



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Njue Harun Samuel (Deceased) (Succession Cause
2 of 2017) [2026] KEHC 5090 (KLR) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 2 OF 2017**

RM MWONGO, J

APRIL 22, 2026

IN THE MATTER OF THE ESTATE OF NJUE HARUN SAMUEL (DECEASED)

BETWEEN

GEORGE WANJAU SAMUEL 1ST ADMINISTRATOR

ELIZABETH MUMBI NJUE 2ND ADMINISTRATOR

AND

ESTHER WANGECHI NJUE PROTESTOR

RULING

Background

1. The deceased died on 12th October 2013. A grant of letters of administration was issued to his son and daughter, George Wanjau Samuel and Elizabeth Mumbi Njue, on 07th October 2016. The administrators filed summons for confirmation accompanied by an affidavit proposing a mode of distribution. The protestor has opposed the mode of distribution.

Summons for confirmation of Grant

2. According to the summons for confirmation of grant, the deceased was survived by his five children namely: 1) George Wanjau Samuel, 2) Davis Nguu Njue, 3) Lily Kanini Njue, 4) Elizabeth Mumbi Njue and 5) Jane Wangiri Mariga. It also stated that he was survived by a daughter-in-law, Esther Wangechi Njue.
3. According to the record, the deceased died intestate leaving the following properties and proposing distribution as follows:
 1. Land parcel number Ngandori/Kirigi/5341 measuring 0.05 ha to be inherited wholly by George Wanjau Samuel;



2. Land parcel number Ngandori/Kirigi/8911 measuring 0.21 ha to be inherited by:
 - i. George Wanjau Samuel- 0.05Ha including the rental rooms
 - ii. The remainder, including commercial buildings therein to be held jointly by Esther Wangechi Njue, Eric Wilhelm Njue and Beth Emma Wangui Njue.
3. Land parcel number Ngandori/Kirigi/8878 (measuring 0.09 ha) to be inherited in equal shares by Lily Kanini Njue and Jane Wangiri Mariga.
4. Land parcel number Ngandori/Kirigi/8877 (measuring 0.10 ha) to be inherited wholly by Elizabeth Mumbi Njue.
5. Land parcel number Ngandori/Kirigi/8881 (measuring 3 Acres) to be inherited by:
 - i. Kennedy Nthiga- 0.04Ha (Purchaser)
 - ii. The remainder to be held equally by George Wanjau Samuel, Lily Kanini Njue, Elizabeth Mumbi Njue and Jane Wangiri Mariga.
6. Land parcel Number Gatari/Weru/681 (15 Acres) to be inherited by:
 - i. Njagi Karukungi- 0.40Ha (Purchaser)
 - ii. The remainder to be held equally by George Wanjau Samuel, Davis Nguu Njue, Lily Kanini Njue, Elizabeth Mumbi Njue, Jane Wangiri Mariga, Esther Wangechi Njue, Lydia Wangiri Njue and Evelyne Wawira Wanjau.

Affidavit of Protest

4. The protestor filed a protest dated 28th May 2022 together with an affidavit dated 31st May 2022. She opposed the mode of distribution proposed by the administrators and stated that she is the widow of a son of the deceased, the late Elvis Samuel Njue. She proposed that the properties be distributed as follows:
 1. Land parcel number Ngandori/Kirigi/5341 to be inherited wholly by George Wanjau Samuel;
 2. Land parcel number Ngandori/Kirigi/8911 to be inherited by Esther Wangechi Njue exclusively, to enjoy a life interest in it and to hold it in trust for her children Eric Wilhelm Njue and Beth Emma Wangui Njue.
 3. Land parcel number Ngandori/Kirigi/8878 to be inherited in equally by Elizabeth Mumbi Njue, Lily Kanini Njue and Jane Wangiri Mariga.
 4. Land parcel numbers Ngandori/Kirigi/8877, Ngandori/Kirigi/8881 and Gatari/Weru/681 to be inherited in equal shares by George Wanjau Samuel, Davis Nguu Njue, Lily Kanini Njue, Elizabeth Mumbi Njue, Jane Wangiri Mariga and Esther Wangechi Njue.
 5. She stated that there are properties belonging to the deceased which had not been included in the list of properties. These are:
 1. Monies in KCB Bank Ltd Embu Branch.
 2. A coffee account in Kapingazi coffee factory for delivery of coffee from the coffee plantation.
 3. Half acre Bluegum trees



4. Money from Catholic Diocese from sale of Amunira Flowers
 5. Money in Family Bank Ltd Embu Branch
 6. Motor vehicle registration number KAM 536H
6. She proposed that the monies in the various accounts be withdrawn and the trees and car be sold and then the proceeds and the money be shared equally amongst the 6 beneficiaries of the estate of the deceased.

The Hearing

7. The protest was heard viva voce.
8. PW1 was the protestor who stated that she wished to rely on the contents of her affidavit of protest as her evidence. She stated that the 1st administrator sold the deceased's motor vehicle and did not account for the money. That the land parcel number Ngandori/Kirigi/8911 was given to her late husband and she has been living on it. Regardless, the 1st administrator has interfered with the said land by cutting the fence and building rental houses on it. Sometime back, she was forced out of the house by thieves and now she is living in a rental premises. She stated that her daughter was also sexually assaulted by one Charles Njuki, seemingly as a way of intimidating the protestor. She urged the court to adopt her mode of distribution.
9. On cross-examination, she stated she did not have a sale agreement but that her late husband paid Kshs.102,000/= in exchange for land parcel Ngandori/Kirigi/8911 measuring 0.21Ha. She stated that the land is still registered in the name of the deceased. That she bought Ngandori/Kirigi/5340 from the deceased for Kshs.50,000/= and that is where she built her house. She denied that the land was co-owned by the deceased and her late husband. She stated that on Ngandori/Kirigi/8911, there is a one storey building with 10 rooms, a bar and restaurant. The 1st administrator resides on the neighboring piece of land Ngandori/Kirigi/5341 and she did not know if it was him who sent thieves to her house.
10. She stated that she did not know that the deceased demanded for a total of Kshs.405,000/= from her husband for purchasing and transferring the land to his name. She stated that Ngandori/Kirigi/8878 be given to the daughters of the deceased Elizabeth Mumbi, Lily Njue and Jane Wangiri in equal shares. That when Davis Nguu died in December 2023, he was buried on land parcel number Ngandori/Kirigi/8877. She proposed that Ngandori/Kirigi/8881 be shared equally amongst all the beneficiaries who are the children of the deceased.
11. She was unaware of any purchasers who had bought parts of the land and whether there was a public road passing through the land. According to her, Lydia and Evelyne are strangers to the estate and they were added as an afterthought under the falsehood that they were dependants of the deceased. She said that there are only 6 beneficiaries to the estate. She knew the name of the person who bought the deceased's motor vehicle and she said that when she sees it on the road, it is still in mint condition.
12. On re-examination, she stated that the people who went to her house to attack her intended to kill her, and they said that they had been sent by the 1st administrator. That Ngandori/Kirigi/8911 was given to her by the deceased, her father-in-law but the 1st administrator took a portion of it and she reported the matter to the local administration. She wanted the rental houses built by the 1st administrator on her land to be demolished. She referred to the mode of distribution stated in the affidavit of protest and added that Ngandori/Kirigi/5340 was already transferred to her name.



13. RW1 was Elizabeth Mumbi Njue, the 2nd administrator. She stated that the 1st administrator has rental houses and a residential house on Ngandori/Kirigi/5340 and on a part of Ngandori/Kirigi/8911, whose other part belongs to PW1, the protestor. That Ngandori/Kirigi/8911 measures 0.21Ha and it was given to Esther Wangechi, Eric Njue, Beth Wangui and George Wanjau to hold jointly. That the one storey building erected on part of Ngandori/Kirigi/8911 was put up through the joint efforts of the deceased and the protestor's husband while the 1st administrator was given the other part on which he has also built rental units. Ngandori/Kirigi/8878 was given to Lily Kanini Njue and Jane Wangiri Mariga and they built their homes on it. She stated that she lives on Ngandori/Kirigi/8877 which was the deceased's matrimonial home and burial place. That Kennedy Nthiga purchased a part of Ngandori/Kirigi/8881 as road access from the deceased but he had not been given a title. That the protestor was given Ngandori/Kirigi/5340 so that she does not contest the manner of distribution done in these proceedings.
14. In cross-examination, she stated that the protestor's husband predeceased the deceased herein and she did not know if he had bought the land from the deceased. She stated that the land was not registered in the name of the protestor's late husband. She denied knowledge of any money in bank accounts or any other monetary assets of the deceased.

Parties' Submissions

15. In her submissions, the protestor defended her proposed mode of distribution stating it was for her sake and for the sake of her 2 children. She stated that the testimony of RW1 was full of falsehoods and hearsay evidence which the court should discredit. That the mode of distribution she has proposed will not only bring peace to the family, but will also fulfil the actual wishes of the deceased herein. She urged the court to consider the lengthy period over which this matter has been in court and how it was transferred from one court to another. On this basis, she urged the court to determine the estate in favour of her proposal.
16. The administrators on their part, relied on section 38 of the [Law of Succession Act](#) which gives guidance on distribution of the estate under circumstances such as the present ones. They stated that the deceased together with the protestor's husband developed parcel number Ngandori/Kirigi/8911. On a part of the same land, and near the 1st administrator's land Ngandori/Kirigi/5341, the 1st administrator has built 4 rental units which he risks losing if Ngandori/Kirigi/8911 is given to the protestor wholly. On this basis, the administrators have proposed that the 1st administrator gets 0.05Ha of Ngandori/Kirigi/8911 so that he does not lose access to his 4 rental units developed on Ngandori/Kirigi/8911.
17. They submitted that the distribution of Ngandori/Kirigi/8877 should be inherited by the 2nd administrator and that most of it has a gravesite. That there is no reason why the property should be shared out among all the beneficiaries including the protestor who already has other properties in her name. Reliance was placed on section 42 of the [Law of Succession Act](#) which provides for gifts inter vivos.
18. They defended the claim by the purchaser who had acquired a part of parcel number Ngandori/Kirigi/8881 for road access and stated that it is only fair that this road access arrangement be maintained. The administrators submitted that a stranger named Gakungi Maguru had been given 1 acre out of Gaturi/Weru/681 because he was homeless and the deceased wanted to help him. On this basis, they stated that the man was the deceased's dependant under section 29 of the [Law of Succession Act](#) and his portion should be left intact.

Issue for Determination

19. The issue for determination is how the estate of the deceased should be distributed.



Analysis and Determination

20. Where the deceased has died intestate leaving children but no spouse, Section 38 of the [Law of Succession Act](#) offers guidance on distribution of the estate as follows:

“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.”

21. Keeping in mind this guide, there are a few places where the protestor’s and administrators’ cases converge as points of agreement. In these cases, the provisions of law may give way for consensus as an effective way to resolve the present disputes. Where the facts and arguments must be subjected to the evidence adduced, then the court must allow itself to apply the facts alongside evidence to the law and reach a finding.
22. First, it is not in contention as to the distribution of Ngandori/Kirigi/5341 which is intended to be inherited wholly by George Wanjau Samuel, the 1st administrator.
23. Next, there is Ngandori/Kirigi/8911 in respect of which PW1 contends that the 1st administrator has encroached and that he had even built rental units thereon. Both PW1 and RW1 stated, and are in agreement, that Ngandori/Kirigi/8911 and Ngandori/Kirigi/5340 were given to the protestor’s husband as gifts during the deceased’s lifetime. Hence, they may be deemed, for purposes of this case, as gifts inter vivos. There is provision for such gifts in section 42 of the [Law of Succession Act](#). The administrators submitted that if the whole of Ngandori/Kirigi/8911 is given to the protestor, then the 1st administrator would lose access to his investment on it.
24. The nature of a gift inter vivos is that it must be received and perfected before the death of the giver. This was emphasized in the case of *Ngugi v Mukuria* [2025] KEHC 11395 (KLR) where it was held:
- “The characteristics of the gifts inter vivos are that they are made and settled during the lifetime of the deceased and have been identified, awarded and settled for the person to whom it has been given. It is a gift made to a beneficiary when the deceased was alive and is considered when distributing the net intestate estate so that the person who received it may be considered as having received his share and may reduce or diminish any entitlement to the net intestate estate. The gift which is transferred and settled for the beneficiary during the life-time of the deceased, will not form part of his estate but it will be taken into account in determining the share of the net intestate estate finally accruing to that beneficiary.”
25. In this case, Ngandori/Kirigi/8911 was given to the protestor’s husband who predeceased the deceased. The protestor’s husband died in 2010 while the deceased herein died in 2013. In my view, the strict application of this interpretation of section 42 of the [Law of Succession Act](#) is impaired to a certain extent. The succession court, therefore, must follow the evidence adduced. The deceased herein and the protestor’s husband invested on the land jointly and PW1 even stated that they paid some money to hve the land from the deceased.
26. RW1, on the other hand, confirms that the deceased did invest on the land alongside the protestor’s husband but she defended the presence of the 1st administrator on a part of the land. From this evidence, even though the gift inter vivos was not perfected before the death of the deceased herein, it is proved on a balance of probabilities that the protestor and her family are in occupation of the land Ngandori/Kirigi/8911 and rightly so through a gift by the deceased.



27. The administrators proposed that Land parcel number Ngandori/Kirigi/8878 be inherited in equal shares by Lily Kanini Njue and Jane Wangiri Mariga. The protestor proposed that it be inherited equally by Elizabeth Mumbi Njue, Lily Kanini Njue and Jane Wangiri Mariga. In her testimony, RW1 stated that she was not interested in it because she had been given another piece of land elsewhere. From the evidence adduced, the parties will be satisfied if Lily Kanini Njue and Jane Wangiri Mariga inherit that piece of land since RW1, Elizabeth Mumbi Njue, is not interested in it even though the protestor proposed to add her as a beneficiary to it.
28. The administrators stated that a part of Ngandori/Kirigi/8881 was sold to Kennedy Nthiga by the deceased and so the remaining piece should be divided amongst George Wanjau Samuel, Lily Kanini Njue, Elizabeth Mumbi Njue and Jane Wangiri Mariga. The protestor opposed this and proposed that the land be inherited in equal shared by the houses of the 6 children of the deceased namely; George Wanjau Samuel, Davis Nguu Njue, Lily Kanini Njue, Elizabeth Mumbi Njue, Jane Wangiri Mariga and Esther Wangechi Njue
29. The administrators did not produce any proof that Kennedy Nthiga had purchased a portion of the land, whether in the form of a sale agreement, payment receipts or other evidence. It would be unconscionable for a court to accept facts without evidence simply because they have been deposed. While it is possible that the portion of land was sold as a road passage for Kennedy Nthiga, this purported purchaser did not appear before court to assert or defend his interest. Further, neither did the administrators supply the court with documentary proof of sale of this portion of land.
30. It would have helped if the court had a way of ascertaining that the purchaser exists and that he transacted with the deceased prior to his death. On that basis, it is difficult to go by the administrators' proposal on distribution of this land at the risk of wasting the estate on unsubstantiated facts that were posed.
31. The summons for confirmation proposed that Land parcel Number Gaturi/Weru/681 be inherited by: Njagi Karukungi- 0.40Ha (a Purchaser) and the remainder to be held equally amongst George Wanjau Samuel, Davis Nguu Njue, Lily Kanini Njue, Elizabeth Mumbi Njue, Jane Wangiri Mariga, Esther Wangechi Njue, Lydia Wangiri Njue and Evelyne Wawira Wanjau. Nothing appears in evidence regarding a purchaser of 1 acre (0.4 ha) of this land. On the contrary, through submissions, the administrators concede that the deceased had let a homeless person named Gakungi Maguru live on the named land and they intended to keep it that way.
32. The protestor stated that Lydia Wangiri Njue and Evelyne Wawira Wanjau were strangers to the estate and that she did not know them as dependants of the deceased. The administrators defended the unknown people asserting that they were dependants under section 29 of the [Law of Succession Act](#). That provision makes room for dependants to benefit from the estate of the deceased but only after such dependency is proved. Section 29 of the [Law of Succession Act](#) states:

“For the purposes of this Part, “dependant” means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and



- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

33. No evidence was availed to fit the two, Lydia Wangari Njue and Evelyne Wawira Wanjau into the legal category of dependants.
34. The fate of Njagi Karukungi as a purported purchaser of a portion of the named land is the same as that of Kennedy Nthiga discussed hereinbefore. There is no evidence that he transacted with the deceased nor did he appear in court to defend his position. Moreover, as third party, his case ought to have been championed in a clear and precise manner to demystify his interest in the property but this was not done in this case. Similarly, Gakungi Maguru cannot aptly be considered as a dependant, since he falls outside the meaning of dependants under section 29 of the LSA. In fact, he has simply been referred to as a homeless man helped by the deceased. Whatever the case, it remains unclear as to whether the administrators are referring to Gakungi Maguru or Njagi Karukungi, a purported purchaser for value, if at all.
35. In the case of Lydia Wangiri Njue and Evelyne Wawira Wanjau, they are simply mentioned as beneficiaries and defended as dependants of the deceased. However, their relation to the deceased was not clearly disclosed or explained, and there was no evidence to satisfy the requirements set out under section 28 of the *Law of Succession Act* which provides:

“In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the dependant;
- (c) the existing and future means and needs of the dependant;
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- (e) the conduct of the dependant in relation to the deceased;
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.”

(See also the case of *Eddah Wangu & another v Sacilia Magwi Kivuti (Deceased) Substituted with Ribereta Ngai* [2021] KEHC 1142 (KLR))

36. The protestor named additional assets of the deceased but failed to produce proof of their existence. It is the role of the administrators of the estate to identify and gather in the estate of the deceased for purposes of succession, and to administer it accordingly. In this case, this remains an unproven fact and the court has no way of ascertaining whether or not the said assets are in existence. Accordingly, in my view, that issue is indeterminable from the evidence available.

Disposition

37. In light of the foregoing, the protests have merit and should be partially allowed in the terms following.



38. The estate is directed to be distributed as follows:
1. Land parcel number Ngandori/Kirigi/5341 to be inherited wholly by George Wanjau Samuel;
 2. Land parcel number Ngandori/Kirigi/8911 to be inherited by Esther Wangechi Njue exclusively, to enjoy a life interest in it and to hold it in trust for her children Eric Wilhelm Njue and Beth Emma Wangui Njue.
 3. Land parcel number Ngandori/Kirigi/8878 to be inherited in equal shares by Lily Kanini Njue and Jane Wangiri Mariga.
 4. Land parcel numbers Ngandori/Kirigi/8877, Ngandori/Kirigi/8881 and Gaturi/Weru/681 to be inherited in equal shares by the 6 children of the deceased namely: George Wanjau Samuel, the Estate of Davis Nguu Njue (dcd), Lily Kanini Njue, Elizabeth Mumbi Njue, Jane Wangiri Mariga and Esther Wangechi Njue (As administrator of the estate of Elvis Samuel Njue (dcd)).
39. It is further ordered that a certificate of confirmation of grant be issued forthwith reflecting the aforestated mode of distribution.
40. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 22ND DAY OF APRIL, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:

Gaturu for Protestor

Muthoni N. for Administrators

Stella Kithinji - Court Assistant

