

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
SUCCESSION CAUSE NO. 124 OF 2013

IN THE MATTER OF THE ESTATE OF CHARLES KABUGA JOSEPH (DECEASED)

JOSEPH MURIITHI KABUGA.....1ST ADMINISTRATOR

EUNICE MUTHONI KABUGA2ND ADMINISTRATOR

- VERSUS-

JAMLECK MURIUKI KABUGA.....3RD ADMINISTRATOR/PROTESTOR

J U D G M E N T

Background

1. The deceased died on 01st June 2012. A grant of letters of administration was issued to the 3 administrators jointly in his estate on 27th September 2023. The 1st and 2nd administrators filed summons for confirmation accompanied an affidavit proposing a mode of distribution of the estate. The 3rd administrator filed an affidavit of protest opposing the proposed mode of distribution. The estate comprised of L.R. No Ngariama/Ngiriambu/4685, shares in co-operatives, Plot No.20 Njukiri Market, shares in ICDC and a motor vehicle.

Summons for confirmation of Grant

2. According to the summons for confirmation of grant, the deceased was survived by 11 beneficiaries namely: Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.
3. The mode of distribution proposed was as follows:
 - 1) Land parcel number Ngariama/Ngiriambu/4685 to be distributed as follows:
 - i. 0.05Ha to be held by Salome Wangechi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, Susan Wanjiku Kabuga and Rose Kabari Kabugah.
 - ii. 0.05Ha to be held by Joseph Muriithi Kabuga, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga and Jamleck Muriuki Kabuga.
 - iii. Undefined share to be held by Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga,

James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga

- 2) Shares in Ngari Njuki Housing Coop Society Limited under certificate no. 6673 be sold by the administrators and the proceeds be shared equally amongst Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.
- 3) Shares in Gichugu Housing Cooperative Society Limited be sold by the administrators and the proceeds be shared equally amongst Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.
- 4) Shares with ICDC Investment Co. Ltd be sold by the administrators and the proceeds be shared equally amongst Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.
- 5) Motor vehicle registration number KLK 909 be registered in the names of the administrators and disposed by way of sale and the proceeds be shared equally amongst Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.
- 6) Plot No. 20 Njukini Market be registered in the names of the administrators and be disposed by way of sale and the proceeds be shared equally amongst Salome Wangechi Kabuga, Joseph Muriithi Kabuga, Eunice Muthoni Kabuga, Cecily Wanjiku Kabuga, Lizzie Njoki Nguu, John Muriuki Kabuga, Zakayo Mwangi Kabuga, James Ngari Kabuga, Susan Wanjiku Kabuga, Rose Kabari Kabugah and Jamleck Muriuki Kabuga.

The Protest

4. The protestor filed an affidavit of protest dated 28th February 2025 challenging the proposed mode of distribution which he asserted had not been discussed. Consequently, he declined to sign the consent thereon. He deposed that the 2nd

administrator should be removed from among the appointed administrators, and 2 be administrators left who are enough to administer the estate. That the 2nd administrator has been making unilateral decisions for the estate and she does not involve the other beneficiaries.

Response to the Protest

5. In response to the protest, the 1st and 2nd administrators filed an affidavit stating that the family agreed that it was best to distribute the estate equally amongst the beneficiaries. At this meeting, the protestor was an attendant. They stated that the protestor has not substantiated his protest to the proposed mode of distribution which is fair to all the beneficiaries. They stated that the matter had been previously referred to mediation and a settlement was reached.
6. They produced a copy of the mediation settlement agreement as evidence and stated that the mediator captured the property number erroneously, prompting the filing of the summons for confirmation. They stated that the protest comes to them as a surprise and that the protestor has not given reasons why he wants the 2nd administrator removed from office. They urged the court to dismiss the protest and confirm the grant according to the mode of distribution proposed.

The Hearing

7. The protest was heard *viva voce*.
8. PW1 was the protestor. He stated that he was opposing the mode of distribution proposed because it was reached without his participation as a co-administrator. That some beneficiaries have taken sides without being transparent or informing him as co-administrator. Himself and some beneficiaries have not signed the consent as the case should be. His main issue was with distribution of parcel number Ngariama/Ngiriambu/4685 and Plot No. 20 Njukini Market. Regarding Plot No.20 Njukini Market, he stated that he opposed its sale and he preferred that since it already generates a good amount of rental income, the beneficiaries should continue enjoying the rental income from it in equal shares.
9. He stated that parcel number Ngariama/Ngiriambu/4685 has a 4 bedroomed bungalow on it and the mode of distribution does not make any sense. That it is not know which side of the property the 0.05Ha will be hived from and if this portion will have the house on it. In cross-examination, he confirmed that he had not been excluded from the list of beneficiaries. That the matter had been referred to mediation twice but no agreement was reached. That parcel number

Ngariama/Ngiriambu/4685 measured 3.65Ha and it should be subdivided by a surveyor.

10. He stated that he had never been called to any meeting where distribution of the estate was discussed. That the beneficiaries have clustered in to 2 groups and they do not support his point of view. He stated that the consent form shows that not all the beneficiaries were involved and that the 2nd respondent had been making unilateral decisions.
11. PW2 was Rose Kabari Kabugah who stated that she was not consulted about the mode of distribution proposed. She stated that the geographical situation of parcel number Ngariama/Ngiriambu/4685 is not clarified through survey and it was unclear to her why 6 beneficiaries were getting 0.05Ha of the land. Further, the portion of it proposed to be held equally by the 11 beneficiaries is undefined. She opposed distribution proposed in paragraphs 2, 3 and 4 of the affidavit and stated that she was not consulted.
12. She further stated that the administrators did not provide the value of Motor vehicle registration number KLK 909 and the size and value of Plot No. 20 Njukini Market has also not been provided. She proposed that the estate be distributed by casting of lots. On cross-examination, she stated that she was not sure whether all of the deceased's properties had been included in the list of properties. She conceded that she was included in the list of beneficiaries.
13. PW3 was Cecily Wanjiku Kabuga who stated that she was never involved in the proceedings and only learned about them in court. She denied being involved in choosing the administrators and she knew about it later after appointments had been done. She supported the removal of the 2nd administrator so that the estate is only administered by the 1st and 3rd administrators.
14. On cross-examination, she confirmed that she was included in the list of beneficiaries but she denied being involved in distribution of the estate. That the mode of distribution proposed is unclear and she does not understand it. That the parties were referred to mediation but no agreement was reached. She also stated that there is a house and a coffee milling machine on parcel number Ngariama/Ngiriambu/4685.
15. AW1 was the 2nd administrator who stated that the estate of the deceased ought to be distributed equally amongst the beneficiaries. That a meeting was convened in the presence of the Chief but PW1, PW2 and PW3 did not attend. In cross-examination, she stated that there were no minutes captured for the said meeting.

When the administrators were selected, the protestor was not present at that meeting.

16. That the documents concerning the proceedings were shared with the protestor through WhatsApp. She stated that there is a house and a coffee milling machine on parcel number Ngariama/Ngiriambu/4685 but the milling factory is not in working condition. That the deceased wished that the 4 bedroomed house on parcel number Ngariama/Ngiriambu/4685 would be inherited by his daughters. After setting aside the mediation settlement agreement, no further agreement was reached.

Parties' Submissions

17. The protestor submitted that until the protest was filed, the 1st and 2nd administrators had not disclosed to the court that parcel number Ngariama/Ngiriambu/4685 had a 4 bedroomed bungalow and a coffee milling factory erected on it. That the acreage and value of Plot No.20 Njukini Market was not ascertained and so the estate was unascertained in terms of section 83(e) of the LSA. He argued that the 2nd administrator has not been diligent in her duty of administering the estate so far and this is sufficient ground to remove her under section 76 of the LSA. He urged the court to exercise its discretion under section 73 of the LSA to vary its order appointing the administrators by removing the 2nd administrator.
18. He relied on section 71(2)(d) of the LSA and Rule 40(4) of the Probate and Administration Rules. He argued that the court should not make an order distributing the estate until it is certain that the estate and the beneficiaries have been properly ascertained. Further reliance was placed on the case of **In the Matter of the estate of Ephraim Brian Kawai (Deceased) Kakamega HCSC NO. 249 of 1992 (Waweru J) (unreported)**. He stated that if the distribution proceeds as proposed, some parties will be disadvantaged. He prayed that the court allows the family more time to discuss the matter and agree on a more equitable distribution of the estate.
19. In their submissions, the 1st and 2nd administrators stated that the protest is a delay tactic which the protestor has employed to delay administration of the estate. That the matter was referred to mediation which failed because the protestor and some of the beneficiaries were unwilling to participate. They argued that the part of parcel number Ngariama/Ngiriambu/4685 which has the 4 bedroomed house and a grave site should be given to the daughters of the deceased as per his wishes and the rest of the property be held by the sons of the deceased equally. As for Plot No.

20 Njukini Market, they proposed that it be sold and the proceeds thereof be divided equally amongst the children of the deceased.

20. They relied on section 38 of the Law of Succession Act (LSA) and the cases of **In re Estate of Elijah Mbondo Ntheketha (Deceased) [2022] KEHC 2627 (KLR)** and **M'Murithi v Murithi [2015] KECA 347 (KLR)**. They argue that there is no reason why the court should not divide the estate equally amongst the beneficiaries. They also stated that the protestor has not proved any grounds under section 76 of the LSA to warrant removal of the 2nd administrator from office. Further, that the protestor has not proved what prejudice him and the other beneficiaries affiliated to him will suffer if the mode of distribution is ordered.

Issues for Determination

21. The issues for determination are:

- 1) Whether the 2nd administrator should be removed as administrator of the estate; and
- 2) How the estate of the deceased should be distributed.

Analysis and Determination

22. PW1 and PW2 testified that the 2nd administrator has been making unilateral decision on how the estate should be distributed. That the 1st and 2nd administrators excluded the protestor who is also the 3rd administrator from decisions involving the estate. According to the court record, on 27th September 2023, the following 9 beneficiaries were present when the administrators were appointed: Jamleck Muriuki, Rose Kabuga, Cecily Kabuga, Eunice Kabuga, Susan Kabuga, Salome Kabuga, Liz Kabuga, James Kabuga and John Kabuga.

23. The Judge placed on record the following note:

"I note that the mother of the beneficiaries one Millicent Wambua Kabuga passed and there is no administrator at the moment. The beneficiaries have agreed to appoint the following beneficiaries.

- 1) Joseph Murithi Kabuga*
- 2) Eunice Muthoni Kabuga*
- 3) Jamleck Muriuki Kabuga"*

24. An order was made that a grant be issued in the names of the 3. It is now the protestor's case that the 2nd administrator started making unilateral decision regarding the estate and that she is no longer fit to be an administrator. Where it is proved on a balance of probabilities that an administrator is out to frustrate administration of an estate, the court as the appointing authority can remove such

an administrator under section 76 of the LSA. In the case of **In re Estate of Makokha Idris Khasabuli (Deceased) [2020] KEHC 4522 (KLR)**, the court admonished administrators who were not working in harmony with one another to administer the estate. It was stated:

“The administrators should eschew the spirit of competition and rivalry that they are displaying, and get on with the task of administration of the estate of their late father. They hold office on appointment by the court. They do not hold it as a matter of right. They are accountable to the appointing authority, the court. Should it appear to the court that they are unable to discharge their duties as such, for among other reasons, failure to cooperate, hostility, hatred, etc., the appointing authority retains the power to remove them or any of them through revocation of their grant or appointment. Section 76(1) of the Law of Succession Act, Cap 160, laws of Kenya, allows the court to act suo moto, to remove an administrator. They must, therefore, cooperate with one another, and respect one another. There is no shortage of persons to appoint as administrators...The other thing, administration of estates does not last forever. Administration should be for a limited period of time.” [Emphasis added]

25. While it is possible that there might be differences between the protestor and his co-administrator, the 2nd administrator, no probative evidence has been availed on a balance of probabilities to satisfy the court of the need to remove the 2nd administrator.

26. On the issue of distribution of the estate, Section 38 of the Law of Succession Act offers guidance on distribution of an estate where the deceased died intestate leaving children but no spouse, 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.”
[Emphasis added]

27. Keeping this in mind, there are a few places where the protestor’s and administrators’ cases converge. These regard distribution of Shares in Ngari Njuki Housing Coop Society Limited, Shares in Gichugu Housing Cooperative Society Limited and Shares with ICDC Investment Co. Ltd. For these 3, the distribution is uncontested. For part of parcel number Ngariama/Ngiriambu/4685, PW1, PW2 and

PW3 stated that the mode of distribution is unclear and that the property has a house and a coffee milling factory on it, a fact that was not disclosed initially. For Plot No. 20 Njukini Market, PW1 and PW3 stated that its value was not disclosed. PW1 preferred that it be retained as is and the beneficiaries enjoy rental income from it since it is already fetching a decent amount of rental income but the amount is not disclosed.

28. Regarding both properties, the 1st and 2nd administrators stated that they would like the properties to be distributed equally amongst all the beneficiaries. The goal in applying section 38 of the LSA is to attain equitable distribution of the estate which would be attained through equal distribution. (see **M'Murithi v Murithi (supra)**). The protestor's position is that the matter should be referred to further discussions amongst the beneficiaries to reach a fair distribution.

Disposition

29. In my view, this court should allow the mode of distribution proposed in paragraphs 2, 3 and 4 of the affidavit in support of the summons for confirmation of grant for Shares in Ngari Njuki Housing Coop Society Limited, Shares in Gichugu Housing Cooperative Society Limited and Shares with ICDC Investment Co. Ltd. It is so ordered.

30. Regarding parcel number Ngariama/Ngiriambu/4685 and Plot No.20 Njukini Market, the court hereby orders that they be distributed in equal shares to all the beneficiaries. This order shall pend for a period of 45 days within which time all the beneficiaries will be required to attempt further discussions towards distribution of these 2 properties and file an appropriate consent in court. If within such time no consent is filed in court, the distribution stated herein shall proceed as ordered by the court.

31. Orders accordingly.

Delivered, dated and signed at Embu High Court this 29th day of April, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Ms. Ombongi holding brief for Rugaita for 1st and 2nd Administrators
2. Jamleck Muriuki Kabuga

3. Francis Munyao - Court Assistant