burial. I was at Mwea. I received a call that my sister died. The government was called to bury our sister on the deceased land. He had been stopped from burying my sister on the deceased land. Kithenge died long time ago. I don't know Kithenge. I don't know where he went. I was raised at my grandfather's home. When my mother was chased away. I don't know if Gichobi had land. I don't know why my mother was chased away. When my mother was being chased away the lands had not been demarcated by then I was a small child. Its my mother who told me all this. She told me where she was previously. She didn't tell me where she got married after being chased away. She later passed on."

[25] In re-examination, he stated that, *"Kithenge is not my father. My father is called Gichobi. I received the minutes for the plot in 2021. I was looking for Nyaga so that we can know where to bury Grace. Nyaga was at home. I don't know the full names of Nyaga but I know him as Nyaga Gichobi alias Onesimus. Kithenge didn't marry my mother. Kithenge didn't reside at the village. I told him to assist me get an ID card because I didn't have a father. When we left our fathers place we didn't return. I don't know even the place. I don't recall when I took the ID card."*

[26] When questioned by the court, he stated that, *"I can't recall when Grace passed on. Grace died after the demise of the deceased. People were protesting against Grace being buried on the deceased land. We went to the sub chief so that our sister could be buried on the deceased land."*

Submissions

[27] The Appellant urged that a grandchild whose parent is deceased can inherit directly from the grand-parent the share of their deceased parent, and cited **Re Estate of Veronica Njoki Wakagoto (2013) eKLR, Estate of Florence Mukami Kinyua (Deceased) (2018)eKLR and Re Estate of Joyce Kenjiru Njiru (Deceased) (2017) eKLR**. They urged that the children of Grace Wanjoka, a child of the deceased, who is also deceased, ought to have received the share of their late

mother. They urged that the estate property ought to be shared equally between the 4 children of the deceased, while Plot 3B Kavote be registered in the name of the Appellant, sold and the proceeds shared equally.

- [28] The Respondent cited ***Mwongela & Another v Angila (Civil Appeal E694 of 2023)(2024) KEHC***, on the duty an appellate court. He urged that the reasoning of the trial court was correct considering the factual evidence tendered before it. He submitted that Plot No. 3B Kavote market, which had been gifted to the Appellant's mother by the deceased, was a residential premises situated in a prime location, whose value was more likely than not higher than the estate property, and urged the court to dismiss the appeal.

Analysis and Determination

- [29] From the grounds of appeal, the issue for determination is whether the distribution of estate property was against the weight of the evidence led.
- [30] Whereas the Appellant contended that the deceased had 2 wives, the Respondent vehemently refuted those averments insisting that the deceased was married to only his mother.
- [31] The Appellant asserted that Grace Wanjoka (now deceased), was a daughter to the deceased, with his 1st wife namely Wanjira Kingetho Gichobi.
- [32] The Appellant conceded in her testimony that, ***"I do reside at Kavote. My mother was given a plot and she was told to live at the plot she lived on plot 3b Kavote. My mother was told to reside at the plot and a house could be built for her. My mother was buried on the land belonging to Gichobi Kiruchu."*** On cross examination, she stated that, ***"My mother was given a place to reside on by my grandfather. This was a plot. This is plot 3B Kavote. It belonged to my grandfather. My mother died in 2013. My grandfather Gichobi died in 1989."***
- [33] **Petitioner's Witness 2** stated on cross examination, he stated that, ***"When Grace was chased away Gichobi was still alive. She returned to the plot belonging to Gichobi. Gichobi purchased the plot with another person called Bathi and Njeru Chomba. Gichobi had a share to the plot. Grace didn't reside on land 383. She lived at the plot."***
- [34] **Petitioner's Witness 3**, testified that, ***"Gichobi Karucho is my father. My mother is called Wanja Gichobi. My mother had 3 children. They are Kariuko Gichobi, Joseph Muchira and Wanjoka Gichobi Grace. My father had 2 wives. My***

mother was the first wife. The 2nd wife is Waruguru Gichobi. My mother was chased away by our father. We used to reside on the deceased land. Grace was given a plot by my father. She is deceased. She was buried on our fathers shamba. The sub chief was told to oversee the burial of Grace at our father's land.” On cross examination, he stated that, *“My ID card has the names Joseph Muchira Kithenge. I knew Gichobi was my father when he called me. He came to our home. By then I had taken the name Kithenge as a surname. I don't know their father (Father to “Grace children). Gichobi has a share to the plot. My sister used to reside on the plot even today her children still resides on that plot.”*

[35] The Respondent was categorical that, *“Gichobi Kiruchu is my father. He is deceased. He died in 1989. He had one wife who is my mother. She is called Ruguru Gichobi.”* On cross examination, he stated that, *“The chief called me. I saw his letter.”*

[36] When some of the beneficiaries appeared in court on 11/3/2022, it was evident that they were unaware of these proceedings. The children of Grace Wanjoka confirmed that they wanted the estate property distributed equally among the 5 children of the deceased.

[37] Irrefutably, the Appellant proved on a balance of probabilities that the deceased was survived by namely Grace Wanjoka (deceased), Joseph Muchira Kithenge, Beatrice Kariuko Gichobi (deceased), Lucy Wanjoka (deceased) and Onesmus Nyaga Gichobi.

[38] Section 41 of the Law of Succession Act is clear that grandchildren are entitled to inherit directly from their grandparents where their respective parents are predeceased the deceased. The law therefore permits the grandchildren to step into the shoes of their deceased parents and directly claim on their behalf.

[39] In *Christine Wangari Gachigi v Elizabeth Wanjira Evans & 11 others [2014] KECA 150 (KLR)*, the Court of Appeal held that:

“Although Sections 35 and 38 of the Laws of Succession Act is silent on the fate of surviving grandchildren whose parents' pre-deceased the deceased, the rate of substitution of a grand child for his/her parent in all cases of intestate known as the principle of representation is applicable. The law on this is section 41. If a child of the intestate has pre-deceased the intestate then that child's issue alive or en ventre sa mere or that date of the intestate's death will take in equal shares per stirpes contingent on attaining

the age of majority. Per stirpes means that the issue of a deceased child of the intestate takes between them the share their parents would have taken had the parent been alive at the intestate's death."

[40] The court is satisfied that the deceased bequeathed Plot No. 3B to the Appellant's mother, during his lifetime, and the trial court, properly guided by the provisions of section 42 of the Law of Succession Act, considered that bequest during distribution of the estate property.

[41] The evidence on record demonstrates that the Appellant's mother had previously received a bequest from the deceased. In view of the provisions of section 42 of the Law of Succession Act, and taking into account the prior advancement to her mother, it is equitable to decline her claim to a share of the estate property.

[42] The court finds that the estate property ought to be distributed equally among the Respondent, Joseph Muchira Kithenge, estate of Beatrice Kariuko Gichobi comprising of Joseph Muchira Kithenge and estate of Lucy Wanjoka comprising of Charity Muthoni Ndege, Njeru Ndege, Patrick Gichobi Ndege, Francis Njogu Ndege, Rose Wambura Ndege, Edward Gakuru Ndege and Josephine Njoki Ndege.

[43] The court takes cognizance of the amended grant of letters of administration intestate issued to the Respondent on 22/6/2023, and therefore, the issue of there being no administrator does not arise.

[44] The court is satisfied that the trial court misapprehended the evidence led thus rendering an erroneous decision, and there is, consequently, a basis for this court's interference.

ORDERS

[45] Accordingly, for the reasons set out above, the Court finds that the appeal has merit and it is allowed in the following terms:

1. The impugned judgment dated 1/4/2022 is hereby set aside, in respect of the distribution of the estate property to wit L.R No. BARAGWE/GUAMA/383.
2. The estate property shall be distributed equally amongst Joseph Muchira Kithenge, Onesmus Nyaga Gichobi, estate of Beatrice Kariuko Gichobi (comprising of Joseph Muchira Kithenge) and estate of Lucy Wanjoka (comprising of Charity Muthoni Ndege, Njeru Ndege, Patrick Gichobi Ndege, Francis Njogu Ndege, Rose Wambura Ndege, Edward Gakuru Ndege and Josephine Njoki Ndege).

3. Each party shall bear own costs.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF FEBRUARY 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Maina Kagio for the Appellant.

Ms. Juliana Wambunya d/o Onesmus Nyaga Gichobi.

Ms. Rose Njeru for Respondent.