

KENYA / JUDGMENT

In re Estate of Mauchu (Deceased) [2026] KEHC 10094 (KLR)

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COURT

High Court

BEFORE

MA Odero

CASE / FILE NUMBER

Succession Cause 348 of 2008

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In re Estate of Mauchu (Deceased) (Succession Cause 348 of 2008) [2026] KEHC 10094 (KLR) (10 July 2026) (Judgment)

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[2026] KEHC 10094 (KLR)

Republic of Kenya

In the High Court at Nyeri

Succession Cause 348 of 2008

MA Odero, J

July 10, 2026

IN THE MATTER OF THE ESTATE OF KARIUKI MAUCHU (DECEASED)

Judgment

1.The three Administrators of this estate filed in Court a Summons for Confirmation of Grant dated 24th November 2022. In response to that Summons two Affidavits of Protest were filed as follows;-i.Affidavit of Protest dated 18th January 2023 sworn by Juliana Wacera Kariuki (hereinafter the 1st Protestor)ii.Affidavit of Protest dated 18th January 2023 sworn by Jane Nyaguthii Kariuki (hereinafter the 2nd Protestor)

2.The protest was heard by way of oral evidence in open court.

Background

3.This succession cause relates to the estate of the late Kariuki Mauchu who died intestate on 2nd February 2008. A copy of the Death Certificate Serial Number 331586 appears as Annexure JNNK '1' to the Petition for letters of Administration Intestate dated 24th June 2008.

4.The Deceased was survived by several children. The only asset left behind by the Deceased was a parcel of land known as LR No. Aguthi/Gatitu/2968 (hereinafter referred to as the 'suit land')

5.Following the demise of the Deceased the 2nd Protestor Jane Nyaguthii sought and obtained Grant of letters of Administration which were issued to her on 2nd June 2009. The said Grant was thereafter confirmed on 26th February 2010 and the only asset being the suit land was to devolve entirely to the 2nd Protestor.

6.On 18th September 2013 one of the beneficiaries of the estate Silvester Ngunjiri Kariuki filed a Summons for revocation of Grant. That Summons was heard in the High Court at Nyeri and vide a judgment delivered on 12th October 2018, Hon. Justice Ngaah revoked the Grant which had been issued to the 2nd Protestor and directed that title in LR Aguthi/Gatitu/2968 revert back to the name of the Deceased.

7.Following revocation of the Grant which had been issued to the 2nd Protestor, a fresh grant was then issued to the three (3) respondents. On 24th November 2022 the three Administrator filed a Summons for confirmation of grant and in their supporting affidavit it was proposed that the suit land be allocated absolutely to the 1st Respondent Silvester Ngunjiri Kariuki. The two protestors then filed Affidavit of Protest.

The Evidence

8.The 2nd Protestor Jane Nyaguthii Kariuki testified as PW1. The 2nd Protestor states that she is a daughter of the Deceased and therefore is entitled to a share of his estate. She states that she lived with and was cared for by the Deceased who also paid her school fees.

9.The 2nd Protestor stated that the Deceased owned a large parcel of land which he partitioned into several plots. That parcel No. LR Aguthi/Gatitu/2968 was supposed to be allocated to her according to the wishes of the Deceased. The 2nd Protestor opposed the allocation of the said parcel of land to the 1st Administrator.

10.PW2 Juliana Waceke Kariuki largely repeated the evidence of PW1. 'Juliana' told the court that she was a daughter of the Deceased. PW2 stated that the Deceased owned a large parcel of land which he subdivided into several plots. That the family all agreed that Parcel No. 2968 was to be allocated to the 2nd Protestor.

11.DW1 Sylvester Ngunjiri Kariuki was the 1st Administrator. He told the court that the Deceased who was his father left behind six (6) children. DW1 vehemently denies that the 2nd Protestor was a child of the Deceased. He asserts that Jane Nyaguthii was a daughter to Lucy Wanjiru who was the daughter of the Deceased. Therefore according to DW1 the 2nd Protestor was 'grand-child' of the Deceased and was therefore not a direct beneficiary to the estate.

12.The Administrators urge this court to dismiss the two protests and confirm the Grant as prayed in the summons dated 24th November 2022.

13.At the close of oral evidence the parties were invited to file their written submissions. The Respondents filed the written submissions dated 4th March 2026 whilst the Protestors relied on their written submissions dated 19th March 2026.

Analysis And Determination

14.I have carefully considered the Protests filed in this matter, the evidence on record as well as the written submissions filed by both parties.

15.The 2nd Protestor states she is a daughter of the Deceased Kariuki Mauchu and that she is therefore a direct beneficiary to the estate of the Deceased. The 1st Protestor 'Juliana' supports the assertion of the 2nd Protestor that she is a daughter of the Deceased and is entitled to a share of the estate.

16.The 2nd Protestor has not adduced any tangible and/or documentary evidence to confirm her assertion that she is a daughter of the Deceased - no birth certificate was produced as evidence.

17.Despite her protestations that the Deceased was her father in her own affidavit of Protest at Paragraph 1 the 2nd Protestor avers that she was brought up by the Deceased and her grandmother in their homestead. This implies that the Deceased was in actual fact her grand-father not her father.

18.Likewise in her written statement dated 16th June 2023 the 2nd Protestor states as follows"The deceased in this cause is my grandfather. As a young child, youth school days and adulthood I was brought up by the deceased and my grandmother. I was brought up as one of his children. It is only as an adult that I came to learn that indeed I was a grandchild." [Own emphasis]

19.If way back in the year 2023, the 2nd Protestor clearly identified the Deceased as her grandfather then why would she come to court in July 2025 and state under oath that the Deceased was her father.

20.The evidence which the 2nd Protestor gave in court was totally decimated under Cross-examination. The 2nd Protestor in cross-examination claims that she did not know any grandmother yet in her statement of 16th June 2023, she states that she was raised by her grandmother.

21.The 1st Protestor fared no better. She was not able to state with certainty whether or not the 2nd Protestor was the child of the Deceased. I was able to observe the demeanor of the 1st Protestor as she testified and in my view she was not an honest witness.

22.The Respondent told the court that the 2nd Protestor was not the daughter of the Deceased but was in fact the last born child of one 'Lucy Wanjiru' who was the Deceased's daughter. Both the 1st and 2nd Protestor feigned ignorance about the existence of this 'Lucy Wanjiru' and neither was able to state with clarity her relationship to the 2nd Protestor. In her testimony the 2nd Protestor claimed that 'Lucy Wanjiru' was her sister. Under cross-examination she goes on to state that she did not know whether the Respondents were her siblings or her aunts and uncles. On her part the 1st Protestor says "I do not know if the [2nd] Protestor is the child of my sister Lucy....." "I do not know if Lucy is the Protestors mother."

23.Once again I was able to closely observe the demeanour of the 2nd Protestor. The evidence was fumbled and contradictory. It is clear that she was not telling the truth.

24.It is pertinent to note that in the initial chiefs letter issued to court the 2nd Protestor was not named as a child of the Deceased. Likewise the 2nd Protestor was not named as a beneficiary (child) in the Petition for letters of Administration dated 24th June 2008. However both documents did name 'Lucy Wanjiru' as a daughter of the Deceased. Why did the 2nd Protestor not raise any legal objection from the year 2008 until now?

25.It is clear that the 2nd Protestor is in actual fact a granddaughter to the Deceased being the child of 'Lucy Wanjiru' a daughter of the Deceased. As is common in many families the 2nd Protestor was raised by her grand-parents. This Protest is nothing but a desperate attempt by the 2nd Protestor to misrepresent herself as a child of the Deceased in order to claim a share of the estate. It is telling that the Protestor did not call this 'Lucy Wanjiru' as a witness in support of her claims.

26.This issue of whether or not the 2nd Protestor was the daughter of the Deceased was settled in finality by Hon. Justice Jairus Ngaah in his judgment delivered on 12th October 2016. In that judgement the learned Judge revoked the Grant which had been issued to the 2nd Protestor on grounds that the said grant had been obtained fraudulently through material misrepresentation.

27.Specifically the Honourable Judger rendered himself as follows "One fact that stands out prominently in the affidavit in support of the summons for revocation of grant and on which this summons must turn is that the petitioner is a granddaughter to the deceased and not his daughter as alleged in the affidavit which she swore in support of the petition for grant of letters of administration... Without such rebuttal and in the absence of any evidence to the contrary, the court is entitled to assume that the applicant is right that the description which the respondent assumed in her petition for grant of letters of administration is misleading. That being the case, it can be assumed too, that the respondent deliberately chose to mislead the court so as to obtain the grant of the letters of administration of the deceased's estate. In these circumstances, I would agree with the applicant that the grant is vitiated in at least two respects. I am left with no alternative but to revoke the grant that was made to the respondent...." [Own emphasis]

28.The 2nd Protestor has not filed any appeal against this judgment. She cannot now through this Protest attempt to relitigate matters which have already been decided upon by a court of competent jurisdiction. This court cannot sit in appeal over the decision of a concurrent jurisdiction. The question of whether the 2nd Protestor is a daughter to the Deceased is now Res Judicata.

29.At this point I deem it necessary to warn the 2nd Protestor that her action of lying under oath amounts to perjury which is actionable under Criminal Law. The 2nd Protestor should stop propagating the myth that she is a daughter of the Deceased.

30.Based on her own admission and the unimpeached finding by this Court vide its judgment of 12th October 2018, I find and hold that the 2nd Protestor is not a child of the Deceased but is in fact his grandchild. The question then is whether as a grandchild the 2nd Protestor had a right to benefit from the estate of the Deceased.

31.The law is very clear that grandchildren are not considered direct beneficiaries to the estate of their deceased grandparent, grandchildren can only inherit from the estate in situations where their own parents (the children) of the deceased person) are also Deceased.

32.In RE Estate Of Florence Mukami Kinyua (Deceased) 2018 eKLR, the Court held that“A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into shoes of their deceased parents and take the parents’ share in the estate of the grandparents. This was stated in Re Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held: - Under Part V, grandchildren have no 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.” [Own emphasis]

33.The record shows that Lucy Wanjiku the mother of the 2nd Protestor and a daughter to the Deceased herein is still alive. Indeed all the witnesses confirmed that the said ‘Lucy Wanjiru’ was still living has five (5) children one of who resides in Dubai and that Lucy herself resides in Nanyuki. The said ‘Lucy Wanjiru’ did not appear as a witness nor has she filed any document renouncing or waiving her right to a share of the estate. I find that it is the said Lucy Wanjiru who would be entitled to claim a share of the estate of the deceased and not the 2nd Protestor.

34.The 2nd Protestor has claimed that she was raised by the deceased (her grandfather) and that the deceased paid her school fees. The 2nd Protestor is now an adult. In order to qualify as a dependant under Section 29 of the law of Succession Act, the 2nd Protestor must demonstrate that she was dependant on the Deceased immediately prior to his death. In the case of Beatrice Gamutua Rugamba v Fredrick Nkari Mutegi and 5 Others [2016] eKLR it was stated that:-“.....a dependent under Section 29 (b) and (c) must prove that he or she was being maintained by the

deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts.”

35.The 2nd Protestor has not tendered any evidence to show that she was dependant upon the deceased person immediately prior to his death. As such she cannot claim a share of the estate under Section 29.

36.Finally I find no merit in the two protests. The same are dismissed.Having said that I note that the summons for confirmation of Grant does not have a consent signed by the beneficiaries annexed to it. In the circumstances I direct that the Administrator file in Court a consent signed by the beneficiaries, before the summons can be heard and determined. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 10TH DAY OF JULY 2026.....MAUREEN A. ODEROJUDGE

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