



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1088 OF 2005

IN THE MATTER OF THE ESTATE OF JOSEPH GICHANGA KIMANI (DECEASED)

RISPER WAMAITHA GICHANGA.....PETITIONER/ADMINISTRATIX

VERSUS

ALEXANDER KIMANI GICHANGA.....CO-ADMINISTRATOR

RULING

1. The deceased Joseph Gichanga Kimani died intestate on 26th March 2005 at Kikuyu Hospital. He had two houses. The first house was that of the late Leah Njoki Kimani whose children are Alexander Kimani Gichanga (co-administrator), Edwin Kiarie Gichanga, Leonard Gichuru Gichanga, Daniel Mburu Gichanga and Andrew Gitau Gichanga. The second house is that of Risper Wamaita Gichanga (the petitioner/co-administratrix) whose children are Lawrence Kimani Gichanga, Elizabeth Wanjiru Gichanga, Keziah Gathoni Gichanga and Felix Kariuki Gichanga.

2. The assets that comprise the estate of the deceased are:-

- (a) Kajiado/Kipeto/425 measuring 4.05 Ha;
- (b) Ngong/Ngong/21013 measuring 0.05 Ha;
- (c) Kajiado/Kisaju/641 measuring 4.05 Ha;
- (d) Ngong/Ngong/27934 measuring 1.31 Ha;
- (e) Ngong/Ngong/18619 measuring 0.0280 Ha;
- (f) Ngong/Ngong/27935 measuring 4.60 Ha;
- (g) Ngong/Ngong/18618 measuring 0.0281 Ha;
- (h) Kajiado/Ngong/23331 measuring 0.4047 Ha;
- (i) Ngong/Ngong/19848 measuring 0.10 Ha;
- (j) Ngong/Ngong/21005 measuring 0.05 Ha;
- (k) Kajiado/Olchoro-Onyore/2175 measuring 2.43 Ha;
- (l) Ngong/Ngong/23382;
- (m) 145/Business Ongata Rongai;

- (n) 141/ Business Ongata Rongai;
- (o) Dagoretti/Kinoo/1030;
- (p) Plot No. 10/Industrial-Inkukuon T. Centre;
- (q) vehicle KAS 667H;
- (r) vehicle KAK 201G;
- (s) Plot No. 196 Kasasi;
- (t) bank A/C No. [...] KCB Ongata Rongai; and
- (u) bank A/C [...] Ongata Rongai.

3. The estate has since 9th June 2018 been administered by Risper Wamaitha Gichanga and Alexander Kimani Gichanga following a joint grant. What is at stake is the distribution of the estate to the beneficiaries. This followed the application dated 16th May 2019 by Alexander Kimani Gichanga seeking the confirmation of the grant and the application dated 24th July 2019 by Risper Wamaitha Gichanga seeking the confirmation of the grant. Each party opposed the other side's proposal on how the estate should be shared. Following the death of Daniel Mburu Gichanga his widow Yvonne Asabe Mburu took his place.

4. The distribution proposed by Risper Wamaitha Gichanga was supported by her children, and the distribution by Alexander Kimani Gichanga was supported by his siblings.

5. In the judgment delivered on 9th June 2017 by Justice M.W. Muigai in this cause, it was determined that the matrimonial home of the late Leah Njoki Kimani was on Dagoretti/Kinoo/1025, Dagoretti/Kinoo/1027 and Dagoretti/Kinoo/1029 all of which belonged to the deceased. The deceased, it was found, had in his lifetime bequeathed the parcels to Leonard Gichuru Gichanga, Andrew Githu Gichanga and Edwin Kiarie Gichanga, respectively. The court ordered that that bequest should not be interfered with, and that the bequest should be taken into account when sharing the estate of the deceased. This court is bound by that decision. It does appear from the record that the matrimonial home of Leah Njoki Kimani extended to Dagoretti/Kinoo/1030, and that the deceased was left with the parcel. This followed the meeting dated 18th May 1991 between the deceased and his family. The total acreage of the Dagoretti/Kinoo/1025, 1027, 1029 and 1030 was 4.5 acres, it would appear.

6. The matrimonial home of Risper Wamaitha Gichanga is on Ngong/Ngong/27934 and 27935. Their total measurement is about 14.6 acres. Both sides agreed in their proposals that Risper Wamaitha Gichanga will inherit both parcels.

7. It should be noted that the deceased's Will dated 26th April 1995 was invalidated by this court in the decision rendered on 9th June 2017, and it was asked that the estate of the deceased be distributed in accordance with **sections 35, 37, 40 and 42 of the Law of Succession Act (Cap. 160)**, as if the deceased had died intestate.

8. It is my considered opinion that Risper Wamaitha Gichanga, in getting parcels Ngong/Ngong/27934 and 27935, has been adequately catered for and should not expect anything else from the estate. This will, therefore, leave her children and the children of the late Leah Njoki Kimani to be catered for. In all, the children are 9 (five from the first house and four from the second house).

9. The proposal by Alexander Kimani Gichanga was that all the rest of the property be each sold and the proceeds shared equally among them, and that the money in the bank be equally shared among them.

10. Risper Wamaitha Gichanga proposed that Plot No. 145 Ongata Rongai, Plot No. 196 Kasasi, vehicle KAK 201G and Kajiado/Kisaju/641 go to her son Felix Kariuki Gichanga; Ngong/Ngong/2331, Plot No. 129 Ongata Rongai and Plot No. 10 Inkukuon go to her daughter Elizabeth Wanjiru Gichanga; Ngong/Ngong/18618 and Ngong/Ngong/18619 go to her daughter Keziah Gathoni Gichanga; Kajiado/Olchoro-Onyore/2175 and Ngong/Ngong/19848 go to her son Lawrence Kimani Gichanga; Plot No. 141 goes to her children Lawrence Kimani Gichanga and Keziah Gathoni Gichanga; and she takes Ngong/Ngong/21005, Ngong/Ngong/21013 and vehicle KAS 667H. She then asked that Dagoretti/Kinoo/1030 goes to Alexander Kimani Gichanga; Ngong/Ngong/9757, Ngong/Ngong/9762, Ngong/Ngong/23382 and Ngong/Ngong/425 be shared by the children of the first house. Lastly, that the money in the bank be used to pay the court expenses.

11. Alexander Kimani Gichanga complained that the proposal by Risper Wamaitha Gichanga favoured her house.

12. Under **section 40** by the **Act**, the distribution of the net estate of the deceased should be shared between the houses, and this should consider the number of children in each house. It is also trite that the children of the deceased are each equal in worth, and, as much as it is possible, each should equally benefit from the estate of their father (**In the Matter of the Estate of George Karegwa Gitau (Deceased) Nairobi HC Succession No. 959 of 2001**). The court did not have evidence about the value of each parcel of land. The parcels are several, and each has a different size. Achieving equality may not be easy, and therefore the court should temper equality with equity and fairness (**Rono –v- Rono Civil Appeal No. 66 of 2002**).

13. Dagoretti/Kinoo/1025, 1027 and 1029 went to Leonard Gichuru Gichanga, Andrew Gitau Gichanga and Edwin Kiarie Gichanga, respectively. Risper Wamaitha Gichanga proposed that Dagoretti/Kinoo/1030 goes to alexander Kimani Gichanga. There was no opposition. I allow him to take the parcel. The whole land on which their mother settled was 4.5 acres. Daniel Mburu Gichanga did not benefit from the

parcel.

14. The two biggest parcels that the deceased left were Kajiado/Kisaju/641 and Kajiado/Kipeto/425, and each is 4.05 Ha. Each is about 10 acres. Balancing equality and equity, and ensuring that children of each house occupy about the same area, I ask that Kajiado/Kisaju/641 shall be equally shared by Alexander Kimani Gichanga, Edwin Kiarie Gichanga, Leonard Gichuru Gichanga, Andrew Gitau Gichanga and the estate of Daniel Mburu Gichanga as represented by Yvonne Asabe Mburu. Lawrence Kimani Gichanga, Elizabeth Wanjiru Gichanga, Keziah Gathoni Gichanga and Felix Kariuki Gichanga shall equally share Kajiado/Kipeto/425.

15. To balance what the children of the first house got before the deceased died, I give the children of the second house (Lawrence Kimani Gichanga, Elizabeth Wanjiru Gichanga, Keziah Gathoni Gichanga and Felix Kariuki Gichanga) Kajiado/Olchoro-Onyore/2175 (measuring about 6 acres) to share equally.

16. The estate of Daniel Mburu Gichanga as represented by Yvonne Asare Mburu shall get Ngong/Ngong/23331, which is about one acre.

17. Ngong/Ngong/18618, Ngong/Ngong/18619, Ngong/Ngong/19848 Plot No. 141 Ongata Rongai and Plot No. 196 Kasasi shall be jointly owned by the children of the first house in equal shares.

18. Ngong/Ngong/21005, Ngong/Ngong/23382, Plot No. 145 Ongata Rongai and Plot No. 10 Inkukuon Trading Centre shall jointly go to the children of the second house in equal shares.

19. Vehicle KAS 667H and vehicle KAK 201G, and any other property not shown above, shall be sold and the proceeds shared equally among the children of the deceased.

20. The money in Account No. [...] KCB Ongata Rongai and Account No. 059-1980 Ongata Rongai shall be used to cover the costs of the administration of the estate, including the subdivision of the parcels. Any balance shall be shared equally among the children of the deceased.

21. In those terms, the grant issued to Risper Wamaita Gichanga and Alexander Kimani Gichanga on 9th June 2018 is hereby confirmed.

DATED AND DELIVERED ON THE 15TH DAY OF JUNE 2020

A.O. MUCHELULE

JUDGE