



REPUBLIC OF KENYA



**In re Estate of Isaiah Wahome S/O Ngatia (Deceased) (Succession Cause
19 of 2009) [2025] KEHC 4038 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 19 OF 2009
MA ODERO, J
MARCH 28, 2025**

JUDGMENT

1. The Petitioner Stephen Kagiri Wahome filed in this Court the Summons for confirmation of Grant dated 10th January 2023 setting out the proposed mode of distribution of the estate of the Deceased.
2. The Protestor Rose Wanjira Wachira filed an Affidavit of Protest dated 27th April 2023. The protest was heard by way of oral evidence with each party calling only one (1) witness in support of their case.

Background

3. This succession cause relates to the estate of the late Isaiah Wahome Ngatia (hereinafter ‘the Deceased’) who died intestate on 8th July 1991. A copy of the Death Certificate Serial No. 234369 was filed in court on 23rd July 1999.
4. The Deceased was a polygamous man and was survived by three (3) wives namely Tabitha Ngima Kagiri, Grace Muthoni Mureithi and Edith Nyokabi Wahome. The Deceased was also survived by several children.
5. The estate of the Deceased comprised the following parcels of land
 - (i) Ruguru/Kamariga/1033 – measuring 14.1 Acres.
 - (ii) Mutara Laikipia Block 1/201 – measuring 6 Acres.
 - (iii) Supili Ndururumo/1502 – measuring 5 Acres.
6. Following the demise of the Deceased one of his sons from the 2nd House Stephen Kagiri Wahome applied for Grant of letters of Administration Intestate which Grant was issued on 26th November 2021.



7. Thereafter the Petitioner filed the Summons for confirmation of Grant dated 10th January 2023. In the Affidavit in support of the summons for confirmation of Grant the petitioner proposed that the estate be distributed in the following manner:-

“I. Ruguru/kamariga/1033 To Go To

- a. Esther Wamuyu Mwangi - 0.5 Acres
- b. Nicholas Kagiri Gatangi - 0.15 Acres
Eric Githinji Murugi
Stephen Kagiri Wahome
Charles Macharia Wahome
John Ngatia Wahome
Joseph Muriithi Wahome
- c. John Ngatia Muregi - 0.366 Acres Jointly
- d. Alice Ngima Wahome
Caroline Gathoni Wahome
Duncan Kagiri Wahome - 0.366 Acres Jointly
- e. Phylis Njoki Wahome
- f. James Ngatia Wahome - 0.366 Acres Jointly
- g. Esther Wangechi Kagiri - 1 Acre
- h. Esther Wanjiku Gatonga - 1 Acre
- i. Margaret Wangari Thangei - 1 Acre
- j. Milka Gathigia Mwaniki - 1 Acre
- k. Joseph Muriithi Wahome - 1.25 Acres
- l. Stephen Kagiri Wahome - 1.25 Acres
- m. Charles Macharia Wahome - 1.25 Acres
- n. John Ngatia Wahome - 1.25 Acres
- o. Duncan Kagiri Wahome - 1 Acre
- p. Alice Ngima Wahome - 0.5 Acres
- q. Caroline Gathoni Wahome - 0.5 Acres
- r. Peris Gathigia Mwangi - 1 Acre

II Mutura Laikipia Block1201

- a. Duncan Kagiri Wahome- HALF SHARE
- b. Alice Ngima Wahomeand



III. Spill Durumo Laikipia/1502.....to go to

a. John Ngatia Wahome - Absolutely”

8. The protestor who is a daughter of the Deceased from the 3rd House filed this Protest objecting to the proposed mode of Distribution of the estate.

The Evidence

9. The Protestor Rose Wanjira Wachira gave evidence on her own behalf. She confirmed that she is one of the daughters of the Deceased from the 3rd House. The Protestor complained that some of the beneficiaries of the estate namely herself, Margaret Murugi Muriuki and Esther Wanjiru Muthui had been excluded in the distribution of the estate.
10. According to the Protestor being daughters of the Deceased, she and her sisters are entitled to a share in land parcel No. Laikipia/Mutura/Block 1/201 which had been allocated to the 3rd House. The Protestor submitted that the mode of distribution proposed by the Petitioner smacks of discrimination against some of the genuine beneficiaries. That the said beneficiaries stand to be disinherited if the mode of distribution proposed by the petitioner is allowed to stand and the Grant is confirmed as proposed by the petitioner. The protestor proposes that the said parcel of land be divided equally amongst all the children of the 3rd House.
11. The Petitioner confirmed that he was a son to the Deceased from the 2nd House and that he had been issued with the Grant. He further confirmed that the protestor is his stepsister from the 3rd House. He defends his proposed mode of distribution. He states that prior to his demise the Deceased had already shared out his property amongst the three Houses and had indicated what share each person was to get.
12. According to the Petitioner the Deceased had set aside 1.5 acres to be given to any daughter who would be sent away by her husband. The Petitioner stated that the Deceased made it clear that married daughters should not inherit from his estate. That the Protestor was not being discriminated against as she was married and was still living with her husband. The petitioner urged the court to confirm the Grant as prayed.

Analysis And Determination

13. I have considered the Summons for confirmation of Grant filed by the petitioner, the Affidavit of Protest sworn in response thereto, the evidence adduced before the court as well as the written submissions filed by both parties.
14. It is common ground that the Deceased in this matter passed away way back in July 1991. It is also accepted that the Deceased was a polygamous man who was survived by three (3) Houses. The identities of the beneficiaries is not in dispute.
15. The Protestor appears to take no issue with the Grant of letters of Administration Intestate to the petitioner who is her brother. Nor does she seek to have the Grant revoked. The Protestors only complaint is that some of the Deceased’s daughters have been left out in the distribution of the estate.



16. It is pertinent to note that this matter relates to the estate of a polygamous man. In that regard the distribution of the estate will be guided by Sections 40(1) and 42 of the [Law of Succession Act](#) Cap 160 Laws of Kenya. Section 40(1) provides that

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

17. In Estate of John Musambayi Katumanga (Deceased) [2014] eKLR Hon. Justice William Musyoka stated as follows:

“Under Section 40 of the Act, if the deceased had several wives, as opposed to households, the estate would devolve depending on the number of children. Ideally, the estate would be divided equally among all the members of the entire household, lumping the children and the surviving spouses together. After that the family members would retreat to their respective houses where Section 35 of the Act would be put into effect, so that if there was a surviving spouse in a house she would enjoy life interest over the property due to her children. The house without a surviving spouse would split its entitlement in terms of Section 38 of the [Law of Succession Act](#), the children would divide the estate equally amongst themselves.” [Own emphasis]

18. 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.” [Own emphasis]

19. I have perused and considered the mode of distribution as proposed by the petitioner. He has distributed the three parcels of land left by the Deceased to the three (3) Houses.

20. In the allocation to individual beneficiaries I note that some of the daughters of the Deceased have been included but as pointed out by the protestor herself and her two (2) sisters have not been allocated any portion of land.

21. The petitioner argues that he was merely following the wishes of the Deceased who had decreed that no married daughter was to inherit from his estate. The fact of the matter is that the Deceased died intestate. He did not leave a written will specifying which of his children was to inherit from his estate. More importantly there was no written will left behind by the Deceased instructing that no married daughter was to inherit from his estate.

22. The Petitioner as the Administrator of the estate has a duty to ensure that there is equity in the distribution of the estate. He ought not rely on unwritten edicts to determine how the estate is to be distributed.

23. The argument that the Protestor being a married daughter is not entitled to inherit from her father’s estate has no basis in law. This argument is founded on customary law which is no longer applicable.



24. Section 38 of the *Law of Succession Act* is gender neutral. It provides for equal distribution of the estate to all the children of the Deceased irrespective of gender or marital status. Therefore daughters of a Deceased person whether married or not are entitled to a share of the estate of their dead parent.
25. Section 38 of the *Law of Succession Act* must be read together with Article 27 of *the Constitution* of Kenya 2010 which provides for ‘Equality and Freedom from Discrimination. Article 27 provides that all men and women have the right to equal treatment in all spheres of life. Therefore any customary edict that contravenes Article 27 of *the Constitution* of Kenya 2010 is null and void.
26. Even prior to the promulgation of the 2010 Constitution, the courts made it very clear that despite the existing customary law they would not uphold discrimination of daughters in the distribution of an estate.
27. In Re Estate Of Solomon Ngatia Kariuki(Deceased) [2008] eKLR, Hon. Justice Makhandia (as he then was) stated as follows:-
- “The *Law of Succession Act* does not discriminate between the female and male children or [between] married or unmarried daughters of the deceased person when it comes to 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 county, 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 forgo their father’s inheritance because they are likely to enjoy inheritance of their husband’s side of the family.” [Own emphasis]
28. This is precisely the argument being fronted by the Petitioner when he asserts that being a married woman who is living with her husband, the Protestor is not entitled to inherit from her Deceased father’s estate.
29. In Re Estate Of M’ngarithi M’miritalias Paul M’ngarithi M’miriti(Deceased) [2017] eKLR Hon. Justice Gikonyo stated as follows:-
- “And I am happy to say that from thence there are many cases and the number is rising by the day as courts implement *the constitution* which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and true constitution. More specifically I am content to cite the proclamation by the court of Appeal in the case of Stephen Gitonga M’muriithi v 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.....” [Own emphasis]
30. In Mary Wangari Kihika v John Gichuhi Kinuthia & 2 Others[2015] eKLR the court emphasized that:-
- “all children of the deceased, including the daughters who are married, are entitled to inherit.”



31. In *Eliseus Mbura M' Thara v Harriet Gambaka & Another* [2012] eKLR Hon. Lady Justice Lessit (as she then was) stated that

“The *law of succession Act* does not discriminate between gender in matters succession or inheritance. Under the *Law of succession Act* and indeed under *the Constitution* a child is a child and every person has equal rights under the law irrespective of gender. The *Law of Succession Act* does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.” [Own emphasis]

32. Finally on this point in the case of *Peter Karumbi Keingati & 4 Others v DrAnn Nyokabi Nguithi*[2014] eKLR, Hon. Justice Luka Kumaru (as he then was) held as follows:-

“As regard to the argument by the Applicants that married daughters ought not to inherit their parents’ property because to do so would amount to discrimination to the sons on account of the fact that the married daughters would also inherit property from their parents-in-law, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter 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..... 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. This ghost has long cast its shadow in our legal system despite the 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 persons on the basis of their sex, marital status or social status among others, the time has now come for these discriminative cultural practices against women to be buried in history.” [Own emphasis]

33. Based on these and a plethora of other similarly decided cases, I find that the argument by the petitioner, that the Respondent is not entitled to inherit from the estate of her father merely because she is married and lives with her husband is not only discriminatory, running afoul of Article 27 of *the constitution* of Kenya 2010, but is also retrogressive. The petitioner being a child of the deceased has equal rights of inheritance with all the other children (sons) of the deceased.

34. I have perused the summons for Confirmation of Grant filed by the Petitioner. Such summons ought to be accompanied by a consent signed by all the beneficiaries indicating that they do not object to the proposed mode of distribution of the estate. In this case no such consent was annexed. Therefore the court has no way of knowing if all the other beneficiaries had consented the distribution as proposed by the petitioner. The petitioner seems to have been acting unilaterally in presenting to court proposed a mode of distribution without seeking the consent of the other beneficiaries. This is not acceptable.

35. Additionally the deceased left behind 3 houses yet the Petitioner has not indicated clearly which house each beneficiary belongs to.



36. Based on the foregoing this court is not inclined to confirm the grant as it is. I find that the petitioner has omitted genuine beneficiaries in the distribution of the estate. Therefore the Court makes the following orders;-

(i) The protest dated 27th April 2023 is successful.

(ii) The Summons for confirmation of Grant dated 10th January 2023 is disallowed.

(iii) The Petitioner shall within forty (40) days file a

Fresh summons for confirmation of Grant incorporating all the beneficiaries to the estate and specifically Rose Wanjira Wachira, Margaret Murugi Muriuki and Esther Wanjiru Muthui indicating the share of the estate allocated to each beneficiary.

(iv) This being a family matter each party shall bear their own costs.

Dated in Nyeri this 28th day of March 2025.

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MAUREEN A. ODERO

JUDGE

