



**In re Estate of Monicah Wanjiru Kinyanjui alias Monicah Wanjiru Gitau (Deceased)
(Succession Cause 5 of 2019) [2022] KEHC 10351 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 5 OF 2019**

CM KARIUKI, J

MAY 26, 2022

BETWEEN

JOSEPH NDERITU MWANGI ADMINISTRATOR

AND

HARUN KAMAU KINYANJUI ADMINISTRATOR

JUDGMENT

1. The Administrators herein filed two different summons of confirmation of grant. The 1st Administrator's application is dated 28th January 2021 and is supported by the supporting affidavit deponed by Joseph Nderitu Mwangi, the 1st Administrator herein. The 2nd Administrator's application is dated 27th January 2021 and is supported by the supporting affidavit sworn by Harun Kamau Kinyanjui, the 2nd Administrator herein.
2. The 2nd Administrator filed replying affidavit objecting the 1st Administrator's mode of distribution.

1st Administrator Submissions

3. The 1st Administrator through his counsel submitted that there is no dispute as to the properties that form the estate. However, the Administrators were not in agreement on the persons who should benefit from the estate.
4. In his preferred mode of distribution, the 1st Administrator has included Agnes Waithira Kamau, Regina Wambui Wanjohi, Mary Muthoni Iregi and Samwel Iregi Wairimu (hereinafter referred to as the 4) on the following basis:-
 - i. Agnes Waithira Kamau to represent the deceased brother one Peter Kamau (deceased)
 - ii. Regina Wambui Wanjohi- to represent the deceased brother one Anthony Wanjohi
 - iii. Mary Muthoni Iregi- to represent the deceased brother one Simon Iregi (deceased)



- iv. Samwel Gitau Wairimu- to represent the deceased grandson born of deceased sister one Mary Wairimu
5. Counsel averred that the four are legally entitled to a share in the estate in their capacities as half-sister, half-brother and child to the sister to the deceased. Reliance was placed on Section 39 of the Law of Succession Act and *Re Estate of Gatawua Kangata (Deceased)* [2018] eKLR.

2nd Administrator's Submissions

6. The 2nd Administrator submitted that the identity of the assets comprising of the estate of the deceased is not in dispute however the identity of the heirs and the mode of distribution is in dispute. They stated that the 1st Administrator has introduced the following persons as heirs:-
 - v. Agnes Waithira Kamau- sister in law of the deceased
 - vi. Regina Wambui Wanjohi- sister in law of the deceased
 - vii. Mary Muthoni Iregi- sister in law of the deceased
 - viii. Samwel Gitau Wairimu- grandchild of the deceased
7. It was argued that the aforesaid person do not qualify as siblings of the deceased. That the four do not fit within the definition of a sibling.
8. The 2nd Administrator contended that even assuming the four qualify as siblings the first Administrator admitted that Peter Kamau Gitau and Simon Iregi Gitau predeceased the deceased and thus they cannot inherit her estate through their wives posthumously.
9. Further, the 4 have not exhibited grant of letters of administration whether full or limited to confirm that indeed they are legally appointed a legal representatives of the deceased's siblings they purport to represent to enable them to inherit on their behalf. They lack the requisite locus.

Reliance was placed on Section 39 of the Law of Succession Act, *Re Estate James George Maruti (Deceased)* [2021] eKLR.
10. It was averred that the 4 do not quality as the deceased's dependants as they were not depending on the deceased for their maintenance and livelihood prior to her demise. They were living at their respective homes with their families.
11. Counsel urged the court to reject the inclusion of the 4 names in the list of heirs and if the court finds otherwise, they would inherit the one unit that is to be inherited by the 1st Administrator in the mode of distribution proposed by the 2nd Administrator because the court in its judgement dated 19/5/2020 did not find that the siblings of the deceased herein and the children of Beth Nyokabi were each to get an equal share of the estate.
12. The 2nd Administrator asserted that the estate initially belonged to his father and the same devolved to the deceased. The 2nd Administrator's mother Beth Nyokabi assisted in the acquisition and development of the estate and it would be unfair and unequitable for the 1st Administrator and persons representing the deceased's siblings to get an equal share of the properties inherited by their sister from her husband as her step children. Reliance was placed on the case of *Re Estate John Musambanyi Katumanga (Deceased)* [2014] eKLR.



13. Lastly, it was submitted that the 1st Administrator did not object to John Ndaire Kamau, a buyer getting his half an acre from LR Nyandarua/Nandarasi/568 and therefore they prayed that it should be awarded to him.

Analysis and Determination

14. This court reiterates that there is no dispute as to what comprises the estate; the dispute revolves on who are the beneficiaries to the estate and resultantly the mode of distribution of the deceased's estate. In the premise, the main issue for determination herein is:
 - i. Who are the beneficiaries of the deceased's estate?
15. From the foregoing, it is clear that there is no dispute as the identity of the assets comprising of the estate of the deceased however the identity of the heirs and the mode of distribution is in dispute.
16. The 2nd respondent's main contention centers on Agnes Waithira Kamau, Regina Wambui Wanjohi, Mary Muthoni Iregi and Samwel Gitau Wairimu who were introduced by the 1st respondent as part of the heirs to the deceased's estate.
17. The 2nd Administrator argued that the aforesaid persons do not qualify as siblings of the deceased. That the four do not fit within the definition of a sibling. On the other hand, the 1st Administrator averred that the four are legally entitled to a share in the estate in their capacities as half-sister, half-brother and child to the sister to the deceased. In his preferred mode of distribution, the 1st Administrator the four on the following basis:-
 - i. Agnes Waithira Kamau to represent the deceased brother one Peter Kamau (deceased)
 - ii. Regina Wambui Wanjohi- to represent the deceased brother one Anthony Wanjohi
 - iii. Mary Muthoni Iregi- to represent the deceased brother one Simon Iregi (deceased)
 - iv. Samwel Gitau Wairimu- to represent the deceased grandson born of deceased sister one Mary Wairimu
18. The court notes that in the judgement dated 19th May 2021, the court ordered that the deceased beneficiaries are the 1st Administrator who was the applicant by then, his siblings and the deceased's step children. Therefore, in line with the aforesaid order and the discretion of this court it is my view that all the siblings of the deceased are entitled to benefit from the deceased's estate. In the event that some of the deceased's siblings are deceased their respective estates stand to benefit from their inheritance of the deceased's herein estate.
19. Further, the 1st Administrator did not object John Ndaire Kamau, a buyer getting his half an acre from LR Nyandarua/Nandarasi/568 therefore I find that he is also a beneficiary to the estate.
20. In the premises, and in line with Section 39 as read with section 66 of the Law of Succession Act, I order that the estate shall be distributed equally among the deceased's siblings including the estates of the deceased's siblings i.e. Peter Kamau Anthony Wanjohi Simon Iregi and Mary Wairimu and the deceased's step children. Additionally, John Ndaire Kamau, a buyer shall inherit his half an acre from LR Nyandarua/Nandarasi/568.
21. Thus the court makes the following orders;



- i. The estate shall be distributed equally among the deceased's siblings including the estates of the deceased's siblings i.e. Peter Kamau Anthony Wanjohi Simon Iregi and Mary Wairimu and the deceased's step children.
- ii. Additionally, John Ndaire Kamau, a buyer shall inherit his half an acre from LR Nyandarua/ Nandarasi/568.

DATED AND SIGNED AT NYAHURURU THIS 26TH DAY OF MAY, 2022.

.....

CHARLES KARIUKI

JUDGE

