



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCCESSION CASE NO. 740 OF 2011**  
**IN THE ESTATE OF THE LATE M'IMPWI M'ITARU....DECEASED**  
**GLADYS KAROKI M'IMPWI.....1<sup>ST</sup> PETITIONER**  
**VERSUS**  
**SAMUEL MWONGERA M'IMPWI...2<sup>ND</sup> PETITIONER**  
**RULING**

1. On the 28/9/2022 the court, with consent of the parties, directed that each of the two sides appoint a surveyor, to visit the land within 30 days, and carry out a survey towards parceling out the land in terms of the shares distributed to each of the beneficiaries.
2. Pursuant to such direction two surveyors, visited the land carried out the work and came up with separate subdivision sketches which were then filed and exhibited to court through the affidavit of Samuel Mwongera Impwi and Joyce Gatabi M'Impwi filed on 14/12/2021 and 21/2/2022 respectively.
3. Both reports agree that the land on the ground, after taking into account a riparian area abutting a river, is smaller than its size on the title documents. Accordingly, when each of the daughters gets that 1 acre each, the administrator is left with a size of approximately 1.88 acres.
4. The parties then attended court on 21/2/2022 and urged the court to approve and adopt the sketches as the mode of subdividing the land for purposes of transmission.
5. Parties could however not agree on how to handle the shares in the estate distributed to the widow who has since died. They then left the issue to be determined by the court. That is the only issue that the parties seek a determination from the court.
6. I am of the opinion that while the certificate of confirmation of grant directs how the land would be shared out, the proprietorship of land is determined by its registration. As of today the share to the deceased widow and beneficiary is yet to be transferred to her as to form part of her net estate on death. It remains part of the estate of the deceased in the cause and upon death, it reverts to the estate for purposes of distribution among the surviving beneficiaries. I say, among the surviving beneficiaries well aware that if that deceased beneficiary had other dependants, apart from her children with the deceased, who would not have benefited from the estate, justice would have demanded that the share be preserved for the benefit of such dependants.
7. Here, however, no other beneficiaries to the deceased beneficiary have been revealed to exist, apart from those who have benefited from the cause.
8. I deem the shares of the shares due to Gladys Karoki M'Impwi to have reverted to the estate for distribution to the estate beneficiaries. In executing that mandate, I take into account that while the daughters got one (1) acre each, the administrator, a son, got 1.88 acres according to the survey sketch.
9. Mr. Kaumbi counsel for the administrator has urged that the one acre due to the widow be shared equally among the seven siblings while Mr. Gichunge proposes that the same goes to the widow's grandchildren who have not been identified.
10. The court take the view that as much as possible, in the absence of consensus, equality between the dependants, regardless of gender, is the fairest formula to distribute the estate.[\[1\]](#)
11. I will not depart from that principle and take into account what each of the 7 siblings has got from the estate and seek to invite equity to the cause. That approach directs me that the share of the widow is best shared among the daughters so that, at the end, each of the daughters

shall get 1.2 acres as Samuel Mwongera Impwi retains his balance measuring 1.88 acres or thereabouts.

12. In order that the progress made so far is not lost, I direct that the two surveyors now do a joint subdivision scheme, maintain the area identified for Mr. Samuel Mwongera Impwi and re-parcels the rest of the land equally between the five sisters. That be done within 30 days from today to enable the scheme be registered and the new parcels transferred to the beneficiaries within 90 days for today.

13. In the alternative, the ladies may agree that the sketch schemes be maintained and the sixth parcel is sold so that they share the proceeds equally or it be registered in their joint names as proprietors in common.

14. The cause will be further mentioned on the 13/7/2022 to confirm that the administration shall have been concluded.

**DATED SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2022**

**PATRICK J.O OTIENO**

**JUDGE**

**In presence of**

Mr. Kaumbi for petitioner

No appearance for Gichunge

**PATRICK J.O OTIENO**

**JUDGE**

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[\[1\]](#) Section 38, Law of succession Act