



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 41 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE JOHANA KAMAU MWATHI

LUCIA WANGESHI KAMAU1ST PETITIONER

NAOMI WAITHERA KAMAU.....2ND PETITIONER

VERSUS

WANJIKU KAMAU.....OBJECTOR

RULING ON DISTRIBUTION

1. On 25th June 2015 Hon Justice Karanja made the following decision in respect to this estate.

“ a) **The certificate of confirmation of grant be and is**

hereby revoked to pave way for a new certificate.

b) The beneficiaries were at liberty to agree on the mode of distribution of the estates unmovable property taking into account what was disposed off by the deceased during his life time.

c) The deceased having been recognized as a polygamous man, the estate be divided between his two (2) houses in accordance with Kikuyu customary law or section 40 of Cap 160.”

2. The parties herein then proceeded to attempt the various ways to share the deceased property which save for the purchasers they were unable to agree. Each of them did file their various mode of distribution as it can be deduced from the proposals filed on 17th February 2017, 5 May 2015, 14/5/2015, 29/10/2018 and the affidavit of Monica Wamboi Kamau.

3. All the parties agree that they should share the estate and each of them to go their own way. It must be noted that the decision by my brother Karanja J was not challenged by way of appeal or review. Therefore contrary to the averments of Monica Wamboi Kamau, the earlier grant issued in the year 2009 was revoked and consequently superseded by the orders issued in the aforestated ruling.

4. A close scrutiny of the rival modes of distribution seems to suggest equality for both houses. Obviously, in this kind of proceedings, it is not possible to achieve equality but at least some equity must be attained. It must also be emphasized that the property or the estate belonged to the deceased and it is high time that the beneficiaries in whatever form must work hard to attain their wealth and not to die and fight over their parents estate.

5. Having stated so, it is evidently that the proper law governing the estate herein is **Section 40 of the Succession Act** which state that;

“ Where an estate has married more than once under any system of law permitting polygamy, his personal and household effect 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.”

6. In such a situation it would be appropriate that the estate be shared equally between the two houses and thereafter they shall be at liberty to share out among themselves. The two widows essentially shall ensure that the deceased children are apportioned their shares appropriately.

7. In my view therefore the proposed mode of distribution dated 18/9/2011 and filed on 29/10/2018 is more reasonable and efficacious. The

same ensures that each of the capital assets of the estate is shared equally and equitably.

8. Were this court to follow the other modes, then it would have entered into the arena of distributing directly to the beneficiaries yet as it appears on record, several parties seemed to have settled and done developments at least on an individual basis. Nothing precludes the parties from “trading” in their portions in a give and take individual basis. Further more each of the household shall get a portion of at least each assets.

9. At the same time, the families can be at liberty to dispose the assets and share the proceeds once it has been bequeathed to them.

10. The question of gender should be addressed by the respective household appropriately and for now it would be onerous for this court to venture into it.

11. Consequently the distribution be as follows:-

1. HOUSE ONE (FIRST WIDOW)

- 1). Kitale Municipality No. 6156 – 10 acres
- 2) Nyakinywa Plot No. 105 – 3.3 Acres
- 3). Cherengany/Kapsara/205 – 16.5. Acres
- 4) Mwago Farm – 41 Acres
- 5) Naivasha Maraigishu Block 8/424 – 0.5 acres
- 6) Nairobi Block 105/301 measuring 0.25 acres

7) **Machinery**

- a) Tractor John Deere
- b) Corn sheller
- c) Boom sprayer
- D) Spinner
- d) Disc harrow
- 8) Tractor (4) tons

II) HOUSE TWO (2ND WIDOW)

- 1) Kitale Municipality Plot No. 6156 – 10 Acres
- 2) Cherengany/Kapsara/205 – 16.5 Acres
- 3) Mwago Farm LR 6628/3 – 34 Acres
- 4) Waumini parcel measuring – 10.5 acres
- 5) Nawache Maraigishu Block 8/424 – 0.5 Acres

Machinery

- a) Tractor Fiat 100-90
- b) Plough Disk
- c) Posho Mill
- d) Spike harrow.

III) Accounts

The amount if any available in the said accounts shall be shared equally between the two houses.

The shares as well as liabilities shall be shared equally among the two houses.

It must however be noted that the liabilities due to the estate must as of necessity be settled by the proceeds from the accounts before sharing the same.

- a) Barclays Bank Eldoret Branch A/C No 831****
- b) Barclays Bank Eldoret Bank Account No. 001****
- c) Kenya Commercial Bank Nakuru Branch Account No. 2006****
- d) Standard chartered Bank Ltd Account No. 01020-39****
- e) Standard Chartered Bank Ltd Account No. 00003**** Nairobi Branch

Shares

- f) ICDC Shares – Certificate No. 8872
 - g) Kenya Airways – Certificate No. 008****
 - h) Standard chartered Certificate No. 001****
 - I) Barclays Bank Certificate No. 001****
- IV) Nakuru Municipality Block 2/80 and 2/81 (Stadium Flats No. 703 Nakuru)

The same is still under some litigation. Once the dispute is resolved it be shared equally between the two houses.

- V) 4 acres to Kaosa & Co Advocates out of Kitale Municipality 6156. To be shared equally between the two houses.

In conclusion, should there be either assets not provided the beneficiaries be at liberty to apply. Being a family cause, each party shall meet their respective costs.

Delivered, signed and dated at Kitale this 22nd January 2019.

H.K. CHEMITEI

JUDGE

22/1/19

In the presence of:

Barongo for 2nd Petitioner

Ambutsi holding brief for Isiaho for Objector

No appearance for the 1st Petitioner

Court Assistant – Kirong

Ruling read in open court.