



REPUBLIC OF KENYA



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**In re Estate of Kariuki Iranji Michira (Deceased) (Probate & Administration
8 of 1995) [2025] KEHC 11750 (KLR) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 8 OF 1995
MA ODERO, J
AUGUST 1, 2025**

IN THE MATTER OF THE ESTATE OF KARIUKI IRANJI MICHIRA (DECEASED)

BETWEEN

DUNCAN NYAGA KARIUKI APPLICANT

AND

PAUL WANJUKI KARIUKI 1ST RESPONDENT

GERALD MAINA NGATIA 2ND RESPONDENT

PETER KARIUKI WANJUKI 3RD RESPONDENT

JUDGMENT

1. Before this Court is the Affidavit of Protest dated 30th July 2024 sworn by Duncan Nyaga Kariuki (the Protestor). The Protestor opposed the proposed mode of distribution of the estate as set out in the Summons of confirmation of Grant dated 14th July 2024.
2. The administrators of the estate Paul Wanjuki Kariuki, Gerald Maina Ngatia And Peter Kariuki Wanjuki opposed the protest through their Reply to the Affidavit of Protest dated 5th February 2025.
3. The matter was canvassed by way of written submissions. The protestor filed the written submissions dated 21st February 2025, whilst the Respondents relied upon their written submissions dated 7th April 2025.

Background

4. This is an extremely old succession cause initially filed in the year 1992. Indeed I would wager that it is one of the oldest cases still subsisting in the High Court Probate Registry. The matter initially commenced as Succession Cause No. 146 of 1992 filed in the Magistrates Court. Later the matter was transferred to the High Court as Succession Cause No. 8 of 1995. This matter relates to the estate of



- the late Kariuki Iranji Michira (hereinafter ‘the Deceased’) who died intestate on 9th July 1989. A copy of the Death Certificate Serial No. XXXXXX is in the Court file.
5. The Deceased was a polygamous man who had four (4) wives (Houses).
 6. At the time of his demise the Deceased was survived by the following persons;-
 - i. William Ngatia Kariuki - Son
 - ii. Rebecca Wangui Kariuki - Wife
 - iii. Margaret Wanja Kariuki - Wife
 - iv. Kirikiru Kairuki - Son
 - v. Wamathai Kariuki - Son
 - vi. Kahamri Kariuki - Son
 - vii. Nyaga Kariuki - Son
 - viii. Gicheru Kariuki - Son
 - ix. Paul Wanjuki Kariuki - Son.
 7. The estate of the Deceased was said to comprise of the following assets:-
 - a. Tetu/Kiriti/196 - Measuring 13.37 Acres
 - b. Cathedral Parish Co-operative Shares Member No. 401
 - c. Tetu Coffee Growers Shares - Member No. 9656
 - d. Plot No. 1 Kinunga Market - Member No. 4
 - e. Plot No. 5 Kamakwa - Member No. 4
 - f. Plot No. 5 Kamakwa - Member No. 8
 - g. Nyeri Kenya Commercial Bank Account No. XXXXXXXXX
 8. On 24th July 2023 a Grant was issued to the three respondents. The Administrators filed a Summons for confirmation of Grant dated 14th July 2024 in which they proposed a mode of distribution of the estate to all the four (4) Houses. The protestor then filed this Affidavit of Protest challenging the mode of distribution of the estate as proposed by the Administrators.

Analysis And Determination

9. I have carefully considered the summons before this court, the reply filed by the Respondents as well as the written submissions filed by both parties. It is common ground that the Deceased in this matter passed away on 9th July 1989. The identities of the beneficiaries to the estate are not disputed. The only issue for determination is how the estate of the Deceased ought to be distributed.
10. The protestor alleged that he was not involved in this succession cause. The protestor is being very economical with the truth here because the record shows that the protestor did file a summons for revocation of Grant which summons was determined by Hon. Lady Justice Florence Muchemi vide the Ruling delivered on 17th August 2022.



11. In that ruling the Court revoked the Grant issued on 27th September 2021 and directed the family to submit the names of new Administrators for appointment. Therefore it is clear that the protestor has been an active participant in this cause and has even succeeded in having a grant revoked. As such I find no merit in this allegation of non-involvement.
12. The Protestor has also contested the issue of appointment of administrators to the estate. He objects to the fact that some of the administrators are the 'grandchildren' of the Deceased. The protestor submits that being a son of the Deceased he ought to have been appointed as one of the administrators.
13. Firstly there is no law that states that an administrator must be a 'child' of Deceased person. Any person even a non-relative may be appointed as an administrator with the consent and agreement of all the beneficiaries. All that is required is that person so appointed be willing to take up the task of administering the estate of the Deceased.
14. Secondly as has been stated earlier the Deceased was a polygamous man who had four (4) houses. In the circumstances and in view of the fact that this succession cause had proved quite litigious, it was prudent and desirable to have four (4) administrators, with each house having one administrator to represent it.
15. Indeed in the ruling delivered on 17th August 2022 the Hon. Judge directed that the family agree on three or four administrators to be appointed by the court.
16. Following the above orders a consent was filed in court on 17th July 2023. That consent dated 26th June 2023 gave the names of three persons from the 1st, 2nd and 3rd houses to be appointed as Administrators. Thereafter on 24th July 2024, the parties were in court and it was agreed that the protestor Duncan Nyaga Kariuki would be the fourth administrator. Therefore the complaint raised by the protestor has no basis as he is in fact one of the administrators of the estate.
17. The matter was then sent for Court Annexed Mediation (CAM) to give the parties a chance to agree on the mode of distribution of the estate. However no agreement was reached hence this present hearing.

Analysis And Determination

18. I have carefully considered the protest filed in court as well as the written submissions filed by the parties. In my perusal of the file I found that it was not entirely clear which out of the children of the Deceased were still alive. Therefore on 18th July 2025 the court requested the parties to prepare a family tree to assist the court in determining the case on 22nd July 2025 the counsel for the Respondents presented to the court a typed copy of the family tree and the protestor concurred that the details in the chart were correct.
19. The only issue which is disputed in this case is the mode of distribution of the estate. The protestor takes issue with the fact that some of the persons named as beneficiaries and who are set to inherit a share of the estate are in fact 'grand children' of the Deceased. According to the protestor these grandchildren cannot inherit when their parents (the children of the Deceased) are still alive.
20. From that family tree it can be discerned that the four wives of the Deceased namely Rebecca Wangui (1st Wife), Annah Nyokabi (2nd Wife), Margaret Wanja (3rd Wife) And Teresa Kagure are all Deceased. The protestor Duncan Nyaga is a son of the Deceased from the 3rd House.
21. The protestor is quite correct in his assertion that the grandchildren of the Deceased cannot inherit from the estate if their parents are still alive. One who is a 'grandson' does not rank in priority over the



- biological children of the Deceased. A grand child can only step in to replace a deceased parent – they can only claim the share of the estate that would have been due to their parent.
22. However it is not to say that grandchildren can never inherit from the estate of their grandparents. Where the child of a deceased person passes away then the grandchild of that Deceased may step in and inherit the share of the estate due to their deceased parent.
23. In RE Estate of Wahome Njoki Wakagoto (2013) eKLR it was held:
- “Under Part V, grandchildren have no right to inherit their grandparents who died intestate after 1st July 1981. The argument 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 of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.” [Own emphasis]
24. In the case of Cleopa Amutala Nanyi v Judith Were Succession Cause 457 of 2005 [2015] eKLR Hon. Mrima, J. observed that:-
- “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 from their own parents..... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren inherit from their grandparents is when the grandchildren’s own parents are dead.....
- [Own emphasis]
25. The Objector cannot claim a right in priority over the estate of the Deceased for as long as any one of the biological children of the Deceased remains alive.
26. The objector could only stake a claim to the estate if he was a ‘dependent’ of the Deceased in terms of Section 29 of the *Law of Succession Act*. The Applicant has not proved that he was dependent on the Deceased immediately prior to his death.
27. It is not in dispute that the Deceased who died intestate was a polygamous man who left behind four (4) houses.
28. Section 40 of the *Law of Succession Act*, Cap 160 Laws of Kenya provides for the mode of distribution of the estate of a polygamous man in the following terms:-
- “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.”
29. I have perused the mode of distribution as proposed in Paragraph (5) of the Supporting Affidavit dated 14th July 2024. Out of the persons allocated a share of the estate in this proposed mode of distribution the following are the biological children of the Deceased:-



- (i) Duncan Nyaga (the Protestor) – who is the son of the Deceased from the 3rd House.
 - (ii) Paul Wanjuki – who is a son of the Deceased from the 4th House.
30. The named beneficiaries who are ‘grandchildren’ of the Deceased include:-
- (i) Teresa Njeri – being a grandchild from the 2nd House.
 - (ii) Joseph Kanyugo – being a grandchild from the 2nd House.
 - (iii) Gerald Maina – being a grandchild from the 2nd House.
31. The question then is whether these grandchildren of the Deceased should be excluded from inheriting from the estate of the Deceased.
32. As stated earlier the Deceased was a polygamous man. As such in order to ensure equity it is important that each house be considered and receive a share in the estate. Teresa Njeri and Joseph Kanyugo is from the 2nd House. Their father who was the son of the Deceased David Ndiritu is Deceased. This David Ndiritu had three (3) wives Teresa Njeri is the daughter of his 1st wife whilst Joseph Kanyugo is the son of the 2nd wife. The two can therefore properly step into the shoes of their late father and inherit the share of the estate that would have been due to him.
33. Gerald Maina are both the son of William Ngatua who was also a son of the Deceased from the 2nd House, William Ngatua also had 2 wives and Gerald Maina is the son of his 1st wife Catherine Wanjiru. Both parents of ‘Gerald’ are deceased so once again despite being a grandson, the law allows him to step into the shoes of his late parents and inherit the share of the estate that would have been due to them.
34. It must be remembered that in matters of succession distribution is done by way of agreement within the family. Each of the 4 houses of the Deceased is at liberty to decide who amongst them will receive the inheritance due to that house. From the record no other family member is complaining about the proposed mode of distribution. Indeed they have all signed the annexed consent dated 14th July 2024.
35. It is evident that the reason why the protestor so vociferously objects to any of the ‘grandchildren’ of the Deceased inheriting a share of the estate is because he mistakenly believes that if the grandchildren are excluded then the entire estate will be shared between himself and Paul Wanjuki who are the only remaining biological children of the Deceased. This is an erroneous assumption for as long as there remain members of each house still alive then equity demands that they receive the share of the inheritance due to that House.
36. In the circumstances I reject the submission by the protestor that grandchildren of the Deceased cannot inherit. Given the circumstances of this case where most of the children of the Deceased have also passed on, the grandchildren are entitled to inherit the share of the estate that would be due to their late parents.
37. In his Affidavit of protest the protestor claims that his step brother Paul Wanjuki Kariuki was intending to inherit together with this son Peter Kariuki Wanjuki. A look at the proposed mode of distribution in the Supporting Affidavit dated 14th July 2024 reveals that no mention is made of this Peter Kariuki Wanjuki as set to inherit any asset of the estate. Therefore this allegation by the Protestor has no basis.
38. The Protestor appears to be complaining on behalf of other beneficiaries, however no beneficiaries has signed a consent authorizing the Protestor to act for them. If any other beneficiary had a problem with the mode of distribution then they would have filed their own petition.



39. I have considered the mode of distribution as proposed by the protestor. In that proposal the protestor seeks to have the assets left behind by the Deceased inherited by himself and Paul Wanjuki only. No allocation was to be made to members of the Houses left behind by the Deceased. The mode of distribution proposed by the protestor is unfair and inequitable and the court cannot endorse the same.
40. Finally I find no merit in this protest. The same is dismissed in its entirety. The court now makes the following orders:-
- i. The Summons for confirmation of Grant dated 14th July 2024 is hereby allowed.
 - ii. A certificate of confirmed grant to be issued to the four (4) Administrators namely Peter Kariuki Wanjuki, Gerald Maina Ngatia, Duncan Nyaga Kariuki And Paul Wanjuki Kariuki.
 - (iii) The estate of the Deceased to be distributed as in accordance with Paragraph 5 of the Supporting Affidavit dated 14th July 2025.
 - iv. This being a family matter each side to meet their own costs.

DATED IN NYERI THIS 1ST DAY OF AUGUST, 2025

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MAUREEN A. ODERO

JUDGE

