In re Estate of Charles Macharia Muraguri (Deceased) (Probate & Administration Appeal E010 of 2022) [2025] KEHC 4849 (KLR) (25 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4849 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

PROBATE & ADMINISTRATION APPEAL E010 OF 2022

MA ODERO, J

APRIL 25, 2025

(IN THE MATTER OF THE ESTATE OF CHARLES MACHARIA MURAGURI (DECEASED)

BETWEEN

PURITY NJOKI MURIUKI ..... APPELLANT

AND

EUNICE WANJIRU MAINA ..... RESPONDENT

JUDGMENT

1. Before this Court is the Memorandum of Appeal dated 17th August 2022 by which the Appellant Purity Njoki Muriuki seeks the following orders:-

> "(a) That the appeal be allowed.
>
> (b) That judgement of the Honourable M. Okuche delivered on the 20th July 2021 be and is hereby set aside and the same be substituted with an order allowing the protest as prayed.
>
> (c) That the Respondent be condemned to pay the costs of this appeal and the trial suit."

2. The Respondent Eunice Wanjiru Maina opposed the appeal. The matter was canvassed by way of written submissions. The Appellant filed the written submissions dated 7th March 2025 whilst the Respondent relied upon her written submissions dated 5th February 2025.

Background

3. This matter relates to the estate of the late Charles Macharia Muraguri (hereinafter 'the Deceased') who died intestate on 30th November 2020. A copy of the Death Certificate Serial Number 53XXXX31 was filed in Court on 22nd March 2021.

4. Following the demise of the Deceased the Respondent Eunice Wanjiru Maina filed a petition dated 9th February 2021 seeking to be issued with Grant of Letters of Administration Intestate. In that Petition the Respondent indicated that the Deceased was survived by the following persons:-

   (a) Eunice Wanjiru Maina - Wife

   (b) Fredrick Muraguri Macharia - Son (Deceased)

   (c) Damaris Njoki Macharia - Daughter

5. The Petition listed the following as the assets left behind by the Deceased.

   (i) Title Number Kabaru Block II/Mathina/1470

   (ii) Title Number Kabaru Block II/Mathina/1471

   (iii) Title Number Kabaru Block II/Mathina/983

   (iv) Title Number Kabaru Block II/Mathina/985

   (v) Title Number Kabaru Block II/Mathina/986

   (vi) Title Number Kabaru Block II/Mathina/34

   (vii) Title Number Kabaru Block II/Mathina/671

6. Grant of letters of Administration Intestate were duly issued to the Respondent on 5th July 2021.

7. The Respondent then filed a Summons for confirmation of Grant dated 25th August 2021. At this point the Appellant Purity Njoki Muriuki filed an Affidavit of Protest dated 8th September 2021.

8. In her Protest the Appellant averred that she was a wife to the Deceased and that they had one child MN Maina (then a minor). The Appellant stated that the Deceased was living with her in her home immediately prior to his death and that it was she who took the Deceased to hospital when he fell ill and paid the medical bills. The Appellant further claimed that the burial permit was issued to her.

9. The Appellant alleged that the Respondent had failed to disclose all the assets left behind by the Deceased. She objected to the proposed mode of distribution of the estate.

10. The protest was heard by way of oral evidence in the lower court. Vide a Judgment delivered on 27th July 2022, the learned trial magistrate dismissed the protest.

11. Being aggrieved by that decision the Appellant filed the instant appeal which is premised upon the following grounds:-

    " 1. That the trial magistrate failed to consider the weight of the evidence by the appellant and ended up with a wrong finding.

    2. That the trial magistrate erred in law and fact in finding that the appellant was not a beneficiary while the petitioner did not demonstrate her dependency.

3. That the trial magistrate failed to appreciate the principals of dependency as provided in the *law of succession Act* and ended up with a wrong finding.

4. That the trial magistrate erred in law and fact in failing to appreciate that the petition by the petitioner therein was frivolous as it even included properties not forming part of the estate.

5. That the entire judgment and subsequent order is misleading and is against the weight of evidence and against the principles of a fair trial and natural justice."

Analysis and Determination

12. I have carefully considered this memorandum of appeal as well as the record of Appeal filed in this matter.

13. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see Peters -vs- Sunday Post Limited [1958] E.A 424]

14. In Selle and Another -vs- Associated Motor Boat Company Ltd & Others [1968] 1 E.A 123 it was stated as follows:-

> "…….this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence."

15. Likewise in Gitobu Imanyara & 2 Others -vs- Attorney General [2016] eKLR, the court of Appeal stated thus;-

> "An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."

16. Therefore the appropriate standard of review in cases of appeal can be summarized in the following principles:-

(1) On first appeal the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.

(2) In reconsidering and re-evaluating the evidence the first appeal court must bear in mind and give due allowance for the fact that the trial court had the advantage of seeing and hearing the witnesses.

(3) It is not open to the first appellate court to review the findings of a trial court simply on the basis that it would have reached a different conclusion had it been hearing the matter for the first time.

17. It is common ground that the Deceased whose estate forms the subject matter of this cause died intestate on 30th November 2020. Following the demise of the Deceased the Respondent Eunice Wanjiru Maina who stated that she was the wife of the Deceased sought and obtained a Grant of letters of Administration Intestate which Grant was made to her on 5th July 2021.

18. The Appellant Purity Njoki Muriuki claims that she was also a wife of the Deceased and filed an Affidavit of Protest asking that she and her daughter be included as beneficiaries to the estate.

19. It is trite law that he who alleges must prove. In law the burden of proof lies upon the party who asserts the existence of a fact or set of facts. Section 107 of the *Evidence Act* Cap 80 Laws of Kenya provide as follows:-

> " Burden of Proof
>
> 107(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
>
> (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

20. In the case of Evans Nyakwana -vs- Cleophas Bwana Ongaro [2015] eKLR, it was held that:-

> " As a general preposition the legal burden of proof lies upon the party who invokes the aid of law and substantially asserts the affirmative of the issue. That is the purport of Section 107(1) of the *Evidence Act* Chapter 80, Laws of Kenya. Furthermore, the evidential burden is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of the law of proof of that fact shall lie on any particular person....." [own emphasis]

21. In order to prove her claim as a beneficiary the Appellant needed to adduce evidence sufficient to prove that she was in fact a wife of the Deceased.

22. The Appellant sought to rely on the fact that the Deceased was living with her immediately prior to his death, that she is the one who took the Deceased to hospital and paid his medical bills and the fact that the burial permit was issued in her name as proof that she was a wife. The Appellant annexed to her Affidavit of Protest dated 8th September 2021 copies of medical documents from Kenyatta National Hospital and from the Mortuary ('PNM 2b' and PNM 2 'c' as well as a copy of the burial permit (Annexture PNM 2 'd') which was issued in the name of the Appellant.

23. However none of the above pieces of evidence is proof that a marriage existed between the Deceased and the Appellant. All that is proved is that the Deceased was 'cohabiting' with the Appellant prior to the period when he fell ill and died. The Appellant needed to adduce tangible evidence to show that the Deceased married her under one of the systems of marriage recognized by law in the Republic of Kenya.

24. The Appellant in her evidence stated that the Deceased married her under Kikuyu customary law in January 2019. That the Deceased came to her parents' home for the 'ruracio ceremony' where he paid a dowry and other items.

25. The Appellant told the trial court that her union with the Deceased was blessed with one child – a daughter who was born on 4th October 2010. That following their marriage the couple cohabited as man and wife in Chaka where they ran a business known as 'Njoma Bar'.

26. On her part the Respondent categorically denies that he Deceased ever married the Appellant. She states that the Appellant was merely an employee (barmaid) at the family business in Chaka. The Respondent relies on a letter dated 3rd February 2021 written by the Area chief of Thogu Location which letter indicates that the Respondent Eunice Wanjiru was the wife of the Deceased and that the couple had two children.

27. The Appellant claimed that she had entered into a customary marriage with the Deceased. Section 43 of the *Marriage Act* 2014 provides as follows:-

> " 43(1) A marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.
>
> (2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage."

28. In the case of Hortensiah Wanjiku Yawe -Vs- The Public Trustee [1976] eKLR the court held that

> " The onus of proving of customary law marriage is generally on the party who claims it. The standard of proof is the one usually for civil action namely "a balance of probabilities required for a customary law marriage must be proved to that standard....."

29. A kikuyu customary marriage (like customs of other African communities) consists of certain rites which must be performed. Further marriage is not a clandestine or secret affair. It involves the coming together of two families and clans and is often conducted publicly and with much fanfare.

30. Eugene Contran's casebook on Customary Law at page 30 sets out the essentials of Kikuyu Customary Marriage. These are stipulated as:

> " 1. Capacity; the parties must have capacity to marry and also the capacity to marry each other.
>
> 2. Consent; the parties to the marriage and their respective families must consent to the union.
>
> 3. Ngurario; no marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.
>
> 4. Ruracio; there can be no valid marriage under Kikuyu law unless a part of the ruracio (dowry) has been paid."

31. In the case of Eva Naima & Another -vs- Tabitha Waithera Mararo [2018] eKLR the Court of Appeal in observing that 'nguarario' ceremony did not take place stated as follows:-

> " From the above it becomes apparent that, no ram or goat was slaughtered to mark the coming into existence of a marriage. Without the presence of the central feature of the ngurario ceremony, it cannot be said that a valid Kikuyu customary marriage came into existence between Waithera and the Deceased." (Own emphasis)

32. Despite her claim that the Deceased visited her family home on January 2019 to pay dowry, the Appellant did not call as a witness any person who attended that event. As stated earlier customary marriages are not clandestine or secretive affairs. They are ceremonies at which many people are in

attendance. The Appellant should have had no problem securing at least one person who witnessed the event to give evidence.

33. The Appellant sought to rely on a document dated 11th April 2019 concerning a Dowry meeting. Firstly it appears that this dowry meeting was held in April 2019 which was four (4) months after the date when the Appellant claims the Deceased visited her home and paid dowry. Secondly none of the persons who signed that document were called to testify.

34. There was no evidence to show that the 'ngurario' ceremony was conducted. This is a rite which is central to a Kikuyu customary marriage without which the parties cannot be said to have been married.

35. Further the Appellant stated that the Deceased was not accompanied by either of his parents when he visited her home. This is unusual as in the Kikuyu culture a prospective groom is usually accompanied by his parents when he visits the home of the intended bride to discuss dowry.

36. The Appellant called as her witness the chief of Thigu Location one George Muturi Mwangi (PW2). The chief confirmed that he was the author of the letter dated 23rd January 2021 (Annexture 'PNM1') to the Affidavit of Protest dated 8th September 2021. In that letter the chief states that prior to his death the Deceased was "living in Chaka together with Purity Njoki Muriuki as husband and wife."

37. It is pertinent that in his letter PW2 did not refer to the Appellant as the "wife" of the Deceased. He merely stated that the two were cohabiting in Chaka. In fact the said letter goes on to confirm that the Deceased was "married to Eunice Wanjiru Maina"

38. PW2 did not attend any of the customary rites which were allegedly conducted in the Appellants home. As such he was not able to state with certainty that a Kikuyu customary marriage was in fact conducted. His evidence was only to the effect that the two lived together as man and wife. As I have pointed out earlier evidence of cohabitation does not amount to proof of a marriage.

39. It is curious that whereas the Appellant relies on a letter written by PW2 the chief of Thigu Location, the Respondent similarly relied on a letter dated 31st February 2021 written by the very same chief of the same location, which letter named only the Respondent as the wife of the Deceased.

40. Indeed under cross-examination PW2 admitted that

> " I later wrote a letter to court dated 31/2/2021. It is addressed to the registrar Nyeri. The letter introduced Eunice, the deceased son and daughter of deceased. In it I did not indicate that Eunice was the 1st wife to the deceased....."

41. In the second letter the chief made no mention of the Appellant being a wife to the Deceased. Why would a local administrator write two different letters giving two different positions relating to the marital status of the Deceased. In my view PW2 is not an entirely honest or truthful witness. He appears ready to support whomever approached him instead of writing a letter indicating what he himself knew regarding the wife or wives of the Deceased. I find that it has not been proved on a balance of probabilities that the Deceased and the Appellant got married under Kikuyu customary law.

42. The next question is whether a presumption of marriage can be said to have existed between the Appellant and the Deceased. In the Hortensiah Wanjiku Case [Supra] the court stated that

> " Long cohabitation as a man and wife gives rise to a presumption of marriage in favour of the party asserting it. Only cogent evidence to the contrary can rebut the presumption....."

43. In the case of Mary Njoki -Vs- John Kinyanjui Mutheru & 3 Others 1985 eKLR the Hon. Nyarangi Judge of Appeal stated as follows:-

> " The concept of presumption of marriage is with us, having been recognized and approved by this courts predecessor in Hortensia Wanjiku Yawe v Public Trustee.....
>
> The presumption does not depend on the law of systems of marriage. The presumption simply is an assumption based on very long cohabitation and repute that the parties are husband and wife. In my judgment before a presumption of marriage can arise a party needs to establish long cohabitation and acts showing general repute. If the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children that would be a factor very much in favour of presumption of marriage. Also if say the two acquired valuable property together and consequently had jointly to repay a loan over a long period, that would be just what a husband and wife do and so it would be unreasonable to regard the particular man and woman differently. Performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married. To sum it, there has to be evidence that the long cohabitation is not close friendship between a man and a woman, that she is not a concubine but that the cohabitation has crystallized into a marriage and that it is safe to presume that there is a marriage..... To my mind, presumption of marriage, being an assumption does not require proof of an attempt to go through a form of marriage known to law." [Own emphasis]

44. In the case of MWK -VS- AMW [2017] eKLR, Hon. Justice Joel Ngugi (as he then was) discussing the concept of a 'presumption of marriage' stated as follows:-

> " Since then our case law has been consistent in following the English common law in requiring that a presumption of marriage arises only when a person proves two factual predicates
>
> a. Quantitative element - namely the length of time the two people have cohabited with each other; and
>
> b. Qualitative element - namely acts showing general repute that the two parties held themselves out as husband and wife. Factors tending to demonstrate these qualitative element include whether the parties had children together, whether the community considered the two as husband and wife, whether the two carried on business jointly or whether they took a loan jointly, whether the two held a joint bank account and so forth."

45. The Appellant did not during the trial adduce sufficient evidence that would lead to a presumption of marriage. The quantitative element was not proved. According to the Appellant she had cohabited with the Deceased from the year 2019 until the time of his demise in November 2020. This is a period of roughly two (2) years which in my view does not amount to a period of long cohabitation such as would give rise to a presumption of marriage.

46. Aside from chief (PW2) whose evidence has already been discredited the Appellant did not call any independent witness to testify that they knew the couple as man and wife.

47. Regarding the quantitative element the Appellant claimed that she and the Deceased were running a business in Chaka town. The Respondent denied this and asserted that the Appellant was merely an employee in the family business. The Appellant did not avail any document to prove that she was a

part owner of the said business, no evidence of how many shares she held in the business (if any). The Appellant annexed a liquor licence permit for an enterprise known as 'Njoma' issued by the County Government of Nyeri in her name. In my view this is not sufficient proof that she was a co-owner of the business.

48. The Appellant testified that she and the Deceased bore one child together. She produced as evidence a certificate of Birth Certificate Serial No. - 001XXXXX29 for a child MN born on 4th October 2010. The name of the child's father is indicated to be Charles Macharia Muraguri (the Deceased).

49. It is pertinent to note that this birth certificate was issued on 1st February 2021, which was three (3) months after the Deceased had passed on.

50. Section 12 of the *Births and Deaths Registration Act* Cap 149, Laws of Kenya provides that:-

> " No person shall be entered in the Register as the father of any child except at the joint request of the father and mother upon the production to the Registrar of such evidence as he may require that the father and mother were married according to law or in accordance with some recognized customs."

51. A certificate of birth obtained after the death of the deceased would raise doubt as its genuiness and the court is entitled to a plausible explanation for such turn of events. In any event, a certificate of birth, even though a proper one, is not adequate proof of paternity. In the matter of Kamau Muigai (Deceased) (2018) eKLR Hon. Justice Musyoka held as follows:-

> " Regarding the second Applicant there is a Birth Certificate on record that places the name of the late son of the Deceased on record as her father. The family claims that she was not related to them as she was not introduced as such. The certificate was obtained before the alleged father died. I am however, alive to the fact that a certificate of Birth is not adequate proof of paternity....." [own emphasis]

52. Similarly in the Matter of The Estate of Peter Muraya Chege Alias Muraya Chege (2019) eKLR Hon. Justice A. K. Ndungu held that:-

> " In this time and age of considerable scientific discovery, development and achievement, where a dispute arises as to the paternity of an individual, there is no better way to settle that issue with finality than through a dependable DNA test."

53. The very real possibility that this document was obtained deliberately with a view of 'presenting it as evidence to support the Appellants claims cannot be ignored. Science has provided a reliable and foolproof way to prove paternity which is by DNA testing. No DNA testing was applied for out in this case. I find that the evidence of the birth certificate alone is not adequate proof that the child was fathered by the Deceased.

54. Having found no evidence to prove that the Appellant was a wife to the Deceased and there being no evidence to prove that the child borne by the Appellant was fathered by the Deceased, the Appellant cannot stake a claim to any part of the estate. The only way the Appellant could claim a share of the estate of the Deceased, would be to prove that she and/or her daughter were dependant on the Deceased immediately prior to his death in line with Section 29 of the *Law of Succession Act*.

55. The Appellant did not adduce any proof of dependency. She did not allege much less prove that the Deceased was paying the rent, educating the child, buying groceries etc.

56. The Appellant in her Affidavit of Protest claimed that the Deceased left to her the following properties;-

(i) Kabaru Block II/Mathina/1470

(ii) Kabaru Block II/Mathina/986

(iii) LR Number 7387/317 Nyeri

(iv) Motor vehicle Registration No. KAL XXXX Mercedes Benz Lorry.

57. It must be remembered that the Deceased died intestate. He did not leave behind a written will bequeathing any of his property to the Appellant nor has the Appellant produced such a written will.

58. The Appellant is therefore asserting that the Deceased made to her 'gifts inter vivos' that the Deceased gifted these assets to the Appellant during his lifetime.

59. The *Law of Succession Act* recognizes both testamentary and intestate succession. In the case of testate succession there must be evidence of a written or oral will left behind by the Deceased indicating the manner in which he wished his estate to be distributed.

60. The proceedings in this matter were filed as an intestate cause i.e the Deceased did not leave behind any will.

61. Section 42 of the *Law of Succession Act* provides for 'Gift Intervivos as follows;-

Where

a. an intestate has during his lifetime or by will paid given or settled any property to or for the benefit of a child, grandchild or house

(b) ....."

62. The main characteristics of a gift inter vivos is that is 'made and settled' during the lifetime of the Deceased i.e the said gift must have been identified, awarded and transmitted to the beneficiary by the Deceased prior to his demise. Such a gift will not form part of the estate but will be taken into account in determining the share of the net estate finally due to the said beneficiary.

63. The requirement in law for recognition of a 'gift intervivos' is that said gift must have been settled by deed or by an instrument in writing by delivery, by way of a declaration of trust by the donor or by a resulting trust or transfer and registration. Therefore in order to be valid the gift must have passed from the deceased to the recipient.

64. In Odunga's Digest on Civil Case law and Procedure Vol III Page 2417 at Paragraph 5484(d)-(e), it is stated as follows:-

> " Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift..... Equity will not come to the aid of a volunteer and therefore if a donee needs to get an order from a court or equity in order to complete his title, he will not get it. If on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee needs no assistance from equity and the gift is complete. It is on that principle that in equity is held that a gift is complete as soon as the donor has donee everything that the donor has to do that is to say as soon as the donee has within his control all those then as necessary to enable him complete his title. Where a donor has done all in his power according to the nature of

the property given to rest he legal interest in the property in the done, the gift will not fail even if something remains to be done by the donee or some third person. Likewise a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the done has not yet been registered as a proprietor." [own emphasis]

65. In re Estate of Godana Songoro Guyo (Deceased) [2020] eKLR the court stated as follows:

> "…….However, the court is tasked to investigate whether the applicants claim suffices to be gift inter vivos or causa mortis?
>
> What is the requirement of law as far as a gift inter? Vivos is concerned? I find useful guidance in Nyamweya I in her decision in the case of Re Estate of the late Gedion Manthi Nzioka (Deceased) [2015] eKLR where she stated as follows:
>
> "In? law, gifts are of two types. There are the gifts made between living persons (gifts intervivos), and gifts made in contemplation of death (gifts mortis causa). Section 31 of the *law of Succession Act* provides as follows with respect to gifts made in contemplation of death:
>
> ……For gifts intervivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid"?
>
> In Halsburys? Laws of England? 4th?? Edition Volume 20 (1) of paragraph 67 1 is stated as follows with respect to incomplete gifts:?
>
> "Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor's subsequent conduct gives the done a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property and which it was in his power to do" It may be noted that the concept of gifts is divided into two categories. First gifts intervivos and gifts causa mortis. Gifts intervivos as contemplated in the law of succession are such that the owner of the property or asset donates it to another without expectation of death. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift be perfected. In the case of intervivos the gift must go into immediate and absolute effect. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts. Further, it is fundamental to understand the intention of the parties and their acts done sufficient to establish the passing of the gift to the donee….."

66. The Appellant did annex copies of the Title for Kabaru/Block II/1470 and 986 as well as a certificate of official search dated 31st December 2020 all showing that the two parcels of land are still registered in the name of the Deceased. It is obvious the Deceased did not transfer these properties to the Appellant during his lifetime. As such the said parcels of land form part of the estate of the Deceased and are available for distribution to the genuine beneficiaries.

67. Regarding LR No. 7387/317 all that the Appellant has annexed is a Deed plan. This does not amount to proof of the transfer of this property to the Appellant. The Appellant did not during the trial

produce any transfer document made out and executed by the Deceased in her favour in respect of the two parcels of land.

68. With regard to the motor vehicle Registration KAL 310H, no documentation was annexed. Thus the court has no way of knowing who the registered owner of this vehicle is. Furthermore I note the Respondent did not list his particular vehicle as one of the assets comprising the estate of the Deceased. That vehicle does not form part of the estate and the court will make no orders in respect of the said vehicle.

69. All in all I find there exists no evidence of the Deceased having 'gifted' Kabaru Block II/Mathina 1470, Kabaru Block II/Mathina/986 or LR Number 7387/317 Nyeri to the Appellant during his lifetime. As such I find and rule that the above properties form part of the estate of the Deceased and the same are available for distribution to the genuine beneficiaries.

70. Finally and in conclusion I find no merit in this appeal. The judgment delivered by the trial court on 25th July 2022 is confirmed and upheld. The appeal is dismissed in its entirety. Costs will be met by the Appellant.

DATED IN NYERI THIS 25TH DAY OF APRIL, 2025

.....

MAUREEN A. ODERO

JUDGE