



REPUBLIC OF KENYA



KENYA LAW
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**Kiama v Kiama & 3 others (Civil Appeal E018 of 2021)
[2025] KEHC 6559 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 6559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E018 OF 2021
DKN MAGARE, J
MARCH 25, 2025**

BETWEEN

WILLIAM WAITHAKA KIAMA APPELLANT

AND

ANN NJOKI KIAMA 1ST RESPONDENT

JANE WANGECHI KIAMA 2ND RESPONDENT

PAULINE WANJIKU KIAMA 3RD RESPONDENT

PAUL NDEGWA KIAMA 4TH RESPONDENT

JUDGMENT

1. Succession is the only branch of law where the 4 cardinal vices of prudence, justice, fortitude, and temperance lay side by side with cardinal like folly, injustice, cowardice, and intemperance. It is a place where surge, greed, lust, and gluttony are king while virtue is then out of the window. This Appeal represents what is the worst one can harvest out of greed and gluttony.
2. The matter herein gained shape on 8.8.1984, when the deceased died at the young age of 55 years. Since then the deceased family has never known peace. tears and sweat have flowed effortlessly from brows, and hate blossomed for people who have related for the last many years. Saliva and spit have come out of mouths at the same speed as truth and lies.
3. In 3.5.2013, the family took out a chief's letter from Lilian Wanjugu Kirira, the assistant chief of the Kamakwa sub-location. She listed a total of 12 dependants as having survived the deceased from one dear widow, Lydia Wambui Kiama. The dependants were:
 - a. Lydia Wambui Kiama
 - b. Alexander Macharia Kiama



- c. Joseph Kiriro Kiama
 - d. Josephine Nyangendo
 - e. Ann Njoki Kiama
 - f. Mary Wangui Kiama
 - g. James Wachira Kiama
 - h. William Waithaka Kiama
 - i. Paul Ndegwa Kiama
 - j. Peter Maina Kiama
 - k. Pauline Wanjiku Kiama
 - l. Jane Wangechi Kiama
4. The assistant chief indicated that the family agreed that William Waithaka Kiama was to be the administrator as the widow was elderly. William Waithaka Kiama filed for citation for letters of administration in the high court in Nyeri on 21.5.2013, through the firm of Wagita Theuri and company advocates. These were against Paul Ndegwa Kiama, Pauline Wanjiku Kiama and Jane Wangechi Kiama.
 5. The assistant chief indicated that the family agreed that William Waithaka Kiama was to be the administrator as the widow was elderly. William Waithaka Kiama filed for citation for letters of administration in the high court in Nyeri on 21.5.2013, through the firm of Wagita Theuri and company advocates. These were against Paul Ndegwa Kiama, Pauline Wanjiku Kiama and Jane Wangechi Kiama.
 6. Annexed to the petition for letters of administration were three documents, that is:
 - i. Receipt number 878 for 875/= dated 14.2.2007 from Laikipia West Farmers Co Ltd, being title fee.
 - ii. Receipt number 29573 dated 8.3.1983 share capital of KShs. 1,500/=.
 - iii. Search over Title number Thegenge/Kairia/1113 measuring 0.505 ha dated 2.7.2013
 7. Other properties were listed as belonging to the estate, without a search. These were:
 - i. Parcel Number 212, Mwichwiri Farmers Company.
 - ii. Thegenge/Kiaria/1113
 - iii. Shares With Nyeri Plot Owners Ltd
 - iv. Shares With Tetu Farmers Cooperative Society
 - v. Euaso Nyiro /Surguroi/ Block 1/721
 - vi. Laikipia West Farmers Co Ltd, Plot Number 4782
 - vii. Tigithimatanya/Mururura/299
 8. The application for letters of administration interstate was duly published in the Kenya gazette as 354 of 2013. After transfer to the lower court, the file was later changed to Nyeri CMCC 199 of 2018.



Thus, the file is deceptively new when, in reality, it is over 12 years old in the system. The grant of letters of administration intestate was issued to William Waithaka Kiama on 6.2.2019.

9. Vide summons dated 20.6.2019, the said William Waithaka Kiama sought to confirm the grant of letters intestate earlier issued. The Appellant sought to have the estate distributed as follows:
 - i. Parcel number 212 with Mwichwiri farmers company, Thegenge/Kiaria/1113,
 - ii. Shares with Nyeri plot owners, Shares with Tetu Farmers Cooperative Society, LR Euaso Nyiro /Surguroi/ Block 1/721,
 - iii. Laikipia West Farmers Co Ltd, plot number 4782, and
 - iv. Tigithi Matanya/mururura/299
 - v. be shared equally among Alexander Macharia Kiama, Joseph Kiriro Kiama, Josephine Nyagendo Thungu, Ann Njoki Kiama, Mary Wangui Kiama, James Wachira Kiama, William Waithaka Kiama, Paul Ndegwa Kiama, Peter Maina Kiama, Pauline Wanjiku Kiama and Jane Wangechi Kiama and the share of Joseph Kiriro Kiama who is of unsound mind be registered in the name of Pater Maina Kiama, James Wachira Kiama and Mary Wangui Kiama in trust of Joseph Kiriro Kiama.
10. Paul Ndegwa Kiama filed an Affidavit of Protest in which he opposed the distribution of the estate property and stated that the only property listed for distribution is Thegenge/Karia/1113. He proposed that the same be equally divided among the children of the deceased.
11. The Protestor alleged that the administrator could not purport to distribute the estate as, before the passing of their mother, she had already allocated the estate to different beneficiaries. He annexed a letter alleging a meeting to that effect. He stated that the properties listed under paragraph 4 do not list the estate of the deceased
12. Pauline Wanjiku Kiama also filed an Affidavit of Protest dated 3rd October 2019 with the authority of Jane Wangechi Kiama and Anne Njoki Kiama, in which they opposed the distribution of the property. They stated that the only property that could be distributed is Thegenge/Karia/1113, which is registered under the deceased's name.
13. The Protest dated 3rd October 2019 yielded a certificate of search over Thegenge/Karia/1113, which is registered under the name of the deceased, LR No. Euaso Nyiro/Suguroi Block 1/721 under Lydiah Wambui Kiama; LR Laikipia/Tigithi Matanya Block 3/299 under Diocese of Nyeri Trustees; Share in Laikipia West Farmers receipt numbers 878, 29573 in the name of the deceased; Nyeri Plot owners Limited 668 shares.
14. The Appellant, in response to the Protest, stated that he was opposed to the mode of distribution as per the protest as all the properties were in the name of the deceased John Kiama Kiriro as at his demise on 8th August 1984 and that no succession had been done to date.
15. Jane Wangechi Kiama filed a statement wherein she asserted that in July of 1991, their late mother swore an Affidavit to transfer Land Parcel 212 (Mwichwiri Farmers Company Ltd) in her name being the then legal widow. She stated that their late mother chaired a meeting and sub-divided the estate in the manner: Tigithi Matanya to Paul Ndegwa Kiama-3.5 acres, Land Parcel 212 (Mwichwiri Farmers Company Ltd) to Pauline and Jane Wangechi Kiama to share equally, Gatarakwa (Euaso Nyiro Suguroi Block 1/721) to Peter Maina Kiama and William Waithaka Kiama to each have 2 acres each, Maran Laikipia West Farmers Company to James Wachira Kiama and Alexander Macharia Kiama to have 2 acres each and Thegenge Karia 1113 to all siblings of John Kiama Kiriro in equal proportions.



16. She stated that their mother transferred Land Parcel 212 (Mwichwiri Farmers Company Ltd before the committee of Mwichwiri Farmers Company Ltd to herself and Pauline Wanjiku Kiama. She stated that they have since settled on the said parcels including LR No/Thegenge/Karia/1113.
17. In an undated affidavit of protest, Ann Njoki Kiama refuted the claims that she did not attend the meeting held on 8 August 2004. She stated that Joseph Kiriro Kiama, who is unsound, resides on Thegenge/Karia/1113.
18. The parties filed submissions to which the lower court rendered its judgement on 30th June 2021 that the outcome of the meeting distilled into minutes presided over by their mother does not amount to a will as per Section 11 of the *Law of succession Act*. The trial court noted that the parties were in agreement over distribution of the properties and did not interfere with them.
19. From this judgment, A certificate of confirmation of grant was issued on 30th June 2021 to the Appellant, where the surviving 11 beneficiaries were allotted in equal shares Gatarakwa Euaso Nyiro Suguroi Block 1/721, Thegenge/Karia/113 and Maran Laikipia West Farmers Co. Ltd No. 4782. Tigithi/Matanya Block 299 saw Paul Ndegwa Kiama receive 2 acres from it, whereas Pauline Wanjiku Kiama and Jane Wangeci Kiama shared 1 ½ acres. Mwichwiri Farmers Co Ltd LR 212 saw Pauline Wanjiku Kiama and Jane Wangechi Kiama to share in equal shares.
20. The judgement was appealed against. This was against the backdrop a failed mediation exercise conducted on 25th November 2019.
21. The memorandum of Appeal raises the following grounds:
 - a. That the learned trial magistrate erred in law and in fact, in allowing herself to be misled by the Respondents who sold LR numbers Tigithi/Matanya Block/299 about four acres and LR Number Mwichwiri/Kiamathaga/212 about 2 acres after his death but the trial court gave them equal shares of the remainder to the detriment of the other beneficiaries.
 - b. That the trial court erred in law and, in fact, by disregarding the appellant's oral evidence and pertinent documents on record.
 - c. That the learned trial court erred in law and, in fact, in considering extraneous matters.

The evidence

22. PW1, Ann Njoki Kiama stated that she was the third-born daughter of the deceased, who had one widow, Lydia Wambui Kiama, who is also deceased. She stated that she wished that his property be subdivided equally among his children. Cross-examination was not conducted on this witness.
23. PW2 Pauline Wanjiku Kiama stated that in the year 2004, their mother called a meeting for the disposal of their late father's estate and that she disposed of all of it except for LR Thegenge/Karia/1113 that was to be shared equally among all siblings. She stated that Maran Laikipia was issued to James Wachira and Alexander Macharia, Gatarakwa Euaso Nyiro was allocated to Peter Maina Kiama and William Waithaka, Tigithi Matanya was allocated to Paul Ndegwa Kiama and Mwichwiri was allocated to Pauline Wanjiku and Jane Wangeci. She stated that the disfilede concerned two parcels of land.
24. PW2 stated that she was content with how their mother disposed of the land and that the contention was their portion at home. She stated that their late mother convened a meeting in August of 2004 informing them that she was transferring land to them and effected it at the lawyer's offices. She stated that she affected some, but others were not yet completed. She stated that she effected the transfer of



- land at Mwichwiri to herself and Jane Wangeci. She stated that the committee is ready to come to court to testify.
25. In cross-examination, she stated that title deeds are being processed. She said their mother swore the affidavit as their father's legal widow. She stated that the land at Mwichwiri is disfiled, so the title is not out. She said that she sold the land as it was their right.
 26. In re-examinations, she stated that she had already filed their late mother's affidavit.
 27. PW3, Paul Ndegwa Kiama stated that he was a son of the deceased. He stated that the petitioner did not include them during the petitioning for letters and had Alexander's signature forged. He stated that Alexander was last seen at home in 2001. He stated that Josephine Nyagendo's signature was forged as well. He stated that the receipt for Laikipia West Farmer's Company indicates 'deceased' and wondered if a deceased person could be issued with a receipt. He stated that they were questioning the legality of the documents.
 28. He stated that the land known as Thegenge/Karia/1113 was registered under the names of their late father, and after his demise, their mother caused land parcels under land-buying companies to be registered in her name. He stated that their mother called them when they were of age and told them that she wished to distribute the property to them and distributed the land in accordance with the minutes of the meeting.
 29. He stated that Alexander Macharia Kiama's whereabouts are unknown and that Joseph Kiama is of unsound mind. He proposed that their shares be under the custodianship of them or of the public trustee. He stated that their portion was at Thegenge/Karia/1113.
 30. He stated that Alexander had another share in Maralal and was to share with James Macharia. He stated that apart from Thegenge Kaaria 1113, the rest are under their late mother's name, which she transferred to them.
 31. In cross-examination he stated that they did not transfer but that it was their late mother who transferred the same to them. He stated that when she transferred the properties to her name, they were minors at the time. He stated that, concerning Thegenge Gatanya, it was disposed of jointly by their mother. He stated that Mwichwiri is still under the name of their deceased father and that Thegenge Matanya Block 299 was transferred from the land-buying company to their late mother.

Petitioner's case

32. DW1, William Waithaka Kiama stated that he wished that the estate be distributed as it was in 1984 and prayed the court to adopt his statement as his evidence in Chief.
33. In cross-examination,, he stated that they were not informed or involved during the transfer of land from their father's name to their mother and that she should file a succession cause. He stated that their mother was alive when the succession cause was instituted. He stated that Alexander Kiama left home a long time ago. He stated he was not in contact with him. He stated that Nyagendo had been attending court.
34. In cross-examination, he stated that Pauline Kiama did not attend the meeting. He stated that Josephine Nyagendo signed the document when it was taken to her and that few people were present.
35. The trial court rendered its judgment on 30th June 2021.



Parties submissions

36. The Appellant filed his submissions on 25th September 2024, stating that the 2nd, 3rd, and 4th Respondents sold land parcel number Tigithi/Matanya Block/299 and land parcel no. Mwichwiri/Kiamathaga/212 after the demise of the deceased herein. He contended that the trial court did not take this into account when dividing up the property remaining among the deceased's children. He stated that the estate of the deceased was distributed on 30th June 2021 whereas the deceased died on 8th August 1984.
37. The Appellant argued that the clearance certificate from Matanya estate on page 67 of the Record of Appeal as of 11th March 2008, the rightful owner of LR. Tigiithi/Matanya Block/299 was still the deceased. He stated that the referenced meeting of 8th August 2004 wherein the late mother allegedly distributed the estate and gave the 2nd, 3rd, and 4th Respondents the disfiled estate, with the 3rd Respondent allegedly selling the same. He stated that not all beneficiaries were privy to the meeting and that the disfiled properties were transferred to them.
38. The Appellant stated that the trial court was right in pointing out that their mother's transfer of Tigithi Matanya Block 3/299 and LR No. Mwichwiri Kiamathaga/212 was not tenable and thus ought to have been distributed equally. He stated that the respondents did not show evidence of how Tigithi Matanya Block/299 moved from the deceased to their mother to the Archdiocese of Nyeri and the money shared out. He stated their mother not having a grant over their late father's estate invalidated any transaction over the deceased's property and thus amounted to intermeddling. The Appellant relied on the authority of Veronica Njoki Wakagoto (Deceased) [2013] eKLR.
39. The Appellant further stated that the trial court erred in giving Mary Wangui Kiama a share in the estate despite her court-registered renunciation of any right in the estate dated 29th March 2021. The Appellant contended that the respondents took over the deceased's properties and made decisions affecting the estate without letters of administration and a court order, actions of which are intermeddling.
40. The fourth respondent herein, Paul Ndegwa, filed a 'Replying affidavit' in response to the appeal and stated that not all of the assets that the Appellant purports to be part of the deceased estate are registered in his name. He stated that the properties that were under the name of the deceased were LR Thegenge/Karia/1113, shares with Nyeri Plot owners, and Shares with Tetu Farmers Coop Society. He stated that Land Parcel 212 Mwichwiri Farmers Company, LR Euaso Nyiro/ Suguroi Block 1/721, and Laikipia Farmers Coop Lt plot no. 4782 and LR Tigithi /Matanya Block 3/299 were at the time of their father's demise in the process of being purchased in installments.
41. The fourth Respondent stated that their mother, having completed the payments that their late father did not complete, then proceeded to legally transfer the LR Tigithi/Matanya Block 3/299 and Land Parcel 212 Mwichwiri Farmers. The Respondents contend that the Appellant forged Alexander Kiama's signature when applying for consent to make letters of administration in their father's estate. He asked the court to uphold the judgment of the trial court.
42. The 3rd Respondent filed her submissions wherein she stated that the Land reference number Land Parcel 212 Mwichwiri Farmers company had been transferred to herself and the 2nd Respondent during the lifetime of their mother after it was processed in their mothers name as per page 62 of the record of appeal. She urged the court to uphold the decision of the court as at 30th June 2021 and that the Appeal herein is an afterthought and ought to be dismissed.



Issues for Determination.

Did the Deceased's widow have the legal capacity to transfer the Property of the deceased to the beneficiaries?

43. This dispute in brevity can be surmised as follows: Did the Deceased's widow have capacity to transfer the deceased's property to their children and if not, what next? The Appellant contends that there being no grant, the deceased's widow and the children who subsequently sold what was transferred to them are guilty of intermeddling. In contrast, the Respondents contend that their mother legally transferred the properties.

44. Under Section 79 of the *Law of Succession Act*, states that the property of the deceased shall be vested in the personal representative. The Section reads as follows:

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

45. A reading of the above Section informs this court that only an administrator (in the instance of an intestate succession) is the one legally mandated to handle, so to speak, to dispose or deal in the property of the deceased. From the proceedings and documentation, the Respondents claimed that their mother legally transferred the property of the deceased from his name to her name and thereafter to the Respondents.

46. While indeed by dint of Section 35 of the *Law of Succession Act* which states that where a deceased has left as surviving spouse, the spouse shall be entitled to not only his personal goods and even the net estate, such transmission can only happen where there is a grant. This is by dint of the powers and duties of personal representatives provided at Section 82 of the *Law of Succession Act* which states:

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that-

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;

47. Therefore, it was incumbent upon the Respondents to show that their deceased mother had made out Letters for Petition for administration of the estate. The same was subsequently granted, and a Certificate of Confirmation was granted to her as Administrator/Personal Representative to operationalize the powers to dispose or sell the property of the deceased in compliance with Section 82 of the Law of Succession.



48. The finding of the court in re Estate of Jamin Inyanda Kadambi (Deceased) [2021] eKLR where it was stated that;

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, ..., cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the Law of Succession Act. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the Law of Succession Act, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

49. The court went on to reproduce the Sections 45, 79 and 82 of the Law of Succession Act. Succinctly filed, the transfer by the deceased’s widow to the Respondents and their subsequent sale of the property was illegal and amounts to intermeddling with the estate of the deceased as no Grant existed that would allow such transaction over the deceased’s property.

50. Section 45 of the Law of Succession Act states as follows:

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall-

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

51. In *Morris Mwiti Mburungu –vs- Denis Kimathi M’Mburungu* [2016] the court pronounced itself as follows:-

“.... Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”

Determination

52. Thus, I find that the Appeal succeeds in its entirety and makes the following orders:

- a. That the Parties do File a Fresh Summons for Confirmation of Grant;



- b. That within 30 days from delivery this judgment, the status of the estate of the deceased, John Kiama Kiriro be filed in court and;
- c. That in the exercise of powers granted to the High Court under Article 165(6) & (7) of the Constitution, the File known as CMCC 199 of 2018 be and is hereby transferred to the High Court.
- d. Costs to the Appellants.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 25TH DAY OF MARCH, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

Represented by: -

Ms. Macharia for the Appellant

Respondents present

Court Assistant –Michael

M.D. KIZITO, J.

