



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Elijah Mwangi Mbiro (Deceased) (Succession Cause
38 of 2016) [2022] KEHC 10652 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 38 OF 2016**

RB NGETICH, J

MAY 26, 2022

BETWEEN

LOISE WANGARI NJOROGE 1ST PETITIONER

ANN NJOKI MBIRO 2ND PETITIONER

JACOB IHUGO MWANGI 3RD PETITIONER

MICHAEL KAMAU MWANGI 4TH PETITIONER

AND

PHILIP KARANJA MBIRU OBJECTOR

JUDGMENT

1. The matter relates to the estate of Elijah Mwangi Mbiro who died on May 19, 2012 as per the certificate of death attached. Michael Kamau and Loise Wangari petitioned this court for a grant of letters of administration intestate vide the petition filed on January 25, 2016 in the capacity of son and daughter of the deceased. In the petition, they listed the following as the beneficiaries surviving the deceased, Loise Wangari, Shadrack Mbiro, Jacob Ihugo, Michael Kamau, Philip Karanja and David Mungai.
2. The following properties were listed as comprising the estate of the deceased: -Kiambogo/Miroreni block 1/325 (Itherero)Kiambogo/Miroreni block 1/189 (Itherero)Miti Mingi/ Mbaruk block 5/302 (Kiungururia)Miti Mingi Block 9/130 (Ndioni)Nakuru Menengai/6Nakuru Municipality block 15/87Bahati/ Kabatini block 1/4792Light Industry plot no 30 Bahati Trading centreTitle No IR 1509 LO No 3334 (Original no. 4587/2 and 4)

Shares

Kengen -xxxxxxSafaricom xxxxxxKenya Breweries Limited -xxxxxxxFamily Bank Ltd -
xxxxxxKenya Commercial Bank -MOI xxxxxxxKenya Commercial Bank - MOO xxxxxxxKenya
AirwaysSasiniMaraba Tea FactoryMenengai Farmers Limited



Banks

Barclays Bank Limited – A/C No xxxxxxxxNational Bank Limited A/c No xxxxxxxxxFamily Bank Limited A/c No xxxxxxxx

3. A grant of representation was issued on 29th April 20016. The Petitioner applied for a confirmation of the grant vide the summons dated June 23, 2017. In the summons the proposed mode of distribution of the estate was as follows:

List of properties

Nakuru/Menengai 1/6 Loise Wangari - 28.5 acresAnn Njoki - 34.5 acresJacob Ihugo - 34.5 acresMichael Kamau - 28.5 acresPhilip Karanja - 29.5 acresDavid Mungai - 36.5 acresIR No 1509 – L.O. 3334

* Original No 4587/2 & 4 Loise Wangari - 60acres

* Ann Njoki - 60acres

* Jacob Ihugo - 60acres

* Michael Kamau - 60 acres

* Philip Karanja - 120acres

* David Mungai - 60acres

Kiambogo/Miroreni block 1/889 - Loise Wangari, Ann Njoki Mbiri,

* Jacob Ihugo, Michael Kamau,

* Philip Karanja David Mwangi. –

* Each 2.25 acres

Light Industry Plot No 30 - Ann NjokiKiambogo/Miroreni block 1/325

(Itherero) - Michael Kamau Mwangi

Nakuru Municipality Block 15/87 - to be retained by the familyMiti Mingi/Mbaruk Block5/ 302 (Kiungururia) -to be disposed offMiti Mingi/ Miti Mingi Block 9/130 (Ndioni) - to be disposed offBahati/ Kabatini Block 1/4792 -to be disposed offThe shares and the monies in the bank accounts - to be disposed off and the monies shared equally amongst the beneficiaries.

4. Dissatisfied with the mode of distribution the two objectors filed an affidavit dated July 9, 2022, contesting the mode of distribution because he and other beneficiaries of the deceased have been disinherited. Philip Karanja Mbiru further contends the deceased had allocated his estate to the beneficiaries in 1982 and every beneficiary had settled on their respective plots without any complaint as follows: -Philip Karanja Mbiru -LR No 3334 original No. 4587/284 Subukia Measuring 420 acres.Ann Njoki wife to Shadrack - shares in Bibirioni Nairobi Real estate Plot no 30 Light Industry,Bahati Centre 15 acres excised from Nakuru/ Manengai 1/6.Michael Kamau Mwangi - Motor Vehicle registration no. KAR 209J,Mercy Furgson Tractor reg no KAH 458V,Shares in Menengai farmers limited, and Maraba Tea Factory.parcel No Limuru/Bibirioni/81 – 8 acresLoise Wangari - parcel No Nakuru/ Menengai/14. 29.8 acres

- LR no 10631/1 - Subukia

Jacob Ihugo - 20 acres excised from Nakuru/Menengai1/6David Mungai Mwangi - 157 acres excised from Nakuru/Menengai 1/6.

5. The objector averred that the distribution was in not accordance with the deceased wishes. He averred that he was his father's permanent chauffeur and the manager of all farming activities on all the land and



was assisted by the 2nd objector. He averred that he carried out intensive development on the land he was given by the deceased and wished the estate be distributed as per the deceased wishes.

6. on September 23, 2019, a consent was recorded in court on the partial confirmation of the grant. They agreed that all shares be sold and the proceeds used to pay liabilities and the balance shared equally among the beneficiaries, while the cash at the bank was to be used to pay rates, liabilities, legal fees and the balance be shared equally.
7. On September 30, 2019, the court gave directions that the matter viva voce proceeds through evidence.

Protestor's Case

8. PW1 Philip Karanja testified that he resides in Subukia and he utilizes Parcel no 3334 original 458 and 71284 approximately 420 acres. He stated that he was given the land by the deceased in the year 1982 and has lived in the land for 37 years. He relied on his affidavit dated 9th July 2019 and said he has extensively developed the land. He added that after the death of the father agreed to have the property devolve to their mother Leah Wanjiru and upon her death the property to be distributed amongst the children. He said the administrators did not involve him and his co- objector in the succession process.
9. The first protestor said they are 6 siblings three of the siblings Philip, David and Jacob Ihugo lived in Kenya and were present when the deceased distributed the estate, while the others were in the United States.
10. He contends his contention is on plot nos. Nakuru Menengai/1/6 amd LR No 3334 original No. 4587/284.
11. During cross-examination, he stated he is not claiming a portion of David's part but wished to be given LR 3334 original 5487/2 and 4 comprising 420 acres with a seven roomed house, as he has extensively developed the land. He contends he has never shared the income with other beneficiaries and has taken loans with his property in order to develop the estate.
12. PW2 David Mungai adopted his affidavit dated 9th July 2009 as his evidence and stated that he opposes the distribution of Menegai 1/6 and said he claims 157 acres to be excised from the parcel. He stated that the deceased gave him the 157 acres and he has lived there for 35 years.
13. On cross-examination, he said the beneficiaries agreed on the issue of selling some shares in order to settle the debts. He further stated that the land Menegai 1/6 is utilized by Ann Njoki and Jacob's Children.
14. PW3 Francis Nguyo testified that he lives in Subukia and the deceased was his close friend; they worked together. He said the deceased gave property No.3334 to the 1st objector who utilized and developed the estate and has lived there for over 35years.
15. On cross-examination, he confirmed some assets were in the parcel when the 1st objector was taking over from the deceased.

Petitioner's Case

16. DW1 Michael Kamau testified that he is a co-administrator and that he distributed the deceased's estate amongst all beneficiaries. He said acreage for: -
 - a. Parcel Nakuru Menengai 1/6 is estimated at 192 acres and proposed distribution to the following siblings
 - i. Philip Karanja 29.5 acres,



- ii. David Munagi 36.5 acres
 - iii. other siblings will have a share of where their homestead is located.
 - b. IR No 1509/ LR Plot no 3334 measuring 420 acres
 - i. Philip Karanja gets 120 acres for having developed the land developed the land.
 - ii. Other siblings to have 60 acres each
 - c. Kiambogo Meroreni block 1/189Itherero 14 acres to be shared equally amongst all beneficiaries each to get 2.5 acres.
 - d. Light Industry Plot no 30 Bahati Trading Centre was given to Ann Njoki by the deceased.
 - e. Kiambogo Meroreni Block 1/ 325 to go to 1st petitioner
 - f. Nakuru Municipality Block 1/587 (developed property) to remain as a family entity and proceeds to be shared equally among the beneficiaries
 - g. MitiMingi/ Mbaruku/5/302, MitiMingi Block 9/130 (Ndioni), and Bahati/Kabatini Block 1/4792. to be sold and the proceeds shared equally among the beneficiaries,
 - h. trees will go to the person whose part falls where the trees are planted
 - i. machinery and other developments go to Philip.
17. On cross-examination, he stated he lived in the USA for 26 years and came back in 2005. He said the 1st objector Philip occupied IR No 1509/ LR Plot No 3334 in 1980 but their father did not gift the land to 1st objector Philip. He however said he has no evidence to show the machinery in the estate belongs to the deceased.
18. DW2 Loise Wangari the co-petitioner adopted their joint affidavit dated 23rd June 2017 on the proposed mode of distribution.
19. On cross-examination, she said she is not agreeable to the objectors' mode of distribution and said the deceased was well until 2000 and the objectors did not in any way assist the deceased.
20. DW1 said all beneficiaries are entitled to equal distribution of the deceased's estate. She said she was gifted by the deceased the property at Bahati measuring 14 acres and the only issue in dispute is property IR No 1509/ LR Plot No 3334 which she proposes to be distributed amongst the beneficiaries with the 1st objector Philip getting 120 acres.

Protestors Submissions

21. Counsel for the protestors filed submissions dated 10th February 2022. He submitted that the deceased gifted the 1st and 2nd protestors 420 acres and 157 acres respectively as an appreciation for their hard work and the benefits the deceased received from them. Counsel further submitted that protestors have substantively and overwhelmingly added value to the property gifted to them and thus they should not be inconvenienced and prejudiced by the other beneficiaries. He urged court to find the lazy beneficiaries not to inherit and the estate should cater for the legal fees and costs.



Petitioner's Submissions

22. Counsel submitted that the fair mode of distribution on the intestate property is section 35(5) of the *Law of Succession Act*. That is equal distribution to all beneficiaries; that none of the beneficiaries had acquired proprietary rights to the estates before the death.
23. He further submitted that the protestors have not proved their contribution towards improving the estate and are not therefore entitled to a lion's share of the estate. He submitted the protestors have enjoyed 2/3 of the estate wealth in exclusion of other beneficiaries.
24. Counsel urged the court to be guided by the case of *Peter Gathoge (deceased)* (2020) eKLR where the court faced with a similar situation, shared the estate equally among all beneficiaries.
25. He urged court to distribute the estate as per the proposed mode attached in the affidavit of confirmation of the grant.

Analysis and Determination

26. I have considered the evidence adduced and submissions by parties herein. There is no dispute the deceased died intestate on May 9, 2012. The only issue for determination is the mode of distribution of the estate of the deceased. Distribution of two assets is contested.
27. The 1st objector argue that parcel number IR No 1509/ LR Plot No 3334 measuring 420 acres was gifted to him by his father in his life time and that he has lived in and utilized the land for 37 years. He said he has singlehandedly developed and managed the parcel of land since he was given by his late father and it should be allocated to him.
28. The 2nd objector on the other hand argue that he was gifted 157 acres from Parcel No parcel Nakuru Menengai 1/6 which measures total of 192 acres and that he should retain the 157 acres.
29. The deceased herein died after the commencement of the succession act and thus the applicable laws in respect to the distribution of the estate is the *law of Succession Act*.
30. The protestors allege the deceased had shared his estate before his demise, they allege the deceased had distributed the estate to the beneficiaries. The protestors contend the deceased in distributing the estate looked at the most hard working and the one who helped the deceased while he was alive. I do note there are no documents that have been adduced in evidence to support that assertion. There is therefore no evidence adduced that the deceased took any necessary steps towards completing the alleged transfer.
31. The deceased did not initiate any transfer on the parcels of land to the various beneficiaries but only showed them the land to use and occupy.
32. If the deceased intended to have the properties distributed to the beneficiaries as alleged he would have taken the necessary steps to have the same transfer to each beneficiary. I do note the deceased showed his children parcels to settle and utilize in 1982 but by the time he passed on in the year 2012 he had not made any attempts to regularize the allocation. There is therefore no clear indication as to whether he wished to gift the protestors the two parcels respectively in exclusion of their siblings.
33. From the foregoing the property was free for distribution at the time of his death unless the beneficiaries agreed not to interfere with parcels occupied by each of them.
34. At the time of filing this petition, the deceased's wife had passed on leaving behind only the children. The applicable law is therefore Part V of the *Law of Succession Act*, which provide that where an intestate is survived only by children and no spouse, the property is shared out equally amongst the children.



35. Section 38 states as follows:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

36. The above provision provide for equal distribution among all the children of the deceased, whether male or female, whether married or not; they are treated equally when it comes to the intestate distribution of the estate of the deceased parent.

37. I take note of the fact that the beneficiaries herein have developed parcels shown to them; there is need to take into account developments done by individual beneficiaries and ensure their shares fall in the parcels of land where they have developed.

38. From evidence adduced, parties herein consent on the distribution between the protestors and the petitioners of the following properties Plot No 30 Light Industry to Ann Njoki, Nakuru Municipality Block 15/87, Miti Mingi/Mbaruk Block5/ 302 (Kiungururia), Miti Mingi/ Miti Mingi Block 9/130 (Ndioni), Bahati/ Kabatini Block 1/4792 and the shares and the monies in the bank accounts.

39. I will therefore determine distribution in respect to LR No 3334 original No 4587/284 Subukia Measuring 420 acres which the 1st protestors propose it be allocated to the him and Nakuru/Menengai 1/6 measuring 192 acres which the 2nd protestors propose to be allocated 157 acres.

40. In their proposal, the 4 beneficiaries are agreeable to the 1st protestor being allocated bigger portion by the 1st protestors being 120acres in LR No. 3334 original No 4587/284 Subukia.

41. I note that the other siblings have also benefited from other allocations LR No 3334 original No 4587/284 Subukia Measuring 420 acres acres for one beneficiary is however way on the higher side though in my view 120 acres proposed is on the low side taking into account the 1st objector's contribution in development and managing the farm for 37 years, it should not also be lost in our minds that he also reaped proceeds from farming in he land. In my view 180 acres would be reasonable allocation to the 1st respondent in LR No 3334 original No 4587/284 Subukia and the remaining 240 acres to be shared equally between the remaining 5 beneficiaries.

42. In respect of Nakuru/Menengai 1/6 measuring 192 acres, the same be shared equally among all the beneficiaries. However, the 2nd respondent should be allocated his share on the area he has constructed his house.

Final Orders

1. 180 acres out of 420 acres from LR No 3334 original No 4587/284 Subukia be allocated to 1st protestor Philip Karanja Mbiru and the remaining 240 to be shared equally between the remaining 5 beneficiaries.
2. Parcel Nakuru/Menengai 1/6 to be shared equally among the beneficiaries save for Philip Karanja Mbiru. David Mungai Mwangi to be allocated where his house is .
3. The remaining properties to be shared as proposed by the petitioners in their joint affidavit dated 23rd June 2017.
4. Each party to bear own costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIA ZOOM AT KIAMBU THIS 26TH DAY OF MAY, 2022



.....

RACHEL NGETICH

JUDGE

In the presence of:

Kemboi - Court Assistant

Parties - absent

