



**In re Estate of Mbaria Wairenge (Deceased) (Succession Cause  
258 of 2013) [2022] KEHC 11051 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11051 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 258 OF 2013  
RN NYAKUNDI, J  
JULY 29, 2022**

**BETWEEN**

**JAMES MAINA ..... 1<sup>ST</sup> APPLICANT**

**ALICE WANGUI MAINA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARY NJOKI ..... RESPONDENT**

**AND**

**HANNAH NYAMBURA NGARE ..... OBJECTOR**

**AND**

**MWANGI MBARIA ..... PETITIONER**

**JAMES GETUA MBARIA ..... PETITIONER**

**RULING**

1. The deceased, Mbairia Wairenge, died on 28<sup>th</sup> February, 1996 intestate. From the evidence on record, the deceased was married to two wives Wanjiku Mbairia and Wangeshi Mbairia who are now both deceased.
2. The evidence on record further shows that the deceased was survived by the following dependants/beneficiaries;

1st House

- 1) Wanjiku Mbairia- widow (Deceased)
- 2) James Maina-son
- 3) Mwangi Mbairia-son



- 4) Isaac Njoroge-son (Deceased)
- 5) Alice Gishu-daughter
- 6) Jecinta Wangari-daughter
- 7) Njoki Mbaria-daughter (Deceased)
- 8) Peter Muchunu-daughter (Deceased)

2nd House

- 1) Wangeshi Mbaira (Deceased)
- 2) Johnson Mbaira-son
- 3) Mary Wangui- daughter
- 4) Nancy Wamboi-daughter
- 5) Rebecca Njoki-daughter (Deceased)
- 6) Penina Wanja-daughter
- 7) James Getua Mbaria-son
- 8) Peter Muchunu Mbaria-son
- 9) Delvine Wanjiku Mbaria-daughter
- 10) Isaiah Wachira Mbaria-son

3. The grant of letters of administration intestate of estate of the deceased was made to Mwangi Mbaria and James Getua Mbaria on 23<sup>rd</sup> June, 2014.
4. The application that is pending before Court are summons for confirmation of the grant of letters of administration intestate of estate of the deceased was made to Mwangi Mbaria and James Getua Mbaria on 23<sup>rd</sup> June, 2014. The administrators herein in the affidavit in support of the said summons propose that the deceased's estate being parcel of land No. Uasin Gishu/ainabkoi North/53 measuring 17.0HA distributed as follows;

1st House

- 1) Wanjiku Mbaira- widow (Deceased)
- 2) James Maina- 4 acres
- 3) Mwangi Mbaira- 3 acres
- 4) Hannah Nyambura-3 acres (In place of Isaac Njoroge)
- 5) Alice Gishu- 3 acres
- 6) Jacinta Wangari- 2 acres
- 7) Rebecca Wanjiku and Haron Mbaria- 2 acres to be shared equally (In place of Njoki Mbaria)
- 8) Marion Wambui- 3 acres (In place of Peter Muchunu)



9) Haron Mbaria Evans-1 acre

2nd House

1) Wangeshi Mbaira (Deceased)

2) Johnson Mbaira-3.5 acres

3) Mary Wangui-1 acre

4) Nancy Wamboi- 1acre

5) Gideon Getau and Haron Mbaria- 1.5 acres to shared equally (In place of Rebecca Njoki (Deceased)

6) Penina Wanja-1 acre

7) James Getua Mbaria-3.5 acres

8) Peter Muchunu Mbaria- 3.5 acres

9) Delvine Wanjiku Mbaria- 2 acres

10) Isaiah Wachira Mbaria- 3.5 acres

5. Section 71 of the [Law of Succession Act](#), Cap 160, Laws of Kenya, says:

“Confirmation of Grants

71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—
  - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
  - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or



- (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
- (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

- 6. The principal purpose of confirmation of grant is distribution of the assets. The proviso to subsection (2) of section 71 requires that the Court be satisfied as to whether the administrator had properly ascertained all the persons beneficially entitled to a share in the estate and properly identified the shares due to them. The proviso mandates that the grant should not be confirmed before the Court is satisfied on that account.
- 7. Similarly, Rule 40 (4) of the [Probate and Administration Rules](#) provides as follows:
  - “Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all person entitled to the estate have been ascertained and determined.”
- 8. Has the proviso to section 71(2) of the Act and Rule 40(4) of the Probate and Administration Rules been complied with? In the instant cause it not disputed that the deceased herein had two wives. In both households the deceased had children some of who are now also deceased. The administrators herein represent the interests of both household and have proposed that the subject land be divided equally amongst the two households. I have keenly looked at their proposal on the mode of distribution and I note that every beneficiary and or dependant has gotten a share of the said estate. I also note that the share of the estate belonging to deceased’s children who have since died has been distributed to their respective spouses or children being. I must say that equity is not equality and that litigation must come to an end. For the reasons set out above it is my finding that the proposed mode distribution is fair.
- 9. Accordingly, I hereby order as follows:-
  - 1) That the Summons for Confirmation of Grant, dated 26<sup>th</sup> November, 2021 and filed on even date, is hereby allowed, in the following terms –
  - 2) The grant made on 23<sup>rd</sup> June 2014 is hereby confirmed, and
  - 3) Uasin Gishu/ainabkoi North/53, being the only asset of the estate of the deceased, shall be shared as follows:-



- i. James Maina- 4 acres
- ii. Mwangi Mbairi- 3 acres
- iii. Hannah Nyambura-3 acres
- iv. Alice Gishu- 3 acres
- v. Jacinta Wangari- 2 acres
- vi. Rebecca Wanjiku- 1 acre
- vii. Haron Mbaria- 1 acre
- viii. Marion Wambui- 3 acres
- ix. Haron Mbaria Evans-1 acre
- x. Johnson Mbairi-3.5 acres
- xi. Mary Wangui-1 acre
- xii. Nancy Wamboi- 1 acre
- xiii. Gideon Getau- 0.75 acres
- xiv. Haron Mbaria- 0.75 acres
- xv. Penina Wanja-1 acre
- xvi. James Getua Mbaria-3.5 acres
- xvii. Peter Muchunu Mbaria- 3.5 acres
- xviii. Delvine Wanjiku Mbaria- 2 acres
- xix. Isaiah Wachira Mbaria- 3.5 acres

4) That a certificate of confirmation of grant shall issue to the administrators in those terms;

5) That, this being a family matter, each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 29<sup>TH</sup> DAY OF JULY, 2022.**

.....

**R. NYAKUNDI**

**JUDGE**

