



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Paul Muhanda Agonya (Deceased) (Succession Cause
150 of 2010) [2025] KEHC 5554 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 150 OF 2010
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

JOHN MUREMI MUHANDA PETITIONER

AND

DIPHINA KHATONDE MUHANDA 1ST APPLICANT

GERTRUDE ACHITSA MUHANDA 2ND APPLICANT

AND

ELIAS MORAD MATEGWA INTERESTED PARTY

RULING

1. The summons dated 1512023 seeks for confirmation of Grant issued on 552023 to Diphina Khatonde Muhanda and John Muremi Muhanda whom I will hereafter refer to as the Applicant and petitioner respondent respectively . The summons were filed by the Applicant who is the co- Administrator of the estate.

The Applicant 1st Petitioner's Case.

2. The Applicant states that the deceased's estate comprise of Land Parcels No. IsukhaKambiri1631 (PNo. 1XX1), IsukhaKanubiri1XX7 (PNo 1XX7) and IsukhaKanubiri1327(PNo.1XX7). Certificates of official searches and attached to the Supporting Affidavit.
3. She proposes that the above parcels be distributed as per the houses as the deceased had married three(3) times during his lifetime.. Consequently she proposes the mode of distribution as follows:
 - a.PNo. 1xx1 to the 1sr house consisting of :
Diphine Khatonde Muhanda



Gertrude Achitsa Muhanda,

Residue - to defray legal and sub- division fees.

b.PNo. 1XX7 : To the 2nd house consisting of Joyce Musiyele : (and to be held in trust by Diphine Khatonde Muhanda)

(c) PNo. 1XX7 : To the 3rd house consisting of :

John Muremi Muhanda (to hold in that for his siblings).

4. She further proposes that the value of trees, sugarcane, four heads of cattle and residential houses be valued and to be paid back to the estate by the protestor, or in the alternative, the protestor forfeits his right to PNo. 1XX7.

The respondent's case.

5. The respondent objects to the mode of distribution proposed by the Applicant and instead proposes the distribution as follows:

a. PNo. 1XX1: To himself:

b. PNo. 1XX7: To be shared equally among:

Diphine Khatonde Muhanda

Gertrude Achitsa Muhanda

Margaret Wanjiru

Leah Njoki

Jenny Wanjiku

(c) PNo.1XX7to David Ekimuru Segero as purchaser.

6. He states that PNo. 1XX7 was purchased by David Ekimuru from the deceased.
7. The Respondent further states that Joyce Musiyele (from the 2nd house) was never a wife to the deceased. That she only had a relationship with the deceased which lasted for one month. He further states that he is the only son of the deceased and his sisters have no objection to the proposed mode of distribution.

Applicant's Response.

8. In response, the Applicant asserts that there is no evidence that the Protestor's sisters have consented to the distribution. That the status of Joyce Musiyele was addressed by the court under paragraph 19, 20, 21 and 10 of the judgement dated 16102020.

Applicant's Submissions

9. The Applicant points out that the interest of David Segero had been determined by a judgement delivered on 16102020. That it had already been established through the proceedings that gave rise to the judgement dated 2842023 that the deceased was a polygamous man of 3 wives; that the deceased's daughters have not renounced their share of the estate. She submits that the proposed mode of distribution is in tandem with the provisions of Section 40 of the *Law of Succession Act*.



10. It is further submitted that the respondent's mode of distribution is unfair as it is evident that he has allocated himself a share of 3.75 acres while he wants his sisters to share only one acre amongst themselves.

Respondent's Submissions

11. The Protestor submits that the deceased's daughters, declared their renunciation before the chief during a meeting before the chief on 15122008; that the estate's liability to one David Ikumiru Segero is valid; That indeed by referring him to the Environment and Land Court, the court did acknowledge the said interest. The respondent argues that any distribution of PNo. 1947 would mean the displacement of David's interest.
12. The Respondent further submits that there is no evidence that Joyce Musiyele was married to the deceased; that she left the deceased's home and never returned; that her whereabouts remain unknown and therefore the Applicant cannot purport to hold the property in trust for her. He further states that she was in a one month's Relationship with the deceased
13. The respondent further submits that he is in occupation of PNo. 1637; that he has done extensive developments on it, while the Applicant has never stayed in the property.
14. Whereas the respondent accepts that the distribution should be on the basis of Section 40, he urges the court to prioritize equity as opposed to equality as was held in the case of *Rahab Njeri Kariuki v Joyce Wanguru*. (citation not provided)
15. It is finally submitted that in any event, the respondent he not excluded his sisters in his proposal.

Analysis and determination.

16. I have considered the parties' rival arguments, in their pleadings and submissions, and I have identified the following issues for determination:
 - a. Who are the beneficiaries of the estate?
 - b. What is the appropriate mode of distribution?

Beneficiaries of the Estate.

17. The fact that the deceased was a polygamous man is not contested. From the 1st house were the Applicant and her sister Gertrude Achitsa Muhanda. According to the Applicant their mother's marriage to the deceased had ended by the time the deceased died, and she had been married elsewhere. From the 3rd house is respondent and his sisters Margaret Wanjiru, Leah Njoki and Jenny Wanjiku. Their mother Susan Wambui predeceased the deceased.
18. What is in contest is whether the deceased had a 3rd wife whose name has been given as Joyce Munyele. It is the Applicant's case that Joyce was the wife of the deceased and that she left after the demise of the deceased due to harassment by the respondent. She had no children with the deceased. On the other hand, the respondent states that the said Joyce was in one month's relationship with the deceased.
19. I have anxiously considered the place of Joyce. There are no pleadings that has been filed by Joyce in these proceedings, yet the first priority in Administration of the deceased's estate ought to have gone to her. She has not filed any Affidavit in support of the Applicant's allegation. Apart from what the Applicant has deposed , there is no other evidence to prove that indeed the deceased was married to her at the time of his demise. To the extent that Joyce's relationship to the deceased was contested, the onus was on the Applicant to provide proof showing that indeed Joyce was married to the deceased.



20. I have further noted a curious offer by the Applicant: to hold Joyce's share of the estate in trust for her, "in the event that she happens to come back into the deceased's estate." . This statement , in my view, lends credence to the Protestor's assertion that her whereabouts remain unknown. Further , and in any event , Joyce was is an Adult and there is no reason why her property would be held in trust.
21. In view of the foregoing, I am not satisfied that the Applicant has proved, on a balance of probabilities ,that Joyce Musyele was the wife of the deceased.
22. The interest of one David Ekimuru Segero, the alleged purchaser of PNo. 1327 was determined by Justice Sitati through a ruling delivered on 16102020. In the said ruling, the court stated that the determination of the purchaser's interests falls under the purview of the Environment and Land Court. This matter is therefore *res judicata*. Consequently, it is my finding that the respondent has failed to demonstrate that David Segero, had a right, which had crystallized, as at the time of the deceased's demise.
23. To conclude on this issue, it is my finding that the deceased was survived by six (6)children with no spouse. The distribution of the estate will therefore be in accordance with section 38 of the *Law of succession Act*, which provides as follows: Where an intestate has left a surviving child or children but no spouse, the net instate estate shall, subject to the provisions of sections 41 and 42 , devolve upon the surviving child , if there be one , or shall be equally divided among the surviving children"

Distribution

24. It is common ground that the deceased's estate constituted of Land Parcels No. 1631, 1327 and 1947. According to the certificate of official searches in respect of the parcels, PNo. 1631 is 1.5 hectares(3.7 acres), PNo. 1327 is 0.45 hectares(1.1 acres) and 1947 is 0.04 hectares (0.01acres).
25. I have further considered the Applicant's plea that the Protestor should be made to account for 26 mature trees, a semi- permanent house sugarcane and four heads of cattle. In response, the respondent stated that he planted the trees; that the semi-permanent house had been destroyed by ants due to its vacant status that he rears the cattle. The Applicant has not denied the assertion that the semi-permanent house has been destroyed by ants. On the sugarcane, the same is lacking in specificity.
26. Doing the best I can, and while agreeing with the respondent that in the distribution of a deceased's estate, equity not equality, is an appropriate consideration. I will hereby proceed to distribute the Estate as follows:
 - a. IsukhaKambiri 1XX1 - to:
 - John Muremi Muhanda
 - Margaret Wanjiru
 - Leah Njoki
 - Jenny Wanjiku -In equal portions
 - b. IsukhaKambiri1XX7-to:
 - Diphine Khatonde Muhanda
 - Gertrude Achitsa Muhanda -In equal portions
 - c. IsukhaKambiri1XX7. To:
 - Diphine Khatonde Muhanda



Gertrude Achitsa Muhanda – In equal portions

- d 26 mature trees and 4 heads of cattle to be sold and the proceeds to be share equally between all the beneficiaries
 - e The Administrators are hereby directed to complete the process of transmission within the next 90 days and report back to court.
27. Right of Appeal - 28 days.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 29TH DAY OF APRIL 2025.

S.CHIRCHIR

JUDGE

