



**In re Estate of CKN (Deceased) (Probate & Administration
E012 of 2021) [2025] KEHC 3147 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
PROBATE & ADMINISTRATION E012 OF 2021
F GIKONYO, J
FEBRUARY 28, 2025
IN THE ESTATE OF CKN (DECEASED)**

BETWEEN

EWM PETITIONER

AND

EKN 1ST OBJECTOR

JW 2ND OBJECTOR

JN 3RD OBJECTOR

FMK 4TH OBJECTOR

JUDGMENT

Confirmation of grant

1. These proceedings relate to the estate of the late CKN who died intestate and domiciled in Kenya on the 14th July, 2021.
2. Before the court is a Summons for Confirmation of Grant dated 21st June, 2022 as well as the various protests filed by the objectors thereto.

Functions of probate court

3. A probate court, in confirming the grant, carries out the following functions: -
 - a. Identifies and ascertains the estate property;
 - b. Identifies and ascertains the rightful beneficiaries; and
 - c. Distributes the estate to the rightful beneficiaries.



4. But, the court first deals with matters on alleged intermeddling.

Intermeddling and accounts

5. The 1st objector accused the petitioner of engaging into a spree of intermeddling with and wastage of the estate without regard to the law, court orders and the agreement reached amongst the family members after the burial of the deceased, causing him to apply for limited letters-Ad Litem- to preserve and secure the estate as per section 67(1) of the Law of Succession Act. According to him, despite explanations by the petitioner, she made withdrawals from the accounts of the deceased after the death of the deceased.
6. He made further accusations against her: caused transfer of shares in Narok Golden Chance Sacco Ltd.
7. He also listed other acts of intermeddling in paragraph 17 of his affidavit.
8. He urges the court to punish these acts of intermeddling under section 45 of the Law of Succession Act. And, also order her to file accounts on the properties she wasted. sold or transferred to herself.
9. He is of the view that the petitioner should render account of the administration of the estate so far.
10. The court has considered these allegations as well as the explanations provided by the petitioner. The allegations were not proved especially noting that the petitioner is one of the wives of the deceased and has young children who are still in school in need of care, maintenance and provision. The allegations are dismissed.

Estate property

11. The petitioner listed the property of the deceased to be: -
 - a. Narok/Township/3X4 ([particulars withheld] House)- matrimonial property where the deceased left her.
 - b. Cis-Mara/Oleleshwa/2XX5- subdivided into parcels number Cis-Mara/Oleleshwa/19XX1 and Cis-Mara/Oleleshwa/19XX2
 - c. Cis-Mara/Oleleshwa/2XX5
 - d. Cis-Mara/Oleleshwa/19XX5
 - e. Cis-Mara/Oleleshwa/19XX6
 - f. Cis-Mara/Oleleshwa/19XX7
 - g. Cis-Mara/Oleleshwa/19XX8
 - h. Cis-Mara/Oleleshwa/19XX9
 - i. Cis-Mara/Oleleshwa/19XX0
 - j. Cis-Mara/Oleleshwa/19XX1
 - k. Cis-Mara/Oleleshwa/19XX4
 - l. Cis-Mara/Oleleshwa/19XX5
 - m. Cis-Mara/Oleleshwa/19XX6
 - n. Cis-Mara/Oleleshwa/19XX8



- o. Cis-Mara/Oleleshwa/19XX0
 - p. Cis-Mara/Oleleshwa/19XX1
 - q. Cis-Mara/Oleleshwa/2XX3
 - r. Cis-Mara/Oleleshwa/19XX7
 - s. Cis-Mara/Oleleshwa/19XX8
 - t. Cis-Mara/Oleleshwa/19XX9
12. The 1st objector argued that, some of the properties listed as estate property are registered in the joint names of the deceased and him. He is of the view that, upon the death of his father, these properties automatically passed to him as the surviving joint tenant through the operation of the law and the doctrine of survivorship. Re the Estate of Johnson Njogu Gichohi (deceased) [2018] eKLR, J. Mwangi Gakuri vs. Benard Kigotho. Therefore, he submitted that the following properties do not form part of the estate of the deceased: -
- i. Narok/Township/3X4
 - ii. Cis-Mara/Oleleshwa/19XX7, 19XX8, 19XX9, 19XX0
13. He stated that the green cards he produced as exhibit ENK-1 and exhibit EWM-1 produced by the petitioner confirms that property number 3X4 is jointly owned by him and the deceased. These instruments are proof of ownership.
14. He cited section 2 of the *Land Act* which defines joint tenancy. He also cited sections 60, 91 and 49 of the *Land Registration Act* on joint ownership and deletion of the name of a deceased person from the register by the Registrar.
15. The 1st objector admitted that he did not contribute anything towards the acquisition of these properties but of essence, in his view, is that they were registered as joint tenants with the deceased. He claims these properties under the doctrine of survivorship.
16. It appears that, there is consensus amongst the parties that the properties listed by the petitioner except the three of which the 1st objector claims joint ownership, form part of the estate.
17. The controversy is only in respect of property number Narok/Township/3X4, Cis-Mara/Oleleshwa/19XX7, 19XX8, 19XX9, 19XX0. The 1st objector claims these properties were owned jointly by the deceased and him, thus, passed to him as the sole owner under the rule of survivorship and operation of law to wit; sections 49, 60 and 91 of the *Land Registration Act*.
18. The 1st objector in his testimony stated that the intention of his father was to have a joint ownership with him of the properties in issue. He also relied on the fact that registration in their joint names is conclusive of joint ownership of these properties and should go to him.
19. The petitioner, on the other hand, claims that these assets are matrimonial properties. She also claimed that they are estate property. Except, that the 1st objector intends to use registration in his name and that of the deceased to presume a joint tenancy, thereby, disinheriting the other beneficiaries and spouses of the property and defeating the course of justice. She stated that these are valuable properties which the 1st Objector wants to unlawfully keep for himself.



20. The petitioner argued the 1st Objector's claim- who is the son of the deceased- should be seen in light of section 191 of the [Land Registration Act](#) and the work of Sir Robert Megarry and Sir William Wade, Law of Real Property, Sweet & Maxwell, Eighth Edition, 496 to 503.
21. The 2nd objector argued that she was a wife of the deceased and made her contribution-financial and non-financial- to the acquisition of the estate properties during their long-term relationship as husband and wife. Thus, making these properties matrimonial property of which the deceased held in trust for her. They lived in [particulars withheld] House before she moved to the farm and the petitioner moved into [particulars withheld] House.
22. She urged before the court that the law does not recognize joint ownership between a parent and a child unless there is clear intent from the deceased. And dismissed the claims by the 1st objector that the properties in issue are his by virtue of the principle of survivorship and the law. She stated that these properties are estate property.
23. The 4th objector submitted that plot no 3X4 was acquired when she was the only wife of the deceased. And, that she did not receive her share of the matrimonial property after the divorce. The property was acquired during the subsistence of marriage between the deceased and her; making it matrimonial property. She placed her entitlement at 50%. According to her, the property was constructed in 1986. She made contribution towards acquisition of the property. Her claim is based on the [Matrimonial Property Act](#). According to her, the deceased held the said property in trust for himself and her. She thus, argued that, it is the 50% that belongs to the deceased which constitutes the estate property.
24. She submitted further that, it is not disputed that income from plot no. 3X4 significantly contributed to the acquisition of the other properties. Nevertheless, she lays no claim on the other properties acquired after the divorce.
25. In addition, she stated that the petitioner was married when all the properties of the deceased had been acquired.
26. These arguments bring the court to ponder about: exercise of concurrent jurisdiction with possible distributional consequences.
27. The High Court sitting as the probate court has the jurisdiction to ascertain estate property. The High Court also has jurisdiction to determine matters to do with matrimonial property. And, when trust is claimed, the High Court will have jurisdiction under the law on Trusts.
28. All these nuances from ascertainment of estate property to matrimonial property to trust, have arisen in these proceedings. The mix and the relationship amongst these issues is inextricable and relevant to the main issue: ascertainment of the estate property.
29. But, in such situation, possibility of distributional consequences upon other jurisdictions with concurrent jurisdiction is real.
30. In section 91(2) of the [Land Registration Act](#): -

Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.
31. The registration herein does not show the nature of the rights of the deceased and 1st objector. This negates the claim of joint ownership by the 1st objector.



32. Be that as it may, the circumstances of this case borne out of evidence adduced show that the deceased intended to retransfer the properties in question to himself before he died. But did not complete the transaction. Evidence show that he had the 1st objector sign transfer forms and applications to land control board for consent to transfer the lands in issue from the 1st objector to himself. The 1st objector confirmed that he signed these instruments.
33. Of further utility and significance in this matter is that the properties in question have been claimed as matrimonial properties. It is doubtful a spouse may create a joint ownership or tenancy in favour of a third party over matrimonial property.
34. Again, these matters negate the claim by the 1st objector of joint ownership of these lands.
35. Evidence show that the properties claimed by the 1st objector are estate property. I so find and hold.
36. The 4th objector is entitled to part of the [particulars withheld] House on the basis of Matrimonial property which will be taken account of in the final orders.
37. Therefore, the following are the estate property: -
 - a. Narok/Township/3X4 ([particulars withheld] House) – subject to claims on matrimonial property by the 4th objector.
 - b. Cis-Mara/Oleleshwa/2XX5- subdivided into parcels number Cis-Mara/Oleleshwa/19XX1 and Cis-Mara/Oleleshwa/19XX2
 - c. Cis-Mara/Oleleshwa/2XX5
 - d. Cis-Mara/Oleleshwa/19XX5
 - e. Cis-Mara/Oleleshwa/19XX6
 - f. Cis-Mara/Oleleshwa/19XX7
 - g. Cis-Mara/Oleleshwa/19XX8
 - h. Cis-Mara/Oleleshwa/19XX9
 - i. Cis-Mara/Oleleshwa/19XX0
 - j. Cis-Mara/Oleleshwa/19XX1
 - k. Cis-Mara/Oleleshwa/19XX4
 - l. Cis-Mara/Oleleshwa/19XX5
 - m. Cis-Mara/Oleleshwa/19XX6
 - n. Cis-Mara/Oleleshwa/19XX8
 - o. Cis-Mara/Oleleshwa/19XX0
 - p. Cis-Mara/Oleleshwa/19XX1
 - q. Cis-Mara/Oleleshwa/2XX3
 - r. Cis-Mara/Oleleshwa/19XX7
 - s. Cis-Mara/Oleleshwa/19XX8



- t. Cis-Mara/Oleleshwa/19XX9
- u. shares at CMA and Golden chance, all vehicles and farm implements

Rightful beneficiaries

38. According to the petitioner, the rightful beneficiaries of the estate of the deceased are:-
- i. EWM (widow)
 - ii. RM (Adult)
 - iii. EN (Adult, 1st Objector)
 - iv. JW (Adult)
 - v. GM (Adult)
 - vi. MM (Adult)
 - vii. JN (Adult)
 - viii. MM (Adult)
 - ix. JNK (Minor)
 - x. FMK (Minor)
 - xi. AWK (Minor)
39. The 1st Objector has confirmed the deceased had 10 children. He stated that these are the rightful beneficiaries of the estate of the deceased.
40. He raised concerns about the legitimacy of the petitioner, the 2nd and 3rd objectors as beneficiaries. He specifically stated that the petitioner was married in 2008 and no property that was acquired thereafter. She does not therefore qualify to be a beneficiary. According to him, there was no formal marriage that was conducted between her and the deceased and she did not make any contribution towards acquisition of any of the estate property. He quips of the 3rd objector; whether after divorce and alimony was paid, she is still a beneficiary of the deceased?
41. The petitioner, the 2nd objector and the 4th objector have confirmed that the deceased had 10 children. There is also no dispute in relation to the children of the deceased.
42. The petitioner claimed that the deceased was not a polygamous person as; the 2nd objector was separated from the deceased in 2002-some she says the 2nd objector admitted in her submissions;- and the 4th objector is divorced him in 1990.
43. The petitioner submitted that a former wife is a dependant of the deceased. However, the petitioner accused the 2nd objector of advancing two position; that is married under Agikuyu customary law, and a prolonged cohabitation giving rise to a presumption of marriage.
44. But according to the petitioner, she did not prove marriage under either prong. Thus, failing to discharge her onus of proof thereto. According to the petitioner, the 2nd objector is, therefore, not a dependant of the deceased. He cited Re Estate of Cosmas Ikunyua M'Mbwiria (deceased) [2024] KEHC 2087 (KLR).



45. The 2nd objector stated that she was a wife of the deceased having married him in 1991 and made her contribution-financial and non-financial- to the acquisition of the estate properties during their long-term relationship as husband and wife. They lived in [particulars withheld] House before she moved to the farm and the petitioner moved into [particulars withheld] House. They also raised children together. She claimed to be a wife of the deceased despite their separation in 2003.
46. Evidence show that the 2nd objector was married to the deceased by virtue of long cohabitation, living together and holding out as husband and wife since 1991. They separated in 2003.
47. According to Section 3(1) of the Law of Succession Act: -
“wife” includes a wife who is separated from her husband...’
48. Separation is not divorce, thus, by law she is a wife and dependant of the deceased for purposes of succession.
49. The 4th objector, the first wife of the deceased but now divorced, confirmed that the 2nd objector was the 2nd wife of the deceased. According to the 4th objector, the deceased had three wives-the petitioner, 2nd objector and her as the first wife.
50. Despite claims by the petitioner that she is the only wife of the deceased, evidence shows that the petitioner is the third wife of the deceased. The first wife-now divorced- confirmed this fact.
51. Therefore, the petitioner and the 2nd objector are wives of the deceased, and therefore, dependants of the deceased. The ten children of the deceased are also dependants of the deceased.
52. I find thus, the rightful beneficiaries of the estate of the deceased are: -
- i. JW (widow)
 - ii. EWM (Widow)
 - iii. RM (Adult)
 - iv. EN (Adult, 1st Objector)
 - v. JW (Adult)
 - vi. GM (Adult)
 - vii. MM (Adult)
 - viii. JN (Adult)
 - ix. MM (Adult)
 - x. JNK (Minor)
 - xi. FMK (Minor)
 - xii. AWK (Minor)
 - xiii. MM

Distribution of the estate

53. The final function is distribution of the estate to the rightful beneficiaries.



54. The petitioner has submitted that, the 4th Objector's claim that Narok/Township/3X4 ([particulars withheld] House), should be treated as matrimonial property and should, therefore, get one half of it, is not substantiated. She dismissed the claims that it was completed in 1986 for it was without proof. According to the petitioner, the 4th Objector divorced the deceased in 1999, and therefore, her rights to claim the matrimonial property was extinguished by the divorce.
55. This submission is provoking and requires prompt settlement. Matrimonial property is property protected under article 40 of *the Constitution*. Its ownership as well as acquisition of interest in matrimonial property vest in the spouses in accordance with section 7 and 9 of the *Matrimonial Property Act*; and is not extinguished by divorce. In fact, and in law, a claim for and division of matrimonial property between the spouses, ripen 'if they divorce or their marriage is otherwise dissolved'. S.7 of the *Matrimonial Property Act*.
56. Back to arguments by the petitioner; that, the 4th Objector admitted at paragraph 6 of her Replying Affidavit, that, after the divorce, she was never maintained by the deceased. She is not, therefore, a dependant of the deceased.
57. The petitioner stated that this property is matrimonial property where the deceased lived with the petitioner until his demise. She made non-monetary contribution vesting proprietary interest in the property in her. Thus, entitled to the said property. The property be so treated. *AMM vs. SMN [2022] KEHC 367 (KLR)*.
58. According to her, these are estate property.
59. The deceased having died intestate the Petitioner proposes the estate of the deceased be distributed as follows:
1. The petitioner as a beneficiary
 - i. Narok/Township/3X4 ([particulars withheld] House) to the Petitioner as matrimonial home. She still resides at the said property to date.
 2. The 10 Children of the deceased
 - ii. Cis-Mara/Oleleshwa/2XX5 (subdivided into parcels number Cis-Mara/Oleleshwa 19XX1 and Cis-Mara/Oleleshwa 19XX2.
 - iii. Cis-Mara/Oleleshwa/2XX5
 - iv. Cis-Mara/Oleleshwa/19XX5
 - v. Cis-Mara/Oleleshwa/19XX6
 - vi. Cis-Mara/Oleleshwa/19XX7
 - vii. Cis-Mara/Oleleshwa/19XX8
 - viii. Cis-Mara/Oleleshwa/19XX9
 - ix. Cis-Mara/Oleleshwa/19XX0
 - x. Cis-Mara/Oleleshwa/19XX1
 - xi. Cis-Mara/Oleleshwa/2XX3 measuring 16 acres distributed to the 10 children
 - xii. Cis-Mara/Oleleshwa/19XX7



- xiii. Cis-Mara/Oleleshwa/19XX7
- xiv. Cis-Mara/Oleleshwa/19XX8
- xv. Cis-Mara/Oleleshwa/19XX4
- xvi. Cis-Mara/Oleleshwa/19XX5
- xvii. Cis-Mara/Oleleshwa/19XX6
- xviii. Cis-Mara/Oleleshwa/19XX7
- xix. Cis-Mara/Oleleshwa/19XX8
- xx. Cis-Mara/Oleleshwa/19XX0
- xxi. Cis-Mara/Oleleshwa/19XX1
- xxii. Cis-Mara/Oleleshwa/19XX9
- xxiii. Cis-Mara/Oleleshwa/19XX0
- xxiv. Cis-Mara/Oleleshwa/19XX2
- xxv. Cis-Mara/Oleleshwa/19XX3
- xxvi. Cis-Mara/Oleleshwa/19XX4
- xxvii. Cis-Mara/Oleleshwa/19XX5
- xxviii. Cis-Mara/Oleleshwa/19XX6
- xxix. Cis-Mara/Oleleshwa/19XX2
- xxx. Cis-Mara/Oleleshwa/19XX3

- 60. She proposes that, the money deposited at Cooperative bank be used to pay the accrued land rates and;
 - a. Other income from the estate to be shared- 50% to her for she has three young children who are still in school - and each of the other two houses to get 25% thereof.
- 61. The 1st objector proposes that the estate property be shared equally amongst the ten children of the deceased.
- 62. The 2nd objector propped equitable distribution of the estate properties to all beneficiaries including JW and her children. She stated that the estate is comprised of three households and that the estate be divided equally amongst the three households under section 40 of the [Law of Succession Act](#).
- 63. She however, argued that by dint of definition of ‘wife’, ‘spouse’ and ‘widow’ in section 3 of the [Law of Succession Act](#) excludes a divorced wife. Thus, the 4th objector is not entitled to inherit anything from the deceased.
- 64. The 2nd objector proposes that [particulars withheld] House be sold and proceeds thereof be shared amongst all beneficiaries.
- 65. The 4th objector proposed that it be presumed that she contributed 50% in the acquisition of [particulars withheld] House which was acquired during her marriage to the deceased. And that she is entitled to 50% of [particulars withheld] House as well all income generated from that investment.



66. After consideration of the arguments by all parties as well as the law, the deceased had; 3 wives FM (divorced), JW and EM; and 10 children.
67. The estate properties identified herein shall be distributed as follows: -
- a. Except for [particulars withheld] House, all landed properties of the deceased including shares at CMA and Golden chance, all vehicles and farm implements shall be shared equally amongst all the beneficiaries ascertained above other than the 4th objector.
 - b. The [particulars withheld] House will be distributed equally to the 4th objector and all other beneficiaries. Parties may consider selling this property and share the proceeds equally.
 - c. The four young children of the deceased who are still in school shall be allocated funds sufficient to cater for their school fees and up to university or college level. The money shall be held in a trust for the said children in the name of their mothers and any child or children from their said homesteads who have attained the age of 18 years. These funds should come from the accounts in cooperative bank and Equity bank as well as income derived from the estate property until distribution of the estate is completed.
 - d. Money in bank accounts and any income from the estate after provision for (c) above, and payment of all liabilities of the estate, shall be shared equally amongst all the beneficiaries except the 4th objector.
 - e. As these proceedings involve close family members, no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 28TH DAY OF FEBRUARY, 2025.

.....
F. GIKONYO M

JUDGE

In the presence of: -

Yenko for 1st Objector

Nyairo holding brief Njagi for Petitioners

Kiptoo for 3rd Petitioner

Odanga for 2nd Objector

CA - Kinyua

