



REPUBLIC OF KENYA



In re Estate of Mwaura Mbira alias Ndumu Mbira (Deceased) (Succession Cause 144 of 2012) [2025] KEHC 5467 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 144 OF 2012**

EM MURIITHI, J

APRIL 30, 2025

IN THE ESTATE OF MWAURA MBIRA ALIAS NDUMU MBIRA (DECEASED)

BETWEEN

PETER MUNENE MWAURA APPLICANT

AND

SHELMITH WACUKA NDUMU 1ST PROTESTOR

DAISY KARUANA MURIITHI 2ND PROTESTOR

RULING

1. The applicant filed summons dated 27th January, 2023 seeking the following orders:
 1. That the Honourable Court be pleased to declare that the applicant herein Peter Munene Mwaura is a dependant of Mwaura Mbira Alias Ndumu Mbira (deceased).
 2. That the Honourable Court be pleased to order that the applicant herein Peter Munene Mwaura is entitled to a share of the estate of Mwaura Mbira Alias Ndumu Mbira (deceased) during distribution.
 3. That the cost of this application be provided for.
2. The Application is based on the grounds on the face of the application and the supporting affidavit of Peter Munene Mwaura. The applicant's case is that the deceased herein was his grandfather. His mother is Mary Wawira Njiru who is a daughter to the deceased herein who got married and left him at his grandfather's home. He was brought up and raised by the deceased herein and he treated him like his son. That the deceased died on 11th February, 2012 and before his death he had called him and his sons for a meeting on 15th August, 2011 which was attended by Stephen Maina Mwaura (deceased), Patrick Mbira Mwaura, Karira Mwaura (deceased), Peter Gachoki Mwaura and Mwaura Mbira (deceased). The deceased bequeathed his uncle, Karira Mwaura (deceased) and him 1 ¼ acre out of land parcel



number Baragwe/Guama/209 which they were to share in equal shares. It was agreed that he was to occupy the upper part of the land while Karira Mwaura was to occupy the lower side of the parcel.

3. Further, applicant avers that he helped his uncle Karira Mwaura (deceased) with money to refund a tenant who had leased his portion of land on condition that he share with Karira his piece of land which position he confirmed and was witnessed by his uncles who have sworn affidavits to confirm the same. That the tenants vacated the land in the year 2012 and he occupied the upper part and his uncle occupied the lower part as agreed.
4. Moreover, in the year 2018, his uncle Karira Mwaura (deceased) and him entered into an agreement where his uncle renounced his share of the Land Parcel Number Baragwe/Guama/209 and transferred the land to him. After the death of the deceased, he agreed to finance the succession process where the beneficiaries agreed that he will inherit 0.20 ha out of Land Parcel Number Baragwe/Guama/209.
5. Lastly, he prays that he be declared a dependant of the deceased and that he is entitled to 0.70 ha share out of Land Parcel Number Baragwe/Guama/209.

The Respondents on 13th April, 2023 opposed the application by putting forth the following grounds:

6. The respondents aver that it is not true that land parcel Baragwe/Guama/209 was entitled to Karia Mwaura(deceased) since the deceased land was Baragwe/Guama/409 and was never subdivided during his lifetime. The deceased never assumed any parental responsibility of the applicant and if any the applicant is put to strict proof during the hearing. The applicant is a son to one Mary Wawira Njiru who is a daughter to the deceased and she is entitled to a share in the estate.
7. Further, they are strangers to any meeting that was held by the applicant and the deceased and if the same happened the applicant is put to strict proof. That the annexed minutes do not have any reference of any land parcel if indeed the meeting was held concerning a certain parcel of land. That they are strangers to any refund of money to tenants. The transaction held in the year 2018 over the deceased estate was conducted after his death.
8. Lastly, they never took part on agreeing on the facilitation of the succession process by the applicant and the same is not a liability to the deceased estate.

Witness testimony

Pw1 – Peter Munene

9. He testified that that he is a grandchild to the deceased Mwaura Mbira Alias Ndumu Mbira. The Applicant's mother was a daughter to the deceased.
10. The Applicant told the court that the deceased had taken him as his own child. The deceased took care of the Applicant's welfare, education and even when the deceased shared out his land he gave a share of land to the Applicant out of Land Reference Number Baragwe/Guama/409.
11. He told the court that since he was living with the deceased who had taken him in as his own child, when he got of age the deceased allowed him to use his sir name "Mwaura" as his father's name.

Pw2- Peter Gachoki Mwaura

12. He is a son of the deceased. The applicant's mother is his sister. He confirmed that the deceased took care of the applicant as his son.
13. Further, the deceased bequeathed to the applicant and Karira Mwaura 1 ¼ share of out of Land Reference Number Baragwe/Guama/409.



14. He admitted that a meeting was held where the applicant was given his share of the deceased's land.

Pw3- Henry Mugo Gachoki

15. He adopted his witness statement as his evidence in chief dated 31st May, 2023.

16. He testified that in the year 2018, Karira Mwaura (deceased) and the applicant entered into an agreement where his uncle renounced his share of the Land Parcel Number Baragwe/Guama/209 and transferred the land to him.

17. He testified that both the applicant and the children of Karira Mwaura have a right to inherit his land.

Shelmith Wacuka Ndumu – Respondent

18. She is a daughter of the deceased. She denied that the Applicant had been taken by the deceased as his own child. Despite her confirming that each son had been given a portion of land by the deceased she indicated that the Applicant also cultivates on the land. The Respondent clearly illustrated to the court how the land is shared out. She told the court that there is a road that cuts through the land and the said road separates the portions occupied by the wives of the deceased and those that are occupied by the sons of the deceased. The Respondent confirmed that the portions that the Applicant occupies are on the side where the deceased had shown his sons.

19. Further the Respondent told court that apart from the portion that belongs to Karira Mwaura the Applicant cultivates another portion that the Respondent allegedly indicated that it belonged to her late mother. The Respondent denied that the Applicant did not grow up at the home of the deceased and that he used to stay at his mother's place, and could only visit his grandfather.

Applicant submissions

20. The applicant urges the Court to consider that the deceased had during his lifetime gifted the applicant herein two portions of land out of Land Reference Baragwe/Guama/409 Measuring approximately 1 ¼ acre. He urges the court to exercise the discretion accorded to it by Section 27 of the [Law of Succession Act](#) and order that provision should be made during distribution for the Applicant as a dependant of the deceased. This court discretion is absolute and unfettered.

21. In the Matter of the Estate of the Late M'mburungu M'rubia where the court held inter alia that the protestor is a dependant of the deceased and is entitled to a share in the estate based on the provisions of Sections 26 and 28 of the Act.

Respondent submissions

22. Section 27 of the [Law of Succession Act](#) gives this court the discretion in making orders regarding dependants as follows: -

“In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provisions for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”

23. The respondent submits that the applicant ought to benefit from his mother and not the deceased directly.



Issue

24. Whether the applicant meets the threshold of dependency.

Analysis

25. The main issue for determination herein is whether the applicant meets the threshold of dependency within the meaning of Section 29 of the *Law of Succession Act* and if the applicant is entitled to share in the estate of the deceased.
26. Section 29 of the *Law of Succession Act* provides for different categories for dependants:
27. Section 29 (a) provides that a dependant means wife (s), former wife(s) and children whether or not they were being maintained by the deceased prior to death.
28. Section 29(b) further provides that dependants include, deceased's parents, step parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters as were being maintained by the deceased immediately, prior to his death.
29. The applicant filed the application in his capacity as the grandson of Mwaura Mbira Alias Ndumu Mbira(deceased) and deponed that he was brought up and was being maintained by the deceased during his lifetime and the deceased had taken him in as his son.
30. The 1st protestor/respondent opposed the said application and deponed that the deceased had 6 wives and 7 sons. That she further testified that they had settled in one common homestead but the deceased decided to give each wife portions and only 5 have a place to occupy, the sons were also given portions which they occupy.
31. The 1st respondent further averred that land parcel No. Baragwe/Guama/409 belonged to the deceased and was never subdivided in his lifetime.
32. The Applicant told the court that the deceased had taken him as his own child. The deceased took care of the Applicant's welfare and education. His mother is Mary Wawira Njiru who is a daughter to the deceased herein who got married and left him at his grandfather's home.
33. There is no evidence that the applicant's mother renounced her parental responsibility and transferred the same to the deceased.
34. Hence, the applicant is not a dependant.

Whether the applicant is entitled to share in the estate of the deceased

35. Section 27 of the *Law of Succession Act* gives this court the discretion in making orders regarding dependants as follows: -
36. "In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provisions for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit."
37. The applicant avers that in the meeting held on 15th February, 2012, the deceased bequeathed his uncle, Karira Mwaura (deceased) and him 1 ¼ acre out of land parcel number Baragwe/Guama/209 which they were to share in equal shares. It was agreed that he was to occupy the upper part of the land while Karira Mwaura was to occupy the lower side of the parcel.



38. Further, he avers that in the year 2018, his uncle Karira Mwaura (deceased) and him entered into an agreement where his uncle renounced his share of the Land Parcel Number Baragwe/Guama/209 and transferred the land to him.
39. The respondent avers that the transaction held in the year 2018 over the deceased estate was conducted after his death and hence amounts to intermeddling with the deceased's estate.
40. In re Estate of John Gakunga Njoroge (2015) eKLR this Court said:
- “A person can only lawfully deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the Law of Succession Act. In this regard, the jurisdiction of the Court to protect the estate of a deceased person is set out in Section 45 of the Law of Succession Act...”
41. The 1st respond testified that apart from the portion that belongs to Karira Mwaura, the Applicant cultivates another portion that belonging to his late mother. Further, when Karira Mwaura died, his portion was left without an occupant. It was never transferred to the applicant.
42. Consequently, the applicant should benefit from the share belonging to his mother.

Orders

43. Accordingly, for the reasons set out above, the application dated 27/1/2023 is dismissed.
44. There shall be no order as to costs.
- Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Otieno for Mrs Makworo for the Applicant.

Mr. Nyaga Gitari for the Respondent.

