



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 53 OF 2009
IN THE MATTER THE ESTATE OF JOHN GITAU
WARURU (DECEASED)

FLORENCE WAMBUI GITAU 1ST

APPLICANT

JANET NJERI GITAU 2ND

APPLICANT

VEERSUS

JOYCE NJIRU KIBIKU 1ST

RESPONDENT

HANNAH WANJIRU GITAU 2ND

RESPONDENT

RULING

1. This ruling relates to the applications dated **26th March, 2021** filed by the applicant, Florence Wambui Gitau; seeking for **ORDERS THAT:**

1. Spent.

2. This honourable court be pleased to supervise the distribution of the estate of John Gitau Waruiru (deceased) in terms of paragraph 7 of the

annexed affidavit of Florence Wambui Gitau or otherwise as the court will deem just and equitable following a deadlock among the administrators.

3. The OCS King'eero Police Station to enforce the orders issued and supervise the survey process for the subdivision of the estate as per the orders of this court.

4. The grant issued to Florence Wambui, Janet Njeri, Joyce Njiru and Hannah Wanjiru be rectified in the following respects as provided for the Rule 43 (1) of the Probate Administration Rules:

a. The grant be rectified to include Naivasha LR/1556/ 132, which was inadvertently left out.

b. The said Naivasha LR/1556/132 be distributed in the following terms as previously agreed by beneficiaries by consent:

NAME:	SHARE:
JANET NJERI GITAU	1 ACRE
HANNAH WANJIRO GITAU	4.5ACRES

5. Costs of this application be in the cause.

2. The application is based on the grounds thereof and supported by affidavit sworn by Florence Wambui Gitau on 26th March, 2021.

3. She avers *inter alia* that she is a beneficiary of the deceased's estate. A previous grant had been revoked on account of fraud, following which a fresh grant was issued pursuant to a judgment delivered on **31st May, 2019**. The annexed court order is relied upon to demonstrate that the administrators, comprising the deponent and the respondents, were mandated to jointly consult with all beneficiaries to ensure a fair and equitable distribution of the estate, with express directions that no beneficiary or their family should be evicted from land occupied and that prior benefits received by some beneficiaries be considered in the final distribution.
4. Contrary to these orders, certain beneficiaries, particularly the family of Hannah Wanjiru and the late James Kamau Elijohn, have acted in breach by evicting two grandsons of the deceased from the only remaining estate property. The affected individuals were subjected to hostile living conditions, including denial of access to shared amenities such as sanitation facilities and water, ultimately forcing them to vacate and seek alternative accommodation. She attributes these events to a disregard of the court's directive aimed at preserving occupation and ensuring orderly distribution.
5. The estate has largely been depleted, leaving only one remaining asset, namely land parcel **Kabete/Kibichiku/1677/1676** measuring approximately **4.1** acres. Attempts to convene meetings among the

administrators to agree on distribution have failed, despite efforts made directly and through the intervention of the local chief. The annexed letter from the Chief of Wangige Location is relied upon to evidence that summons were issued to the parties to facilitate resolution, but the respondents failed to attend or engage, thereby frustrating the administrative process.

6. She proposes that the remaining property be distributed by allocating **1.5** acres each to herself and Janet Njeri Gitau, with the balance to be shared between Hannah Wanjiru and the estate of James Kamau Elijohn, considering existing developments on the land. She asserts that the latter beneficiaries had already received substantial portions of the estate, including land parcels, shares and cooperative interests, while she and Janet Njeri have not benefited proportionately. She therefore urges the court to intervene and supervise the equitable distribution of the remaining asset in accordance with the prior court orders and the demonstrated history of prior allocations.
7. The application is further supported vide supplementary affidavits sworn by Janet Njeri Gitau on **24th August, 2021** and **19th November, 2021**. She avers *inter alia* that the dispute over the estate has been longstanding and predates the current proceedings, tracing it back to as early as 2008 when attempts were made to evict certain

beneficiaries, particularly the grandchildren of the deceased, from the suit property.

8. In support of this assertion, she exhibits documentary evidence including a letter authored by the 2nd respondent seeking eviction, a police occurrence book extract evidencing reported incidents of violence and multiple letters from the area chief spanning several years, all of which collectively demonstrate a pattern of persistent attempts to remove the said beneficiaries from the property.
9. These acts extended to deliberate interference with their occupation, including the demolition of a toilet constructed by the grandchildren, as supported by additional documentary evidence. She maintains that contrary to the respondents' assertions of willingness to resolve the matter amicably, the annexed correspondence from the chief and related documentation demonstrate failed attempts at reconciliation and non-cooperation.
10. That the respondents have misrepresented the position of the estate by claiming that no other properties existed for distribution, yet evidence on record shows that substantial portions of the estate had previously been appropriated by certain beneficiaries. The applicants were excluded from earlier distributions and only now seek an equitable share of the remaining property, consistent with the court's prior directions. The previous distribution of the estate was irregular and disproportionately favored certain

beneficiaries, particularly the 2nd respondent and the late James Kamau Elijohn, who benefited extensively from various assets of the estate.

11. In support of this position, she references evidence relating to prior allocations and transactions involving estate property, including land parcels and shares and challenges the legitimacy and transparency of such dealings.
12. She also relies on documentary material indicating that the earlier grant under which some transactions were undertaken was irregular and that certain dealings with estate assets, including sales and transfers, were conducted without the consent of all beneficiaries or compliance with requisite procedures.
13. She further addresses the status of the remaining estate property, namely **Kabete/Kibichiku/1677/1676**, stating that a caution had been lodged against the title as early as **8th September, 2008** to preserve the property pending lawful distribution. A copy of the caution is exhibited to demonstrate that any dealings or developments on the land were restricted.
14. Despite the existence of the caution and the court's judgment revoking the earlier grant and directing orderly distribution, the 2nd respondent proceeded to erect permanent structures on the property, particularly in commercially advantageous sections. Photographic evidence annexed depicts ongoing developments on the land, which she asserts were undertaken in disregard of

both the caution and the court's directives. At the time the caution was placed, the property had no permanent developments and the subsequent construction was calculated to influence the eventual distribution by entrenching occupation over valuable portions of the land while relegating other beneficiaries to less advantageous areas.

15. She maintains that the continued occupation and development of the property by the 2nd respondent and the family of the late James Kamau Elijohn has effectively excluded other beneficiaries from meaningful use of the land. In conclusion, she reiterates that the most equitable mode of distribution would be one that ensures all beneficiaries share in both the commercial and agricultural portions of the remaining property, while considering prior benefits received by some beneficiaries. She maintains that those who have already received substantial portions of the estate should not benefit further from the remaining asset and urges this court to intervene to ensure a fair and just distribution in accordance with its earlier judgment and the evidence placed before it.
16. The application is opposed vide replying affidavit, further affidavit and supplementary affidavit sworn by Hannah Wanjiru Gitau on **3rd July, 2021, 9th July, 2021 and 20th April, 2022.**
17. She avers *inter alia* that she is a co-administrator of the deceased's estate. The allegations advanced by the

applicants are untrue and unsupported. She denies that any beneficiaries, including the alleged grandchildren of the deceased, were evicted from the property known as **Kabete/Kibichiku/1677/1676**, asserting that no evidence has been presented to substantiate such claims. There is no proof of any reports made to authorities or documentation evidencing displacement and therefore characterizes the allegations as unfounded.

18. She also disputes that any attempts at consultation were made through the Chief or otherwise, stating that no communication or summons were served upon her or brought to her attention. She confirms that pursuant to the judgment delivered on **31st May, 2019**, the administrators were required to consult all beneficiaries in distributing the estate and identifies the estate property as comprising **Kabete/Kibichiku/1677/1676** and **Naivasha LR/1556/132**.
19. While she expresses no objection to the proposed mode of distribution of the Naivasha property, she opposes the applicants' proposal regarding **Kabete/Kibichiku/1677/1676** on the basis that it is inequitable and inconsistent with the acreage of the land. The property measures approximately **4.1** acres and the applicants' proposal disproportionately allocates a larger share to fewer individuals. She sets out the list of beneficiaries as reflected in the court record and maintains that the estate should be distributed equally among them,

- including the family of the late James Kamau Elijohn, who survived him and is entitled to inherit his share.
20. That there was no prior unequal distribution of the estate as alleged by the applicants and the applicants themselves have benefited from the estate, including proceeds from the sale of **Maela Ndabibi Block 2/84** and allocations from **Naivasha LR/1556/18**, as reflected in the annexed certificate of confirmation of grant.
 21. She maintains that proceeds from shares held in entities such as KCB and BAT were minimal and applied towards estate liabilities and expenses and that certain cooperative societies referenced by the applicants ceased operations, rendering any benefits therefrom unavailable. She therefore urges that the estate be distributed in accordance with the law and the confirmed beneficiaries. She reiterates her position and clarifies the list of beneficiaries, indicating that the omission of her name in an earlier affidavit was inadvertent.
 22. She affirms that the estate should be distributed equally among all surviving beneficiaries, including the dependants of the late James Kamau Elijohn, in line with the applicable provisions of the Law of Succession Act. She annexes identification documents to confirm her identity and capacity in the proceedings.
 23. One of the applicants, Florence Wambui, is deceased, as evidenced by an annexed death certificate and therefore cannot maintain a claim to a share of the estate. She

further addresses the applicants' assertions regarding prior distribution, maintaining that the Naivasha property was subdivided in accordance with the court's judgment and that any allocation to the applicants was duly accounted for. The applicants had, at one point, acknowledged and accepted their share in the Naivasha property and therefore cannot now contest the distribution.

24. She also addresses the existence of developments on the **Kabete/Kibichiku/1677/1676** property, stating that some structures predate the judgment of **31st May, 2019** while others were constructed thereafter, as depicted in the annexed photographic evidence. She asserts that the property comprises both developed residential portions and undeveloped agricultural land, and that any distribution should consider existing occupation and developments so as not to displace beneficiaries already settled thereon.
25. She maintains that the applicants have not established any legal entitlement to a larger portion of the land and reiterates that the entire parcel should be shared equally among all beneficiaries. She concludes by maintaining that the applicants' claims of inequitable distribution and exclusion are unfounded, that the prior dealings with the estate were lawful and in accordance with the confirmed grant and that the appropriate course is for the court to uphold an equal distribution of the remaining estate

property among all beneficiaries as identified in the proceedings.

26. Grace Wariara, Rose Njoki Njau, Alice Wangare Githuku and Lilian Nyaucha Kamau have sworn affidavits dated **9th July, 2021** and **25th September, 2023**. They aver *inter alia* that they are daughters of the deceased and beneficiaries of his estate. Each of them confirms her identity and locus as a beneficiary, supported by annexed identification documents.
27. They collectively express concurrence with the mode of distribution proposed in the replying affidavit sworn by Hannah Wanjiru Gitau, thereby aligning themselves with the respondents' position on the administration and distribution of the estate. They adopt a uniform position that the estate properties, particularly **Naivasha LR/1556/132** and **Kabete/Kibichiku/1677/1676**, should be distributed in accordance with the framework set out in the replying affidavit.
28. In respect to the Naivasha property, they acknowledge the proposed allocation of specific acreage to named beneficiaries, while with regard to the Kabete property, they support its equal distribution among the listed beneficiaries, including the family of the late James Kamau Elijohn and the other surviving beneficiaries. The tabulated schedules annexed within the affidavits set out the respective beneficiaries and their proposed shares, thereby reinforcing the proposed mode of distribution.

29. The deponents further state that some beneficiaries have already established permanent residences and developments on portions of the **Kabete/Kibichiku/1677/1676** property. They urge that, in effecting the distribution, the court should consider such occupation and developments so that, as far as practicable, beneficiaries who have settled on specific portions retain those areas. This position is presented as a practical consideration to ensure stability and continuity in occupation following the eventual subdivision of the property.
30. Additionally, Lilian Nyaucha Kamau clarifies her identity and name variations, explaining that she is also known as Lilian Kinyatti, and annexes a copy of her passport in support thereof. She affirms that the different names refer to the same person and confirms her entitlement as a beneficiary of the estate. They collectively urge the court to adopt the proposed distribution model as set out in the replying affidavit.
31. The applicants have filed written submissions dated **26th November, 2021** while the respondents have not filed written submissions.

ANALYSIS AND DETERMINATION

32. I have read the application before this court, the responses thereto and the filed submissions.

33. The legal question that emerges is whether the Applicants have established a sufficient basis for the court to depart from an equal distribution and to instead impose a differentiated allocation premised on alleged prior benefits and inequities.
34. In In re Estate of Chasala (Deceased) [2026] KEHC 4140 (KLR) the court pronounced itself as follows: “... **15. The Court having considered the grounds in support of the application, the Respondent’s case in her Replying Affidavit, both parties’ submissions as well as the evidence tendered herein in its entirety, the court identifies one pertinent issue for determination being, whether the Application, framed as a review under Section 47 of the Law of Succession Act, is procedurally viable to challenge the substantive distribution of the confirmed grant in Succ. Cause No. 205 of 2014. 16. To start with, the said Section 47 of the Law of Succession Act which the Application is grounded on grants this Court expansive jurisdiction in succession matters. The court however notes that the substantive challenge herein targets the distribution decreed in a confirmed grant of 24th January 2019. The legal framework for nullifying or amending the distribution contained within a confirmed grant is primarily governed by Section 76 of the Law of**

Succession Act, which addresses revocation or annulment. 17. The Applicants allege that the Respondent concealed the judicial order from P&A 250/2015 when obtaining the rectified grant, thereby rendering the proceedings defective. Such an allegation falls squarely within the grounds for revocation under Section 76(b) or 76(c) Law of Succession Act on concealment of a material fact or untrue allegation of fact. 18. The court takes the position that although the application is styled as a ‘review’ application, the court must apply the rigorous standards set out in Section 76 when assessing whether the confirmed grant contains a defect substantial enough to warrant alteration of vested rights. The application shall therefore be treated as one seeking the removal of Lochwi Lokwanga Lokindori’s name due to an alleged defect in the process of confirming the grant in Succ. 205/2014...”

35. In In re Waiganjo (Deceased) [2026] KEHC 4091 (KLR) the court observed as follows: “... **8. The statutory bedrock governing the revocation or annulment of a Grant of representation is section 76 of the Law of Succession Act. The provision is couched in clear, unambiguous language, stipulating that a Grant of representation, whether confirmed or not, may be revoked or annulled at any time if the Court decides**

that: (a) the proceedings to obtain the grant were defective in substance; (b) the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. 9. The jurisprudence surrounding section 76 is unequivocal: probate proceedings operate in rem, meaning they bind the whole world. Consequently, the law demands the highest standard of utmost good faith from any individual petitioning the Court for a Grant of representation. The concealment of a prior Grant, the existence of other beneficiaries, or the true historical nature of the estate constitutes a fatal breach of this foundational duty...

36. While **Section 47** of the Law of Succession Act grants the court wide jurisdiction to supervise administration of estates, the substance of the applicants' claim, as correctly framed, touches on alteration of the effect of prior distribution and conduct of administrators. Such claims, in law, are closely aligned with the principles under **Section 76** of the Act relating to defective proceedings, concealment or inequitable administration. The applicants' reliance on annexures purporting to demonstrate prior

benefit and irregular dealings must therefore meet the threshold of cogent, verifiable evidence capable of displacing the presumption of equality among beneficiaries.

37. The dispute before this court revolves around the proper mode of distribution of the estate in circumstances where there is admitted deadlock among administrators and competing claims of prior benefit, occupation and entitlement.
38. The applicants' case is anchored on the court's earlier judgment of **31st May, 2019**, which required consultation and equitable distribution and they seek the court's supervisory jurisdiction to enforce that directive. Their position is reinforced by documentary annexures pointing to alleged eviction attempts, prior dealings with estate property and the existence of a caution restricting transactions over the suit land.
39. Conversely, the respondent challenges both the factual basis and legal sufficiency of those claims, disputing the alleged evictions, prior unequal distribution and the probative value of the annexures relied upon. The respondent instead advances a position grounded on equality of distribution among all beneficiaries, as reflected in the confirmed list of heirs.
40. On the other hand, the respondent's position is strengthened by the consistency of the beneficiaries' affidavits, which collectively support an equal distribution

model and recognize the existing occupation and developments on the land. The annexed documentary material, including the certificate of confirmation of grant and identification documents, lends formal support to the respondent's position on the identity of beneficiaries and prior allocations.

41. Further, the evidence of developments on the suit property introduces a practical dimension that the court cannot ignore, as it implicates the principle that distribution should, where possible, avoid displacement and preserve settled occupation.
42. The applicants' proposal, while framed as equitable, does not sufficiently reconcile these competing considerations, particularly in light of the acreage of the property and the number of beneficiaries entitled.
43. The tenor of the ruling of my sister Muigai J on 31st May 2019 was arrived at after a full hearing of the suit and the only remaining issue was distribution of the estate.
44. In this case the proposed distribution was to be equal and all the beneficiaries were to be involved and that as much as possible there was no movement from the position, they had already done development.
45. In the circumstances, I find that the applicants have not discharged the burden required to justify a departure from the general rule of equal distribution among beneficiaries. The material placed before this court does not establish, to the requisite standard, that there was prior distribution so

inequitable or unlawful as to warrant reallocation in the manner proposed.

46. Accordingly, and in disallowing the application I hold that:

(I) The estate property Kabete/Kibichiku/1677/1676 be distributed equally among all beneficiaries, while considering, as far as practicable, existing occupation and developments on the ground.

(II) The equal division shall be as hereunder;

(a) The family of the late James Kamau Elijohn

(b) Grace Wariara

(c) Rose Njoki Njau

(d) Alice Wangare Githuku

(e) Florence Wambui

(f) Janet Njeri Gitau

(g) Joyce Wanjiru Kibiku

(h) Lilian Kinyatti

(i) Hannah Wanjiru Gitau

(III) The parties be at liberty to seek the services of a qualified and registered surveyor to complete the exercise as well as the security protection from the local or the nearest police station.

(IV) Costs in the cause.

**Dated signed and delivered at Nairobi via video link
this 30th day of April 2026.**

H K CHEMITEI
JUDGE