



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**SUCCESSION CAUSE NO. 111 OF 2017**

**IN THE MATTER OF THE ESTATE OF ONESMUS MWANGI (DECEASED)**

**MARGARET NYOKABI NGIGI.....1<sup>ST</sup> ADMINISTRATOR/APPLICANT**

**JANE NYAMBURA NGANGA.....2<sup>ND</sup> ADMINISTRATOR/APPLICANT**

**JUDGEMENT**

1. This matter relates to the Estate of Onesmus Mwangi (Deceased) who died intestate on 9<sup>th</sup> December 2011. A grant of letters of administration was issued to Margaret Nyokabi Ngigi, 1<sup>st</sup> Administrator herein and Jane Nyambura Nganga, 2<sup>nd</sup> Administrator herein. The Deceased was survived by the following beneficiaries; -

- Margaret Nyokabi Ngigi - Widow
- Nathan Ndungu Mwangi - Adult Son
- Cecilia Njeri Mwangi - Adult Daughter
- Mary Wanjiru Mwangi - Adult Daughter
- Jane Nyambura Nganga - Widow
- Shorn Naisano Kuntai - Adult Daughter
- RNM - Son (Minor)
- RNM- Son (Minor)

2. This court is tasked with making a determination on the mode of distribution of the Deceased's estate.

**1<sup>ST</sup> ADMINISTRATOR PROPOSED MODE OF DISTRIBUTION**

3. The 1<sup>st</sup> Administrator outlined her proposed mode of distribution of the Deceased's estate vide the affidavit sworn by herself dated 8<sup>th</sup> December 2020 as follows: -

- i. That taking into account that her co-Administrator lives in a double storey permanent residential house with 2 bedrooms and a master bedroom ensuite and that she lives in a semi-permanent house with 2 bedrooms and a bathroom she proposes the following: -*
- ii. That both houses being the matrimonial houses all on LR N.O. Nyandarua/ Ol Kalou West/ xxx measuring approximately 2.27 acres. The said parcel of land be shared between both houses at the ratio of 2:1 in her favour and that of her house.*
- iii. That LR/ Nyandarua/ Ol Kalou West/xxxx measuring approximately 0.809ha (2 acres) be shared equally among the two Administrators to hold on their own behalf an in trust and their respective children.*
- iv. That considering that if LR No Nyandarua/ Ol Joro Orok Salient/ xxxxx mearing 0.045ha approximately is located a kilometer from Kasuku town towards Lake Olbolast and Plot No. xxx Kasuku is located within Kasuku township then the two parcels of land are of distinct values with one in Kasuku township fetching more value*

*a. In view of the foregoing, she proposes that the aforesaid two plots should be sold and their proceeds be shared in equal share between her co-Administrator and herself to hold on behalf and in trust for their respective children*

*v. That considering that even though her children are adults, they have not left school going age and re in tertiary education and she is therefore in need of the monies in equity bank branch account numbers [...] and [...] to educate her children therefore the said monies be divided on a 50:50 bases between her co-Administrator and herself to hold don their own behalf and in trust for their respective children.*

*a. Provided the distribution above be done after the legal fees for Nderitu Komu & Co. Advocates and Mathea Gikunju & Co. Advocates are certified by the Deputy Registrar and paid to the two law firms.*

*vi. That considering That LR Nyandarua/Ol Joro Orok Salient/xxxxx & xxxxx have not been recovered to form part of the Deceased estate the same be left out of these proceedings until such a time when they will be recovered and will have formed part of the Deceased's estate.*

## **2<sup>ND</sup> ADMINISTRATOR PROPOSED MODE OF DISTRIBUTION**

4. The 2<sup>nd</sup> Administrator outlined her proposed mode of distribution of the Deceased's estate vide the affidavit sworn by herself dated 24<sup>th</sup> November 2020 as follows: -

5. That taking in account that the existence of minors in the estate and the provisions on the distribution of an intestate estate she proposes the following: -

*i. LR Nyandarua/ Ol Kalou West/xxx which house the matrimonial homes for the two houses be shared in equal shares among the two Administrators on their behalf and in trust for their respective children.*

*a. Provided the subdivision should ensure that the homes of the 2 Administrators are not relocated.*

*ii. L.R. Nyandarua/Ol Kalou West/ xxxx be shared in equal shares among the two Administrators to hold on their behalf an in trust for their respective children.*

*iii. LR Nyandarua/ Ol Joro Orok Salient/ xxxxx be shared in equal shares among the two Administrators to hold on their behalf and in trust for their respective children.*

*iv. Plot No. xxx Kasuku be sold and proceeds to be shared in equal shares among the two Administrators to hold on their behalf and in trust for their respective children.*

*v. Proceeds in Equity Bank Nyahururu Bank Account Number [...] and [...] be distributed as follows: -*

*a. 70% proceeds to Jane Nyambura Nganga to hold on her behalf and in trust for her children.*

*b. 30% of the proceeds to Margaret Nyokabi Ngigi to hold on her behalf and in trust for her children.*

*c. Provided the distribution in (i) and (ii) above be done after the legal fees for Nderitu Komu & Co. Advocates and Mathea Gikunju & Co. Advocates are certified by the Deputy Registrar and paid to the two law firms.*

*vi. That the estate was defrauded of LR Nyandarua Ol Joro Orok Salient/ xxxxx & xxx and upon recovery the two parcels of land, they be distributed to the beneficiaries in equal shares.*

*vii. I observe that all the Administrators are unanimous in their affidavits that all the listed issues are beneficiaries of the Deceased and on the properties listed as belonging to the estate of the Deceased. The bone of contention in the proposed modes of distribution center around the distribution of LR Nyandarua/Ol Kalou West/ xxx and the proceeds in the Equity Bank Nyahururu Branch Account No. [xxxx] and [xxxx].*

6. In distributing the estate of the Deceased I shall be guided by the law and in a view to maintain peace and harmony between the families.

7. Section 40 (1) Of the Law of Succession Act provides that: -

*“Where an intestate has married more than once under any system of Law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”*

8. Having therefore considered the law applicable in this matter and all the proposals on the mode of distribution of the estate that have been placed before me and for equity to be achieved, it is my considered view that the mode of distribution that does commend itself to the circumstances of this cause and which I hereby order is as set out below: -

*i. LR Nyandarua/ Ol Kalou West/xxx (2.227) acres which houses the matrimonial homes for the two houses be shared the first*

*administrator 1.227 acres and the 2<sup>nd</sup> administrator 1 acre as 2<sup>nd</sup> administrator has permanent house and the two Administrators to hold in trust on their behalf and in trust for their respective children.*

*ii. That LR/ Nyandarua/ Ol Kalou West/xxxx measuring approximately 0.809ha (2 acres) be shared equally among the two Administrators to hold on their own behalf an in trust and their respective children.*

*iii. LR Nyandarua/ Ol Joro Orok Salient/ xxxxx be shared in equal shares among the two Administrators to hold on their behalf and in trust for their respective children.*

*iv. Plot No. xxx Kasuku be sold and proceeds to be shared in equal shares among the two Administrators to hold on their behalf and in trust for their respective children.*

*v. Proceeds in Equity Bank Nyahururu Bank Account Number [....] and [....] be distributed as follows: -*

*50% proceeds to Jane Nyambura Nganga to hold on her behalf and in trust for her children.*

*50% of the proceeds to Margaret Nyokabi Ngigi to hold on her behalf and in trust for her children.*

*Provided the distribution in (i) and (ii) above be done after the legal fees for Nderitu Komu & Co. Advocates and Mathea Gikunju & Co. Advocates are certified by the Deputy Registrar and paid to the two law firms.*

*vi. I make no determination on LR Nyandarua/Ol Joro Orok Salient/xxxx & xxxx as the same have not been recovered to form part of the Deceased estate. The administrators are at liberty to recover them and then seek court directions on sharing and /or record consent thereof on sharing.*

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 30TH DAY OF JULY, 2021.**

.....

**CHARLES KARIUKI**

**JUDGE**