

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J)

SUCCESSION CAUSE NO. 174 OF 2015

IN THE MATTER OF THE ESTATE OF GRACE MUTHONI WAWERU (DECEASED)

JOSEPH NDIRANGU WAWERU.....PETITIONER

VERSUS

PENINA WANGUI WAWERU & 3 OTHERS.....PROTESTERS

JUDGMENT

1. The parties in this suit are in dispute concerning the distribution of the estate of Grace Muthoni Waweru, the deceased, who died a widow without having made a will. There is no dispute as to who the children of the deceased are. They are:

1) Francis Muriithi Waweru; 2) Bernard Kibanya Waweru; 3) Patrick Mbugua Waweru; 4) Joseph Ndirangu Waweru; 5) Mary Wambui Waweru; 6) Cecilia Wanjiku Waweru; 7) Paulina Wanjiru Waweru, and 8) Penina Wangui Waweru

2. In a Ruling dated 28th February, 2019, this court gave guidelines for the distribution of the deceased's estate and directed that:

“a. That the deceased's estate shall be distributed to all her children equally;

b. That the petitioner and the protestors shall within thirty (30) days of the date of this ruling avail by way of affidavit clear, unambiguous and conclusive details of the properties they have received from the deceased during her life-time, including details and evidence of what transpired in respect of the parcels numbers Nyandarua/ Mkungu/ 3638-3842.

c. That immediately after the filing of such affidavits as stated in (b) above, the parties shall meet to agree on the distribution of the estate.”

3. Parties complied with the order, and filed their respective affidavits. They were, however, still unable to agree on the distribution.

4. Following orders of the court made in the proceedings, the full extent of the intestate estate was disclosed through affidavits of the parties. The deceased owned a sub-division of Nyandarua/ Mkungu/2763, which received Title No Nyandarua /Mkungu/3637 measuring 3.3 hectares (8.15 acres). This is the only “free property” of the deceased. That is to say that, in terms of **section 2** of the **Law of Succession Act**, that parcel is the only:

“property of which that person [deceased] was legally competent to dispose during his lifetime and in respect of which his interest has not been terminated by his death”

5. In the said ruling this court had also pointed out that pursuant to **section 42** of the **Law of Succession Act**, distribution of the deceased's estate must include gifts proved to have been given by the deceased to any of her children during her lifetime. In this regard this court stated:

“17. Thus, in the present case, any gifts given by the deceased to her children during her lifetime must be included in the distribution. From the petitioner's evidence, the only child shown to have received a gift is Cecilia Wanjiku Mukunu.”

6. For clarity, I set out **section 42** of the **Law of Succession Act** which provides as follows:

“Where –

(a) An intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) Property has been appointed or awarded to any child or grandchild under the provisions of section 26 or 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
(emphasis supplied).

7. It is not in dispute that the deceased's daughter Cecilia Wanjiku Waweru is now known as Cecilia Wanjiku Makunu. In the affidavit of the Petitioner deponed on 16th January, 2018 and filed on 20th February, 2018, the petitioner exhibited "JNW6(d)". That exhibit shows the Green Card of sub-division of Parcel No 2763 which confirms that Cecilia Wanjiku Makunu received from the deceased – during the deceased's lifetime – Parcel Number Nyandarua /Mkungi/ 3642 comprising 0.405 hectares (1.000 Acres). This parcel must be taken into account in the distribution.

8. This court now has to determine the distribution of the deceased's estate taking into account these two principles:

a) Under section 38: an equal share to go to all deceased's children

b) Under section 42: take into account any gifts given to any child during the deceased's lifetime. This will cover the 1.00 acres transferred to Cecilia Wanjiku Makunu via Nyandarua/Mkungi/3642

9. From the evidence available, Parcel No 3637 has a 167 metre frontage along the main road. This is shown in the Mutation Form annexed as exhibit "JNW 4". Upon sub-division of the parcel for distribution, each parcel shared out should have a frontage along the road. This will be in tandem with other neighbouring parcels.

10. It is clear from the available evidence that the estate of the deceased has no other land or financial resources other than those indicated in the Petitioner's application for confirmation of grant filed in court on 20th December, 2016.

11. What remains in the distribution of the deceased's property is now a simple arithmetic exercise. Parcel No Nyandarua/Mkungi 3637 of 3.3 hectares (8.15 Acres) shall be distributed equally between the eight children of the deceased. In distributing the 8.15 acres, account must be taken of the gift of 1.00 acres already given by the deceased to Cecilia Wanjiku Makunu (Nyandarua/ Mkungi/ 3642).

Disposition

12. Accordingly, it is hereby ordered and directed as follows:

a) That the deceased's estate shall be divided and distributed as follows (in acres):

<i>Child's Name</i>	<i>Share (Ac)</i>		<i>Total Shared Acres</i>
	<i>Title 3637</i>	<i>Previous Gift (Ac) Title 3642</i>	
1. <i>Francis Muriithi Waweru</i>	1.14375	-	1.1438
2. <i>Bernard Kibanya Waweru</i>	1.14375	-	1.1438
3. <i>Patrick Mbugua Waweru</i>	1.14375	-	1.1438
4. <i>Joseph Ndirangu Waweru</i>	1.14375	-	1.1438
5. <i>Mary Wambui Waweru</i>	1.14375	-	1.1438
6. <i>Cecilia Wanjiku Makunu (Waweru)</i>	0.14375	1.000	1.1438
7. <i>Paulina Wanjiru Waweru</i>	1.14375	-	1.1438
8. <i>Penina Wangui Waweru</i>	1.14375	-	1.1438
Totals	8.15000	1.000	9.1500

b) The sub-division of Parcel No Nyandarua/Mkungi/3637 shall be done in such a manner that each sub-division shall have a frontage to the main road and shall be aligned in a similar manner as neighbouring parcels such as Nos 3638, 3639 and 3640.

c) To enable the implementation of the distribution process, a Confirmed Grant of Letters of Administration shall be issued to the administrator, Joseph Ndirangu Waweru, forthwith. The administrator shall do and perform all such things and sign all such documents as are necessary to ensure the sub-division and distribution of the deceased's estate in the terms aforesaid.

d) Each beneficiary named in the Confirmed Grant that shall be issued pursuant to paragraph 12 c) above, shall contribute an equal share to the costs and expenses of the sub-division ordered herein, as shall be indicated by the surveyor or other professional properly engaged by the administrator for the purpose of effecting the sub-division and distribution herein

e) The parties are at liberty to agree on the alignment of the sub-division of the parcels for distribution ordered in paragraph 12 b) above, and as to which beneficiary will be allotted which sub-division. Failing agreement, the administrator shall convene a meeting of all the deceased's children/beneficiaries and the issue shall be settled by a majority vote of the children.

13. Each party shall bear their own costs herein.

14. Orders accordingly

Dated and Delivered at Naivasha this 26th Day of February, 2020

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Ms Kenya holding brief for S. K. Mburu for the Petitioner
2. Protestors in person
3. Court Clerk: Quinter Ogutu