



REPUBLIC OF KENYA



**In re Estate of M'Ichaba M'Aritho (Succession Cause 291 of 2009)  
[2025] KEHC 9575 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 291 OF 2009**

**SM GITHINJI, J**

**JUNE 30, 2025**

**IN THE MATTER OF THE ESTATE OF M'ICHABA M'ARITHO**

**BETWEEN**

**CECILIA KARURU M'ICHABA ..... ADMINISTRATRIX**

**AND**

**DORCAS NTARARA ..... ADMINISTRATRIX**

**JUDGMENT**

1. On 29/6/2017, this court (Chitembwe J) dismissed the petition for grant of letters of administration jointly filed by the widows of the deceased herein namely Veregener Karoki (now deceased) and Cecilia Karuru M'Ichaba, 1<sup>st</sup> Administratrix herein, on 9/6/2009 for want of prosecution.
2. Subsequent to the appointment of Cecilia Karuru M'Ichaba and Dorcas Ntarara as the joint administrators of the estate of the deceased, directions were taken that the protest dated 2/3/2015 by the 1<sup>st</sup> Administratrix herein (hereinafter referred to as the Objector) be heard by way of viva voce evidence.
3. On 24/7/2023, the matter was referred to mediation and the mediation agreement ensuing therefrom was on 25/10/2023 adopted as an order of the court. In those mediation proceedings, the parties herein conceded to equally distribute the shares at Kenya Breweries and Kenya Oil and Plot No. 11 Banana Market Meru among the 12 beneficiaries of the deceased namely Dorcas Ntarara, Jane Kananu, Hellen Kanario, David Muthuri, Judith Mukiri (daughter to Charles Muriuki – deceased), Cecilia Karuru M'Ichaba, Patrick Kathunkumi, Stella Mpinda, Kenneth Mutwiri, Laban Mwitimi, Miriam Mukuba and Ibrahim Koome.
4. The bone of contention is the distribution of L.R No. NYAKI/GIAKI/527 measuring approximately 11 Acres (hereinafter referred to as the disputed property).



5. At paragraph 7 of her affidavit in protest, the Objector proposed that the 5 sons of the deceased get 1½ each while the balance be jointly registered in the names of the 6 daughters of the deceased, in accordance with the wishes of the deceased.
6. In her affidavit in response to the protest, the 2<sup>nd</sup> Administratrix herein (hereinafter referred to as the Petitioner) proposed an equal share of the disputed property between the 2 houses.
7. In her affidavit to support the mode of distribution filed on 3/2/2020, the Objector proposed that the men get 7.5 acres, the ladies get 3 acres while she retains the balance of 0.5 acres and the shares at Kenya Breweries to devolve solely to her.
8. The Objector, Stanley M'Rukwaru, Saberio Gatobu and Stella Mpinda filed witness statements dated 4/11/2024 in support of the protest. They averred that the deceased had distributed the disputed property to his beneficiaries before his death, and the beacons thereto have already been picked.
9. The Petitioner swore a statutory declaration on 3/10/2024 in opposition to the protest.

### **Oral evidence**

10. PW 1 Dorcas Ntarara, a daughter to the deceased herein, told the court that the chief and the elders gave her mother 1½ of the disputed property and she prayed for equal sharing thereof.
11. OW 1 Cecilia Karuru, the 2<sup>nd</sup> wife to the deceased herein, testified that the deceased had expressly given 1½ of the disputed property to each of his sons while the daughters would get the balance. Although the land was subdivided in 2000 when all the beneficiaries were adults, the children from the 1<sup>st</sup> house were not invited for the exercise because they were far.
12. OW 2 Stella Mpinda, a daughter to the deceased herein, told the court that her father had 2 wives and a total of 11 children. She did not know that Charles Muriuki (deceased) had a daughter named Judith Mukiri. The deceased subdivided the disputed land in 2000 where he gave the sons 1.5 acres each and the ladies got 3 acres. The beneficiaries have built on their respective portions and planted trees.
13. Stanley Rukwaro, a neighbour to the deceased herein, stated that he was not present when the land was allegedly distributed by the deceased and he denied signing his statement. The 1<sup>st</sup> wife of the deceased was staying at the disputed land while the 2<sup>nd</sup> wife lived at Banana Market. He attended the burial of the deceased and denied the contention that the deceased had subdivided the land.
14. The parties filed their respective submissions in support of their respective proposals, which I have duly considered.

### **Disposition**

15. Having analyzed the pleadings, the evidence led and the submissions by counsel, I find the issue for determination to be how the disputed property should be distributed.
16. On her part, the Objector insists that the deceased had during his lifetime shared out the disputed property to his beneficiaries where the 5 sons would get 7.5 acres while the 6 daughters would share the balance of 3 acres. In rejoinder, the Petitioner vehemently refutes the contention that the deceased had distributed the disputed property to his dependants prior to his death and prays for equality and fairness in the distribution between the 2 houses.
17. In her proposal, the Objector and her children get a whopping 8 acres while the 1<sup>st</sup> house gets a meagre 3 acres. The Objector has blatantly failed to provide for Judith Mukiri, a daughter to a son to the deceased herein namely Charles Muriuki (now deceased).



18. I find that the proposal by the Objector is discriminatory against the 1<sup>st</sup> house yet it is deliberately skewed towards unjustly enriching the 2<sup>nd</sup> house. To adopt such a proposal under the pretext that it allegedly aligns with the wishes of the deceased would be to perpetuate an injustice against the children of the deceased from his 1<sup>st</sup> marriage, which is highly undesirable.
19. In *Re the Estate of the Late George Cheriro Chepkosiom (Deceased)* [2017] eKLR, the court (Mumbi Ngugi J, as she then was) remarked as follows: “33. To equate the widow to children, or the first widow to widows who enter the home decades later, who may be the age of the first widow’s children and made no contribution to the acquisition of the estate registered in the name of the deceased, is to perpetrate an injustice against women that cannot be justified under any circumstances. For the courts to perpetuate the perpetration of the injustice on the basis of section 40 of the *Law of Succession Act* is to abdicate their constitutional responsibility to do justice. The principle of equality and non-discrimination is at the core of the sovereign law of this land, *the Constitution*. For a court, therefore, to apply any law in a manner that is discriminatory on the basis of sex, or any of the prohibited grounds of discrimination, or to apply a provision of the law that is discriminatory, as section 40 admittedly is, or to consider itself bound by such discriminatory law, is to fail to meet the constitutional demands imposed on it.”
20. Suffice to state, OW 3, an immediate neighbour to the deceased herein, categorically refuted the assertions that the deceased had subdivided the disputed property prior to his death. I undoubtedly find that the deceased herein, a polygamist died intestate survived by one spouse, the 1<sup>st</sup> Administratrix herein and 11 children, namely Dorcas Ntarara, Jane Kananu, Hellen Kanario, David Muthuri, Judith Mukiri (grand daughter), Patrick Kathunkumi, Stella Mpinda, Kenneth Mutwiri, Laban Mwitimi, Miriam Mukuba and Ibrahim Koome.
21. Section 40 of the *Law of Succession Act* provides that; “(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. (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
22. It thus follows that the disputed property ought to be distributed according to the number of children in each house, with the 1<sup>st</sup> Administratrix being treated as an additional unit, by dint of section 40 of the *Law of Succession Act*.
23. The upshot from the foregoing analysis is that the protest dated 2/3/2015 is in want of merit and it is hereby dismissed.
24. The disputed property to wit L.R No. NYAKI/GIAKI/527 shall be distributed equally among the 12 beneficiaries of the deceased herein.
25. Parties to bear own costs. Mention to confirm distribution for closure of the file on 10/12/2025.

**DATED AND DELIVERED AT MERU 30<sup>TH</sup> THIS JUNE, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Parties Absent.



They be notified.

