



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 957 OF 2017

IN THE MATTER OF THE ESTATE OF JOHN KIARIE KAROMO (DECEASED)

RULING

1. The contestation before court is in relation to the distribution of the only asset which belongs to the deceased estate being **L.R. No. Ndumberi/Ting'ang'a/616** measuring 2.04 Ha.

2. The deceased John Kiarie Karomo died intestate on the 24th of June, 1998 and left behind his widow and several children. The deceased widow died in 2007. One daughter also died living behind two children (sons).

3. There is therefore no dispute that the heirs of the estate are:

- i. Margaret Wanjiku Kiarie
- ii. Samuel Ngugi Kiarie
- iii. Jane Wanjiru Kiarie
- iv. Eunice Wambui Kiarie
- v. Alice Ithuru Kiarie
- vi. Bernard Ng'ang'a Kiarie
- vii. John Kiarie and George Ndung'u
- viii. Priscilla Gakuru Kiarie

4. Grant of letters of administration was issued on 23rd of May, 2018 to **Samuel Ngugi Kiarie, Margaret Wanjiku Kiarie** and **Eunice Wambui Kiarie**. Notable though is that the representative of the estate of Alice Ithuru Kiarie, Bernard Ng'ang'a Kiarie and Priscilla Gakuru Kiarie did not sign the consent for the appointment of said administrators.

5. On the 2nd of April 2019 three of the administrators sought to confirm the grant and proposed a mode of distribution as follows:

- i. Samuel Ngigi Kiarie - 1.64 Acres
- ii. Priscilla Gakuru Kiarie - 0.46 Acres
- iii. Eunice Wambui Kiarie – 0.53 Acres
- iv. Margaret Wanjiku Kiarie – 0.53 Acres
- v. John Kiarie and George Ndung'u – 0.46 Acres
- vi. Jane Wanjiku Kiarie – 0.46 Acres

vii. Samuel Ngigi Kiarie – 0.45 Acres

(said to have been sold to him by Alice Ithiru Kiarie)

viii. Bernard Ng'ang'a Kiarie – 0.48 Acres

6. A consent in support was signed by only 5 out of the 9 named beneficiaries two of who represent their deceased mother. It is not clear other than for Bernard the protestor why the consent of the others was not obtained.

7. In an affidavit of protestor dated 9th April 2019 Bernard Ng'ang'a Kiarie disagrees with the proposed subdivision. It is his case that the parents did not envisage one of their children would occupy a larger portion compared to the others and that if indeed that was the intention their father would have subdivided the said property while alive. He contends that his brother Samuel took to cultivating a bigger portion upon the death of their mother.

8. In response to the protestor Samuel Ngigi Kiarie and Margaret Wanjiku Kiarie they contend that the deceased divided his property to his children in 1999 with each one of them occupying their portion. Secondly the protestor got a smaller share since the deceased also gave him another property. The justification for Samuel's larger share is said to be for reason that he took care of his parents whereas the protestor was in bad terms with his parents. Samuel also alleges to have bought of Alice's share. A sale agreement was availed.

9. In a rejoinder the protestor denied the allegation of another land having being allocated to him.

10. In support of subdivision by the deceased were pictures of occupation by different persons and an alleged note on distribution by the deceased to 8 children which did not give an indication of acreage, further the note stated that houses in Riruta would go to Ngigi and a house in Ting'ang'a would go to Ng'ang'a. The other document is said to be an extract from a book witnessed by several people on the 7th of April 2004 stating that some papers from the said book had been plucked.

11. The initial movers of the petition for grant of representation indicated that the deceased died intestate which indeed he did as the evidence placed before court does not support the assertion that he left a written will nor gifted his estate *inter vivos*. The pieces of paper are not admissible in evidence as a will.

12. The so-called proof of distribution was not witnessed nor can it qualify to be a will indeed the same did not give any acreages alleged.

13. In the absence of proof as required, that the deceased gave gifts *inter vivos* or left behind a valid will the court has to fall back to Section 38 of the Laws of Succession Act Chapter 160 of the Laws of Kenya, which provides that where an intestate leaves behind children, the estate will be divided equally among the surviving children.

14. The law has not put any conditions so that if a child spends time and money on his parents and where the parent did not gift or leave a will, the said child cannot claim to be more entitled than a delinquent child. All children of an intestate are treated equally by the law in respective of gender.

15. Consequently, the protest succeeds.

16. The court therefore directs that fresh subdivision whose cost will be borne by all the beneficiaries be undertaken jointly or by either of the administrators so that property Number **Ndumberi/Ting'ang'a/616** be shared equally among the children of the deceased (8 portions).

17. Each party to bear their on costs.

DATED, SIGNED and DELIVERED at NAIROBI this 24TH DAY OF SEPTEMBER, 2020.

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ALI-ARONI

JUDGE