



REPUBLIC OF KENYA



In re Estate of Jaladean Njoki Mbiri alias Njoki Mbiri (Deceased) (Succession Cause 270 of 2019) [2025] KEHC 9368 (KLR) (Family) (27 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 270 OF 2019

PM NYAUNDI, J

JUNE 27, 2025

**IN THE MATTER OF THE ESTATE OF JALADEAN
NJOKI MBIRI ALIAS NJOKI MBIRI (DECEASED)**

RULING

1. This matter relates to the Estate of Jaladean Njoki Mbiri who died intestate, on 12th October 2000. James Mwathi in his capacity as the son of the deceased petitioned for letters of administration of grant intestate. The grant was issued to him on 14th November 2022. The grant is yet to be confirmed.
2. The deceased is said to be survived by the following persons;
 - i. James Mwathi..... Son.
 - ii. Lucy Wangari Njoki Daughter.
 - iii. Rose Nyambura Njoki Daughter(deceased).
3. The deceased had the following assets;
 - a. Dagoretti/Mutuini/299.
 - b. KJD/Olchoro-Olnyore/473.
4. The administrator filed summons for confirmation of grant dated 18th November 2022 which was opposed by Lucy Wangari Njoki vide an affidavit of protest dated 1st February 2023. She averred that she is the daughter of the deceased. She opposes the mode of distribution by the administrator because it does not disclose that there are other beneficiaries who are dependent on the estate. The administrator did not consult the other beneficiaries before filing the summons for confirmation. She disagrees with the value of the properties and argues that a re-evaluation should be done. That the schedule of distribution does not take into account the existing and future needs of the dependants. She urged the court to dismiss the summons for confirmation and that the dependants be served with the application as required by law.



5. In response, the administrator stated that Rehema Nyambura Njoki and Salma Nyambura Njoki as grandchildren are not beneficiaries of the estate. He asked the court to dismiss the affidavit of protest.

Evidence

6. The administrator testified as PW1. He stated that the grandchildren mentioned in the protest are the children of his sister, Rose Nyambura Njoki. He does not object to Lucy Wangari Njoki getting a share of the deceased's property if she is chased away by her husband. That the land is community land and is guided by Kikuyu Customary laws. He argued that he only met the children of Rose after her demise. He asked the court to distribute the estate as per his supporting affidavit sworn on 18th November 2022.

Administrator's Submissions.

7. It was his submission that the objectors have failed to prove that they are related to the deceased and should benefit from the deceased's estate.

Protestor's Submissions

8. It was her submission that the administrator's proposed mode of distribution is discriminatory in the sense that he proposes that all the properties should vest on him. She sought to rely on the decisions of *Re Estate of M'Ngarithi M'Miriti* [2017]eKLR and *Rono v Rono* [2005] eKLR, where the courts held that all children are entitled to a share of the deceased's estate irrespective of their gender.
9. She further submitted that the children of Rose their late sister are entitled to benefit from the deceased's estate. They have been mentioned as the grandchildren of the deceased and are entitled to inherit the share which belonged to their mother. Reliance was placed on the decision of *In re Estate of John Kihara Njau alias Kihara John (Deceased)* [2021] eKLR.

Analysis And Determination

10. The issues for determination are;
 - i. Whether Kikuyu Customary Law is applicable in distribution of the estate of the deceased;
 - ii. Whether the grandchildren of the deceased are entitled to a share of the deceased's estate
 - iii. Distribution of the estate;

Whether Kikuyu Customary Law is applicable in distribution of the estate of the deceased.

11. The administrator in his submissions stated that according to Kikuyu Customary Laws, married daughters are not allowed to inherit from the deceased's estate. It is apparent that the administrator has set his mind that the property should only be inherited by him and unmarried daughters.
12. All laws in Kenya, including Customary law are subject to *the Constitution* of Kenya as the supreme law. Article 27 of *the Constitution* 2010 provides that every person is equal in the eyes of the law and before the law; and the Article goes further to state that there should be no discrimination on any ground including gender which encompasses marital status. *The Constitution* does not allow discriminatory rules and customs in matters of personal law, including inheritance.
13. *The Constitution* does not countenance discrimination on any ground including gender or marital status.



14. From the submissions presented this court is satisfied that the failure by the administrator to include the married female siblings in the proposed mode of distribution is both discriminatory and runs afoul of the dictates of the law; by dint of the Constitution the married daughters qualify as beneficiaries and are entitled to benefit from the deceased's estate.
15. This court is satisfied that Kikuyu Customary Law as propounded by the Administrator is inconsistent with the Constitution as it discriminates against the married daughters of the deceased.

Whether the grandchildren of the deceased are entitled to a share of the deceased's estate

16. In the case of *Cleopa Amutala Namayi v Judith Were Succession Cause No. 457 of 2005 [2015] eKLR* cited In *Eddah Wangu & Another v Sacilia Magwi Kivuti (deceased) Substituted With Ribereta Ngai [2021] eKLR* Mrima J observed thus:

Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents ... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents..... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead

17. Section 29(b) of the Act defines meaning of dependants, grandchildren are defined as dependants. It means that grand children whose parents died before the deceased, are entitled to the share that should have gone to their parents.

Distribution of the estate.

18. This court being satisfied that the that the deceased's daughters regardless of their marital status qualify to be beneficiaries of the deceased's estate and also that the grandchildren are entitled to a share of their parent; the task left for this court is to determine the dispute on the distribution of the deceased's estate;
19. There is no dispute as to the property that comprises the estate of the deceased. She does not have a surviving spouse and therefore, the applicable section in these circumstances is found to be Section 38 which provides that the estate of the deceased be divided equally between the surviving children of the deceased; the section reads as follows;
 38. Where intestate has left a surviving child or children but no spouse Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
20. It is also an undisputed fact that the deceased was survived by three children; therefore, the property known as *Dagoretti/Mutuini/299* and *KJD/Olchoro-Olnyore/473* shall be distributed equally amongst the three children of the deceased in accordance with Section 38 of the Law of Succession Act.
21. For the afore-going reasons this court makes the following findings and determination;
 - i. This court finds Kikuyu Customary Law to be inapplicable, as it is unconstitutional for being discriminatory against women; and finds that the daughters of the deceased irrespective of their marital status are beneficiaries and are entitled to benefit from the deceased's estate;



- ii. The children of Rose Nyambura Njoki who are the grand children of the deceased are entitled to a share belonging to their mother.
- iii. The administrator's proposed mode of distribution is found to be unfair and discriminatory;
- iv. The Protest is found to have merit and it is hereby allowed;
- v. The estate of the deceased shall be distributed in equal shares amongst the three children of the deceased; namely
James Mwathi..... Son.
Lucy Wangari Njoki Daughter.
Estate of Rose Nyambura Njoki
- vi. The assets of the deceased namely Dagoretti/Mutuini/299 and KJD/Olchoro-Olnyore/473 to be held in equal shares in Common among the 3 beneficiaries.
- vii. The Administrator will finalise transmission within 120 days
- viii. Each party shall bear their own costs.
It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27th DAY OF JUNE, 2025.

P. M NYAUNDI

HIGH COURT JUDGE

In the presence of:

James Mwathi in person

Njau for Objector

Fardosa Court Assistant

