

KENYA / JUDGMENT

In re Estate of Muriithi (Deceased)

[2026] KEHC 11961 (KLR)

[2026] KEHC 11961 (KLR)**COURT**

High Court

BEFORE

DKN Magare

CASE / FILE NUMBER

Succession Cause 367 of 2004

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA IN THE HIGH COURT AT NYERI SUCCESSION CAUSE NO. 367 OF 2004 IN
THE MATTER OF THE ESTATE OF KABURU MURIITHI (DECEASED)

MARY MUTHONI WATATUA..... PETITIONER

VERSUS

BENSON THAIRU KIAMBO..... PROTESTOR

RULING

1. By the judgment of this court dated 28.5.2025, the court decreed thus:
2. The Protest dated 15.10.2019 is merited and is partly allowed.
3. The schedule to the Summons for Confirmation of Grant dated 8.5.2019 is hereby struck out. The protestor's schedule is equally struck out.
4. The Petitioner and the Protestor as Administrators shall immediately file in court a schedule describing the size of L.R No. Muhitu/Thiha/553 to enable the court to issue a certificate of confirmation of grant together with the properties which were hitherto given as gifts *inter vivos*.
5. The protestor to give an election on any entitlement over land parcel number Githi/Muthambi/643.
6. Each party to bear their own costs.
7. Confirmation on 24.7.2025.

8. The Protestor filed copies of green cards and skeleton submissions. The Protestor is agreeable to sharing parcel number Muhitu/Thiha/553 with the Petitioner and has elected not to share in Githi/Muthambi/643.
9. From the green card filed, parcel number Muhitu/Thiha/553 measures 1.94 hectares. Mary Muthoni Watatua had already obtained a share of 3 acres out of land parcel number Githi/Muthambi/643. This must be considered in the extent of the shares. Under **Section 28 of the Law of Succession Act it is provided as follows:** In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—
 - a) The nature and amount of the deceased's property;
 - b) Any past, present or future capital or income from any source of the dependant;
 - c) the existing and future means and needs of the dependant;
 - d) Whether the deceased had made any advancement or other gift to the dependent during his lifetime;
 - e) The conduct of the dependant in relation to the deceased;
 - f) The situation and circumstances of the deceased's other dependants and the beneficiaries under any will; *g)* The general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.
1. Mary Muthoni Watatua has already benefited from land parcel number Githi/Muthambi/643, that is, 1.214 ha. It is only the protestor who has not benefited. For equality, the difference should be shared; that is, 0.44 ha in Parcel number Muhitu/Thiha/553, measuring 1.94 hectares, is available for sharing.
2. Lydia Njoki Hungura and the family of Joseph Hungura also got 0.89 ha in 1988. This means that they only got 2.199 ha, while Mary Muthoni Watatua secured three acres, which she registered in the sons' names. For fairness and to avoid disinheriting the petitioner, who has since sold her entitlement, the balance of the land will be shared with Lydia Njoki Hungura.
3. This leaves the issue of costs, which is governed by Section 27 of the Civil Procedure Act, which provides as follows:
 - (1) **Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**

- (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
1. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of [**Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR)**](<https://new.kenyalaw.org/akn/ke/judgment/keca/2018/158/eng%402018-10-18>) had this to say: It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.
 1. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of [**Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR)**](<https://new.kenyalaw.org/akn/ke/judgment/kesc/2014/31/eng%402014-03-04>), as follows:
 18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.
 22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.
 1. In the circumstances of the case, each party to bear its own costs.
 2. The court thereof makes the following final orders:
 3. A portion measuring 0.22 hectares out of Parcel number Muhitu/Thiha/553 is hereby apportioned to Mary Muthoni Watatua.
 4. Lydia Njoki Hungura shall have 0.22 hectares out of Parcel number Muhitu/Thiha/553 to be registered in her name.
 5. Benson Thairi Kiambo shall have 1.50 hectares out of Parcel number Muhitu/Thiha/553 to be registered in his name.

6. A certificate of confirmation of grant to be issued forthwith.
7. Each party to bear its own costs. **DELIVERED, DATED and SIGNED** at **NYERI** on this **27th** day of **July** the year of our Lord **Two Thousand and Twenty-Six**. Ruling delivered through Microsoft Teams Online Platform. **KIZITO MAGARE JUDGE In the presence of: - Mr. Ng'ang'a for the Petitioner Court Assistant – Timothy**

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/11961/eng@2026-07-27>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/Confirmationofgrant-high-court-2026--2b2d9f415ed19a8a72157a6c>

Prepared on 27 October 2026 · Esheria