



**In re Estate of Geoffrey Rotter Mbuthia alias Geoffrey Mbuthia (Deceased) (Succession Cause 515 of 2010) [2025] KEHC 5166 (KLR) (Family) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5166 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 515 OF 2010  
HK CHEMITEI, J  
APRIL 30, 2025  
IN THE MATTER OF THE ESTATE OF GEOFFREY ROTTER  
MBUTHIA ALIAS GEOFFREY MBUTHIA (DECEASED)**

**BETWEEN**

**MAGDALENE GATHONI MWANGI ..... APPLICANT**

**AND**

**JANE NDUATA MBUTHIA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MWANGI MBUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**GEORGE KAMAU MBUTHIA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This judgement relates to the affidavit of protest dated 17<sup>th</sup> August, 2023 filed by the Protestor, Magdalene Gathoni Mwangi, based on the GROUND THAT she is the deceased's spouse and one of the Petitioners and that she was opposed to the mode of distribution in the summons for confirmation of grant dated 25<sup>th</sup> November, 2022 and proposes a different mode of distribution.
2. She went ahead to swear her own affidavit attaching her proposed mode of distribution.
3. The parties were directed to file their written submissions on why they chose the mode of distribution of the estate. It is evident of course that this cause has had many challenges and this court has made various decisions.
4. The Protestor has filed written submissions dated 27<sup>th</sup> March, 2025 placing reliance on the following among others;



- a. Nairobi High Court Succession Cause No. 1263 of 2000: In Re Estate of Lerionka Ole Ntutu (2008) eKLR where the court categorically held that a surviving spouse's inheritance rights cannot be waived, denied or diluted by other beneficiaries.
  - b. Nakuru Succession Cause No. 614 of 2006: In re Estate of Charles Kamau Gitau (Deceased) where the court observed as follows: "The right of a widow to inheritance is absolute and cannot be diminished simply because other beneficiaries do not approve of her."
  - c. Eldoret Civil Appeal No. 66 of 2002: Rono v Rono & Another [2008] eKLR where the court further reaffirmed the principle of equitable distribution, ensuring that all rightful beneficiaries receive their fair entitlement.
  - d. Nairobi Succession Cause No. 1974 of 2008: In re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR where the court warned against succession disputes designed to erase rightful widows, stating that inheritance is a legal right, not a matter of public opinion.
5. The Respondents have filed written submissions dated 22<sup>nd</sup> May, 2024 placing reliance on the following:-
- a. Irene Njeri Macharia v Margaret Wairimu Njomo & another [1996] eKLR where the court held as follows: "For our part, we agree with the appellant that as the widow of the deceased, she was entitled to a share of her husband's estate available for distribution. We, however, disagree with her that her entitlement took away the Judge's power to weigh the conflicting needs of the heirs and determine how much should go to each heir according to those needs. [...] We can find absolutely nothing wrong in what the judge did, but the appellant being the widow of the deceased and in order to forestall any allegations that the courts are disinheriting widows contrary to this court's decision in Elizabeth Kamene Ndolo v George Matata Ndolo, Civil Appeal No. 128 of 1995 (Unreported), we will agree with this appellant that like Shylock, she is entitled to her pound of flesh from the estate of the deceased. Only because we want to attain that objective, namely not to disinherit a widow, we order that out of the Kshs. 186, 086/= available for distribution between the appellant and Jackline, the appellant be given Kshs. 10/= and the rest be invested in the manner ordered by the Judge..."

### **Analysis And Determination**

6. I have carefully considered the protest before the court and the written submissions filed in response thereto. It appears to me that the issue of marriage between the Objector and the Deceased came way after the deceased first wife passed on.
7. Secondly the properties in question had already been purchased by the Deceased and his late wife and there was therefore nothing meaningfully contributed by the Objector in terms of material acquisition.
8. She has not objected to the fact that she came to the union with her two adult children and it appears the deceased accepted them.
9. Evidence on record as well indicates that she left the matrimonial home.
10. I agree with the Applicants that in the event that a party is claiming purchase of part of the estate, and in particular one Mugo Kagiri then his recourse is with the Environment and Land Court just as in the issue surrounding land parcel number Ngong/Ngong/17301.



11. I have perused the two modes of distribution and it is my considered view that the mode of distribution by the Applicants takes into consideration all the factors contained in this cause and more specifically the issues surrounding the Protestor and her children and the past decision by this court.
12. In the premises the application dated 25<sup>th</sup> November 2022 is allowed and the estate be distributed in the manner contained in the affidavit attached to it sworn on 25<sup>th</sup> November 2022.
13. Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**H K CHEMITEI**

**JUDGE**

