



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 583 OF 2010**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIBURI MUCIARIA (DECEASED)**

**ZIPPORAH GACHEKE ..... 1<sup>ST</sup> PETITIONER**

**MARGARET GACHERI ..... 2<sup>ND</sup> PETITIONER**

**VERSUS**

**NAOMI NKOYAI KIBURI ..... PROTESTOR**

**FINAL JUDGMENT**

1. On 25<sup>th</sup> October 2018, this court delivered a partial judgment whereby it found that there was no evidence that the properties put forward by the combatants in this Cause formed part of the estate. The court therefore directed that the parties do provide such evidence to assist the court in distributing the estate.

2. On 5<sup>th</sup> December 2018, the District Land Adjudication and Settlement Officer, Tigania East District and Demarcation Officer Akaiga Adjudication Section filed letters in court confirming the properties that were owned by the deceased to be as follows: -

**Kiguchwa Adjudication Section**

- |                         |   |            |
|-------------------------|---|------------|
| a) Land Parcel No. 1724 | - | 5 acres    |
| b) Land Parcel No. 1835 | - | 0.40 acres |
| c) Land Parcel No. 1914 | - | 3 acres    |
| d) Land Parcel No. 2063 | - | 3.50 acres |
| e) Land Parcel No. 2355 | - | 0.70 acres |
| f) Land Parcel No. 2430 | - | 0.20 acres |
| g) Land Parcel No. 2817 | - | 1.06 acres |
| h) Land Parcel No. 2785 | - | 0.10 acres |
| i) Land Parcel No. 3676 | - | 0.50 acres |
| j) Land Parcel No. 3685 | - | 0.45 acres |
| k) Land Parcel No. 2127 | - | 0.05 acres |
| l) Land Parcel No. 2470 | - | 0.60 acres |

**Akaiga Adjudication Section**

- a) F/No. 4028 - 0.96 acres
- b) F/No. 5117 - 1.50 acres
- c) F/No. 5119 - 1 acre

3. It was confirmed that F/No. 5118 measuring 7.37 acres is recorded as owned by Naomi Nkoyai. In this regard, that property is not available for distribution. Therefore, the total acreage available for distribution is 19.02 acres.

4. As was found in the partial judgment, the deceased was survived by 3 widows and 19 children as follows: -

**Widows**

- a) Naomi Nkoyai
- b) Zipporah Gacheke
- c) Margaret Gacheri

**Children**

- a) Rahab Kanario
- b) Esther Mukubu
- c) Benjamin Kimathi
- d) Rebecca Kagwiria
- e) Ayub Mwiti
- f) Josephin Kendi
- g) Doreen Karambu
- h) Laban Mutethia
- i) Magdalene Nkirote
- j) George Kaberia
- k) Vivian Kananu
- l) Lucy Makena
- m) Jasper Collin Mugambi
- n) Eric Murungi
- o) Nicholas Mutwiri
- p) Samuel Thurania
- q) Jesse Mwendwa
- r) Polly Mukiri
- s) Agnes Ntinyari

5. While the petitioners were categorical as to where they had been settled by the deceased, the objector did not specify where she was settled. Margaret Gacheri was settled on **plot no. 1914** while Zipporah Gacheke Mituru was settled on **plot no. 3676**.

6. In distributing the estate, I propose to take into consideration the foregoing. I will also consider the fact that the protestor lived the longest with the deceased and that therefore most of the estate properties were acquired with her substantial contribution as found in the partial

judgment.

7. Since the deceased was polygamous, the provisions applicable in the distribution of his estate is **section 40 of the Law of Succession Act**. That section requires that the estate be distributed equally with each child representing a unit. Further, every surviving widow represents an independent and separate unit.

8. The acreage being 19:02 acres and the beneficiaries being 22, each beneficiary will be entitled to approximately 0.864 acres.

9. In view of the foregoing, I am of the view that the estate be distributed as follows: -

**Kiguchwa Adjudication Section**

<b>a) Land Parcel No. 1742</b>	-	<b>5 acres</b>
<b>Naomi Nkoyai</b>	-	<b>(0.864)</b>
<b>Rahab Kanario</b>	-	<b>(0.864)</b>
<b>Esther Mukuru</b>	-	<b>(0.864)</b>
<b>Benjamin Kimathi</b>	-	<b>(0.864)</b>
<b>Rebecca Kagwiria</b>	-	<b>(0.864)</b>
<b>Ayub Mwiti</b>	-	<b>(0.68)</b>
<b>b) Land Parcel No. 2817</b>	-	<b>1.06 acres</b>
<b>Josephine Kendi</b>	-	<b>(0.864)</b>
<b>Ayub Mwiti</b>	-	<b>(0.196)</b>
<b>c) Land Parcel No. 2063</b>	-	<b>3.5 acres</b>
<b>Doreen Karambu</b>	-	<b>(0.864)</b>
<b>George Kaberia</b>	-	<b>(0.864)</b>
<b>Laban Mutethia</b>	-	<b>(0.864)</b>
<b>Vivian Kananu</b>	-	<b>(0.864)</b>
<b>d) Land Parcel No. 3685</b>	-	<b>0.45 acre</b>
<b>Jasper Collin</b>	-	<b>whole</b>
<b>e) Land Parcel No. 2470</b>	-	<b>0.60 acre</b>
<b>Naomi Nkoyai</b>	-	<b>whole</b>
<b>f) Land Parcel No. 2355</b>	-	<b>0.70 acre</b>
<b>Magdalene Nkirote</b>	-	<b>whole</b>
<b>g) Land Parcel No. 1835</b>	-	<b>0.40 acre</b>
<b>Jasper Collin Mugambi</b>	-	<b>whole</b>
<b>h) Land Parcel No. 3676</b>	-	<b>0.50 acre</b>
<b>Zipporah Gacheke</b>	-	<b>whole</b>
<b>i) Land Parcel No. 2430</b>	-	<b>0.20 acre</b>

Zipporah Gacheke - whole  
j) Land Parcel No. 2127 - 0.05 acre  
Zipporah Gacheke - whole  
k) Land Parcel No. 1914 - 3 acres  
Margaret Gacheri  
Polly Mukiri  
Agnes Ntinyari  
l) Land Parcel No. 2785 - 0.10 acre  
Zipporah Gacheke - whole

Akaiga Adjudication Section

a) F/No. 4028 - 0.96 acre  
Eric Murungi  
b) F/No. 5117 - 1.50 acre  
Nicholas Mutwiri - 0.864 acre  
Samuel Thurania - 0.64 acre  
c) F/No. 5119 - 1 acre  
Samuel Thurania - 0.200  
Jesse Mwenda - balance  
d) A/C NO. [particulars withheld] Barclays Bank held jointly with Naomi Nkoyai  
Naomi Nkoyai by dint of the principle of survivorship.

**DATED and DELIVERED at Meru this 21<sup>st</sup> day of February, 2019.**

**A. MABEYA**

**JUDGE**