



**In re The Estate of Anthony Mugo Mwai (Deceased) (Succession Cause 39 of 2017) [2023] KEHC 26832 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26832 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 39 OF 2017  
CM KARIUKI, J  
DECEMBER 21, 2023**

**BETWEEN**

**FRANCIS MWANGI MUGO ..... APPLICANT**

**AND**

**MIRRIAM WAMBUI MUGO ..... RESPONDENT**

**JUDGMENT**

1. The final distribution is as follows: -
2. The court herein in its judgement dated February 9, 2023 directed the parties to file further affidavits giving a clear account of the beneficiaries of the estate and the suit property herein including details on the current size of the suit land and its occupancy; any subdivisions done; the size and value of each property therein; clear details of what part of the suit land has been sold and by who; any titles issued in relation to the suit land so as to enable the court make a fair assessment.
3. Subsequently, the Protestor/Applicant filed a further affidavit dated 19<sup>th</sup> May 2020 and the respondent filed an affidavit dated 15<sup>th</sup> March 2023.
4. The Applicant deponed that the parcel of land had been subdivided by map plan surveyors into 11 portions but the title deeds had not been processed. The portions had been marked A-J. that portions E-F had been sold and the buyers had taken occupation. It was stated that each of the beneficiaries had settled on the land way before the deceased's death and had developed their respective portions and that the respondent had already sold the portion that she occupied with the deceased therefore there was no land available for further distribution.
5. According to Map Plan Surveys report dated 14<sup>th</sup> February 2023, Nyandarua/Karati 527 is sub divided as follows: -
  - A. Francis Mwangi 0.53HA 1,200,000/-



- B. Phylis Wangari 0.62HA 1,500,000/-
  - C. Samuel Waithaka 2.02HA 5,000,000/-
  - D. Francis Mwangi 1.52HA 3,700,000/-
  - E. Buyer 1 0.81HA 2,000,000/-
  - F. Buyer 2 0.81HA 2,000,000/-
  - G. Miriam Murugi 0.81HA 2,000,000/-
  - H. Leah Wambui 1.21HA 3,000,000/-
  - I. Joyce Nduta 1.48HA 3,500,000/-
  - J. Paul Wachira 2.43HA 12,000,000/-
- Total approximation 36,000,000/-

6. The estimations of the above in acres is as follows :-

- i. Francis Mwangi – 5 acres
- ii. Phylis Wangari - 1.5 acres
- iii. Samuel Waithaka - 5acres
- iv. Buyer 1 – 2 acres
- v. Buyer 2 - 2 acres
- vi. Miriam Murugi - 2 acres
- vii. Leah Wambui - 3 acres
- viii. Joyce Nduta - 3.7 acres
- ix. Paul Wachira – 6 acres

7. The Protestor gave differing allocations stating that suit property known as Nyandarua/Karati/3764 measures 27 acres. According to the Protestor the deceased had subdivided the same as follows:-

- i. Francis Mwangi - 6 acres
- ii. Paul Wachira - 7 acres
- iii. Leah Wambui - 3 acres
- iv. Joyce Nduta - 3 acres
- v. Phyllis Wangari - 2 acres
- vi. Miriam Murugi - 2 acres
- vii. Samuel Waithaka - 5acres

8. Further, the deceased is said to have sold 4 acres to third parties

9. On the other hand, the respondent asserted that the deceased had not sold land to any purchaser and that the beneficiaries have since sold the shares that they were to inherit. She deponed that the deceased



land should be distributed equally among all the children and the surviving spouse of the deceased with each of them getting 2.03 acres.

10. Strictly speaking, the parties herein merely reiterated their submissions and did not necessarily shed light on the information requested by the court regarding the suit property. All the same, I shall proceed to make my determination based on the available information.
11. Given the difference in the Protestor's submissions and map surveys estimations, I make a finding that I shall rely on Map Surveys report considering they are the professionals. I agree with the Protestor that the aforementioned 4 acres which were sold by the deceased are not available for distribution. That leaves the rest for distribution.
12. Having decided that the Applicant and her children are dependants and are therefore entitled to benefit from the estate, they should therefore be provided for in the estate despite the Protestor's assertions and the deceased's wishes which did not include them.
13. Putting in mind the aforementioned holding, the stipulation of section 40 & 42 of the Law of Succession Act and the deceased's wishes, it is my considered finding that in order to ensure fair and equitable distribution of the estate given that Francis Mwangi, Paul Wachira and Samuel Waithaka were each allocated the largest portions of the suit property i.e. 5 acres, 6 acres and 5 acres respectively, 1 acre should be excised from each of their portions in order to provide for the Applicant and her children.
14. Therefore, the final distribution for the suit property stand as follows: -
  - i. Francis Mwangi – 4 acres
  - ii. Phylis Wangari - 1.5 acres
  - iii. Samuel Waithaka – 4 acres
  - iv. Buyer 1 – 2 acres
  - v. Buyer 2 - 2 acres
  - vi. Miriam Murugi - 2 acres
  - vii. Leah Wambui - 3 acres
  - viii. Joyce Nduta - 3.7 acres
  - ix. Paul Wachira – 5 acres
  - x. Mirriam Wambui Mugo – 3 acres (to hold- on behalf of herself and her children)

**DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 21<sup>ST</sup> DAY OF DECEMBER 2023.**

.....

**C KARIUKI**

**JUDGE**

