

REPUBLIC OF KENYA
MILIMANI HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 397 OF 1994
IN THE MATTER OF THE ESTATE OF PETER MUIRURI
GITONGA

JUDGMENT

INTRODUCTION

1. The deceased herein died on 10th August 1993. Initially grant was issued jointly to Veronica Wanja Muiruri and Anthony Gitonga Muiruri however, Veronica Wanja Muiruri died prior to the grant being confirmed. A fresh grant was issued to the Anthony Gitonga Muiruri and Martin Njenga Muiruri on 17th January 2024. Vide Summons dated 10th July 2025, presented under Sections 71(1) of the Law of Succession Act and Rule 40 of the Probate and Administration Rules, the administrators seek that the Grant be confirmed.
2. The proposed mode of distribution of the sole asset of the Estate LR No. 145/ 31 (IR No. 30751) is set out at paragraph 4 of the supporting affidavit sworn by the administrators on even date. Also attached is a consent executed by the beneficiaries of the estate, Save for James

Mwangi Muiruri, Estate of Jane Njeri Ndungu and John Ngigi Muiruri.

3. Having directed that those who had not signed proceed and file affidavits of protest. Only one protest was filed within the prescribed time. The Protestor, James **Mwangi Muiruri** opposes the proposed mode of distribution, on the basis that there was an earlier subdivision and he was not consulted on the current mode of distribution.
4. The relevant provisions of the law on confirmation of grant and distribution of estate asset is Section 71 of the Law of Succession Act which provides-

Section 71. Confirmation of grants

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.

5. Rule 41 of the Probate and Administration Rules allows for the filing of protests and their hearing. I have considered the protest filed herein. The protestor is aggrieved that the current proposal does not conform with an earlier subdivision. He does not suggest that the proposed distribution offends Section 38 of the Law of Succession Act which provides-

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.

6. Section 55 of the Law of Succession of the Act makes it clear that any action taken to divide the estate of the deceased prior to confirmation of the grant is of no effect.

Section 55. No distribution of capital before confirmation of grant

(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.

7. The supposed distribution of the estate prior to confirmation is therefore of no effect. Consequently, the protest herein is dismissed. The grant is confirmed the Estate will be distributed in accordance with the proposal in paragraph 4 of the affidavit sworn by Anthony Gitonga Muiruri on 10th July 2025.
8. On account of the relationship between the parties, there shall be no order as to costs.
9. Parties are at liberty to appeal, the Party exercising their right to do so within 30 days.

It is so ordered

**SIGNED, DATED AND DELIVERED IN VIRTUAL COURT
THIS 8th DAY OF MAY 2026.**

**P. M. NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant

Wachanga holding brief Njenga for Administrator