



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. E002 OF 2022

IN THE MATTER OF THE ESTATE OF DANIEL M'MUTEA

M'ITURU (DECEASED)

DORIS MWENDWA NTONJA & ROSE MAKENA MBABU.....

PETITIONERS

VERSUS

SAMUEL MUTUMA MUTEA.....1ST

OBJECTOR

CATHERINE GAKII MUTHOMI.....2ND

OBJECTOR

MERCY KAIRUTHI DANIEL.....3RD

OBJECTOR

RULING

1. The parties recorded a consent dated 6/5/2025 wherein they agreed on the distribution of L.R Nos. L.R Nos. Nyaki/Mulathankari/2777, L.R No. Kiiru/Nkando/1586 and L.R No. Kirimara/Kithithina Block 1/76.
2. Pursuant to the revocation of the certificate of confirmation of grant dated 17/6/2023 vide the ruling of Lady Justice Wamae T.W. Cherere J. dated 7/3/2024, the parties herein have sworn and filed their respective affidavits on their proposed modes of distribution of **L.R Nos. KIIRUA/NAARI/4683, 4684, 4685, 4686 and 4688** (hereinafter referred to as the estate properties).
3. The 1st petitioner proposes that upon excision of 1 acre from L.R No. Kiirua/Naari/4686, to be held in trust for their ailing mother namely Mary Ncurubi Mutea, the remainder thereof be distributed equally among the 5 children of the deceased namely Doris Mwendwa Ntonja, Rose Makena Mbabu, Samuel Mutuma Mutea, Catherine Gakii Muthomi and Mercy K. Daniel.

4. Conversely, the 1st objector has deponed that L.R No. Kiirua/Naari/4686, measuring 17 acres, belongs to him, save that the deceased had indicated that 1 acre thereof be given to their mother. He further avers that the deceased then subdivided L.R No. Kiirua/Naari/4686 into plots measuring 50 ×100 feet, with each sibling entitled to a share, and the criteria for occupation was to be determined by a secret ballot based on their respective dates of birth. He contends that the deceased had distributed L.R No. Kiirua/Naari/4686 *inter vivos*, as evidenced by the minutes of 10/2/2022 which were allegedly signed by all the beneficiaries.
5. The matter proceeded by way of *viva voce* evidence where the 1st objector reiterated his position that the deceased had distributed L.R No. Kiirua/Naari/4686 during his lifetime. The 1st petitioner vehemently denied either attending the meeting of 10/2/2019 or appending her signature in the minutes emanating therefrom, and insisted that L.R No. Kiirua/Naari/4686 ought to be distributed equally among the beneficiaries.

6. Parties did not file submissions.

Analysis & Determination

7. The issue for determination is how the estate property ought to be distributed.

8. The undisputed evidence is that the deceased herein died intestate on 24/10/2018, survived by a widow namely Mary Ncurubi Mutea, and 5 children namely Doris Mwendwa Ntonja, Rose Makena Mbabu, Samuel Mutuma Mutea, Catherine Gakii Muthomi and Mercy K. Daniel.

9. The provisions of Section 35 of the Law of Succession Act are succinctly clear that where the deceased has left one surviving spouse and a child or children, the surviving spouse shall be entitled to —

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate.

10. The proposal by the 1st objector in his affidavit, sworn on 20/5/2025 is manifestly unjust and skewed towards

disinheriting the other beneficiaries. Indeed, the 1st objector's adamantness that the deceased had distributed L.R No. Kiirua/Naari/4686 and settled his children in their respective portions thereon is preposterous and bereft of any evidential support. Accordingly, I find that the proposal by the 1st petitioner at paragraph 9 of her affidavit, sworn on 10/6/2024, is fair and equitable.

11. The upshot from the foregoing analysis is that the grant issued to Doris Mwendwa Ntonja and Rose Makena Mbabu, the petitioners herein, is hereby confirmed in the following terms:

- a) **As per the consent recorded in court, LR Nyaki/Mulanthakari/2777 and LR. Kiirua/Nkanda/1586 to be sold and the proceeds to be shared equally among all the beneficiaries, including the widow.**
- b) **L.R No. Kiirua/Naari/4683 shall be distributed to**
- c) **L.R No. Kiirua/Naari/4684 to be distributed to**
- d) **L.R No. Kiirua/Naari/4685 to be distributed to**

- e) **L.R No. Kiirua/Naari/4688 to be distributed to Mercy Kairuthi Daniel.**
- f) **For L.R No. Kiirua/Naari/4686 two(2) acres shall be excised and be reserved for the widow. The two acres be on the land surrounding her home.**
- g) **The said portion of L.R No. Kiirua/Naari/4686 under (f) above is to be held in trust by the administrators and upon her death shall revert to the estate and be shared equally among the beneficiaries.**
- h) **The balance of**
- i) **The costs of the subdivision and transmission shall be borne by the estate from the proceeds of the sale under (a) above before the remainder is shared.**
- j) **There shall be no orders as to costs.**
- k) **Orders accordingly.**

Dated, Signed and Delivered at Meru this day of 7th Day of May, 2026.

H. M. NYAGA
JUDGE