



In re Estate of Samuel Kinyanjui Machungu (Deceased) (Succession Cause 36 of 2024) [2026] KEHC 5425 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 36 OF 2024
SM MOHOCHI, J
APRIL 28, 2026**

BETWEEN

MBUGUA KINYANJI PETITIONER

AND

JANE WACHECHI NJUGUNA OBJECTOR

RULING

1. This cause relates to the estates of Samuel Kinyanjui Muchungi died intestate on 5th December, 2015.
2. This file was transferred to this Court on 28th November, 2023 in HCCC Misc. App. No. E050 of 2023 upon discovery that the Magistrate's Court lacked pecuniary jurisdiction.
3. A grant of letters of Administration was issued to the Mbugua Kinyanjui on 9th May, 2022 in Nakuru Chief Magistrates Court Succession Cause No. E218 of 2022.
4. The Petitioner through Summons dated 26th February, 2024 sought confirmation of the grant issued with a proposed mode of distribution.
5. The Objector subsequently, filed Summons for confirmation of Grant dated 19th March, 2024. She annexed a signed consent by the beneficiaries save for the Petitioner and a proposed mode of distribution.
6. The Objector filed an Affidavit of Protest dated 26th November, 2024. The Petitioner filed a Further Affidavit sworn on 12th March, 2025 in response.
7. The deceased at the time of death was survived by the following: -
 - a. Rebecca Kinyanjui Widow (now deceased)
 - b. James Njuguna Kinyanjui Son (Deceased) represented by Jane Wangechi Njuguna



- c. Peter Njoroge Kinyanjui Son (Deceased) represented by Elizabeth Wangari Njoroge.
 - d. Mbugua Kinyanjui Son
8. The properties listed by the Petitioners as forming part of the estate of the deceased are as follows:
- a. Umoja 1 /Block 109/2530
 - b. Nyandarua/Sabugo/14 [comprising 25 single residential units & 8 single commercial units
 - c. Title No. Solai/Ndungiri Block 3/551 at Wanyororo
 - d. Eight [8] bedroomed-house [deceased matrimonial home] erected on Title No. Nyandarua/Sabugo/14
 - e. Undeveloped portions of title No. Nyandarua/Sabugo/14
9. The matter proceeded by way of viva voce evidence.

Objector's Case

10. OW1 Jane Wangechi Njuguna wife of James Njuguna Kinyanjui, son of the deceased herein who had gone missing for over 20 years. She testified that the Petitioner was never left in Umoja Block 109/2530 it belonged to the deceased the Petitioner was only renting. That he is not entitled to the renovation that he made and it should therefore be divided equally as well as the Nyandarua Property 8 acres as per the affidavit of protest.
11. As for Solai/Ndungiri Block 3/551 (Wanyororo B) she stated that it was acquired by her husband and did not form part of the estate. She produced list of documents dated 14th January, 2021 P Exh. 1 and 2.
12. In cross examination, she stated that the Affidavit of 1986 was signed by both the seller and her deceased husband. That she has consent from all the beneficiaries including Elizabeth wife to Peter Njoroge. That the deceased never divided his property when he was alive. She disagrees with the proposal by the Petitioner as he is taking the most valuable assets. That his are stone structure's while Peter's wife has timber structures.

Petitioner's Case

13. PW1 Mbugua Kinyanjui. He stated that before the deceased died, he gave James Njuguna the Wanyororo property in 1993 and him the Umoja property in 1995 and that he has never been a tenant. He added that the titles were not out and they could have changed ownership.
14. That the deceased sold a matatu through Moses Muchiri to acquire land on behalf of James and the title might be in James' name but he was given the money to purchased. That the affidavit presented is not deponed, commissioned or signed by James Kinyanjui.
15. That he convened a meeting on 11th March, 2022 by his family and that of Elizabeth, they went to the chief before moving to Court and they agreed. The Objector was not in attendance but those in attendance consented. That Elizabeth was incited not to sign.
16. There is a timber and cement structure and everyone was to get a mix but the 8-bedroom house was to be inherited by him as the lastborn according to culture and nobody else can live there. The Objector declined to signed the consent and the ones signing the consent are Jane's and Elizabeths' children. that his occupation of Umoja house has never been challenged.



17. In cross examination, he there is a front house where rent is 9,000 and 11,000 where he and Elizabeth are collecting rent to the exception of the Objector. Some are complete others are incomplete. Elizabeth collects rent from 16, 17, 18, 19, 20, 21, 23, 24, 27 and 29. Elizabeth lives where she will be receiving her share. Peter was not left anything as he died earlier. He confirmed he has no problem if Elizabeth gets the 8 bedrooms.
18. In re-exam he confirmed that Elizabeth cultivates in Sabugo where there are 6 acres.
19. PW2 Moses Muchiri brother to the deceased's wife. He stated that he has known the deceased and his family as well as all his assets. He stated that the maji moto land was purchased out of proceeds of sale of motor vehicle KBZ pick up that belonged to the deceased in 1990. That it was sold for Njuguna to get a place as he then lived in his parents' land.
20. He sold the vehicle, took the proceeds to the deceased and accompanied him in search for a plot and acquiring the same. The title was registered in Njuguna's name but the money belonged to the parents. That Njuguna and Mbugua had received their share but Peter had not.
21. That Njoroge had a family, that he summoned all of them to make a provision for Njoroge Peter. The Objector came but refused. He added that the last born retains the house of the deceased as per culture. That Mbugua has not assigned him prime plots and that the wife of Peter never complained.
22. Petitioner's proposal:

Property	Beneficiary	Share
Umoja 1 /Block 109/2530	Mbugua Kinyanjui	whole
Residential units/shops erected on title Nyandarua/ Sabugo/14 being shops number 1,2,3,4,29 and 30	Mbugua Kinyanjui	whole
Residential units/shops erected on title Nyandarua/ Sabugo/14 being shops number 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27 & 28	Peter Njoroge Kinyanjui [Represented by his widow Elizabeth Wangari Njoroge]	whole
Residential units/shops erected on title Nyandarua/ Sabugo/14 being shops number 5,6,7,8,9,10,11,12,13,14, & 15	James Njuguna Kinyanjui [represented by his widow Jane Wangechi Kinyanjui]	
Wanyororo Bahati	James Njuguna Kinyanjui	whole
Undeveloped Portions of Title No. Nyandarua /Sabugo/14	Mbugua Kinyanjui Peter Njoroge Kinyanjui James Njuguna Kinyanjui	Equal Shares.



23. Objector's Proposal

Property	Description	Beneficiary & Share
Umoja 1/Block 109/2530	To be sold	
Nyandarua/Sabugo/14	8-bedroom house	Mbugua Kinyanjui (whole)
	9 residential units and 4 shops (No. 1, 2, 3, & 4 and an unfinished shop)	Mbugua Kinyanjui (whole)
	10 Residential Units and 3 shops (No 5 and 2 unfinished shops)	Jane Wangechi Njuguna & her Children (whole)
	10 Residential Units and (3 shops No 6 and an unfinished shop)	Elizabeth Wangari and her children(whole)
Remainder of the undeveloped areas	To be subdivided equally	
All mature trees	To be harvested and proceeds to be shared equally	

Analysis and Determination

24. I have considered the material placed before me and the issues for determination are
- i. What properties can properly be considered as part of the estate
 - ii. Whether Title No. Solai/Ndungiri Block 3/551 at Wanyororo forms part of the estate.
 - iii. How should the estate of the deceased be distributed.
25. I have perused both the Magistrate's Court file and the current High Court file. The parties have only availed ownership documents for two properties, namely Nyandarua/Sabugo/14 and Solai/Ndungiri Block 3/551. No documentary evidence has been produced in respect of the other properties alleged to form part of the estate.
26. The Court is therefore constrained to determine the estate distribution primarily on the basis of the two properties whose ownership documents are on record.
27. As regard the second issue, the Petitioner, argues that in as much as the Solai/Ndungiri Block 3/551 is registered in the name of James Njuguna Kinyanjui, the same formed part of the deceased's estate as the bequeathed the same to James Njuguna Kinyanjui in his lifetime where his family, including the Protestor herein have settled on. The objector insist that it was purchased by her husband and produced documents that were not legible to suggest the property was purchased in 1986.
28. A gift inter vivos must be complete and unconditional and the donor must have divested himself of ownership. Despite PW2 testifying to being part of the purchase procession and being the one who



sourced the buyer of the pick-up owned by the deceased, there is really no evidence to show that deceased provided the purchase price but caused registration in the name of his son or that the deceased gave the son property to settle him.

29. If the Court were to accept that the property was given to the deceased son and subsequently registered in the deceased's son name then it would not form part of the estate and would devolve exclusively to James Njuguna's house. In such circumstances, it would be excluded from succession proceedings.
30. It is telling that the deceased facilitated the ownership of one property in favour of a single child including acquisition of title yet did not extend the same to the others. This selective action raises doubt as to whether he intended to make equal provision inter vivos.
31. The fact that the ownership documents were acquired during his lifetime demonstrates that he was fully aware of the transactions and had he wished could have similarly bequeathed ownership of the other properties especially the one the Petitioner claims to have been bequeathed.
32. The question that begs is why would the deceased facilitate the whole process of getting his son property in 1993 up to acquiring title documents at his own expense including leaving himself out of ownership of any property?
33. In the same breadth, the law is clear that registration confers prima facie indefeasible ownership.
34. Section 26 (1) of the [Land Registration Act](#) provides as follows:
 - “(1) the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements restrictions and conditions contained or endorsed in the certificate and title of that proprietor shall not be subject to challenge except-
 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”
35. The issuance of title in the 1990s lends weight to the Objector's position that Solai/Ndungiri Block 3/551 was acquired independently by her late husband.
36. The evidence of PW1 and PW2, being unsupported, cannot displace the indefeasibility of title in the circumstances and further cannot not be considered for purposes of distribution.
37. Accordingly, the Court is satisfied that Solai/Ndungiri Block 3/551 does not form part of the estate of the deceased and is excluded from the succession proceedings.
38. The final question that arises is the appropriate mode of distribution among the beneficiaries.
39. Section 38 of the [Law of Succession Act](#) provides that where an intestate has left children but no spouse, the net estate shall devolve equally among the surviving children. Representation by the widows of the deceased's sons is recognized under Section 41 of the Act.
40. The Court is not persuaded that cultural considerations such as the lastborn inheriting the matrimonial home can override the statutory requirement of equality. Be that as it may it appears all beneficiaries agree that the Petitioner gets the 8-bedroom house.



41. In the premise, Nyandarua/Sabugo/14 shall be distributed as follows: -

Property	Description	Beneficiary & Share
Nyandarua/Sabugo/14	8-bedroom house	Mbugua Kinyanjui (whole)
	9 residential units and 4 shops (No. 1, 2, 3, & 4 and an unfinished shop)	Mbugua Kinyanjui (whole)
	10 Residential Units and 3 shops (No 5 and 2 unfinished shops)	Jane Wangechi Njuguna & her Children (whole)
	10 Residential Units and (3 shops No 6 and an unfinished shop)	Elizabeth Wangari and her children(whole)
Remainder of the undeveloped areas	To be subdivided equally	
All mature trees	To be harvested and proceeds to be shared equally	

42. As for the properties without ownership documents the same shall be distributed once the beneficiaries can prove ownership.

43. This being a family matter, there shall be no orders as to costs.

It is so ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 28TH DAY OF APRIL, 2026

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MOHOCHI S.M

JUDGE

