



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of King'ori Mbogo Ben alias King'ori Mbogo (Deceased) (Succession Cause 430 of 2007) [2025] KEHC 7337 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7337 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 430 OF 2007  
DKN MAGARE, J  
MAY 27, 2025**

**BETWEEN**

**SIMON MATU KING'ORI ..... APPLICANT**

**AND**

**PATSON NDIRITU KING'ORI ..... 1<sup>ST</sup> PETITIONER**

**ANDREW KIMATHI KING'ORI ..... 2<sup>ND</sup> PETITIONER**

**MARY WANJIRU KING'ORI ..... 3<sup>RD</sup> PETITIONER**

**RULING**

1. Judgment in this matter was delivered on 16.11.2008 by Hon. Justice M. T. Matheka. It is reported as In re Estate of King'ori Mbogo Ben (Deceased) [2018] KEHC 2346 (KLR). In the judgment the court made the following orders:
  1. The grant issued to the petitioners on the 20<sup>th</sup> May 2008 and confirmed on the 17<sup>th</sup> June 2011 be and is hereby revoked.
  2. A fresh grant to issue to the petitioners and the protester jointly.
  3. The petitioners and the protester, or each of them be at liberty to file summons for confirmation of the grant taking into consideration all the concerns raised.
  4. The same be filed and served 30 days from the date hereof.
2. The deceased the late King'ori Mbogo Ben Aka King'ori Mbogo (deceased) died on 15.06.2007 and left 10 issues, namely:
  - a. Andrew Kimathi King'ori.
  - b. Ann Wakarima King'ori



- c. Jane Murugi King'ori
  - d. Martin Ndungu King'ori
  - e. Mary Wanjiru King'ori
  - f. Michael Ndirangu King'ori (deceased)
  - g. Moses Mbogo King'ori
  - h. Peterson Ndiritu King'ori
  - i. Simon Matu King'ori
  - j. Tabitha Wamucii N. Kariuki
3. From the evidence, the deceased herein was pre-deceased by the wife and mother of the 10 issues. The parties dueled distribution of the estate. It emerged that there were several properties that initially belonged to the deceased herein but some of which he had given as a gift inter vivos. What emerged was that the persons who had been given gifts inter vivos, sold some of them after the demise of the deceased. In particular, Simon Matu King'ori received a gift inter vivos, which he did not purchase or even know of its existence until after the demise of the deceased. Simon Matu King'ori was still awaiting distribution without having regard to the prior gifts, the properties.
4. The court is satisfied from the evidence that land parcel Tigithi/Matanya/Block 1/2X8 measuring 7.5 acres was given as a gift inter vivos, to Simon Matu King'ori. Gifts inter vivos are counted in having regard to the sharing of properties unless it is shown it was for a specific non inheritance related reason. This was not shown. It is only fair that the gift be taken into consideration in distributing the estate. Gift inter vivos are provided under Section 42 of the Law of Succession Act. It provides:
- “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; or
  - (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.
5. In the case of Micheni Aphaxard Nyaga & 2 others v Robert Njue & 2 others [2021] eKLR, L Gitari J stated as follows regarding a gift:
- In Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 67 it 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 donee 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 comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”



Adherence to the rule based-model on transfer of immovable property involves an inquiry on the Law of gifts inter vivos or causa mortis featuring in Odunga's Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1 thus:

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in Re Fry Deceased {X946} CH 312 Rose: and Trustee Company Ltd v Rose {X949} CL 78 Re: Rose v Inland Revenue Commissioners {X952} CH 499 Pennington v Wolve {2002} 1WLR 2075 Maledo v Beatrice Stround {X922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of 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 need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, 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 donee has not yet been registered as a proprietor. (See Shell's Equity 29ED Page 1X2 paragraph 3)”

6. The above also applies to the gift of Nakuru/Olongai Phase II/X0, measuring 25 acres to Mary Wanjiru Kingori. The deceased filed a caution when Mary Wanjiru Kingori wanted to sell the land. It is not disputed that the said Mary Wanjiru Kingori had just completed form 4 when the father transferred the land to her. Pursuant to Section 42 of the Law of Succession Act, the said gift will be taken into consideration.
7. In effect, it can be seen that the estate is comprised of the following
  1. Properties in the deceased's name
    - a. Nyandarua/Magumu Township/X7
    - b. Nyandarua/Magumu/Township X9
    - c. Nyandarua/South Kinangop/9X7- measuring 0.30 Ha
    - d. South Kinangop/7X2 measuring 36.0 Ha
    - e. Thegenge/Kianjogu/1X2- measuring 1.4 Acres
    - f. UNS. Industrial Plot –Kiganjo- Alternative plot measuring 3 acres
    - g. A/C No.0305XXXX5600 in Consolidated Bank Nyeri Branch
    - h. A/C No.487461X700202291 in Barclays Bank Naivasha Branch -0X7-8144992
  2. Properties transferred inter vivos
    - a. Tigithi/Matanya/Block 1/2X8 -7.5 acres - Simon Matu King'ori
    - b. Nakuru/Olongai Phase II/X0 - 25 acres- Mary Wanjiru Kingori
8. It came out in the course of the proceedings that one of the beneficiaries, Michael Ndirangu King'ori, is deceased. However, parties are contesting whether the said beneficiary left behind dependants or not.



The protestors were of the view that he left behind a son while the respondent was of the view that Michael Ndirangu King'ori (deceased) left behind a son, namely, Boniface Muiruri Ndirangu.

9. However, for a court handling a succession cause of the estate of the current deceased, there is no need to settle the issue. The new deceased survived the deceased herein. The deceased dependant will get a share, registered in his estate and questions of his dependants, including those at large be dealt with in the estate of the deceased dependants.
10. After hearing lengthy evidence, I have no doubt in my mind that the two properties registered in the names of the deceased's children formed part of the estate. This is because it turned out that for land parcel number Tigithi/Matanya/Block 1/2X8 -2.51 hectares (7.5 acres), the protestor did not know about transfer to his name. He got it upon demise of the deceased and proceeded to sell the same. He now complains that it was at a throw away price.
11. He made his bed and should not have difficulties lying on it as he must. The said beneficiary must live by ruing the day he tried to steal a march on his siblings. He blames the deceased for registering the said parcel in his name. The court therefore finds that the share registered in the name of Simon Matu King'ori, that is land parcel number Tigithi/Matanya/Block 1/2X8 -7.5 acres was a gift intervivos that must be reckoned with while distributing the estate.
12. From what came out in evidence there are two parcels that are more valuable than the rest. These are Nyandarua/South Kinangop/9X7 and UNS Industrial Plot –Kiganjo-Alternative Plot. The other truth is that the plots were largely sold illegally pursuant to the initial grant, the purported agreement which resulted in the grant which the court set aside as aforesaid.
13. I am satisfied that Nakuru/Olongai Phase II/X0 measuring 25 acres, must be considered as a prior gift to Mary Wanjiru Kingori, unless she had availed the said parcel for distribution. This applies to the parcel Tigithi/Matanya/Block 1/2X8 -7.5 acres sold by Simon Matu King'ori.
14. Then there is a question of Nyandarua South Kinangop/9X7 and UNS Industrial Plot –Kiganjo-Alternative Plot. The Applicant is interested in both these parcels and does not want to give up the Nyandarua South Kinangop/9X7. Given the size of the land, the same should be shared equally between Simon Matu King'ori and Ann Wakarima King'ori. the sharing of Nyandarua/South Kinangop/9X7- measuring 0.30 Ha(0.7413 acres) will therefoe be as follows:
  - a. Simon Matu King'ori, - 0.15 hectares
  - b. Ann Wakarima King'ori - 0.15 hectares
15. This leaves UNS Industrial Plot –Kiganjo-Alternative plot as a prime parcel to be shared out later as a balancing act for all the estate.
16. One of the considerations the parties considered in the subdivision was proximity to other parcels. Simon Matu King'ori was given 2.51 hectares of land in Tigithi/Matanya/Block 1/2X8. It has been proposed by both parties that he gets half of plot number Nyandarua South Kinangop/9X7, that is 0.15 hectares (0.371 acres).
17. For the parcels of land designated for agricultural purposes, there are three specific parcels, namely:
  - a. Nakuru/Olongai Phase II/X0- 25 acres
  - b. Tigithi/Matanya/Block 1/2X8 2.51 hectares (7.5 acres)
  - c. South Kinangop/7X2 – 36 hectares (89 acres)



Total – 121 acres.

18. If the parties were to share the land equally, each would receive 12.1 acres. However, 25 acres have already been allocated, which is more than sufficient for agricultural purposes to Mary Wanjiru King'ori. This allocation leaves 96.5 acres available for distribution among 9 remaining units. According to the title deeds, the actual size of the land is 38.51 hectares. When equally divided among the 9 units, each unit would receive 4.X78 hectares. Simon Matu Kingori has already received and sold 2.51 acres, leaving him with a deficit of 1.768 hectares (equivalent to 4.37 acres). This works out as follows:

- a. Andrew Kimathi King'ori 4.X78 hectares
- b. Ann Wakarima King'ori 4.X78 hectares
- c. Jane Murugi King'ori 4.X78 hectares
- d. Martin Ndungu King'ori 4.X78 hectares
- e. Michael Ndirangu King'ori (deceased) 4.X78 hectares
- f. Moses Mbogo King'ori 4.X78 hectares
- g. Peterson Ndiritu King'ori 4.X78 hectares
- h. Simon Matu King'ori 1.768 hectares
- i. Tabitha Wamucii N. Kariuki 4.X78 hectares

19. On the other hand, there are five plots in total, namely:

- a. Nyandarua/Magumu/Township X9 measuring 0.48 acres
- b. Nyandarua/Magumu/Township X7 measuring 0.22 acres
- c. Nyandarua/South Kinangop/9X7- measuring 0.30 Ha (0.7413 acres)
- d. Thegenge/Kianjogu/1X2- measuring 1.4 Acres
- e. UNS. Industrial Plot –Kiganjo-Alternative plot measuring 1.X75 hectares (3.15 acres).

Total 6 acres

20. If each of the 9 were to get an equal share, then each will get 0.6657 acres. If each of the 10 units was to get the plots then, each was to get 0.5991 acres, assuming that values are the same. However, some plots are indivisible and uneconomic to subdivide. It also came in evidence that two of the 5 parcels were more valuable than other. It is against the foregoing that the court then reviewed the proposals giving the parcels as follows, having regard to the interests of the parties and the concept of equality.

21. Two of the competing principles in succession is equity and equality. Equality is enshrined in *the constitution* and the Act. Article X7 of *the constitution* is not a decoration. It is an article with full force of the grundnorm of the country. It is consonant with various declarations starting with the Universal Declaration of Human Rights. In the case of Rono v Rono & another 437 of 2001; [2002] KECA X98 (KLR); [2008] 1 KLR (G & F) X0959, the Court of Appeal, sitting at Eldoret, stated as doth:

The deceased in this matter died in X988, while the Succession Act which was enacted in X972, became operational by Legal Notice No. 93/81, published on 23.06.X981. I must therefore hold, as the Act so directs, that the estate of the deceased falls for consideration under the Act. Section 2(1) provides:



- 2.(1) Except as otherwise expressly provided in the Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.
22. The general rule is that sharing is equal in an intestate estate amongst the children of the deceased. In *Re Estate of John Musambayi Katumanga – (Deceased)* [2014] KEHC 7506 (KLR), W. Musyoka posited as follows regarding equal sharing of properties:
- X7. 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.
23. Further, in *Christine Wangari Gachigi v Elizabeth Wanjira Evans & 11 others* [2014] KECA 150 (KLR), the Court of Appeal posited as follows on the qualification to get a share under Section 38 of the *Law of Succession Act*:
1. Under section 38 of the Act; all that one needed to establish in this cause was to show that they were either children or grandchildren of the deceased. Matters of failure to participate actively in the litigation proceedings should not have been a disentitling consideration in respect of the 2nd, 3rd and 4th cross appellants, in the absence of their renunciation of respective claims to the estate.
    1. ...
      1. The principle of equality as enshrined in section 38 of the Act is the key principle which ought to have guided the learned Judge in the distribution exercise. We affirm that it is the same principle that will guide our redistribution exercise. In doing so, we find it fit not to treat the eligible grandchildren of the deceased as single units, but to reroute them back to benefit as such through their deceased parents house hold units.
24. It follows that the best way to get both equal and equitable distribution that is of good economic use is to share as follows:
- a. Nyandarua/Magumu/Township X9 measuring 0.48 acres has been proposed for Mary Wanjiru Kingori.
  - b. Nyandarua/Magumu/Township X7 measuring 0.22 acres - Mary Wanjiru Kingori.
  - c. Thegenge/Kianjogu/1X2- measuring 1.4 Acres was proposed by both sides to Patson Ndiritu King’ori.
25. This leaves UNS. Industrial Plot –Kiganjo-Alternative plot measuring 1.X75 hectares(3.15 acres) among the following children who have not received plots so far:
- a. Andrew Kimathi King’ori.
  - b. Jane Murugi King’ori
  - c. Martin Ndungu King’ori



- d. Michael Ndirangu King'ori (deceased)
  - e. Moses Mbogo King'ori
  - f. Tabitha Wamucii N. Kariuki
26. It also leaves out two persons who got late than others, in distribution of town plots. These are Simon Matu King'ori and Ann Wakarima King'ori.
27. If these were to share, then each will get 0.525 acres each. (0.212 ha). This will be higher than the rest. We shall therefore adjust with the anecdotal values assigned by the parties. It is therefore true that there is a deviation in respect of the beneficiaries vis a vis the assignment of the UNS. Industrial Plot –Kiganjo-Alternative plot measuring 1.X75 hectares. In order to have equality of arms I direct that the following should have a share in UNS Industrial Plot –Kiganjo-Alternative plot measuring 1.X75 hectares:
- a. Andrew Kimathi King'ori 0.X958 hectares
  - b. Jane Murugi King'ori 0.X958 hectares
  - c. Martin Ndungu King'ori 0.X958 hectares
  - d. Michael Ndirangu King'ori (deceased) 0.X958 hectares
  - e. Moses Mbogo King'ori 0.X958 hectares
  - f. Tabitha Wamucii N. Kariuki 0.X968 hectares
  - g. Simon Matu King'ori, 0.05 hectares
  - h. Ann Wakarima King'ori 0.05 hectares
28. The land belonging to Moses Mbogo King'ori shall be held in trust for him by the administrators without the power to sell.
29. The parcel in respect of the deceased beneficiary, the late Michael Ndirangu King'ori (deceased) shall be registered in the names of the said deceased beneficiary and succession do proceed in the said estate. The administrators herein shall sign any requisite documents to effect the transfer into the estate of the deceased.
30. In regard to costs, the Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -
- (18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging



consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

31. The best order herein is for each party to bear their own costs as all are winners and their family will be more united than ever.

**Determination.**

32. In a nutshell, I make the following orders:-

1. The deceased the late King'ori Mbogo Ben Aka King'ori Mbogo (deceased) died on 15.06.2007 and left 10 issues, namely:
  - a. Andrew Kimathi King'ori.
  - b. Ann Wakarima King'ori
  - c. Jane Murugi King'ori
  - d. Martin Ndungu King'ori
  - e. Mary Wanjiru King'ori
  - f. Michael Ndirangu King'ori (deceased)
  - g. Moses Mbogo King'ori
  - h. Peterson Ndiritu King'ori
  - i. Simon Matu King'ori
  - j. Tabitha Wamucii N. Kariuki
2. The estate comprised of two sets of properties that is:
  1. Properties in the deceased's name
  2. Agricultural Properties
    - a. South Kinangop/7X2 measuring 36.0 Ha
  1. Town/Urban Properties
    1. Nyandarua/Magumu Township/X7
    2. Nyandarua/Magumu/Township X9
    3. Nyandarua/South Kinangop/9X7- measuring 0.30 Ha
    4. Thegenge/Kianjogu/1X2- measuring 1.4 Acres.
    5. UNS. Industrial Plot –Kiganjo- Alternative plot measuring 3 acres
  1. Accounts
    - a. A/C No.0305XXXX5600 in Consolidated Bank Nyeri Branch
    - b. A/C No.487461X700202291 in Barclays Bank Naivasha Branch -0X7-8144992
    - b. agricultural Properties transferred inter vivos



- a. Tigithi/Matanya/Block 1/2X8 measuring 7.5 acres transferred to Simon Matu King'ori
  - b. Parcel Nakuru/Olongai Phase II/X0, measuring 25 acres (10.1 hectares), transferred to Mary Wanjiru Kingori.
3. The court shall not deal with the succession of the estate of the late Michael Ndirangu King'ori (deceased) as his share shall be registered in his estate and questions of his dependants, including those who may be at large be dealt with in the said estate.
  4. Under Section 42 of the *Law of Succession Act*, the court is obligated to take into account gifts inter vivos. In this case, the following prior gifts are considered:
    1. Parcel Nakuru/Olongai Phase II/X0, measuring 25 acres (10.1 hectares), gifted to Mary Wanjiru Kingori, and
    2. Parcel Tigithi/Matanya/Block 1/2X8, measuring 7.5 acres (2.51 hectares), gifted to Simon Matu King'ori.
  5. Land parcel number Nyandarua/South Kinangop/9X7 shall be shared as follows:
    1. Simon Matu King'ori, - 0.15 hectares
    2. Ann Wakarima King'ori - 0.15 hectares
  6. South Kinangop/7X2 measuring 36 hectares shall be shared as follows:
    1. Andrew Kimathi King'ori 4.X78 hectares
    2. Ann Wakarima King'ori 4.X78 hectares
    3. Jane Murugi King'ori 4.X78 hectares
    4. Martin Ndungu King'ori 4.X78 hectares
    5. Michael Ndirangu King'ori (deceased) 4.X78 hectares
    6. Moses Mbogo King'ori 4.X78 hectares
    7. Peterson Ndiritu King'ori 4.X78 hectares
    8. Simon Matu King'ori 1.768 hectares
    9. Tabitha Wamucii N. Kariuki 4.X78 hectares
  7. The parcels hereunder are shared as follows:
    1. Nyandarua/Magumu/Township X9 measuring 0.48 acres to Mary Wanjiru Kingori.
    2. Nyandarua/Magumu/Township X7 measuring 0.22 acres to Mary Wanjiru Kingori.
    3. Thegenge/Kianjogu/1X2- measuring 1.4 Acres to Patson Ndiritu King'ori.
  8. UNS Industrial Plot –Kiganjo-Alternative plot measuring 1.X75 hectares shall be shared as follows:
    1. Andrew Kimathi King'ori 0.X958 hectares



2. Jane Murugi King'ori 0.X958 hectares
  3. Martin Ndungu King'ori 0.X958 hectares
  4. Michael Ndirangu King'ori (deceased) 0.X958 hectares
  5. Moses Mbogo King'ori 0.X958 hectares
  6. Tabitha Wamucii N. Kariuki 0.X958 hectares
  7. Simon Matu King'ori, 0.05 hectares
  8. Ann Wakarima King'ori 0.05 hectares
3. The land belonging to Moses Mbogo King'ori shall be held in trust for him by the administrators without the power to sell.
  4. A/C No.0305XXXXX5600 in Consolidated Bank Nyeri Branch and account number 487461X700202291, ABSA Bank PLC Bank Naivasha Branch -0X7-8144992, shall be used to carry out transmission of the estate, excluding rates and rent. The balance shall be shared equally.
33. Each party shall bear their owner costs.
  34. Transmission be completed by 28.11.2025.
  35. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS X7<sup>TH</sup> DAY OF MAY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

No appearance for Applicant

Mr. Gachoka for the 1<sup>st</sup> and 2<sup>nd</sup> Objectors

No appearance for 3<sup>rd</sup> Objector

Court Assistant – Jedidah

