



**In re Estate of Kinyanjui Kamau (Deceased) (Probate & Administration
3119 of 2013) [2025] KEHC 11773 (KLR) (Family) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION 3119 OF 2013
H NAMISI, J
AUGUST 7, 2025
IN THE MATTER OF THE ESTATE OF KINYANJUI KAMAU (DECEASED)**

BETWEEN

STANLEY NJOROGE KINYANJUI APPLICANT

AND

BENSON KAMAU KINYANJUI 1ST RESPONDENT

ALICE NJERI KINYANJUI 2ND RESPONDENT

RULING

1. The Deceased passed away intestate on 30 May 1999. According to the Applicant, the Deceased was survived by his widow (now deceased) and six children, namely:
 - i. Benson Kamau Kinyanjui (now deceased)
 - ii. Godfrey Njenga Kinyanjui
 - iii. James Gitau Kinyanjui
 - iv. Stanley Njoroge Kinyanjui
 - v. Alice Njeri Kinyanjui
 - vi. Leonard Wainaina Kinyanjui (now deceased)
2. The Deceased's estate comprises of two properties; Muguga/Gitaru/901 And Muguga/Gitaru Plot 12.
3. Succession proceedings began in the Chief Magistrate's Court at Kiambu in Succession Cause No. 122 of 2003. Letters of Administration Intestate were issued to Gathoni Kinyanjui (widow) and Benson



Kamau Kinyanjui on 30 September 2003. The Grant was subsequently revoked by the High Court and a fresh Grant issued to Benson Kamau Kinyanjui, Stanley Njoroge Kinyanjui and Alice Njeri Kinyanjui. The Administrators were directed to file Summons for Confirmation of Grant within 60 days of the Ruling, which was rendered on 30 May 2019.

4. Summons for Confirmation of Grant dated 3 February 2022 were filed by the Applicant herein. The same proposed equal distribution of the two properties amongst the six beneficiaries, including Benson Kamau Kinyanjui (deceased) and Leonard Wainaina Kinyanjui (deceased). The Summons, however, do not contain consents to the mode of distribution signed by the beneficiaries.

The Protestor's Case

5. An Affidavit of Protest dated 25 March 2021 was filed by Alice Njeri Kinyanjui, a co-Administrator. The point of departure is the distribution of Muguga/Gitaru/901, which the Protestor avers should be distributed to her wholly. The Protestor's assertion is that she is the only child of the Deceased who was not gifted by him during his lifetime. Further, she contends that it is unequitable to distribute the parcel, Muguga/Gitaru/901, measuring $\frac{1}{4}$ acre, amongst six persons.
6. It is the Protestor's case that during his lifetime, the Deceased distributed land to all his five sons and one daughter, Gladys Wanjiku (now deceased). The sons received approximately $\frac{3}{4}$ acres each, while Gladys Wanjiku received land measuring approximately $\frac{1}{4}$ acre. These gifts were derived from LR Muguga/Gitaru/674, which was later subdivided into 900 and 901. The Protestor maintains that LR Muguga/Gitaru/901 was the only parcel remaining in the Deceased's name after these prior distributions, and that she was the only child who did not receive a gift inter vivos from her father.
7. At the hearing, the Protestor produced Exhibit 1, a document which she described to be like a written will. It was the Protestor's testimony that this document was authored and signed by the Deceased in 1989 in the presence of witnesses, including his children, with the exception of Stanley Njoroge Kinyanjui, as well as clan elders. She testified that this document contains the clear and express wishes of the Deceased that L.R No. Muguga/Gitaru/674, from which L.R Muguga/Gitaru/901 is derived, would devolve to the Protestor upon the Deceased's demise or that of his wife. The document contains a conditional clause that states that if the Protestor were living in wealth and abundance, then the land would devolve to the person who would be caring for the parents. The Protestor argued that these wishes, irrespective of whether the document formally constitutes a valid Will, clearly express the Deceased's intentions and ought to be respected and given effect by the Court.
8. Further, the Protestor asserted that she initiated proceedings against her brothers concerning L.R Muguga/Gitaru/901 before the Kikuyu Land Disputes Tribunal, which issued an award in her favour, declaring the Protestor to be the owner of the land. The Protestor stated that this award was subsequently read and adopted as an order of the Senior Resident Magistrates Court, in Kikuyu Misc Application No. 25 of 2008, and a decree was issued confirming her as the lawful proprietor. She emphasised that this decree has not been challenged to date by the Applicant or any other person and remains in force.
9. It was the Protestor's claim that she has been in continuous possession of L.R Muguga/Gitaru/901 and has cultivated the same for a considerable period of time without any interference from her siblings.
10. The Protestor submitted that section 42 of the *Law of Succession Act* provides that inter vivos gifts made by a deceased person to beneficiaries during their lifetime must be taken into account during the distribution of the remaining intestate estate. Given that all other siblings received land from the Deceased when he was alive, the Protestor argued that L.R Muguga/Gitaru/901 should devolve to her



entirely. She relied on the cases of Joseph Wairuga Migwi -vs- Mikieline Ngina Munga [2015] eKLR, and Peter Chira & Anor -vs- Nelson Gathogo [2007] eKLR.

The Applicant's Case

11. The Applicant proposes that both parcels of lands, that is LR L.R Muguga/Gitaru/901 and Muguga Gitaru Plot 12 be valued and subsequently sold, the net proceeds to be shared equally amongst the beneficiaries. He confirmed that L.R Muguga/Gitaru/901 is too small to be practically subdivided into economic portions for all beneficiaries, thus necessitating its sale.
12. The Applicant asserted that he, his brothers and his late sister, Gladys Wanjiku all received land as gifts from their deceased father during his lifetime. The transfers of these parcels were duly effected. The Applicant contended that the Deceased deliberately chose not to gift the Protestor any land during his lifetime, and suggested that this decision was in accordance with the Deceased's specific wishes.
13. The Applicant dismissed the Protestor's Exhibit 1 as an informal writing by the Deceased, and interpreted it to mean that L.R Muguga/Gitaru/901 should devolve to the beneficiary who provided care for the Deceased and his late wife during their old age. The Applicant claimed that he was the sole individual who care for both parents, and asserted that they lived with him from 1988 until their respective deaths. Consequently, he argues that if the Deceased's wishes were to be strictly adhered to, he should be the sole beneficiary of L.R Muguga/Gitaru/901.
14. The Applicant strongly challenged the Protestor's assertions and actions. He maintained that the proceedings before the defunct Land Disputes Tribunal were unlawful and of no legal or lawful consequence in so far as they related to a deceased's property. He claimed that the Protestor, in collusion with 3 of their brothers, unlawfully initiated a second succession cause, Kiambu CM Succession Cause No 305 of 2012, and obtained a confirmed Grant that distributed the property exclusively to her, deliberately excluding him. This is the Grant that was subsequently revoked by the High Court on 30 May 2019
15. Additionally, the Applicant seeks a refund of Kshs 13,895/= in respect of the county rates that he claims to have single-handedly paid for Muguga Gitaru Plot 12. He asserted that while he bore the burden of these payments, his other siblings collected monthly rent from the property but refused to contribute to the rates.

Analysis & Determination

16. Having carefully considered the pleadings, Affidavits, testimonies and submissions by both parties, the following are the issues for determination by this Court:
 - i. Whether the document marked as Exhibit 1 constitutes a valid Will under the *Law of Succession Act*;
 - ii. The legal validity and effect of the Land Disputes Tribunal award concerning L.R Muguga/Gitaru/901 and subsequent decree from the Senior Resident Magistrate's Court;
 - iii. The equitable mode of distribution of the intestate estate;
17. On the first issue, in her testimony, the Protestor referred to the document as "like a written Will". However, there was no evidence presented to this Court indicating that the document was formally executed in strict accordance with the statutory requirements for a valid Will as provided under section 11 of the Act. Specifically, there was no proof of attestation by two witnesses in the testator's presence,



as required by law. Given that the Deceased passed away intestate on 30 May 1999, the distribution of his estate is primarily governed by the rules of intestacy as set out in the Act.

18. This notwithstanding, even in an intestate estate, the clear wishes and intentions of the deceased, particularly when expressed in writing and supported by actions during their lifetime, carry substantial weight. In *Martha Wanjiku Waweru vs Mary Wambui Waweru* [2007] eKLR, Onyancha J observed as follows:-

“The deceased divided his three pieces of land ... without any uncertainty. His intention was clear- that 928 should go to the Petitioner/Respondent; 929 to appellant/objector; and 930 to his two sons of opposite houses in the shares of 1.6 and 1.6 acres. There is evidence that all the members of the family accepted deceased’s decision as none, including the respondent/petitioner, as admitted protested. The two sons took possession and continued cultivation for more than seven years after the deceased’s death, without dispute....

In this case the deceased had in his lifetime distributed his estate as he wished. He had power to do so. His family members did not protest or change his mode of distribution which they had opportunity to do during his lifetime. He fixed clear physical boundaries which no one interfered with at any stage even after his death. In my view his wishes should have been respected...”

19. In *Paul Kiruhi Nyingi & Another vs Francis Wanjohi Nyingi* [2009] eKLR, the court upheld the wishes of the deceased. In his well considered judgement Makhandia J noted as follows:

“Unless it can be demonstrated that those wishes of the deceased as captured in the black book were illegal, unfair, discriminatory and unjust to the beneficiaries or some of them, such wishes ought to be respected in my view. Nothing has been brought to my attention that remotely suggests that the deceased was biased, unfair and or discriminatory against any of the beneficiaries in the manner he wanted his estate shared out on his demise. In any event, it would appear that some of the beneficiaries were aware of the contents of the black book during the deceased’s lifetime. If they were descanted with the distribution they should have taken it up with him.”

20. In the case of *Joseph Wairuga Migwi* (supra), the Court clarified that section 40 of the Act, which provides for equal sharing by houses in polygamous estates, cannot apply where the deceased expressed his wishes and took steps to ensure their effect.
21. Based on the foregoing, the interpretation of the Courts elevates such expressions of intent, particularly when such expressions are supported by the context of inter vivos gifts, as is the case herein. This expression strongly influences equitable distribution, potentially guiding the application of intestacy rules beyond a strict per capita division of the remaining estate.
22. Additionally, in this instance, the Protestor’s long-term possession and cultivation of L.R No Muguga/Gitaru/901 without interference further reinforces the Deceased’s intent and her reliance on it, demonstrating the practical effect of the Deceased’s wishes on the ground.
23. With regard to the condition in the document, the Applicant claimed that he solely cared for the parents, while the Protestor testified that all the children were involved in the care of their parents. No compelling evidence was presented to the Court to establish that the Protestor was living in such ‘wealth and abundance’ so as to negate the primary intention expressed by the Deceased for her to inherit L.R Muguga/Gitaru/901. The primary intent for the Protestor is clear, and the condition



appears to be a secondary consideration that has not been demonstrably met to alter the primary disposition.

24. With respect to the second issue, the Land Disputes Tribunal, which established under the Land Disputes Tribunals Act, was subsequently repealed by the *Environment and Land Court Act*, 2011. Pursuant to section 3(1) of the Land Disputes Act, the jurisdiction of the Tribunal was strictly limited to disputes concerning the division of, or boundaries to land, claims to occupy or work land, and trespass to land. The Act did not confer jurisdiction on the tribunals to determine issues of ownership or title to registered land, nor did the tribunals have the jurisdiction to hear succession disputes. In that regard, the award by the Kikuyu Land Disputes Tribunal purporting to determine the ownership of the registered land that formed part of the Deceased's estate herein was ultra vires and a nullity.
25. With regard to the issue of equitable distribution of the estate, section 42 of the *Law of Succession Act* 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... that property shall be taken into account in determining the share of the net intestate finally accruing to the child, grandchild or house.
26. It is not in dispute that the Deceased, during his lifetime, gifted land to all his sons, each receiving $\frac{3}{4}$ acre, and his one daughter, Gladys Wanjiku (deceased), who received $\frac{1}{4}$ acre. The Protestor was the only child who did not receive a gift inter vivos.
27. The fundamental purpose of section 42 is to ensure fairness and equity in the distribution of an intestate estate, preventing certain beneficiaries from receiving disproportionately large shares by virtue of having received substantial gifts during the lifetime of the deceased, while others did not. It aims to balance the scales of inheritance among all eligible heirs.
28. Considering that L.R No Muguga/Gitaru/901 measures 0.315 acres, and the Deceased's sons received 0.75 acres each, allocating L.R No Muguga/Gitaru/901 wholly to the Protestor would still result in her receiving a smaller total portion of land compared to what her brothers received as gifts inter vivos.
29. I also note that Gladys Wanjiku (deceased) was survived by a daughter. The Applicant confirmed that he had no objections to his inclusion in the list of beneficiaries.
30. Further, the Applicant presented his claim for refund of Ksh 13,895/= for the county rates. He produced receipts to prove his claim, which was not refuted by the Protestor. These expenses, having been legitimately incurred by one of the beneficiaries for the benefit or preservation of the estate, should be reimbursed from the estate's fund or proceeds before the final distribution to all beneficiaries.
31. In light of the foregoing, I make the following orders:
 - i. That the Grant of Letters of Administration Intestate issued on 4 October 2021 to Stanley Njoroge Kinyanjui and Alice Njeri Kinyanjui is hereby confirmed;
 - ii. That L.R No Muguga/Gitaru/901 shall devolve wholly to Alice Njeri Kinyanjui;
 - iii. That Muguga Gitaru Plot 12 shall be valued by a mutually agreed valuer within 60 days of the date hereof and thereafter sold as agreed by the Administrators. The net proceeds thereof shall be shared equally among 7 children of the Deceased, namely: Estate of Benson Kamau Kinyanjui, Godfrey Njenga Kinyanjui, James Gitau Kinyanjui, Stanley Njoroge Kinyanjui, Alice Njeri Kinyanjui, Estate of Leonard Wainaina Kinyanjui and estate of Gladys Wanjiku;



- iv. That prior to the distribution of the proceeds from Muguga Gitaru Plot 12, the Applicant shall be reimbursed the sum of Kshs 13,895/=;
- v. That each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicants: Wamiti Njagi

3rd Respondent: Mr. Ochieng

Protestor: Mr. Njogu

Court Assistant: Lucy Mwangi

