



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

FAMILY (P & A) APPEAL NO. E004 OF 2025

IN THE ESTATE OF NG'ANG'A KIBIRIU KAMAU-DECEASED

BETWEEN

MARY NYAMBURA NG'ANG'A.....1ST APPELLANT

MILCAH WAIRIMU NG'ANG'A2ND APPELLANT

JOYCE WARUGURU NG'ANG'A3RD APPELLANT

AND

DANIEL MUGWE NG'ANG'A..... RESPONDENT

(Being an appeal from the ruling and order in Engineer Senior Principal Magistrate's Succession Cause No. E085 of 2022 by Hon. E. Wanjala –Principal Magistrate.)

JUDGMENT

1. On August 1, 2024, Hon. E. Wanjala delivered a judgment regarding a protest dated December 21, 2023. The appellants, dissatisfied with this decision, filed an appeal, represented by Morgan Omusundi Advocates. Their grounds of appeal are as follows:

- a) The learned trial court erred in law and fact by failing to consider that the sales of parcels of land to the purchaser, as depicted in the chief's letter, were done by the respondent without authorization by law and/or obtaining a grant of representation.
- b) The learned trial court erred in law and fact by failing to consider that the transactions done before obtaining a grant of representations were null and void in law.

- c) The learned trial magistrate erred in law and fact by failing to address itself on sections 82(b) and section 55 of the Law of Succession Act with regard to the sale of a deceased's property without a Grant and Article 40(6) of the Constitution.
- d) The learned trial magistrate erred in law and in fact in allowing illegality to prevail in the circumstances.
- e) The learned trial court erred in law and fact by failing to hold that the respondent herein had intermeddled with the affairs of the deceased.
- f) The learned trial court erred in law and fact by solely relying on the chief's letter and overlooking the appellant's testimony and evidence presented before the court.
- g) The learned trial court erred in law and fact by relying on an extremely erroneous chief's letter to depict ownership of the deceased's property.
- h) The learned trial court erred in law and fact by failing to note the probate value, if any, of a chief's letter in succession proceedings.
- i) The learned trial court erred in law and fact by holding that the mode of distribution proposed by the protestors was exclusionary of the purchasers in the chief's letter.
- j) Learned trial court erred in law and facts by holding that the protest by the appellants did not cite the property which they were proposing to be distributed in the manner proposed by them, but still allowed the distribution by the respondent.
- k) The learned trial court erred in law and fact by holding that the appellants did not challenge the mode of distribution as proposed by the Respondent as being the share to the purchasers in the chief's letter.
- l) The learned trial court erred in law and fact by holding that the protestors did not lay a basis for the court to reject the mode of distribution as proposed by the respondent.
- m) The learned trial court erred in law and facts by delivering a judgment that is not only incomplete but also based on improper evaluation and consideration of pleadings, evidence on record, submissions and applicable law and principles.
- n) The learned trial court erred in law and fact in failing to consider the history, full facts and circumstances of the case.

- o) The learned trial court erred in law and facts in rendering a judgment that was contrary to the law, facts and the weight of evidence on record. The learned trial court erred in law and fact in applying the wrong principles applicable in the circumstances in arriving at its decision.
 - p) The learned trial court's decision was arrived at in a cursory and perfunctory manner, in consideration of the irrelevant factors, while leaving out relevant ones, resulting in the dismissal of the appellant's case.
 - q) The learned trial court erred in law and fact by disinheriting the children of the deceased in favour of purchasers upon the demise of the deceased and grandchildren of the deceased, without a will being admitted before the court.
2. The respondent was served, yet he did not file any grounds of opposition or submissions.
 3. This is the first appellate court. I recognize my duty to evaluate all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions on the matter.
 4. In their affidavit of protest, the appellants had proposed the sharing of the estate of the deceased as follows:
 5. This proposal did not consider the beneficiaries that the administrator described as buyers, as well as the grandchildren. The key issue before the trial court was whether these buyers were eligible to benefit from the deceased's estate. If indeed the purchasers bought the portions of land after the death of the deceased, this amounted to intermeddling, which is a criminal offence.
 6. Upon my perusal of the record of appeal, I have noted that Mary Nyambura Ng'ang'a and Elizabeth Muthoni Ng'ang'a, who are listed as daughters of the deceased, have not been given any portion of the estate, and no document was filed by them renouncing their right to inherit. This was a grave omission.
 7. During the trial court proceedings, no party was represented by an advocate, and several issues remained unresolved. The trial magistrate should have asked about when the buyers entered into the sale contracts and their identities, why some of the deceased's children did not inherit from the estate despite not renouncing their rights, and why certain grandchildren inherited to the exclusion of others. Clarifying these issues could have made this appeal unnecessary.

8. Based on the above review of the evidence on record, it is fair to allow the appeal. The trial magistrate's findings are hereby overturned, and all related orders are nullified. The case is sent back to the trial court to resolve the remaining issues before the grant is finalized.
9. Since this is a family matter, each party will bear its costs.

Delivered and signed at Nyandarua, this 14th day of April 2026

KIARIE WAWERU KIARIE

JUDGE