



REPUBLIC OF KENYA



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**Muguna v Muguna (Civil Appeal E122 of 2022)
[2025] KEHC 2542 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E122 OF 2022
EM MURIITHI, J
FEBRUARY 27, 2025**

BETWEEN

DAVID MURIUKI MUGUNA APPELLANT

AND

ROBERT KIMATHI MUGUNA RESPONDENT

*(An appeal from the Judgment of Hon. E. W Ndegwa (S.R.M) in
Githongo Succession Cause No. 95 of 2019 delivered on 3/8/2022)*

JUDGMENT

1. The deceased herein, M'Muguna M'Njeru died intestate on 26/8/1983. He was survived by his 5 children namely Robert Kimathi Muguna, Alice Nyegera M'Muguna, Martha Mbuthu Muguna, David Muriuki Muguna and Judith Muthoni, as listed in the introductory letter of the chief of Kibaranyaki Location dated 7/8/2019. Robert Kimathi Muguna, the Petitioner in the lower court and the Respondent herein, petitioned for grant of letters of administration on 30/8/2019. On 11/6/2021, the Respondent filed summons for confirmation of grant but the Appellant protested to the mode of distribution he had proposed at paragraph 4 thereof.
2. The protest was subsequently heard through viva voce evidence and in its impugned judgment dated 3/8/2022, the trial court ruled that:

“The dispute is in relation to Nanyuki Nturukuma/block 8/39 and plot ¹/₈ acre which the protester alleges were jointly sold by Robert Kimathi and Martha Mbuthu without the proteser’s consent. To support his case, the protester produced a letter from the Secretary/ Manager Mariara Farmers Co-operative Society dated 5/10/2021 as PEX1. The same reads as follows: "This is to certify parcel Nturukuma block 8/39 2 acres and 1/8 acre was transferred from late Elizabeth Regeria Muguna to Robert Kimathi Muguna I.D No. 0326XXXX, witnessed by her children Judith Muthuri Muguna I.D No....., Alice Nyegera



Muguna I.D No..., and David Muriuki Muguna I.D NO....during the management meeting held on 15/12/2000 MIN NO 84/2000."

The protestor was therefore aware and was involved in the transfer of the two assets in question. As a matter of fact, this cause relates to the estate of Muguna Njeru alias M'muguna M'njeru. As evidenced by PEX1, the two assets in question were not registered in his names but in the name of Elizabeth Regeria Muguna. The estate of the deceased therefore only comprises of the two assets namely Abothoguchi/Githongo/287 and Abothoguchi/Githongo/439. Lastly, on the issue of distribution of the estate, section 38 of the Succession Act provides that 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. I have considered the petitioner's proposed mode of distribution. I note that Robert Kimathi Muguna, the petitioner and Judy Muthoni Muguna are getting slightly a smaller share than the other beneficiaries. Judy Muthoni Muguna executed the consent to the confirmation of grant. It is my opinion that the petitioner's proposed mode of distribution is fair and I adopt it as a judgement of this court. The estate of the deceased will therefore be distributed as follows:

1. LR NO. Abothoguchi/Githongo/287
 - a) Robert Kimathi Muguna.....0.17ha
 - b) Martha Mbuthu Muguna.....0.17ha
 - c) Judy Muthoni Muguna.....0.17ha
 - d) Alice Nyegera Muguna.....0.17ha
 - E) David Muriuki Muguna.....0.17ha
2. LR NO. Abothoguchi/Githongo/439
 - a) David Muriuki Muguna.....0.114ha
 - B) Martha Mbuthu Muguna.....0.114ha
 - C) Alice Nyegera Muguna.....0.114ha
 - D) Judy Muthoni Muguna.....0.138ha
 - E) Robert Kimathi Muguna.....0.138ha"

The Appeal

3. On appeal, the Appellant filed his memorandum of appeal on 8/9/2022 listing 7 grounds as follows:
4. The learned senior resident magistrate erred in law and in fact admitting petitioner to file summon for confirmation of grant on 11th of June 2021 which were not admissible as evidence and thus reaching to a wrong decision yet I had objected stating Robert Kimathi Muguna and Martha Mbuthu, were not fit to be administrators of deceased estate because they had disposed off Nanyuki/Nturukuma/block 8/39 -2 acres together with a plot ¹/8 an acre and the petitioner failed to include the land in his Further Supporting Affidavit to show they were for the deceased. That petitioner in his further Supporting Affidavit paragraph 6 and 7, both were answered in my objection Further Replying Affidavit paragraph 9 and 11. That was on 17th March 2021.



5. The learned senior resident magistrate erred in law and in facts in not applying the principle of equity and distribution and sharing of the deceased property Abothuguchi/Githongo/287 and Abothuguchi/Githongo/439 and reaching into wrong decision with the provisions of CAP 160 laws of Kenya.
6. The learned Senior Resident Magistrate erred in law and in facts by stating Nanyuki/Nturukuma/block 8/39 and ¹/₈ plot was given to Robert Kimathi by his mother, with a [MIN No. 84/2000](#) dated 25th December 2000 and yet I objected stating to the court that my mother Elizabeth Regeria Muguna died in 1999. Robert did not show any Death Certificate.
7. The learned Senior Resident Magistrate erred in law and in fact in not appreciating that all land parcels were for deceased Muguna Njeru thus reaching to a wrong decision by stating Nanyuki/ Nturukuma/block8/39 and plot ¹/₈ was given to petitioner by his mother on 25th December 2000, yet the petitioner, in his Further Supporting Affidavit did not mention land parcel Nanyuki/Nturukuma/block8/39 - 2 acres and plot ¹/_s an acre was given by his mother Elizabeth Regeria Muguna to him. So, by stating his mother gave him the property later on this is afterthought. The petitioner stated in his Further Supporting Affidavit paragraph 5 the said land and plot of the deceased estate cannot now be deemed to be part of estate. This alone has offended Section 45 of the Succession Act. This is pure intermeddling with property of the deceased.
8. The learned Senior Resident Magistrate erred in law and in fact in admitting in evidence of petitioners without any document to show how he catered for his mother treatment.
9. The learned Senior Resident Magistrate erred in law in admitting my sisters evidence in support of petitioner case and yet they were from nuclear family (one father and mother).
10. The learned Senior Resident Magistrate erred in law and in facts by receiving and signing documents to confuse court process, brought and filed by Robert Kimathi Muguna. The document is named as the Matter Of Estate Of Daniel Mugwika M'ikwinga (deceased) so by this, petitioner does not know the line of deceased owner of estates we are claiming, annexed is the document marked DM2.

Duty of the court

11. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

Evidence

12. Protestor's Witness 1 David Muriuki Muguna, the Appellant herein and the Protestor in the trial court, adopted his statement dated 4/1/2021 and a further statement filed on 16/11/2021 as his evidence in chief. He produced a letter from the Secretary/Manager Mariara Farmers Co-operative Society dated 5/10/21 filed on 27/10/21 as PEX 1.
13. The witness was not cross examined.
14. Protestor's Witness 2 Japheth Mburugu Ringera, testified that, "I recall that I was in court on 9/3/22. I stated that I wish to file my witness statement on 8/3/22. I wish to confirm that I did not file any witness statement. Witness statement filed on 8/3/22 does not bear my signature. It is the protestor who signed. I did not record the contents of the witness statement."
15. The witness was not cross examined.



16. Petitioner's Witness 1 Robert Kimathi Muguna, a resident of Isiolo and a businessman testified that, "I am the petitioner herein. I am aware that the protestor filed a protest. I filed my witness statement on 8/10/21 which I wish to rely on as my evidence in chief. I also wish to rely on my application summons for confirmation of grant filed on 11/6/21."
17. On cross examination, he stated that, "Muguna Njeru (deceased) had 2 parcels of land. Our mother died in the year 2000."
18. Petitioner's Witness 2 Alice Nyegeera M'mugenda, a resident of Githongo and a businesswoman adopted her statement filed on 8/10/2021 as her evidence in chief. She testified that, "I have been called by the petitioner Robert Kimathi Muguna as his witness. The petitioner is my brother. He is my immediate elder brother. The children of the deceased Kimathi Judith Muthoni, David Muguna and myself all had a sitting to distribute the deceased property. We all proceeded to Mariara Society and transferred to Kimathi the land belonging to Nturukuma. The village elders M'marete M'mbocania, M'irua, Francis M'thuranira who are now deceased and the District Officer whose name I did not recall subdivided the deceased lands at Kaugu and Rugeta. The District Officer came to the land of Kaugu a 2nd time and advised that we file a succession cause which was done by Kimathi."
19. The witness was not cross examined.
20. Petitioner's Witness 3 Judith Muthomi, a resident of Isiolo and a business lady, adopted her witness statement filed in court on 8/10/21 as her evidence in chief. She went on to state that, "I know Robert Kimathi Muguna. He is my elder brother."
21. On cross examination, she stated that, "Our mother died almost 20 years ago. It was in 2000 or 2009. I am not very sure. Our father had 2 parcels of land."
22. Petitioner's Witness 4 Martha Mbuthu, a resident of Kaugu-Kibaranyaki and a farmer adopted her witness statement recorded on 8/10/21 as her evidence in chief. She went on to state that, "Robert Kimathi Muguna is my elder brother."
23. On cross examination, she stated that, "Our father had 3 parcels of land. Nturukuma, Karugwa and Kibaranyaki. The land in Nturukuma was not included in this cause because my mother Eizabeth Muguna has given that land to Robert Kimathi Muguna. I wish to confirm that our mother gave the land to him contrary to what David Muriuki claims our mother died 20 years ago. I do not recall the exact years."

Submissions

24. The Appellant urges that the Mariara Society Management and the children of the deceased during the meeting of 15/12/2000 resolved that the Respondent would take land parcel No. Nanyuki/Nturukuma/8/39 (2 acres and ¹/₈ plot) and forego land parcel Nos. Abothuguchi/Githongo/ 287 and 439. He urges that after the said meeting, the Respondent and Martha Mbuthu Muguna sold land parcel No. Nanyuki/Nturukuma block 8/39 (2 acres) and ¹/₈ acre.
25. The Respondent rather swore a replying affidavit on 18/10/2024 in opposition to the appeal.

Analysis and Determination

26. The twin issues for determination are what the estate properties are and how the same ought to be distributed.
27. The Appellant recorded in his statements adopted as his evidence in chief that;



28. “The statement of Secretary manager dated 5th October 2021 is herein to confuse the honorable court because: i) Elizabeth Regeera Muguna died on 1999 and on 15th December 2000 she was deceased. ii) She was not the owner of both land parcel and ¹/₈ an acre plot named Nanyuki/Nturukuma/block 8/39 and ¹/₈ an acre plot. iii) How she managed to transfer both land and ¹/₈ an acre plot is not known and this is true because Doreen Makena has not shown our signatures on her owner. iv) Please, the court should note that both Robert Kimathi, Judith Muthuri, Alice Nyegera and David Muriuki our witness cannot tally because they are both from Nuclear Family with no independent witness.”
29. Alice Nyegera recorded in her statement that “My brother Roberth Kimathi was given the two parcels of land at Nturukuma. We were all present except Martha Mbuthu. David Muriuki was present. He even signed for the transfer at the Mariara sacco offices. My brother Robert Kimathi used the proceeds to and pay for my mothers hospital bills and my sisters children who were living with my mother.” Her evidence was corroborative and consistent with that of Respondent, Judith Muthoni and Martha Mbuthu.
30. The court notes the letter by Doreen Makena, the Secretary/Manager of Mariara Farmers Co-operative Society Ltd dated 5/10/2021 produced by the Appellant as PEX 1 confirming the transfer of Nanyuki/Nturukuma block 8/39 2 acres and ¹/₈ acre from Elizabeth Regeera Muguna (deceased) to the Respondent on 15/12/2000 in the presence of the Appellant, the Respondent, Judith Muthuri Muguna and Alice Nyegera Muguna. That is proof on a balance of probabilities that the said parcels of land were transferred to the Respondent by his mother Elizabeth Regeera Muguna (now deceased).
31. The record is undoubtedly clear that the proprietor of L.R No. Nanyuki/Nturukuma block 8/39 2 acres and ¹/₈ acre, Elizabeth Regeera Muguna had transferred them to the Respondent during her lifetime. This court finds that L.R No. Nanyuki/Nturukuma block 8/39 2 acres and ¹/₈ acre did not form part of the estate of the deceased herein and thus they were unavailable for distribution to the beneficiaries.
32. The estate of the deceased therefore comprised of L.R No. Abothuguchi/Githingo/439 and L.R No. Abothuguchi/Githongo/287.
33. Section 38 of the *Law of Succession Act* provides that:
- “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.”
34. The provisions of section 42 of the *Law of Succession Act* mandates the court to take into consideration the properties, gifts or bequests made to any of the beneficiaries during the lifetime of the deceased, during distribution of the estate properties. Here, it is conceded that although the Respondent was bequeathed L.R No. Nanyuki/Nturukuma block 8/39 2 acres and ¹/₈ acre by his mother (now deceased), the said parcels of land were soon thereafter sold and the proceeds therefrom utilized for their mother’s medical bills and the upkeep of their sister’s children who were living with their mother. Invariably, the Respondent did not benefit from any previous bequests by his mother or the deceased herein.
35. The court notes that L.R No. Abothuguchi/Githongo/287 was distributed equally among the 5 children of the deceased, which distribution was proper and in tandem with the provisions of section 38 of the *Law of Succession Act*.



36. The court equally notes that the Respondent and Judy Muthoni Muguna got a slightly larger share of L.R No. Abothuguchi/Githongo/439 than the other beneficiaries.
37. The court finds the same to be equitable considering that the other beneficiaries save for the Appellant had consented to it and the Respondent took care of his mother (now deceased). The Appellant's protest was centered on the omission of L.R No. Nanyuki/Nturukuma block 8/39 2 acres and $\frac{1}{8}$ acre from the schedule of distribution, and not the Respondent's proposed mode of distribution per se.
38. The court finds that the trial court properly evaluated the evidence led and the applicable principles of law in reaching the decision it did, and there is no error of principle as would entitle this court to interfere.

Orders

39. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
40. There shall be no order as to costs of the appeal.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. David Muriuki, Advocate for Appellant.

Mr. Robert Kimathi, Advocate for Respondent.

