



**In re Estate of Ruingora Kangoroti Mutua Thuku alias Roingora Kangoroti Mutua Thuku
(Deceased) (Succession Cause E134 of 2023) [2025] KEHC 7451 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E134 OF 2023**

HI ONG'UDI, J

MAY 29, 2025

**IN THE MATTER OF THE ESTATE OF RUIGORA
KANGOROTI MUTUATHUKU ALIAS ROINGORA KANGOROTI
MUTUATHUKU (DECEASED)**

BETWEEN

LOICE WANJIRU WANJAU PETITIONER

AND

ANDREW KANARI RUIGORA RESPONDENT

JUDGMENT

1. This matter relates to the Estate of the late Ruingora Kangoroti Mutuathuku alias Roingora Kangoroti Mutuathuku who died intestate in Nairobi on 6th August 1991. A grant of letters of administration intestate was issued on 9th October, 2023 to Loice Wanjiru Wanjau (petitioner). The petitioner has filed summons for confirmation of grant dated 28th August 2024 seeking the following orders: -
 - i. That the grant of letters of administration intestate made to the said Loise Wanjiru Wanjau in respect of the estate of Ruingora Kangoroti Mutua Thuku Alias Roingora Kangoroti Mutuathuku on 9th October, 2023 be hereby confirmed.
 - ii. That the properties forming part of the deceased estate be distributed as per the proposal made by the applicant.
 - iii. That the costs of this application be costs in the cause.
2. The summons is opposed by the respondent who filed a replying affidavit dated 3rd December 2021 where he averred that he had been confirmed as the administrator to the deceased's estate. That the said



estate had been administered through Kiambu Succession Cause No. 190 of 1996. Further, that both the petitioner and all the named beneficiaries were aware of the same.

3. He further deponed that the petitioner's elder brother Allan Njoroge Muriithi (deceased) was his co-administrator and he had represented their house. That the petitioner was not part of the beneficiaries in the Kiambu succession cause because she had been allocated by the deceased an independent subdivision being Lari/Magina/1000 measuring two (2) acres). He added that Lari/Mayina/1001 had been bequeathed to his mother Naomi Wairimu as her life interest.
4. The respondent also averred that the persons named in the petitioner's petition had benefited from the confirmation and distribution and some of them like Hannah and Allan had proceeded to sale off part of the titles they were bequeathed. That the petitioner had challenged the confirmation in Kiambu court and her application for revocation was dismissed by High Court in Nairobi in Cause No. 136 of 2005. He termed the petitioner's petition as being res judicata, an abuse of the court process and that the same ought to be dismissed with costs.
5. The applicant filed a further affidavit dated 18th February 2025, where she deponed that the grant of letters of administration was issued to the respondent and Allan Njoroge Muriithi and confirmed vide Succession cause No.190 of 1996 but the same was revoked by the court on 1st August, 2013 vide Nairobi Succession cause number 136 of 2005. Thus, her petition was not res judicata.
6. The parties also filled written submissions.

Petitioner/Applicant's submissions

7. The said submissions were filed by Mirugi Kariuki & Company advocates and are dated 18th March 2025. Counsel identified two issues for determination.
8. On the first issue on whether the replying affidavit dated 3rd December 2024 is merited, counsel submitted that the said replying affidavit lacked merit and the issues raised therein were res judicata. Further, that the applicant had filed citation proceedings seeking to have the respondent take out letters of administration. That the reasons raised in the said citation proceedings by the respondent were the same ones in the replying affidavit filed by the respondent in this cause. He urged the court to disallow the said replying affidavit as it contained falsehoods which had vehemently been denied by the applicant in her further affidavit.
9. On the second issue on whether the summons for confirmation of grant should be allowed, counsel submitted that the applicant had demonstrated that this matter was proper before this court. That in the replying affidavit the respondent did not object to the mode of distribution proposed. Further, that the other beneficiaries of the estate Hannah Wanjiru Muriithi and Peter Kangethe Muriithi had signed the consent in support of the distribution. He urged the court to allow the application for confirmation of grant as prayed.

Respondent's Submissions

10. These were filed by Namada & Company advocates and are dated 24th March 2025. Counsel identified two issues for determination.
11. On the first issue on whether the succession cause is properly before this court, counsel submitted that summons for confirmation of grant and the whole succession cause was not properly before this court as the same was res judicata. He urged the court not to entertain or allow the same. He placed reliance



on the decision in *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & Another* where the court held as follows;

“..Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights....(55)|..Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept...”

See also;

Lal Chand v Radha Kishan, Air 1977 SC 789

12. On the second issue on whether the applicant’s summons for confirmation of grant should be allowed, counsel submitted that this matter had been litigated to completion in Kiambu succession cause No. 190 of 1996. Thus, it could not be relitigated as the court itself is barred from reopening the same. Further, that the only way a court could re-examine the case on its merits was when a party invoked its appellate jurisdiction but the same had not been invoked in the instant cause. Additionally, that what the petitioner was bequeathed land parcel Lari/Magina/1000 measuring 1½ acres which had been taken into consideration when the deceased’s estate was administered. He urged the court to strike out the summons for confirmation with costs in favour of the respondent.

Analysis and Determination

13. I have considered the pleadings, testimonies and submissions by both the administrators’ and the protestors’ counsel. I find the issues for determination to be:
 - i. Whether the suit is res judicata.
 - ii. The most just way of distribution of the estate
14. The respondent contends that the summons for confirmation of grant is res judicata for reasons that the deceased’s estate had been administered through Kiambu Succession Cause No. 190 of 1996, letters of Administration issued and confirmed. In his replying affidavit he annexed a certificate of confirmation of grant on 25th November 2004 in respect of the estate of the deceased.
15. It is not disputed that letters of grant of administration in respect of the deceased’s estate were issued and confirmed vide Kiambu Chief Magistrate’s Succession Cause No. 190 of 1996. The confirmation was on 25th November, 2004. The administrators were Andrew Kanari and Allan Njoroge.
16. Additionally, there is evidence showing that vide Succession Cause No. 136 of 2005 (Nairobi Family Division) the Petitioner herein Loice Wanjau filed an application dated 3rd March, 2005 seeking to revoke the letters of grant issued to Andrew Kanari Ruingora and Allan Njoroge jointly. The application was heard and dismissed by Wanjiru Karanja J (as she then was) vide her Ruling delivered on 4th October, 2011. This issue did not end there.
17. In the same Nairobi Family Division Succession Cause was filed an application dated 21st February, 2012 by Hannah Muriithi Ruingora seeking revocation of the said grant issued to Andrew Kanari Ruingora and Allan Njoroge Muriithi on 20th February, 2000 and confirmed on 17th November, 2004. The application was allowed and orders issued accordingly on 19th February, 2013 by Luka Kimaru J (as he then was). There is no indication that the said revocation by Justice L Kimaru has been set aside either by review or appeal.



18. A citation cause Chief Magistrate’s Court Nakuru No. 6 of 2018 citing the two former Administrators was filed in respect of the deceased’s estate. The said Andrew Kanari and Allan Njoroge participated in the said proceedings. The court granted the said former Administrators 45 days to initiate the process of obtaining letters of administration within 45 days. This was on 26th June, 2019 and the said orders were never complied.
19. The petitioner then filed the present Succession cause which is properly before this court.
20. No scintilla of evidence was placed before this court indicating whether the said orders have been set aside or reviewed or appealed. My humble finding is that there is no confirmed grant in relation to the estate of the deceased as it stands and so the present summons for confirmation of grant by the petitioner/applicant is not res judicata.
21. Having found as above, I now proceed to determine the summons for confirmation of grant on its merits. The duty of a probate court was elaborated in *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR where court held as follows:

“.....The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”
22. In this case the deceased who was polygamous had two wives who are also deceased. They are however survived by children. In such a case the anchor on the distribution of his of his estate is Section 40 of the *Law of Succession Act* which primarily provides as follows;

“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate, shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

The distribution of the personal and household effects and the residue of the net interest within each house shall then be in accordance with the rules set out in sections 35 to 38”
23. Further, these principles were expounded in the case of *Rono v Rono Civil Appeal NO. 66 of 2002*, where Waki J.A stated inter alia that; -

“More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife and children of that wife.”
24. The beneficiaries in both houses are as follows:
 - i. Loise Wanjiru Wanjau



- ii. Hannah Wanjiru Muriithi
 - iii. Peter Kangethe Muriithi
 - iv. Andrew Kanari Ruingora
 - v. Allan Njoroge Muriithi
 - vi. Allan Njoroge Njenga
 - vii. Paul Koigi Njenga
 - viii. Grace Njeri Njenga
 - ix. Charles Muriithi Njenga
 - x. William Gitau Njenga
 - xi. Ruth Njambi Njenga
 - xii. Joseph Njoroge Njenga
 - xiii. David Waweru Njenga
 - xiv. John Njenga (Deceased)
- 14 Units

25. The properties vested in the Estate of the deceased for distribution are:

- i. LR. No. 10453/6 – (15.27 HA or 38 acres)
- ii. Lari/Magina/1001- (1.15 acres)

26. The total number of units that the deceased left behind is 14 and these are entitled to inherit from his estate. The Court in *Re Estate of John Musambayi Katumanga (deceased) [2014] eKLR* held as follows:

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is ‘equally’ as opposed to ‘equitably’. This is the plain language of the provisions. The provisions are in mandatory terms the property “shall....be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

27. I have considered the law on the matter and all the proposals on the distribution of the estate that have been placed before this court. The proposed mode of distribution by the petitioner/applicant does not make a fair or justifiable, one. I therefore undertake the following distribution of the estate of the deceased:LR. No. 10453/6 – (15.27 HA or 38 acres) to be shared equally amongst the 14 units.Lari/ Magina/1001- (1.15 acres) to be shared equally amongst the 14 units or in the alternative the same be sold (due to its small size) and proceeds shared equally among the units.

28. The grant is therefore confirmed and a certificate of confirmation to issue as per the distribution stated at paragraph 23 above.



29. Costs shall be paid from the estate

30. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 29TH DAY OF MAY, 2025 IN OPEN COURT AT NAKURU

H. I. ONG'UDI

JUDGE

