



REPUBLIC OF KENYA



**GCM v SCM (Succession Appeal 1 of 2020) [2025] KEHC 11539 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION APPEAL 1 OF 2020**

**JM NANG'EA, J**

**JULY 31, 2025**

**BETWEEN**

**GCM ..... APPELLANT**

**AND**

**SCM ..... RESPONDENT**

*(Being an Appeal from the Ruling of Honourable N. Makau (Senior Resident Magistrate/Deputy Registrar) in Nakuru Succession Cause No. 138 of 2000 delivered on the 4th day of February, 2020)*

**JUDGMENT**

1. This Appeal is against the lower court's Ruling dated 4<sup>th</sup> February 2020 by which it executed relevant directions of the Court of Appeal as directed by this Court on 7<sup>th</sup> December 2019. The Appellant was aggrieved by the Ruling of the court which related to distribution of the deceased's Estate as per the Court of Appeal's decision, and relied on the following grounds as per the Memorandum of Appeal dated 24<sup>th</sup> February 2020;-
  1. The trial Magistrate erred in fact and in law, in interpreting the decision of the court of appeal in dividing the estate of the deceased for the reason that the court lacks jurisdiction to do so in the circumstances.
  2. The Trial Magistrate erred in fact and in law, in distributing the Estate yet there is no grant capable of being enforced and/or executed.
  3. The trial Magistrate erred in law and in fact in failing to accord due regard to the Appellant's affidavits and annexures thereto which clearly indicated that there was no existing property in the estate of the deceased capable of being distributed.
2. The Appellant therefore seeks orders as hereunder;



1. This Appeal be allowed with costs.
  2. The Ruling of Honourable N. Makau (Senior Resident Magistrate) in *Nakuru Succession Cause No. 138 of 2000* delivered on the 4<sup>th</sup> February 2020 be set aside.
  3. The costs of the appeal be borne by the Respondent.
3. A brief background to this Appeal is that the Court of Appeal delivered Judgement dated 19<sup>th</sup> October 2017 involving the same parties and directed in part as follows:-

“As M was survived by two houses represented by G and S, the properties comprising his estate ought to and shall be distributed equally between them to hold on trust for themselves and their respective children in equal shares in accordance with Section 40 of the Act. For the avoidance of doubt the distribution shall ensure that Grace and Selina will not require to vacate the houses they each currently occupy.”

4. The Decision followed an Appeal to the superior court from the Judgement of my sister (Wendoh J) delivered on 21<sup>st</sup> February 2012. Maritim is the deceased in the Succession Cause No. 138 of 2000 while the Appellant and the Respondent are his widows and the parties hereto. The record shows that on 4<sup>th</sup> October 2018 my brother (A. K. Ndung’u J) directed the parties to make their proposals on the mode of distribution of the Estate in line with the Court of Appeal’s judgement and there was compliance by filing of affidavits. On 7<sup>th</sup> December 2019 the Judge directed the learned Deputy Registrar to supervise execution of the Court of Appeal’s orders which execution resulted in the Appellant’s contentions in this Appeal.
5. This being a first appeal I am required to reconsider the evidence adduced, evaluate it and draw my own conclusions bearing in mind that I did not hear and see the witnesses who testified{(see *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123 }. The Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
6. The parties were invited to file written submissions but it would appear that only the Appellant complied. Through her Advocates she faults the lower court for distributing the Deceased’s estate despite the Court of Appeal itself sharing out the Estate in its judgment of 18<sup>th</sup> October 2017. The court is told that this is a violation of the well established principle of *stare decisis*. In support of the submissions the court is referred to judicial determinations in *Ngao v Republic* [Petition E017 of 2023] [2024] KEHC 2008 (2KLR) (1 March 2024) (Judgement) which derives guidance from the Supreme Court’s rendition in *Kenya Hotel Properties Limited v Attorney General & 5 Others* (Petition 16 of 2020) [2022] KESC 62 (KLR) (CIV) (7 October 2022) (Judgement). It is underscored in these decisions that judicial hierarchy should be respected. It is a constitutional arrangement that ensures consistency and growth of jurisprudence.



7. There is no doubt that this court and the lower courts are bound by decisions of the Supreme Court and the Court of Appeal in line with the doctrine of stare decisis. It is common ground that the Court of Appeal in the Judgment dated 18<sup>th</sup> October 2017 in Civil Appeal No. 274 of 2013 ordered distribution of the deceased's Estate equally between the two houses of the parties hereto. The Appellant and the Respondent were to;

“hold on trust for themselves and their respective children in equal shares in accordance with Section 40 of the Act. For avoidance of doubt the distribution shall ensure that Grace and Selina will not require to vacate the houses they each currently occupy.”

8. The superior court further included two other properties namely Nakuru/Municipality xx/x (Ronda) and Nakuru Block xx/x (Ronda) as part of the deceased's Estate following the Respondent's successful Appeal. The properties were to be included in the list of five other properties this court had identified in its Ruling and order of 21<sup>st</sup> February 2012 appealed from. This is the decision my brother (A. K. Ndung'u, J) directed the Deputy Registrar to supervise execution.

9. Section 40 of the Law of Succession Act the Court of Appeal ruled would guide execution of its order is in the following terms:-

“Where the intestate was polygamous.

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”.

10. I have studied the Deputy Registrar's Ruling dated 4<sup>th</sup> February 2020 in execution of the Court of Appeal's decision. The Court identified the properties the superior court ruled to be shared out equally. Affidavit evidence filed by the parties was not considered and determined, the task rightly being left to this court. The Deputy Registrar noted in the circumstances thus:-

“I only find it fair if all properties are distributed equally without being consolidated.”

11. I don't quite understand what the Deputy Registrar meant in the quoted words. What is clear is that the Court of Appeal has directed the manner of distribution of the deceased's Estate. What remains is the logistics of actualization of the orders which is the duty of this court. The Deputy Registrar who was delegated the task appears to have only confirmed the decision of the Court of Appeal without implementing it. I don't think he has issued orders that have the effect of varying the Court of Appeal's decision.

12. Perhaps there would be need to carry out valuation of the Estate to achieve not only equality but equity in distribution of the Estate. This is the duty of this court which has to be discharged.

13. There being no cause for complaint in my view, the Appeal is dismissed with no order as to costs.

**J. M. NANG'EA**



**RULING DELIVERED THIS 31<sup>ST</sup> DAY OF JULY, 2025**

In the presence of:

Ms Chesa Advocate for Mr. Njoroge Advocate for the Appellant.

Respondent, Absent.

Court Assistant (Jeniffer).

**J. M. NANG'EA, JUDGE.**

