



REPUBLIC OF KENYA



In re Estate of Ann Mumbi alias Mumbi Njoroge (Deceased) (Succession Cause E108 of 2023) [2025] KEHC 14581 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E108 OF 2023
E OMINDE, J
OCTOBER 16, 2025**

RULING

1. The deceased herein passed away on 4th April 2007 and the Petitioners then made an Application for a Grant of Letters of Administration on 17th April 2023 which was issued on 6th November 2023. The Petitioners then filed a Summons for Confirmation of Grant dated 20th May 2024 seeking the following orders;
 1. That the grant of letters of administration intestate made to the said Serling S.k. Njoroge on 6th November, 2023 be confirmed.
 2. That the costs of the application be cost in the cause.
2. The Summons was premised on the averments in the affidavit of Serling S.K. Njoroge. He stated that the deceased was survived by the following children;
 - a. Serling S.K. Njoroge
 - b. David Njoroge Kinuthia Son
 - c. Josiah Kimani Njoroge Son
 - d. Dorcas Wambui Karunye Daughter
 - e. Esther Wangui Muniu Daughter
 - f. Mary Muthoni Daughter
3. Further, that the deceased was survived by the following other dependants.
 - a. James Gachau Njoroge Grandson
 - b. Sammy K. Njoroge Grandson
 - c. Benson Kuria Grandson



- d. Jeremiah Njoroge Grandson
 - e. Lucy Nduta Karoga Granddaughter
 - f. Michael Karuga Grandson
 - g. Ann Mumbi Granddaughter
 - h. Zachariah Githiomi Grandson
 - i. Peter Ndungu Grandson
4. He stated that the identification and shares of all persons beneficially entitled to the said estate, have been ascertained and determined as per the mode of distribution.

Affidavit of Protest

5. In response to the Summons, Isaac Ndungu Gaithuma and John Muthoga Gathuma filed an Affidavit of protest dated 6th November 2023. He stated that they are the sons of the late Tabitha Mwihaki Gaithuma (deceased), daughter of Ann Mumbi Njoroge and attached and marked as ING-1 a copy of the Chief's Letter confirming the same. Further, that they have authority from their siblings, namely David Wagacha Gaithuma, Henry Karanja Gaithuma, Peter Njathi Gaithuma, Zachariah Githiomi Gaithuma, Eunice Wambui Gaithuma, Florence Mumbi Gaithuma, Fidelis Waithera Gaithuma, and Esther Wangui Gaithuma annexing and marking as ING-2, the consent. They obtained Letters of Grant of Administration ad litem to pursue any claim on behalf of their mother's estate. They attached and marked as ING-3 the said Grant.
6. The deponents averred that as her heirs, they are rightful beneficiaries of Ann Mumbi Njoroge's estate through their mother's share. They protested the summons for confirmation dated 20th May 2024 for various reasons to wit; the beneficiaries herein, being their mother's siblings, have distributed the estate of their grandmother with no provision for the estate of Tabitha Mwihaki Gathuma, who was entitled to a share of her estate. She reiterated that they had been excluded from distribution of the estate.

Response to affidavit of protest

7. Esther Wangui, Dorcas Wambui and Mary Muthoni, children of the deceased, swore an affidavit dated 1st December 2024 in response to the affidavit of protest. They deponed that they were 8 siblings in total being four male children and 4 female children inclusive of Tabitha Mwihaki Gaithuma (deceased). Further, that their sister (Tabitha Mwihaki (deceased) was married to one Nahashon Gaithuma and they were blessed with 10 issues who were all dependents to their father. Their mother owned Lainguse/Kiptenga Block 2 Kamuyu 239 and Lainguse/Kiptenga Block 2 Kamuyu 320. She died intestate on the 4th April 2007 leaving the said properties under the care of their father. In 2015, their father called for a family meeting, where all the siblings met at the home of Dorcas Wambui including Serling Njoroge, David Githiomi and Josiah Kimani, At the meeting, their father gave instructions on his property and was of the view that the properties were family properties and need not to be separated since they were under him following the death of their mother.
8. That Esther Wangui was bequeathed Elburgon/Turi Block 1/101 Mlima Mitatu, Dorcas Wambui was bequeathed Tarkwa Lainguse Block 2 Rukuini 62, Mary Muthoni was bequeathed Lainguse/Kiptenga Block 2 Kamuyu 239 and she was to take 4 acres excised therefrom. Further, that Mary Muthoni was bequeathed whole share in Lainguse/Kiptenga Block 2 Kamuyu 320. Peter Ndungu was bequeathed Tarakwa Lainguse Block 5 Rukuini 73 and their late sister Tabitha Mwihaki Gaithuma was bequeathed 2 acres excised from the said Lainguse/Kiptenga Block 2 Kamuyu 239. Since she was deceased when



this cause was filed her children nominated Zachary Githiomi to take their mothers share. Their father directed that the Glare farm namely Uasin Gishu/Burnt Forest /29 be inherited by his sons namely Serling Njoroge 14 acres, David Githiomi 11 acres, Josiah Kimani was given 10 acres and Ndungu Muniu deceased was given 10, acres and it was to be divided equally to his surviving children.

9. Their father had in his care his sister Dorcas Waithera deceased who was unmarried and staying with him at Glare farm Uasin Gishu/Burnt Forest /29 and he bequeathed her sons James Gachau and Sammy Kinuthia Njoroge an acre each out of the said Uasin Gishu/Burnt Forest /29. Even before the distribution Serling Njoroge, David Githiomi and Josiah Kimani were already farming in the said land and the children of Ndungu Muniu deceased had leased out their 10 acres. The children of our Muniu Mugora sister Dorcas Waithera namely, James Gachau and Sammy Kinuthia were also leasing out their 2 acres before the land was distributed.
10. They stated that as at now all the beneficiaries of Muniu Mugora have taken possession of their respective shares of inheritance as directed by the deceased. Contrary to the allegations by the protesters they have not been left out in the estate as they had already been bequeathed some property same as the other siblings in the household. Further, that they are grandchildren of the late Muniu Mugora and Ann Mumbi and want to intrude into their brother's rightful share of Uasin Gishu/Burnt Forest /29 which they were given as sons of the deceased.
11. The protesters are guilty of material non-disclosure as they have failed to state that they have been given 2 acres out of Languise/Kiptenga Block 2 Kamuyu 239 and which property they have decided to be held by their brother Zachary Githiomi. Given the circumstances the protesters are supposed to share the Kamuyu 239 property amongst themselves as that was the share that was available from the estate of the deceased grandparents to them and they would be benefiting twice and/or double should they be allowed to share in other properties to be distributed to their other siblings.
12. They denied dividing the estate without including the children of their late sister Tabitha Mwihaki Gaithuma and stated that they are not opposed to the land Uasin Gishu/Burnt Forest /29 being distributed as per the consent filed in court. They urged the court to dismiss the protest.

Supplementary Affidavit

13. John Muthoga Gaithuma filed a Supplementary Affidavit dated 6th March 2025. He stated that he is the son of the late Tabitha Mwihaki Gaithuma. In response to the Affidavit of Protest dated 13th December 2024 deposed by Serling S.K Njoroge, he stated that the deponents have admitted that their mother was one of their siblings hence a rightful dependant of the deceased's estate. Despite this admission, the said administrators failed to involve the deceased's dependants on the meeting that was held on 2015 with the sole intention of disinheriting them. In response to paragraph 15, he stated that there is no provision in law that stops them from inheriting their mother's share from the deceased's estate before her demise.
14. In response to paragraph 16, he stated that the Administrators allegations that they inherited from their late father's estate are unfounded and no proof has been produced to support the same. Further, that it would not have in any way affected was a rightful dependant of the deceased who deserved share from his estate without having to proof any dependence on the deceased. That the administrators have not produced any evidence that they were given 2 acres of land out of Lainguse/Kiptenga Block 2 Kamuyu 239.
15. In response to paragraphs 20 and 21, the deponent averred that there is no proof of division of property before the deceased's death and additionally urged that leaving them out will amount to the Administrator's acting against the wishes and the intentions of the deceased.



16. In response to paragraph 23, he stated that their rights have been consistently ignored and they have been completely left out in the process of distribution of the deceased's estate as they were not even involved in the making of the consent referred to by the administrators. He reiterated that he swore the affidavit to supplement their Affidavit of Protest dated 28th October 2024 seeking to be recognized as rightful beneficiaries of Njoroge Mukora through their mother.

Protestors' submissions

17. Learned counsel for the protestors submitted that the protestors have proved their case for the recognition as beneficiaries of the estate of the deceased and they have discharged the burden of proof as required in law. He cited the provisions of Section 29 of the Law of Success Act and urged that the protestors are the deceased's grandchildren and therefore beneficiaries by the virtue of their deceased mother (Tabitha Mwiwaki Gaithuma) being a daughter of the deceased. Further, that the fact that their mother was a daughter of the deceased has not been controverted by the administrators/petitioners, given that the same has been acknowledged by the administrators at Paragraph 2 of their Affidavit of Response to protest. The protestors also invited the court to look at the Affidavit of Response to protest where the administrators have in different paragraphs admitted that Tabitha Mwiwaki Gaithuma) was their biological sister and therefore entitled to a portion as a dependant of the estate of Ann Mumbi alias Mumbi Njoroge) deceased.
18. Counsel urged the court to look at paragraphs 2, 3, 9, 10, 15 and 19 of the said Affidavit of response where the administrators have equally acknowledged the protestors as the deceased's grandchildren. He cited the case of *In re Estate of David Omare Kimori (Deceased) (Succession Cause 4 of 2020) [2023] KEHC 23286 (KLR)* and submitted that the protestors' mother died after the deceased herein but before the division of her estate and as such they are entitled to inherit directly from what would have been their mother's share from the deceased's estate as provided by Section 42 of the [Law of Succession Act](#). Further, that the said Section 42 provides that the share of a child who predeceased the deceased shall devolve upon his/her issues in equal shares, the share which their parent would have taken had he not predeceased the intestate.
19. Counsel cited the cases of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC1930 (KLR)* and the case of *Ngingo v Mwangi & 2 others (Civil Appeal 41 of 2019) [2023] KEHC 24817 (KLR) (3 November 2023) (Judgment)* on inheritance by grandchildren, urging that the administrators have discriminated against the protestors the distribution of their deceased grandmother's estate. He reproduced the reasons as set out in the affidavit of protest.
20. Counsel urged that it is trite law that the burden of proof lies on he that alleges. The administrators having alleged the same ought to have produced evidence before this Honourable court to prove the same which they failed to do. Further, that they have not proved that the protestors nominated their brother Zachary Githiomi to take what would have been their mother's share from the estate. He urged that there is no evidence that has been produced by the administrators before this court to prove their allegations that the protestors inherited from their deceased father's estate.
21. Counsel urged that this cause was filed almost 15 years after the death of the deceased and therefore their deceased grandfather could not have supposedly dictated how her estate was to devolve amongst the children. Further, that where the deceased died intestate and without a surviving spouse, the properties ought to be distributed as per Section 38 of the [Law of Succession Act](#) Cap 160 Laws of Kenya and that is to devolve equally amongst the children. He reproduced the provisions therein and urged that this court should direct that the protestors and other beneficiaries be included in the distribution of the estate.



22. Counsel submitted that having admitted to the fact that the deceased died intestate, their allegation that there was a will is unfounded and meant to mislead this court since they also did not apply for grant of probate but rather grant of letters of administration. Further, that their deceased grandfather did not institute a cause after his wife's death to enable him proceed with the distribution of her estate. That he lacked capacity to distribute their deceased grandmother's property as per the Petitioner's allegations since the properties were still under the name of the deceased. He reiterated that the grant of letters of administration obtained by the petitioners herein were obtained without their knowledge and for reasons that the petitioners wanted them to be left out in the distribution of the deceased's estate. He prayed the court allow the protest.

Administrators' Submissions

23. Counsel for the administrators filed submissions in support of the confirmation of the summons for confirmation of grant. Counsel submitted that the allegations by the protestors in their supplementary affidavit, that the administrators failed to involve the deceased's dependents in the meeting held in 2015 is untrue. He stated that Njoroge Mugora was the surviving spouse of Mumbi Njoroge and thus he was acting in his capacity, having held a life interest in the deceased's estate as per the provisions of Section 35 of the *Law of Succession Act*.

24. Further, that the protestors have not been candid with the court for reasons that the Administrator has not in any way excluded the protestors from the list of dependants of the deceased. Additionally, that the late Njoroge Mugora had directed that property be allocated to his deceased children in the meeting held in 2015 including the protestors' mother. He urged that it was the protestors who nominated one of their siblings to inherit their late mother's share of the deceased's estate. That suffice to note that the nominated sibling is Zachariah Githiomi Gaithuma, who is listed as one of the dependants of the deceased in the petition for grant, and that he actually signed the consent in regards to administration of the estate of the deceased.

25. Counsel submitted that surprisingly, the protestors, in their Affidavit in protest against confirmation of grant, aver that they have authority from their siblings, one of them being Zachariah Githiomi Gaithuma, to swear the affidavit in protest. He urged that Zachariah Githiomi is listed in the Petition for grant of letters of administration as a beneficiary to the estate of the deceased, that is, the property identified as Lainguse/Kiptenga Block 2 (Kamuyu) 239. Additionally, that the said property was the property owned by the Late Mumbi Njoroge, and the same was bequeathed to the late Tabitha Mwhaki Gaithuma.

26. That since she was deceased at the time of succession, her children nominated Zachariah Githiomi Gaithuma to inherit their mother's estate. He pointed out that that the protestors have questioned the credibility of the statement of the administrator and the children of the deceased and they have insisted that administrator provides evidence of them nominating their sibling to inherit the estate of deceased. That notwithstanding, the protestors have turned a blind eye to the fact that Zachariah who is their sibling, appears as a beneficiary and has executed the consent to the making of the grant.

27. Counsel submitted that the proof of the protestors nominating their sibling to inherit the estate of the deceased lies in their unwillingness and inability to question why only one of their siblings is appearing in the petition as a beneficiary to the said estate. Counsel cited the case of *Re Estate of Magangi Qbuki [Deceased] [2020] eKLR* where the High Court of Kenya at Migori emphasized on the importance of being truthful to the court, urging the protestors to be truthful.

28. Counsel urged that the protestors are dependants of the estate in line with Section 29 of the *Law of Succession Act* and stated that it is a provision that the protesters, as grandchildren of the deceased, are



considered as dependants of the deceased. He cited the case of *Re Estate of Imoli Luhitse (Deceased) (2021) KEHC 1389 (KLR)* and urged that the administrator and his siblings are not opposed to the protesters inheriting their late mother's estate and thus they recognize them as dependants of the estate of the deceased. Further that the children of the deceased collectively deemed it reasonable and fair to abide by the initial allocation and distribution of property as directed by their father, the late Njoroge Mugora, who ensured to allocate a share of the estate to each his deceased children and their dependants. Counsel submitted that the administrators have in no way disinherited or removed the protestors from the list of dependants.

29. On distribution, counsel urged that he spouse of the deceased is entitled to a life interest in the deceased estate as discussed herein above and as per as per the provisions of Section 35 of the *Law of Succession Act*. Urging that this further begs the definition of a life interest, counsel cited the definition in the case of *Re Estate of Godfrey Wanjohi Mahinda (Deceased) Succession Cause 14A of 2005 [2024] KEHC*. Counsel submitted that it is therefore logical to state that the protestor's grandfather was accorded a life interest on the estate of his deceased.
30. Counsel pointed out that in the alternative, the protestors have argued that their late grandfather did not institute a cause after the death of his wife to enable him proceed under Section 35 of the Act, and that he lacked capacity to distribute the estate of his deceased wife. Further, that Njoroge Mugora had a life interest over his deceased spouses' property and the issue of him not instituting any cause after the death of his wife was never challenged by the protestors during his lifetime. Counsel submitted that the estate of the Mumbi Njoroge and Njoroge Mugora have been treated as one for purposes of distribution, by their children, and they consider the two estates as the estate of their deceased parents. The reasoning behind this setting is that it is only logical to handle the two estates of their deceased parents as one rather than have the two estates distributed independently. This also ensures that the estate is distributed in reasonable portions.
31. Counsel urged that the reason the administrator has filed different succession causes, is to ensure smooth transfer of the properties to the beneficiaries from their parents. On distribution, Counsel reiterated the contents of the affidavit dated 12th December, 2024 and the submissions on the nomination of Zachariah to inherit on behalf of the Protestors. Further, that it is only reasonable that the protestors provide an alternative distribution criterion as it is unfair, unreasonable and vexatious to other beneficiaries of the deceased who are in agreement with the distribution as provided for by the administrator, for the protestors to only object the distribution thereof while not providing an alternative to it. That failure by the protestors to provide an alternative distribution criterion, also beats the functions of this court which is tasked to oversee the distribution of the estate of the deceased, citing the case of *Re Estate of G.K.K (Deceased) (2017) eKLR* in this regard. He submitted that it is the obligation of parties in a suit to assist the court in understanding the case and that the protestors have failed to do so by failing to provide an alternative to the distribution.
32. On the question of unfair distribution as to the shares allocated to each dependant, counsel urged that the properties forming the estate of the deceased have different market values to wit Lainguse/Kiptenga Block 2 Kamuyu 239 which is the inheritance allocated to the protestors, is situated at a location where it is of high market value as compared the shares allocated to other beneficiaries that appear larger in size. Further, that only one of the beneficiaries of the estate of the deceased, that is, an uncle to the protestors, has his share of the inherited estate intact and has not yet sold or leased out his property. It is clear to the administrator and other beneficiaries to the estate of the deceased that the protestors have their eyes set on their said uncle's share of the estate, as they have intentions to gain from this specific share.



33. In conclusion of the submissions, counsel urged that the protest be dismissed as it is misleading to the court, providing a summary of the reasons as stated in the pleadings and submissions.

Analysis & Determination

34. Section 29 of the *Law of Succession Act* provides as follows;

For the purposes of this Part, "dependant" means—

- a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - b. such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
35. In line with the above cited provisions, the issue of the protestors being dependants of the estate of the deceased is not at all contested by the Administrators. Indeed, in considering all the documentation filed in support for the Summons for the Grant of the Letters of Administration all the way to the Summons for Confirmation of Grant, the names of the deceased's grandchildren are included and they are therein indicated as such. Most significantly the court has observed that the name of Isaac Ndungu Gaithuma who has sworn the relevant documentation on his own behalf and behalf of the other protestors being children of the deceased, appears in each and every document of note filed by the Administrator's in support of both the Summons for Grant of Letters and the Summons for Confirmation. The court also notes that he has appended his signature against his name in all these documents and further notes that the authorship of the said signatures is not at all disputed by the said Isaac Gaithuma.
36. The issue for the court to determine is under what circumstances the protestors being grandchildren of the deceased are entitled to inherit their grandparents. These circumstances were very clearly elucidated by Musyoka J In the matter of the Estate of Veronica Njoki Wakogoto (Deceased) [2013] KEHC 1930 (KLR) cited by the Protestors in their submissions as follows;

Under Part V, grandchildren have not right to inherit their grandparents who die 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. In this case, the applicant's mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant's deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased.

37. In the instant case, the protestors are grandchildren to the deceased and they seek to inherit the portion of the estate that should be inherited by their mother from the estate of her late mother. From the Grant of Letters of Administration of the Estate of their grandmother Ann Mumbi alias Mumbi Njoroge, issued to Serling S. K. Njoroge, her date of death is therein indicated as 4th April 2007. From



the Letters of Grant of Administration Ad Litem of the Estate of Tabitha Mwihaki Gaithuma the mother of the protestors issued to Isaac Gaithuma, her date of death is indicated as 21st November 2011. It follows therefore that the mother of the protestors did not pre-decease her mother. In this regard then, the protestors can then only inherit that which their mother inherited from the Estate of her parents before she died.

38. It is the evidence of the Petitioners that the late Tabitha was their sibling and that upon the distribution of their late mother's estate, she did inherit 2 acres of land excised from Languse/Kiptenga Block 2 Kamuyu 239 it was agreed that Zachary Githiomi hold her portion as part of their deceased mother's inheritance from the estate of their deceased mother. on behalf of his siblings.
39. The protestors however contend that there was no evidence availed in court to show that the said parcel of land to wit Languse/Kiptenga Block 2 Kamuyu 239 that is alleged to have belonged to Tabitha Mwihaki Gaithuma was bequeathed to and did actually belong to the said Tabitha and that further there were no documents availed to demonstrate that the said parcel of land had been transferred to and was being held by Zachary Githiomi on behalf of his siblings as alleged.
40. This Succession Cause No. 108 of 2023 Re Estate of Anne Mumbi (Deceased) was being heard alongside Succession Cause No. 110 of 2023 Re Estate of Njoroge Mugora (Deceased) for reasons that the two were husband and wife and the beneficiaries were the same. On 23rd September 2024 the court directed that because the two matters were related, the orders given in Cause 108 of 2023 shall apply in cause No. 110 of 2023. The above said, I note that there are Summons for Confirmation of Grant in each of the two files and each is dated 20th May 2024 and each is signed by signed by the Administrator Serling S.K. However, I note that the proposed mode of distribution of the Estate is not uniform as follows;
41. In Cause Number 110 of 2023, even as Zachary Githiomi is therein reflected as a beneficiary and he signed the Consent to the proposed mode of distribution, there is no allocation made to him. In cause Number 108 of 2023 at paragraph a) ii) it is indicated that Zachary Githiomi is to get 2 acres out land parcel No. Languse/Kiptenga Block 2 (Kamuyu) 239.
42. Having carefully considered the pleadings and the submissions, it is my finding that because the mother of the protestor herein did not pre-decease her mother whose estate is the subject matter of this cause, the applicable law then is that her children, the protestor Zachary Githiomi being one such, can only then inherit their mother and not their grandmother.
43. The court notes that after all is said and done, the protestor states that there is no evidence that the parcel of land said to have been allocated to their mother was so allocated and subsequently transmitted to the protestor. The court further takes into account the fact that the Petitioner state that that parcel does exist and it is intended for their late sister who is the mother of the protestor and that an attempt has been made to include it in one of the Summons for Confirmation of Grant by the Petitioners, this in my considered opinion is a sign of good faith on the part of the Petitioners.
44. For this reason and in light of my findings as herein above, the court now hereby directs that the Petitioner does file a fresh Summons for the Confirmation of Grant in this Cause No. 108 of 2023 with respect to the Estate of Ann Mumbi alias Mumbi Njoroge (Deceased). Because I have noted that this Estate and the Estate of Njoroge Mugora (Deceased) in Cause No. 110 of 2023 comprise of the same properties and the Administrators too are the same, the Summons herein filed it to be replicated in Cause No. 110 of 2023.
45. In the said Summons apart from distributing the Estate to the beneficiaries as already proposed in the Summons for Confirmation dated 20th May 2024 which is the subject matter of these proceedings is



also to clearly indicate that land parcel No. Lainguse/Kiptenga Block 2 (Kamuyu) 239 belonging to Tabitha Mwihaki Gaithuma out of the Estate of the said deceased, is allocated to Zachary Githiomi who has already been issued with a Grant of Letters of Administration Ad Litem for the Estate of his deceased mother, the said Tabitha Mwihaki Gaithuma, to hold in trust for the rest of his siblings.

46. Each party is to bear their own costs

READ DATED AND SIGNED AT ELDORET ON 16TH OCTOBER 2025

E. OMINDE

JUDGE

