

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT PROBATE AND ADMINISTRATION CAUSE NO.**

**24 OF 2023**

**IN THE MATTER OF THE ESTATE OF ROBINSON MUMENYA**

**GIKUHI (DECEASED)**

**GEORGE**

**NDEGWA**

**MUMENYA**

**.....PETITIONER/RESPONDENT**

**VERSUS**

**WAMBUI KOGI MAKAU.....PROTESTOR**

**JUDGEMENT**

1. The Petitioner/Respondent in this matter **GEORGE NDEGWA MUMENYA** filed in the High Court a Summons dated **18<sup>th</sup> August 2020** seeking confirmation of the Grant of Probate made to him on **30<sup>th</sup> September 2016** in response to the Summons for Confirmation of Grant.
2. In response to the summons for confirmation of Grant the Protestor **PROFFESSOR WAMBUI KOGI - MAKAU** filed an Affidavit of Protest dated **25<sup>th</sup> August 2021**. The matter

was referred for Court Annexed Mediation (**CAM**) but no agreement was reached. As such hearing of the protest proceeded by way of oral evidence.

### **BACKGROUND**

3. This succession cause relates to the estate of the late

#### **ROBINSON**

**MUMENYA GIKUHI** who passed away on **2<sup>nd</sup> July 2004**. A copy of the Death Certificate Serial Number **862216** is annexed to the cross-petition dated **29<sup>th</sup> September 2005**.

The Deceased was a polygamous man who had two (2) wives namely **Nancy Wangu** (1<sup>st</sup> wife) and **Grace Wanjiru** (2<sup>nd</sup> wife) who both pre-deceased him and a total of fifteen (15) children. The 1<sup>st</sup> wife had eight (8) children whilst the 2<sup>nd</sup> wife had seven (7) children. The names of those who survived the Deceased were;-

- (i) Mary Nyangendo Mumanya.**
- (ii) Anthony Wachira Mumanya.**
- (iii) Erastus Wambugu Mumanya.**
- (iv) Patrick Njama Mumanya,**
- (v) George Ndegwa Mumanya.**

- (vi) Wambugu Mumunya.**
- (vii) George Wamai Mumunya.**
- (viii) Charles Kiragu Mumunya.**
- (ix) Rahab Nyangendo Wambugu.**
- (x) Anne Waruguru Nganga.**
- (xi) Wambui Kogi - Makau.**
- (xii) Wangui Kamau.**
- (xiii) Anne Gakena Mbatia.**

4. There has been relentless and protracted litigation over this estate since the demise of the deceased. Initially there was a challenge to the written will left behind by the Deceased. In that will dated **24<sup>th</sup> June 2004** the Deceased named his son **George Ndegwa Mumunya** as Executor. The Respondent petitioned for Grant of Probate on **19<sup>th</sup> April 2005**. The Objector filed an Objection to making of Grant dated **16<sup>th</sup> June 2005** alleging that the will was not genuine, was not executed in accordance with the law and contending that the Deceased died intestate.
5. That objection as duly heard and vide a Ruling delivered on **30<sup>th</sup> September 2016**, **Hon. Lady Justice Ougo** found

that the written will dated **24<sup>th</sup> June 2002** was properly executed by the Deceased and complied with **Section 11** of the **Law of Succession Act, Cap 160 Laws of Kenya**. The Judge directed that Grant of Probate do issue to the Respondent which Grant was issued on **30<sup>th</sup> September 2016**. The court further directed that a Summons to have the grant confirmed be filed.

6. The Respondent did in compliance with this decision file a summons of confirmation of Grant dated **18<sup>th</sup> August 2020**. The Protestor then filed this Protest to confirmation of the Grant.

### **THE EVIDENCE**

7. The Protestor **PROFESSOR WAMBUI KOGI - MAKAU** told the Court that she was a daughter to the deceased and stated that she had filed the protest against confirmation of the Grant on her own behalf and on behalf of her siblings namely
  - **Rahab Nyangendo Wambugu**
  - **Late Serah Nyawira Gichuru (represented by her daughter Anne Wangu Gichuru)**

- **Anne Waruguru Nganga**
- **Mary Nyangendo Mumanya**
- **Mercy Wangui Mbatia**
- **Erastus Wambugu Mumanya**

8. The Protestor complains that the written will dated **14<sup>th</sup> June 2004** is unconstitutional and discriminatory as the married daughters of the Deceased were not provided for in the said will. That upholding the said will run contrary to local and international laws against discrimination on the basis of gender. The Protestor cited **Article 27** of the **Constitution of Kenya 2010** which guarantees to all persons equality and freedom from discrimination.
9. The Protestor faults the Respondent for proceeding to subdivide and distribute the estate while the decision on her objection dated **16<sup>th</sup> June 2005** was still pending delivery. She avers that she and her sisters contributed towards the construction of the family house. That as soon as the Deceased passed away one **William Wachira** took possession of the family home and has denied the daughters

access to the compound. That none of the daughters has access to their late mother's home and grave.

10. The Protestor went on to state that estate assets have been generating rental income but they have no information on how that rental income is being utilized. The Protestor accuses the Respondent of sharing out the rental income to himself and his brothers while giving no share at all to the daughters. Finally the Protestor sought the following orders:-

**“A. That this Honourable Court sets aside all subdivisions, transfers, and registrations over our father's lands. Commercial assets, shares with Mathira Enterprises and land companies and to cause Barclays bank (now Absa Bank), Equity Bank and any other bank to account to this court all monies that belonged to my father.**

**B. That this Honourable Court sets aside the Grant issued to George Ndegwa Mumanya on 30<sup>th</sup> September, 2016.**

- C. That this Honourable Court allows the family to appoint new credible administrators over the Estate of the Deceased.**
- D. That this Honourable Court gives an order for the equal distribution of the assets of the deceased as amongst all his children.**
- E. That this Honourable Court issues an Order that all the Children of the Deceased be granted immediate unconditional access to our parents homes and graves.**
- F. That this Honourable Court issues orders to Mr. George Ndegwa Mumanya (the one we have always known as George Gategwa Mumanya) to account for all the income, assets, liabilities and executor.**
- G. That this Honourable Court issues orders that Ms. Nancy Njoki Kariuki, removes the fences to allow access to that part of the estate, stops meddling and relocates her extended family from our late fathers' estate**

**H. The land of the late Robinson Mumanya Gikuhi be surveyed and its actual size determined and the cost to be undertaken by the Estate.**

**I. That the ruling of Justice Luka Kimaru be implemented.**

**J. The estate of the late Robinson Mumanya Gikuhi be ordered to compensate for the cost incurred in search of justice as the other party has benefited from July to date.”**

11. The Respondent **GEORGE NDEGWA MUMENYA** told the Court that he was a son to the Deceased and confirmed that he was the executor named in the written will dated **24<sup>th</sup> June 2004** and that Grant of Probate was issued to him on **30<sup>th</sup> September 2016**.

12. The Respondent states that this estate has been subjected to extensive litigation which he blames on the Protestors fondness of filing numerous applications.

13. The Respondent confirms that the estate of the Deceased comprises the following assets;-

**(a) LR Konyu/Baricho/3227**

**(b) LR Konyu/Baricho/3228** **Being**  
**subdivisions**

**(c) LR Konyu/Baricho/3229** **derived from LR**  
**No.**

**(d) LR Konyu/Baricho/3230**  
**Konyu/Baricho/2441**

**(e) LR Konyu/Baricho/3231**

**(f) LR Konyu/Baricho/3232**

**(g) LR Konyu/Baricho/3233**

**(h) LR Konyu/Baricho/3234**

**(i) LR Konyu/Baricho/3235** **Being sub-divisions**

**(j) LR Konyu/Baricho/3236** **derived from LR**  
**Konyu/**

**(k) LR Konyu/Baricho/3237** **Baricho/2577**

**(l) LR Konyu/Baricho/3238**

**(m) LR Konyu /Baricho/3239**

**(n) LR Konyu/Baricho/3240** **Being subdivisions**  
**derived**

- (o) LR Konyu/Baricho/3241 from Konyu/Baricho/2578
- (p) LR Konyu/Baricho/3242
- (q) LR Konyu/Baricho/3243
- (r) LR Konyu/Baricho/2438 - the family home.
- (s) Quarter ( $\frac{1}{4}$ ) share is Karatina Municipality Plot Block B1/131
- (t) One-eighth ( $\frac{1}{8}^{\text{th}}$ ) share in Karatina Municipality Plot Block B162
- (u) Monies held in an account held at Barclays Bank, Karatina Branch - approximately Kshs. 1,100,000/=

14. The Respondent asserts that the Deceased died testate having left behind a written will. He states that the question of the validity of this written will has already been determined by a Ruling dated **30<sup>th</sup> September 2016**. The Respondent told the Court that he is committed to distributing the estate in accordance with the written will

which is a correct manifestation of the wishes of his late father.

15. Regarding the complaint by the Protestor that the married daughters have not been provided for in the written will, the Respondent counters that the Deceased was at liberty to distribute his property to whomsoever he wished. Further the Respondent alleges that the Deceased was unhappy with his daughters as they had abused and dis-respected him.
16. The Respondent in the Summons for Confirmation of Grant set out the proposed mode of distribution of the estate as follows:-

<b><u>PARCEL NO.</u></b>	<b><u>SIZE</u></b>	<b><u>BENEFICIARY</u></b>
LR Konyu/Baricho/3227	0.35HA	George Ndegwa Mumenya
LR Konyu/Baricho/3228	0.35HA	William Lawrence Wachira
LR Konyu/Baricho/3229 Mumenya	0.08HA	Wambugu
LR Konyu/Baricho/3230	0.08HA	George Wamai Mumenya
LR Konyu/Baricho/3231	0.08HA	Patrick Njama Mumenya

LR Konyu/Baricho/3232	0.08HA	Mary Nyangendo Mumenya	
LR Konyu/Baricho/3233	0.08HA	Erastus Wambugu Mumenya	
LR Konyu/Baricho/3234	1.42HA	Wambugu	
Mumenya			
LR Konyu/Baricho/3235	1.99HA	William Lawrence Wachira	
LR Konyu/Baricho/3236	1.82HA	Charles Kiragu Mumenya	
LR Konyu/Baricho/3237	1.82HA	George Wamai Mumenya	
LR Konyu/Baricho/3238	0.41HA	Wambugu Mumenya	
LR Konyu/Baricho/3239	1.62HA	Erastus	Wambugu
Mumenya			
LR Konyu/Baricho/3240	1.21HA	Mary	Nyangendo
Mumenya			
LR Konyu/Baricho/3241	1:50HA	George	Ndegwa
Mumenya			
LR Konyu/Baricho/3242	1.62HA	Anthony	Wachira
Mumenya			
LR Konyu/Baricho/3243	1.62HA	Patrick Njama Mumenya	
LR Konyu/Baricho/2438		To be held in Trust	
Trustees:			

Wachira

William Lawrence,  
and George Ndegwa  
Mumenya

$\frac{1}{2}$  share in Karatina Municipality  
Trustees:  
Plot Block B1/131  
Wachira

To be held in Trust

William Lawrence,  
and Ndegwa Mumenya

$\frac{1}{8}$  share in Karatina Municipality  
William  
Plot Block B1/62  
and

To be transferred to  
Lawrence, Wachira

George Ndegwa  
Mumenya Absolutely in  
Equal  
shares.

17. The Respondent denies the Protestors allegations that he has been intermeddling in the estate. He denies having transferred any asset to the beneficiaries as the grant is yet to be confirmed. Whereas under cross-examination the Respondent concedes that he has paid out monies to some of the beneficiaries as transport and disturbance costs, he states that amount so advanced will be deducted from the final allocation due to the said beneficiaries. He denies that the Protestors have been denied access to the family home.

The Respondent finally prays that the Protest be dismissed and that the Grant be confirmed as prayed.

18. Upon closure of oral evidence the parties were invited to file their final submissions. The Protestor filed the written submissions dated **31<sup>st</sup> October 2025**, the Respondent filed written submissions dated **16<sup>th</sup> June 2025**, whilst one **NANCY NJOKI KARIUKI**, the widow of the late **CHARLES KIRAGU MUMENYA** who was a son to the Deceased filed the written submissions dated **26<sup>th</sup> November 2025**.

#### **ANALYSIS AND DETERMINATION**

19. I have carefully considered the Protest filed in this cause, the evidence adduced by the witness as well as the written submissions filed by the parties.
20. It is common ground that the Deceased **Robinson Mumenya Gakuhi** passed away on **2<sup>nd</sup> July 2004**. It is also not disputed that the Deceased was a polygamous man who was married to two (2) wives who both pre-deceased him. The parties are in agreement that the Deceased was survived by a total of **fifteen (15) children**.

21. In the Affidavit of Protest dated **25<sup>th</sup> August 2021**, the Protestor once again took issue with the validity of the written will dated **24<sup>th</sup> June 2004**. Indeed in **Paragraph 28** of said Affidavit there is a prayer for nullification of the judgment of **Hon. Lady Justice Ougo**. The question of the validity or otherwise of the written will is not one which this Court will delve into. This issue is now '**Res Judicata**' having been determined by **Hon. Lady Justice Rose Ougo** in her Ruling delivered on **30<sup>th</sup> September 2016**. In that ruling the Honourable Judge found and held that the written will was valid. If the Protestor was unhappy with this finding then an appeal against that ruling ought to have been filed. There is no record of such an appeal having been filed.
22. The Protestors claimed that they doubted the veracity of the judgement of **30<sup>th</sup> September 2016** on grounds that no copy of the said judgment appears in the **Kenya Law Reports**. The judgment in question is in the court file. No official challenge to its authenticity has been raised by any party. Moreover there exist several judicial decisions which are unreported. The fact that a decision is not reported in

the **Kenya Law Reports** does not amount to proof that it is not a genuine ruling.

23. Therefore regarding the will I find that a finding has been made by a competent court of concurrent jurisdiction that the written will dated **24<sup>th</sup> June 2024** is valid. As such that issue is not one for further consideration by this court.
24. The main issue which this court has to determine is whether the Protestor and the other married daughters of the Deceased are entitled to a share of his estate notwithstanding the fact that he Deceased himself did not make provision for them in his written will.
25. It is not disputed that in the written will dated **24<sup>th</sup> June 2004**, the Deceased provided for all his sons and for only one of his daughters **Mary Nyangendo Mumanya** who was unmarried. It is a sacred tenet of law that all persons have testamentary freedom which is the right to dispose of their property in any manner they wish.
26. However this testamentary freedom is not absolute. The same must be exercised in compliance with the relevant

local and international statutes. **Article 27** of the **Constitution of Kenya 2010** provides as follows:-

**“27(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.”**

**(2) .....**

**(3) Women and men have the right to equal treatment including the right to equal opportunities, political, cultural and social spheres.”**

**(4) .....”**

**[Own emphasis]**

27. **Section 26** of the **Law of Succession Act Cap 160 Laws of Kenya** provides as follows.

**“26 Provision for dependants not adequately provided for by will or on intestacy for by will or on intestacy where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of the Act, their on the application by**

**or on behalf of a dependant, the court may if it is in the opinion that the disposition of the deceased's estate effected by his will or by gift in contemplation of death or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.** [Own emphasis]

28. It is evident that only one of the daughters of the Deceased one **Mary Nyangendo** has been included in the will and in the proposed mode of distribution of the estate. The explanation given for this anomaly is that all the other daughters of the Deceased were married. I also note that one of the male beneficiaries named **Erastus Wambugu Mumanya** is represented by one '**Grace**' who presumably is his wife/ widow.
29. The court takes cognizance of the fact that the parties in this suit hail from the '**Agikuyu Community**'. In that

community culture dictated that married women were not entitled to a share of the estate of their deceased parents the argument being that a married daughter had through marriage left her original home and joined another home (family) from where she would be entitled to inherit through her husband.

30. Does marriage erase the father/Daughter relationship?

Certainly

not. A child remains a child of his/her parent and a parent of his/her

child until death.

31. Both local and international laws condemn any form of discrimination on the basis of race, gender, marital status etc. The **Convention on the Elimination of all forms of Discrimination against women [CEDAW]** prohibits all forms of gender based discrimination. **Article 1** of **CEDAW** defines discrimination as any distinction, exclusion or restriction based on sex that impairs women's human rights and fundamental freedoms. **Article 2** of **CEDAW** compels all signatory states to condemn discrimination against

women and to immediately pursue policies to eliminate such discrimination by abolishing any laws, customs and practices that discriminate against women.

32. The Republic of Kenya is a signatory state to **CEDAW** having acceded to the treaty on **9<sup>th</sup> March 1984**. Therefore Kenya has a legal obligation to uphold the convention and to ensure non-discrimination on the basis of gender in all spheres of life.
33. Likewise the law against discrimination is given a place in Kenyan Law through **Article 2 (5)** of the constitution of Kenya which provides that  
**“Any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this constitution.”**
34. As stated earlier **Article 27(3)** of the **Constitution of Kenya 2010** outlaws any form of discrimination on the basis of gender.
35. The **law of Succession Act** does not discriminate between male and female children or ‘married or unmarried daughters. **Section 38** of the law of succession Act is clear

on equal distribution of the net estate of a deceased person. **Section 38** provides for the equal distribution of the net estate to **'all the surviving children'** of the Deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. Only those children who have specifically and in writing waived their right to inherit, may be excluded.

36. There exist a plethora of cases in this country which uphold the principle that failure to include married daughters in a will or in the distribution of the estate of a deceased parent violate both the **constitution of Kenya** and the **law of succession Act**. Such exclusion is therefore null and void.
37. In the case of **SOLOMON NGATIA KARIUKI (Deceased) (2008) eKLR**, a case which was heard before promulgation of the **2010** constitution **Hon. Justice Makhandia** (as he then was) rendered himself thus on the issue.

**“While speaking about the existing provisions of the law of Succession Act, made a very strong statement on the issue of discrimination against**

daughters generally in succession matters and he said;

**“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father’s estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because**

***they are likely to enjoy inheritance of their husband's side of the family.....***

***It is unfortunate that despite having the constitution in place for over 6 years and numerous pronouncements by the courts on the issue of discrimination of married daughters and inheritance from their parents, it is still considered evil in some quarters for a daughter who is considered to be happily married and to having property of her own, to express any interest in her parents' estate. She is accused of being selfish, of acting in bad faith, of wanting to fuel a family feud yet she does not live in the 'home', of harassing those who only have their parents' inheritance to look up to and nothing else.***

***Those doing so miss the point. That the fact of marriage per se for both sons and daughters, does not change the fact of being born in a certain home to certain parents.....***

**In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. .... This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which has a tendency of once in a while rearing its ugly head to be forever buried. The ghost has long cast its shadow on our legal system despite numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of person on the basis of their sex, marital status or social status, among others, the time has now come for those discriminative cultural practices against women be buried in history.....”**

**More specifically I am content to cite the proclamation by the Court of Appeal in the case of STEPHEN GITONGA M'MURIITHI vs. FAITH NGIRAMURITHI [2015] eKLR that:-**

**“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried....”**

**Therefore a son will not have priority over a daughter of the deceased simply because he is male; all - male and female siblings - are equal before the law and are entitled to equal protection of the law. (See article 27 of the Constitution).....(see also the judgment of Judge Kasango in SAMSON KIOGORA RUKUNGA v ZIPPORAH GAITI RUKUNGA [2011] eKLR)**

**It is evident from the foregoing that this court would be failing on its constitutional mandate to uphold a disputed mode of distribution that is**

**based on an open discrimination of the grounds of gender, sex and status. The fact of the equality of the children in the inheritance of their parents' property is the norm. Any exception must have a basis. In this case the sharing of property among the sons only or men only has not been given any legal basis. The same is not tenable." [Own emphasis]**

38. Similarly **Kimaru, J.** in addressing the alleged justification under the customary laws as to why married daughters ought not to inherit from their parents in the case of **Peter Karumbi Keingati & 4 others vs Dr. Ann Nyokabi Nguthi & 3 others (2014) eKLR** stated as follows:-

**'As regards to the argument by the Applicants that married daughters ought not to inherit their parent's property because to do so would amount to discrimination to the sons on account on the fact that the married daughters would also inherit property from their parent's in-laws, this court takes the view that the argument as**

advanced would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would be no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. The issues that courts would grapple with during distribution are the issues anticipated by Section 28 of the Law of Succession Act. This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which have a tendency of once in a while rearing its ugly head to be forever buried. The ghost has long cast its shadow in our legal

**system despite of numerous court decisions that have decaled such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for those discriminative cultural practices against women be buried in history.'**

39. In **RE ESTATE OF M' IRINGO (Deceased) [2017] eKLR** the Court stated that:-

**".....From his arguments, it is clear the objector is suggesting that the protestor is not entitled to a share of the Estate because she is a woman and more so a married woman. Such arguments are, to say the least are a worn out motion and do not have any place in modern day society. It is also vehemently frowned upon by the constitution of Kenya 2010 as well as the Law**

of Succession Act. See eminent literary work by W. Musyoka Law of Succession at Page 118 in relation to reference to children in the Law of Succession Act that;-

**“Non discrimination of daughters**

**Reference to children does not distinguish between**

**sons and daughters, neither is there distinction**

**between married and un married daughters.” [Own emphasis]**

40. In **RE ESTATE OF ELIZABETH WANJIKU MUNGE (Deceased) [2015] eKLR** the court held thus:-

***“The provisions of Part V of the Act refer to “child” or “children”. They make no distinction as between sons and daughters or male and female children. No distinction is made on their marital status. The effect of this is that the estate ought to be shared equally among all the children of the deceased without considering***

**their gender or their marital status. It should be shared equally between the sons and daughters, where reference to daughters includes those that are married. This is the position so long as the deceased died after 1<sup>st</sup> July 1981 and the Law of Succession Act applied to the estate.” [Own emphasis]**

41. The Respondent in his evidence insists that the reason why the Deceased excluded his married daughters in his will was because the said daughters were fond of abusing him and often dis-respected him. No evidence has been availed to support these allegations.

42. I have carefully perused the written will dated **24<sup>th</sup> June 2004**. In the said will the Deceased stated as follows:-

**“1. THAT for avoidance of doubt, I hereby declare that I have made no provision for any of my married daughters but only for my unmarried daughter Mary Nyang’endo Mumenya.”**

43. The Deceased did not declare that he had excluded the married daughters because they had disrespected him in any way. I note that the Deceased was an elderly gentleman aged above **eighty (80) years** at the time he wrote the will. I have no doubt whatsoever that the deceased's decision was informed by his cultural upbringing and the customary belief that married women should not inherit. The very fact that the Deceased made a clear distinction between his married and unmarried daughters is clear proof of the fact that the basis of this decision was Kikuyu cultural practices.
44. Whilst Kenya celebrates its culture and cultural practices are generally recognised and upheld any cultural practice which discriminates a sector of the society cannot be upheld by the courts. **Article 2 (4)** of the **Constitution** provides that
- “Any law, including customary law that is inconsistent with this constitution is void to the extent of the inconsistency and any act or omission in contravention of this constitution is invalid.”**

45. There is no doubt that the objectors are the biological daughters of the deceased **Robinson Muumenya Gikuhi**. The Respondents do not deny this fact. I find and hold that the reason why the Deceased excluded his married daughters from inheriting from his estate was on the basis of outdated repugnant and discriminatory cultural practices. A written will which does not conform of local and international statutes will be declared null and void to the extent of that non conformity. Indeed this fact was recognised by **Hon. Justice Ougo** in her ruling of **30<sup>th</sup> September 2016** where she stated that

**“The law provides that a testator has power to dispose of his property as he pleases and the court is bound to respect those wishes as long as they are not repugnant to the law and he does not leave out some dependants and beneficiaries.**

**Failure to make provision for a dependant by a deceased person in his will does not invalidate the will as the court is empowered under Section 26 of the Law of Succession Act to make**

**reasonable provision for the dependant.” [Own emphasis]**

46. There is no evidence of any gift having been made to the unmarried daughters during the lifetime of the Deceased. The Protestors are entitled to reasonable provision out of the estate of their late father.

47. Before concluding I do note that by his own admission the Respondent has been intermeddling with the estate by taking and utilising some of the rental proceeds before confirmation of the Grant. Such actions are forbidden under **Section 42** of the **Law of Succession Act**. The fact that he is an executor of the estate did not entitle the Respondent to make use of estate assets as he wished. Under Cross-examination the Respondent admits that:-

**“I took over collection of the rent when I got the grant, I cannot recall which account I was depositing the rent. I was depositing the rent in Equity Bank. I gave the beneficiaries Kshs. 10,000/= each to travel to Court in Nairobi from the rental income I paid out disturbance**

**allowance to myself, George and William Wachira of Kshs. 30,000/= each. This was the money I was using to pay for our relatives to come to court for the hearing in Nairobi. I paid my lawyer. I did not pay the lawyer of the objectors because they have opposed the will. Mary Nyangendo is in the will. I did not give her the Kshs. 30,000/=.....”**

48. Quite apart from the fact that the Respondent had no legal authority to utilize and/or expend that rental income without the authority of the court, it is clear that the Respondent distributed the rental income in a discriminative manner to the detriment of the female beneficiaries. He was using the estate income as his own personal income dispensing of the same at will - the Respondent had no authority to give out **Kshs. 10,000/=** (which in my view was excessive) to the male beneficiaries to travel to Nairobi for the hearing. What on earth constitutes disturbance allowance. Any party who wanted to mobilise relatives to accompany them to court should have done so using their own personal resources not

from estate income. The Respondent unlawfully excluded the female beneficiaries from his generous payouts yet they too had to travel to Nairobi to attend court and they too may have wished to mobilize relatives to accompany them to court. I direct that a sum equal to that amount be paid out to the male beneficiaries must be paid out to the female beneficiaries or in the alternative the monies received by the male beneficiaries be refunded into the estate account.

49. As Executor the Respondent was a trustee of all estate property including estate income. He is accountable to the beneficiaries for the manner in which estate assets are utilized or expended.
50. **Section 83** of the Law of Succession sets out the duties of personal representatives. **Section 83(e)** of the Act provides that:-

**“Personal representatives shall have the following duties:-**

**(e) to produce to the court, if required by the court, either on its own motion or on the application of any interested party in the**

**estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings there with up to the date of the account.”**

51. Regarding the mode of distribution as proposed in the summons for confirmation of grant, I find that the same is clearly discriminatory as no provision is made for the daughters of the Deceased who are dependants under **Section 29 (a) of the Law of Succession Act.**

52. I note that the actual properties left behind by the Deceased were

**(i) LR No. KONYU/BARICHO/2441**

**(ii) LR No. KONYU/BARICHO/2577**

**(iii) LR No. KONYU/BARICHO/2578**

**(iv) LR No. KONYU/BARICHO/2438 - the family**

**home.**

53. Prior to his demise the deceased had embarked on the process of sub-dividing the above properties into seventeen (17) sub-divisions. An attempt to transfer the said sub-divisions to some of the beneficiaries did not materialise as

objections were raised by the daughters. Given that the properties left behind by Deceased have already been demarcated and sub-divided, I find it prudent to refer to the said sub-divisions in determining how the land left behind by the deceased should be distributed.

54. Therefore the orders that commend to me under **Section 26** of the **Law of Succession Act** is that provision be made for the said daughters namely **Wambui Kogi Kamau, Rahab Nyagendo Wambugu; late Serah Nyawira Gichuru** rep by daughter Anne Wangu Gichuru, **Anne Waruguru Nganga, Anne Gakenia Mbatia** and **Mercy Wangui Mbatia** by allotting to them the following properties being sub-divisions **3227-3232**. **Mary Nyagendo** who was provided for in the will is allotted one property rather than two. The male beneficiaries shall retain the other proportioned properties as shown below. The homestead to wit **Baricho 2438** shall be held in trust by **Wambui Kogi** and **William Lawrence Wachira** as it is the family home. The  $\frac{1}{2}$  share in **Karatina Municipality Plot Block B1/131** and  $\frac{1}{8}$  share in **Karatina Municipality Plot Block B1/62**

shall be sold and the proceeds equally distributed to the beneficiaries of the estate.

55. I further order the administrator herein the petitioner render accounts of the estate into court inline with **Section 82, 83 and 84** of the **Law of Succession Act** to render full and accurate accounts of his management of the estate including all income derived from estate assets from the date of issuance of the Grant to date including of the deceased's bank accounts in Barclays Bank which was not addressed in the Summons for confirmation of grant. This is in adherence of the purpose of the probate court to distribute the estate of the deceased to the rightful beneficiaries. The Administrator shall within **forty (40) days** render into court all accounts from the estate from the date he assumed office to the date of judgment showing how much was given to the male children of the deceased so that an equal amount may be paid out to the daughters first and the remainder distributed equally among all the children of the deceased.
56. Finally I direct that the estate of the deceased be distributed as follows:-

<b>No</b>	<b>PARCEL NO.</b>	<b>SIZE</b>	<b>BENEFICIARY</b>
1.	LR Konyu/Baricho/3227	0.35HA	Wambui Kogi Makau
2.	LR Konyu/Baricho/3228	0.35HA	Rahab Nyagendo Wambugu
3.	LR Konyu/Baricho/3229	0.08HA	Late-Serah Nyawira Rep by Anne Wangu
4.	LR Konyu/Baricho/3230	0.08HA	Anne Waruguru Nganga
5.	LR Konyu/Baricho/3231	0.08HA	Mercy Wangui Mbatia
6.	LR Konyu/Baricho/3232	0.08HA	Anne Gakenia Mbatia
7.	LR Konyu/Baricho/3240	1.21HA	Mary Nyagendo Mumenya
8.	LR Konyu/Baricho/3233	0.08HA	Erastus Wambugu Mumenya
9.	LR	1.62HA	Erastus Wambugu

	Konyu/Baricho/3239		Mumenya
10.	LR Konyu/Baricho/3234	1.42HA	Wambugu Mumenya
11.	LR Konyu/Baricho/3238	0.41HA	Wambugu Mumenya
12.	LR Konyu/Baricho/3235	1.99HA	William Lawrence Wachira
13.	LR Konyu/Baricho/3236	1.82HA	Charles Kiragu Mumenya
14.	LR Konyu/Baricho/3237	1.82HA	George Wamai Mumenya
15.	LR Konyu/Baricho/3241	1.50HA	George Ndegwa Mumenya
16.	LR Konyu/Baricho/3242	1.62HA	Anthony Wachira Mumenya
17.	LR Konyu/Baricho/3243	1.62HA	Anthony Wachira Mumenya
18.	LR Konyu/Baricho/2438		To be held in Trust by William Lawrence Wachira and Wambui Kogi

19.	1/2 share in Karatina Municipality Plot Block B1/131		To be sold and proceeds distributed Equally among the Beneficiaries.
20.	1/8 share in Karatina Municipality Plot Block B1/62		To be sold and proceeds distributed Equally among the Beneficiaries.

57. This being a family matter each party to pay their own costs.

**Dated in Nyeri this 8<sup>th</sup> day of May, 2026**

.....  
**MAUREEN A. ODERO**  
**JUDGE**