



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 523 OF 2015

RE ESTATE OF JOHN MURAYA ALIAS JOHN MURAYA NJERU (DECEASED)

ALICE WACHU MURAYA.....PETITIONER

VERSUS

DANIEL MURAYA NJERU.....PROTESTOR

JUDGMENT

1. John Muraya *alias* John Muraya Njeru (hereafter *the deceased*) died *intestate* on 20th December 2014. A dispute has arisen over the *distribution* of his free estate.
2. The deceased was *polygamous*. The petitioner is the widow from the 2nd house. The protestor is the eldest son from the 1st house. They applied jointly as the administrators of the estate.
3. The disputants *agree* that the shares in Kenya Electricity Generating Company (*KenGen*) devolve to the protestor. They also *agreed* that the shares at Gatunguru Tea Factory devolve to the petitioner. I will grant their prayer.
4. But they *disagree* sharply on the *distribution* of the only other asset: a piece of land known as *Loc.19/Kiawambogo/2005* measuring 0.2 hectares or thereabouts. The petitioner proposes that the property be divided into two; each house to get a half.
5. The protestor argues that the 1st house has *ten* children while the 2nd house has only *two* units: the widow and her son Bernard Njeru Muraya. He submitted that it would be unjust to divide the property *equally* between the two houses. He proposes that the property be divided into *three* equal portions measuring 0.04 hectares. The 1st house would get two portions; the 2nd house to get a third.
6. Directions were granted that the dispute be resolved by affidavits and oral submissions. The petitioner's affidavit was filed on 1st March 2017. The protest was lodged on 5th September 2017.
7. There is *no* dispute about the identities of the heirs. There are *ten* children from the 1st house. Their matriarch, Grace Waitherero Muraya, is deceased. The 2nd house comprises of the widow and her *only* son, Bernard Njeru Muraya.
8. Sections 26 and 29 of the **Law of Succession Act** do *not* discriminate between *sons* and *daughters*; or, even *married* daughters. ***Re Estate of Simeon Kuria Kamau*** High Court, Eldoret Succession Cause 218 of 1997 [2014] eKLR.
9. Since the deceased was *polygamous* and died *intestate*, section 40 (1) of the Act is relevant. It provides-

“40 (1) Where an intestate has married more than once under any system of law permitting polygamy his personal and household effects 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.”
10. Section 40 does *not* however take away the *discretion* of the court to distribute the estate *fairly*. ***Rono v Rono & another*** [2008] 1 KLR (G&F), [2005] 1 KLR 538 at 553, ***Esther Wanjiru Githatu v Mary Wanjiru Githatu***, Eldoret High Court P&A 244 of 2002 [2016] eKLR.
11. The disputed asset is a small piece of land. If the property is divided as proposed by the petitioner, the 2nd house comprising of only 2 units will end up with the lion's share. If on the other hand the property is divided equally among the children and the widow, the 1st house will gobble up too large a share.

12. Justice in this case will be better served by adopting the protestor's version. It seems *less* selfish; and, it is fair to all the heirs. I decline to apply section 40 of the Act *blindly* in this case. **Rono v Rono & another** (supra).

13. The upshot is that the estate of the deceased shall be distributed as follows-

i) Loc. 19/Kiawambogo/2005 measuring 0.2 hectares shall in the first instance be divided into *three equal* portions of 0.04 hectares each.

ii) 0.04 hectares shall devolve to Daniel Njeru Muraya, Francis Mwangi Muraya, Rose Wangui Muraya, Jane Muthoni Muraya and Lucy Wanjiku Nyambura all from the 1st house.

iii) 0.04 hectares shall be distributed to Peter Magwi Muraya, Stanley Gathamba Muraya, Nancy Wanjiru Muraya, Nelius Njeri Muraya and Grace Waitherero Nyambura all from the 1st house.

iv) 0.04 hectares shall go to the 2nd house represented by the widow Alice Wacu Muraya and her son Bernard Njeru Muraya.

v) The shares in Kenya Electricity Generating Company Limited (*KenGen*) shall wholly devolve to Daniel Njeru Muraya.

vi) The shares in Gatunguru Tea Factory Company Limited shall devolve wholly to the widow Alice Wacu Muraya.

14. The grant shall be *confirmed* in terms of this judgment. In the interests of justice, there shall be *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 14th day of March 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr.....for the Petitioner instructed by J. Gacheru & Company advocates.

Protestor (in person)

Ms. Dorcas and Ms. Elizabeth, Court Clerks.