



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Hannah Njeri Matu (Deceased) (Succession Cause  
54 of 2020) [2025] KEHC 4350 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4350 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 54 OF 2020**

**A MSHILA, J**

**MARCH 28, 2025**

**IN THE MATTER OF THE ESTATE OF HANNAH NJERI MATU (DECEASED)**

**BETWEEN**

**JERUSHA NJERI MWANGI ..... 1<sup>ST</sup> EXECUTOR**

**FRANCIS KAMAU KARENJE ..... 2<sup>ND</sup> EXECUTOR**

**AND**

**ELIZABETH WANJIRU MATU ..... 1<sup>ST</sup> OBJECTOR**

**CATHERINE WAITHERA MATU ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. Jerusha Njeri Mwangi and Francis Kamau Karengé the Executors herein filed an application for grant of probate dated 28<sup>th</sup> August, 2020 in respect of the estate of Hannah Njeri Matu (deceased) who died on 15<sup>th</sup> February, 2020 in Nairobi leaving behind a will dated 24<sup>th</sup> August, 2018.
2. On 18<sup>th</sup> September 2020, the 2<sup>nd</sup> Objector herein Catherine Waitthera Matu filed her Notice of Objection or Protest to the will dated 24<sup>th</sup> August, 2018. The protest was supported by her affidavit dated 23<sup>rd</sup> September, 2020.
3. The Protest is also supported by the affidavit of Elizabeth Wanjiru Matu the 1<sup>st</sup> Objector herein dated 2<sup>nd</sup> October, 2020.
4. On 23<sup>rd</sup> March, 2021, the court directed that the Objection be heard by way of viva voce evidence and the matter was listed for hearing on 27/10/2021.
5. Douglas Mutai (PW1) a Senior Deputy Secretary at the Ministry of Water, Sanitization and Irrigation. He testified that as at 30/7/2018 he was a Senior Deputy County Commissioner at Thika West Sub-County. On the said date he presided over a dispute between Catherine Matu and Hannah Matu



- (deceased). He stated that the dispute was that Catherine was objecting to her mother's decision to transfer her property to her younger sibling. The outcome was said to be that the deceased said that she would not give Catherine any of her properties but would give to Catherine's sons because Catherine had been given several titles to get loans and had defaulted as such ought not to complain of unfair treatment. The siblings were now paying for the loans to prevent the properties from being auctioned. He stated that minutes were taken during the said meeting.
6. Nyambura Njuguna Magua (PW2) an advocate testified that she wrote the will and attested its execution by the executor and her two witnesses. She testified that the deceased approached her and informed her that she wished to draw a will. She stated that she informed her of the legal requirements. Later the deceased came back to her office and stated her wishes in Kikuyu language which language she is familiar with. She prepared the will, translated it into the English language and explained it to the deceased in the presence of her two witnesses. The deceased confirmed the will and appended her signature as well as her witnesses. She stated that the deceased was of sound mind at the time of making the will and that there was no coercion. She stated that the will was sealed and was only released to the executors after being read in the presence of the Objector. She produced the will.
  7. Caroline Wanjiku Matu Moli (PW3) testified that she resides in the USA and that the deceased was her mother. She adopted her affidavit as her evidence.
  8. In cross examination she stated that her mother visited her in October 2018 and stayed with her until her passing on as she only stayed for two weeks after returning from America. She stated that she was taking care of the deceased's hospitalization.
  9. Jerusha Njeri Mwangi (PW4) testified that the deceased was a longtime friend. The deceased asked her to escort her to a lawyer where she explained what she wanted and the same was written. It was read to them and she accepted that what had been written was correct. She testified that she saw the deceased put her thumb print on the will and that she also signed on the will She stated that there was no intimidation.
  10. Francis Kamau Karengi (PW5) testified that she knew the deceased as she was a friend from his home. He was there when the will was written as the deceased had requested him to accompany her to the lawyer's office. He testified that the signature and thumb print were done by the deceased in his presence.
  11. Philip Karumi Matu (PW6) wished to adopt his affidavit. In cross examination he stated that he was not present when the deceased who was his mother wrote the will. He testified that while living in USA, he was living with Elizabeth but in 2021 he came back as he did not like how Catherine was treating his mother. Catherine manipulated Elizabeth to an extent that Elizabeth never visited the deceased in hospital and she also did not attend the burial.
  12. Cherie Hannah Njeri Kihato (PW7) adopted her affidavit as her evidence in chief. In cross-examination, she testified that she saw the will after her grandmother died.
  13. Catherine Waithera Matu (DW1) testified that the deceased was her mother and that she was objecting to the will. She alleged that the will is a forgery as it was written in English and no one interpreted the will to the deceased. She testified that Philip had taken the deceased to an advocate where she stated that he was the only child. Further, that the will contained government properties. She testified that she wants the will to cater for all the children.
  14. In cross examination she stated that her son Peter Mathu was given a portion being Thika Municipality Block 225 and 224 as well as Caroline. She stated that the children of her late brother were given government land. She testified that the will was a forgery as it was written in English. Further, she stated



that she had not reported the forgery to the police. She contended that her mother's mental state was not good but had no medical report in support.

15. Parties were directed to file their written submissions on the validity of the will.

## 2<sup>nd</sup> Objector's Submissions

16. The Objector submitted that the evidence of DW1 shows that the testator by inclusion in the will of properties belonging to Kenya Prisons as well as leaving out the bulk of the estate undistributed did not comprehend what properties she ought to or not to have included in the will. The testator purported to bequeath properties belonging to her husband which are subject to revocation proceedings before a Muranga court. It was submitted that the testator was poisoned by the circumstances around her at the time of writing the will that negatively influenced her affections towards the objectors. Further, the Objector submits that the testator seemed to have been in distress as she was crying while recording the will. No reasons were advanced as to why the testator signed the will and also put a thumb print. No certificate of translation has been attached as such did the testator understand what she was appending to.

## Executors' Submissions.

17. The Executors narrated that they were both present in the advocate's chambers when the will was drawn and that the testator uttered the will out of her own free will. They witnessed the deceased affix her finger and that they also signed in witness. The same was attested by the advocate as such the will is valid. It was clear why the testator distributed her property the way she did as the two objectors had been cruel to the deceased during her lifetime. It was submitted that none of the objectors presented proof of allegations of fraud or forgery, coercion or incapacity due to unsound mind. It was also said that the testator did not disinherit any of her dependants as such her wishes ought to be upheld. This matter was said to be unrelated with the succession cause in Muranga belonging to the estate of the testator's husband as none of the properties subject to those proceedings form part of the estate herein.
18. It was submitted that the threshold had been met and that the will is valid as it was executed by the testator and attested by two competent witnesses and that the deceased had capacity to express herself as she did. Reliance was placed in the case of in *re estate of Wilfred Koinange Gathioni (deceased)* (2020) eKLR. The Objectors allegations were said to be just mere allegations as no corroborative evidence was presented. It was submitted that the executors presented concrete evidence that the testator was in perfect mental disposition at the time of recording the will and did it out of her own will. There is also no proof of allegations of undue influence, fraud or coercion. Reliance was placed in the case of *in re estate of Kevin John Ombajo (deceased)* (2021) KEHC 459 (KLR). Further, it was submitted that the claim that some properties had been left out could not invalidate a will as the omissions can be subjected to intestacy proceedings. In any case, no property was specifically mentioned. Reliance was placed in the case of *in re estate of Jackson Mubea Waweru (deceased)* (2016) eKLR. Lastly the court was urged to dismiss the objection with costs.

## Issues for Determination

19. Having considered the record and the rival submissions by the parties, the main issue arising for determination is whether the will is valid.

## Analysis

20. The Objector submits that the testator included in her will properties that belonged to the government while leaving out some of her properties as such she did not understand the properties that she ought



- to have included or leave out. She also bequeathed properties that belonged to her husband and were subject to revocation proceedings and was overall influenced by the circumstances around her to leave out the objector in her will. The alleged will was also said to be a forgery and the mental state of the deceased was said to be unstable at the time of preparing the will.
21. The executors on the other hand contended that the will was prepared before an advocate who read it out to the deceased and was only signed by the deceased upon the same being confirmed as being her intended wishes, thereafter the deceased signed and placed a thumb print in the presence of the executors who also signed the will. The deceased was said to be of sound mind and that the deceased left out the objectors as they were cruel to her during her lifetime. The properties in the succession cause in Muranga were said to be unrelated with the properties in the cause herein. Lastly that no proof of fraud, coercion or undue influence as alleged by the objectors.
22. Section 11 of the *Law of Succession Act*, provides as follows:
- a. “Written wills.
  - b. No written will shall be valid unless—
    - the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
    - the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
    - the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”
23. There is ample evidence that the deceased intended to dispose of her property in the manner that she did. The deceased had even gone further to explain the reasons behind her bequests to her different heirs and/or the reasons for the lack thereof.
24. There is also evidence that the will as prepared was signed and thumb printed by the deceased in the presence of her witnesses who equally signed.
25. The Objectors also raise issues of forgery in regard to the deceased’s will. She avers that the will was written in English and the same was not interpreted. The will contained government properties and that some properties had also been left out. However, the alleged fraud has not been reported for investigations to be carried out with a conclusive outcome on whether there had indeed been fraud. Claims of forgery are serious claims that ought to be investigated and proved.
26. Refer to the case in *re Estate of Francis Andabwa Nabwangu (Deceased)* (2021) eKLR where the court stated that: -

The way to deal with allegation of forgeries of signatures on a will is to have them referred to handwriting experts or document examiners for comparison of the alleged forged signatures with the known signatures of the deceased, as was said and done in *In Re JNM (Deceased)* [2005] eKLR (Kooome J). See also *Elizabeth Kamene Ndolo v George Matata Ndolo* [1996] eKLR (Gicheru, Omolo and Tunoi JJA) and *In re Estate of the late Samson Kipketer*



*Chemirmir (Deceased)* [2019] eKLR (Ndung'u J). The opinion of document examiners or handwriting experts is critical.

27. He who alleges must prove their claims. This Court has perused the record and finds that the Objector's claims are mere allegations as no evidence has been tabled before this court to support these allegations of forgery, coercion, undue influence and/or the fact that the properties herein are related to the properties in the succession cause in Muranga subject of revocation belonging to the deceased's husband.
28. This court is satisfied that the impugned will was properly executed by the deceased and her two witnesses as such the will is held to be valid.
29. Next, the application raises issues that the deceased was influenced negatively against the Objectors by the circumstances around her. This court however, notes that the testator had testamentary freedom to bequeath her property in anyway she so wished as provided for by Section 5(1) of the [Law of Succession Act](#) which states that:-

“5(1) Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses
30. The Objectors concede that the deceased was of sound mind when the alleged will was drawn. The allegations that the deceased was unduly influenced will at this point be considered as unsubstantiated as there is no evidence of the same. The deceased has explained the reasons as to her bequests. In any event, this Court reiterates that the deceased had the freedom to distribute her property in any manner she so wished.
31. This Court is satisfied that in the end, the Respondents have proved on a balance of probabilities that the deceased understood what she was doing and her intentions were clear.
32. This Court has carefully considered the record and the rival submissions and is satisfied that the impugned will made by the deceased dated 24<sup>th</sup> August, 2018 was properly executed by the deceased and her two witnesses. This Court is also satisfied that there was no evidence demonstrated of undue influence. As such, the said will is found by this Court to be valid.

### **Findings and Determinations**

33. For the forgoing reasons this court makes the following findings and determinations;
  - i. This court finds the deceased's will to be valid.
  - ii. Distribution shall be as per the will.
  - iii. The Objectors shall bear the costs of this application.

Orders Accordingly.

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of;



Sanja – Court Assistant

Muriithi for the Executors

N/A for the Objectors/Protestors

