



REPUBLIC OF KENYA



In re Estate of Bernard Kariuki Thoronja (Deceased) (Succession Cause 1234 of 2007) [2023] KEHC 3984 (KLR) (Family) (24 March 2023) (Judgment)

Neutral citation: [2023] KEHC 3984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1234 OF 2007
MA ODERO, J
MARCH 24, 2023**

BETWEEN

**MARGARET WANGECI 1ST APPLICANT
BENSON MWANGI KARIUKI 2ND APPLICANT
JORAM BERNARD KARIUKI 3RD APPLICANT
JANE WAMBUI KUNG’U 4TH APPLICANT
ESTATE OF NAHASHON CHEGE KARIUKI 5TH APPLICANT
ROBERT KIMEMIA KARIUKI 6TH APPLICANT
ESTATE OF EVA NJERI 7TH APPLICANT
ESTATE OF GEOFFREY KAMAU KARIUKI 8TH APPLICANT**

AND

BENSON MUGO KARIUKI RESPONDENT

JUDGMENT

1. Before this court for determination is the question of distribution of the estate of the late Bernard Kariuki Thoronja(hereinafter ‘the Deceased’). The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 16th January 2023 whilst the objector Benson Mugo Kariuki relied upon his written submissions dated 13th January 2023.

Background

2. The Deceased was herein died intestate on 14th April 2003. The Deceased was survived by the following:-



- (a) Geoffrey Kamau – son
 - (b) Joram Kabathi – son
 - (c) Benson Mugo – son
 - (d) Nanshan Chege – son
 - (e) Kimemia Bernard – son
 - (f) Eva Njeri – Daughter – Deceased
 - (g) Benson Mwangi – son
 - (h) Jane Wambui – Daughter
 - (i) Margaret Wangechi – Daughter
3. The Deceased left behind an estate, which consisted of the following:-
- (i) 2000 shares in Kagaa Mwireri Company Ltd – 200,000/-
 - (ii) LR Loc 8/Ngerere/Thombotho/194 – 500,000/-
 - (iii) LR Loc 8/Kagaa/614 – 500,000/-
 - (iv) LR Loc 8/Ngerere/Thombotho/357 – 1,000,000/-
 - (v) Unspecified shares with Barclays Bank.
 - (vi) 266 shares with Kenya Commercial Bank – 100,000/-
 - (vii) 10 shares with Wangu Investment Company Ltd
 - (viii) Plot No 7 A Kagaa Market 200,000/-
- Total Estimated Value 2,500,000/-
- Liabilities – NIL
4. This court on 5th August 2022 delivered a Judgement in which it dismissed the summons for Revocation/Annulment of Grant dated 3rd July 2014 which had been filed by the Applicants. The court further set aside the schedule of Distribution of the Estate dated 18th February 2013 and directed the parties to file a fresh schedule of Distribution within twenty-one (21) days. The Judgement lastly provided that if the parties were unable to agree on the issue of distribution of the estate then that issue would be determined by the court.
5. On 15th November 2022 Counsel for the parties reported to the court that the parties had been unable to agree on a mode of distribution of the estate. The court then invited both sides to file written submissions on this aspect alone.
6. The Applicants state that a meeting was convened by their local chief to discuss the mode of distribution of the estate that all the beneficiaries were present at said meeting. However the objector Benson Mugo Kariuki declined to attend the meeting.
7. The 3rd Applicant Joram Bernard Kariuki avers in his Application dated 5th September 2022 that the daughters of the Deceased had in the presence of the chief waived their right to inherit from the estate of their late Father.



8. The Applicants in their written submissions proposed that the estate be distributed in the following manner:-

S/No	PROPERTY	BENEFICIARY
LAND		
1.	Loc 8/NGERERE/ THOMBOTHO/357 – 3 acres	Estate of Geoffrey Kamau
2.	Loc 8/NGERERE/ THOMBOTHO/194-5.8 acres	1. Joram Kariuki – 1.56 acres 2. Robert Kimemia – 1.56 acres 3. Benson Mwangi – 1.56 acres 4. Estate of Nahashon Chege 1.12
3.	Loc 8/KAGAA/614 – 2 acres	1. Benson Mugo – 1.56 acres 4. Estate of Nahashon Chege 0.44 acres
4.	Plot No 7A Kagua Market	1. Estate of Geoffrey Kamau 2. Robert Kimemia
SHARES		
5.	a) Wangu Investments Limited – 10 shares b) NIC Bank Limited – 1,287 shares c) Barclays Bank Limited – 8,545 shares d) Cooperative Bank Limited – 50 shares e) Kagua Mwireri Co. Limited – 2,000 shares f) KCB Limited – 266 shares	Proceeds to be shared equally among:- 1. Estate of Nahashon Chege 2. Benson Mugo 3. Benson Mwangi 4. Joram Kabathi

9. It was submitted that this reflected the wishes of all the beneficiaries save for the objector and that the proposed mode of distribution largely reflected the allocation done by the Deceased prior to his death.
10. It was further submitted that each beneficiary had already taken possession of their respective parcels of land whereon they had built their homes and buried their loved ones.



11. The Respondent however rejected the mode of distribution proposed by the Applicants on grounds that the same was a replica of the written Will which had already been rejected by the court.
12. The Respondent rejected the deliberations which were conducted at the chief's office and states that he was not aware of and did not attend the said meeting.
13. According to the Respondent the Deceased had allocated to him and the 3rd Applicant a plot at Kagua shopping centre in equal shares. That the entire parcel of land known as Loc 8/Kagua/614 had been allocated to the Respondent and that he had resided on said property for the past fifty-two (52) years.
14. The Respondent clarified that the parcel of land known as LR Loc 8/Ngerere/Thombotho/357 comprised of 3.2 acres. That he sold the share of the Deceased for Kshs 582,152.75. The Respondent states that he has rendered a full account on how those proceeds of sale were utilized and that no beneficiary has taken issue with the same.
15. Finally the Respondent submitted that since the daughters of the Deceased had all waived their right to inherit from the estate of the Deceased, there was no reason to interfere with the mode of distribution as set out in the confirmed Grant. The Respondent therefore proposes that the court adopt in its entirety the mode of distribution as set out in the confirmed Grant dated 18th February 2013.

Analysis and Determination

16. I have carefully considered the facts of this case as well as the written submissions filed by both parties.
17. Section 38 of The [Law of Succession Act](#) Cap 160, Laws of Kenya provides that:-

“Where an intestate has left a surviving child or children but no spouse, the net estate shall subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children” [own emphasis]
18. In the judgement delivered on 5th August 2022 this court rejected the contention that the Deceased had died testate. The court rejected the document produced by the Applicants which was alleged to be the written Will of the Deceased.
19. The position therefore is that the Deceased died intestate and as such the distribution of his estate will be governed by Section 38 of the Act. The net estate of the Deceased therefore ought to be divided equally amongst all the surviving children of the Deceased.
20. However the daughters of the Deceased have (as they are entitled to do) waived their rights to inherit from the estate of their father. The said daughters have waived their rights in writing.
21. Annexed to the 3rd Applicants Affidavit of Distribution of Assets dated 5th September 2022 is a letter dated 15th August 2022 written by Jane Wambui Kung'u (the 4th Applicant) of ID Number 593XXXX waiving her legal rights to inherit from the estate.
22. Likewise Margaret Wangeci Wanyoike (the 1st Applicant) of ID Number 639XXXX has also written a letter dated 15th August 2022 waiving her right to inherit from the estate.
23. The last daughter of the Deceased Eva Njeri Kariuki deceased but the Administrator of her estate, who is also her son Anthony Kamwea Mwangi of ID Number 2270XXXX has also written a letter dated 15th August 2022 waiving any interest in the estate of the Deceased.
24. Given the above waivers, it is only fair and just that the net estate of the Deceased be divided equally amongst the remaining children i.e. the Applicants and the Respondent. The mode of distribution



proposed by the Applicants is more acceptable as it provides for an equitable distribution of the estate amongst all the beneficiaries.

25. Finally this court endorses and adopt the mode of distribution proposed by the Applicants and directs that the estate be distributed accordingly. This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 24TH DAY OF MARCH 2023.

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MAUREEN A. ODERO

JUDGE

