



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Nathan Karuingi Kamore (Deceased) (Succession Cause  
104 of 2017) [2024] KEHC 9893 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 104 OF 2017**

**CM KARIUKI, J**

**JULY 31, 2024**

**FORMERLY OF NAKURU HIGH COURT SUCCESSION CAUSE NO. 66 OF 2011  
IN THE MATTER OF THE ESTATE OF NATHAN KARUINGI KAMORE (DECEASED)**

**BETWEEN**

**SALOME WANGARI KARUINGI ..... APPLICANT**

**AND**

**EDWARD KAMORE KARUINGI ..... RESPONDENT**

**RULING**

1. In this matter, the Deceased died intestate and two houses.
2. The first house widow is deceased but has three (3) issues (heir), while in the second house, the widow is alive and has nine (9) issues, thus ten (10) units.
3. The first son of the first house, Edward Kamore Karuingi, was appointed with the widow of house No. 2, Salome Wangare Karuingi Administrators.
4. The court allowed them to go and agree on the distribution of the Estate Constituting Nyandarua/Ngorika/317, 5 Ha, Bahati/Ndunduri/259 plot and ten cows.
5. After the parties failed to reach a compromise, the court directed the parties to file their respective proposals for the court to determine the sharing of the Estate.
6. By Application for confirmation of grant dated 4/12/2023, Salome Wangare Karuingi – widow of the second house, proposes sharing as follows.
  - i. Land Nyandarua/Ngorika/317 5.5 Hectares to be shared by herself and her children and only one child of House No. 1 Edward Kamore Kariungi



- ii) Bahati/Ndunduri /259 to be her property alone.
7. She does not propose sharing the ten (10) cows or say anything about their existence.
  8. The first house's two (2) children, Peter Mbugua Kairu and Nancy Wanjiku Mwangi, are said not to be deceased person children and have never been interested in the Succession Cause.
  9. She alleges that the two also inherited property from their father, David Kairu.
  10. On his part, Edward Kamore Kariungi of the first house and brother to the two of his siblings omitted in Salome's proposal, has made his proposal from the first house siblings, namely
    - i) Nyandarua/Ngorika/317 5.5 Ha – which is 13.59 Acres to be shared.
      - a. ½ Acre be set as a graveyard where the deceased and other family members are buried and be registered in joint names of both administrators.
      - b. A portion will be sold to Carter to pay the estate costs. The balance will be distributed equally to the thirteen (13) beneficiaries so that the beneficiaries of the fir<sup>st</sup> house will get a contiguous allocation, likewise, the seco<sup>nd</sup> house. Both administrators to facilitate the administration expenses and, in consideration, be allocated for the sale portion to be sold for such expenses proposed above.
    - ii. As for Bahati/Ndunduri/259, Plot 40 x100 (ft) will be sold, and proceeds will be shared at 3:10 between the two houses.
    - iii. As for the ten (10) cows, the same should be shared in first house two and second house eight or be sold, and proceeds should be shared equally with all beneficiaries.

## 11. Determination

12. The court finds issues regarding how much in quantum from the deceased Estate will be distributed to each beneficiary. The seco<sup>nd</sup> administrator feebly raises the sub-issues that the two children of the fir<sup>st</sup> house, Peter and Nancy, do not belong to the deceased and tender no further evidence.
13. She also raises the issue that they got their share from their alleged father in Githunguri Kiambu; no evidence supports that:  
Under section 107 of the *Evidence Act*, he who avers must prove on the balance of probabilities. Section 107 of the Kenya *Evidence Act* addresses the burden of proof. It states:  
"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."  
In simpler terms, this means that the party who makes a claim or asserts a fact in court is responsible for providing evidence to prove that fact. This principle is often summarized as "he who alleges must prove."
14. There is no evidence to support the allegations on paternity and gift of the two children of the house (1) from the alleged father, so the two issues are dismissed.
15. Regarding the sharing, the second house's proposed distribution fails flat as it omits the two children of house No. 1 based on the above two issues dismissed.
16. On the other hand, she allocates plot Bahati/Ndunduri/259 without any justification and ignores the existence of the ten (10) cows.



17. Thus, the court finds the fir<sup>st</sup> house proposal is rational and supported by sensible arguments.
18. Under section 40 of the Succession Act, the court is mandated to share the Estate of a Polygamy family per unit, considering the widow to be one of the units.
19. In Kenya, the distribution of an intestate estate (when someone dies without a will) in a polygamous marriage is governed by Section 40 of the [Law of Succession Act](#). Here are the key points:

Division Among Houses: The deceased's personal and household effects and the residue of the net intestate Estate are divided among the "houses" according to the number in each house. Each surviving wife is also counted as an additional unit.

Definition of a House: A "house" is defined as a family unit comprising a wife (whether alive or deceased at the time of the husband's death) and her children.

Factors Considered: While the law suggests division based on the number of persons per house, courts also consider other factors to ensure fairness. These factors include the years each spouse was married, the number of children, property acquired through joint contribution, and any property shared during the deceased's lifetime.

Life Interest: Surviving spouses are entitled to their household share of the personal and household effects of the deceased, as well as a life interest in the entire residue of the net intestate Estate. This life interest ends upon remarriage.

20. Thus, the court directs that the Estate of the deceased will be shared as follows: -
  - i. Nyandarua/Ngorika/317 said to be 13.59 acres. - Each 1 acre.  
Thus:  
3 Acres to fir<sup>st</sup> house. 10 acres to seco<sup>nd</sup> house 0.59 Acres for the grave to be jointly registered in the Administrators' names in trust for all members of the two houses.
  - ii. Bahati/Ndunduri/259 40x100 (ft) be sold, and proceeds be shared equally in the ratio of 3:10 (House 1: House 2)
  - iii. The ten (10) cows to be shared. Two (2) to the fir<sup>st</sup> house and eight (8) to the seco<sup>nd</sup> house.
  - iv. Parties are to share the administration of estate costs at a ratio of 3:10.
  - v. There is liberty to apply.
  - vi. No orders as to costs.

**RULING, DATED AND SIGNED AT NYANDARUA THIS 31<sup>ST</sup> DAY OF JULY, 2024**

.....  
**CHARLES KARIUKI**  
**JUDGE**

