



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1324 OF 2009**

**IN THE MATTER OF THE ESTATE OF HARRISON NGANGA alias KARANJA alias MAANDAMANO HARDWARE  
(DECEASED)**

MARY NJERI KARANJA .....1<sup>ST</sup> APPLICANT

JOSEPH MBUGUA KARANJA .....2<sup>ND</sup> APPLICANT

VERSUS

SALOME NJOKI KARANJA .....1<sup>ST</sup> RESPONDENT

STEPHEN KIURU KARANJA .....2<sup>ND</sup> RESPONDENT

**RULING**

1. The deceased Harrison Karanja Ng'ang'a died intestate on 10<sup>th</sup> September 2008. He left two widows (1<sup>st</sup> respondent Salome Njoki Karanja and 1<sup>st</sup> applicant Mary Njeri Karanja) and 12 children. The children include the 2<sup>nd</sup> respondent Stephen Kiuru Karanja and the 2<sup>nd</sup> applicant Joseph Mbugua Karanja. The widows and these two sons were on 2<sup>nd</sup> October 2009 granted letters of administration intestate. The grant was confirmed on 26<sup>th</sup> October 2016 on the application of the respondents.

2. The 1<sup>st</sup> applicant filed an application dated 21<sup>st</sup> March 2017 seeking the court to vary its ruling dated 26<sup>th</sup> October 2016 confirming the grant to include, in the list of undisputed assets to be shared, monies held in Barclays Bank Account No. 0673542123 and Equity Bank Account No. 0820192970653. He case was that the court had failed to include the accounts in its ruling when they had been listed in the petition. The other request was the court does specify the accounts held by the deceased at Standard Chartered Bank. Lastly, that the court had erroneously given L.R. No. 209/8274/101 Pioneer Estate to one house. She wanted this corrected.

3. There is no dispute that when the application was served to the administrators, all, except the 2<sup>nd</sup> applicant, entered into negotiation to settle the matter. They then filed a consent on 21<sup>st</sup> January 2018 in which they included the account numbers for Barclays Bank and Equity Bank. It was agreed that the proceeds of each account were to be shared equally between the widows. The Standard Chartered Bank accounts were specified and their proceeds were to be shared equally between the widows. Lastly, it was agreed that L.R. No. 209/8274/101 was also to be equally shared between the widows.

4. In opposing the application, the 2<sup>nd</sup> applicant in an affidavit sworn on 8<sup>th</sup> November 2017 and filed on 9<sup>th</sup> November 2017 stated as follows:-

**“4. THAT I do not object to the contents in paragraph 4 and 5 of the affidavit in support and only reiterate that the same be distributed as per the court’s ruling to all the beneficiaries.**

**5.THAT subject to the contents in paragraph 6 as the best possible and most equitable sharing was that delivered by this Honourable Court. The proposed consent by co-administrators does not reflect the ruling of this Honourable Court.**

**6. THAT further to paragraph 5 above, I humbly submit that the application for review by my co-administrator be allowed only with regards to prayer (a) of the application for review dated 21<sup>st</sup> March, 2017 and I have attached a draft consent marked “JMK-1” with respect to the partial confirmation of grant.”**

5. It is important to appreciate the grievances by the 2<sup>nd</sup> applicant whose mother is the 1<sup>st</sup> applicant. In the ruling of 26<sup>th</sup> October 2016 the 1<sup>st</sup> applicant was, for instance, given life interest in plots 221/222 Kariobangi South Jua Kali Section B, Limuru/Kamirithu/587/7, (now T.71), Dandora Plot 754 Nairobi, Korogocho Plot Nairobi, Limuru/Bibirioni/T.30, Limuru/Bibirioni/T.873 (now T.830) and Limuru/Bibirioni/1837, and thereafter to all her children. The money in Standard Chartered Bank was to be shared equally among all the beneficiaries of the deceased. In the consent, the money at Standard Chartered Bank was to be shared equally only between the two widows. The accounts were No. 0151201232100 Ruaraka Branch and No. 0151293110300 Ruaraka Branch. As for the parcels of land that had been allocated to the house of the 1<sup>st</sup> applicant, the consent now gave all of them in “whole” to the applicant without reference to the life interest, or that upon her death they would go to her children. In either case, the money or the parcels of land, the 2<sup>nd</sup> applicant preferred the ruling of 26<sup>th</sup> October 2016.

6. It is my considered view that once the Court distributed the estate in the ruling of 26<sup>th</sup> October 2016, all the beneficiaries became bound by it, until or unless it was set aside or varied on appeal or review. The ruling bound all the other administrators as it bound the 2<sup>nd</sup> applicant. It was not therefore open to the co-administrators to sit down without the 2<sup>nd</sup> applicant and vary the terms of the ruling. Indeed the ruling was varied by the consent to his disadvantage. It follows that, the letters of consent dated 21<sup>st</sup> December 1997 and signed by the co-administrators and Esther Wanjiru, and which did not have the signature of the 2<sup>nd</sup> applicant, could not be acted upon to vary or set aside the ruling of 26<sup>th</sup> October 2016. On 18<sup>th</sup> December 2018 I reviewed and set aside the ruling delivered on 11<sup>th</sup> May 2018 that adopted the consent.

7. It is true that in the ruling of 26<sup>th</sup> October 2016 that confirmed the grant, the proceeds of Barclays Bank Account No. 0673542123 and Equity Bank Account No. 0820192970653 were not distributed. I consider that the amount in each of the accounts has not been indicated. The appropriate order, in the circumstances, is to ask that all the proceeds of the two accounts be shared equally among all the beneficiaries.

8. The 1<sup>st</sup> applicant had a problem with L.R. No. 209/8274/101 Pioneer Estate having been given to her co-widow. There is no reason to review the ruling in regard to this property. This is because there is no new evidence or material that has been placed on record to enable review. The circumstances that were obtaining at the time of the ruling have not changed. Secondly, no error or mistake has been demonstrated by the applicant.

9. The second application dated 24<sup>th</sup> July 2018 was by the 2<sup>nd</sup> applicant. He sought that the money kept in account No. 015120123100 as ordered by the court on 21<sup>st</sup> July 2011 be divided among the beneficiaries; Salome Njoki Karanja (1<sup>st</sup> respondent) be ordered to release Plot No. 574 Dandora as ordered on 20<sup>th</sup> October 2016; and Tassia money which was collected since 2008 be divided equally and the same be considered as part of the estate as ordered on 27<sup>th</sup> June 2011. The gist of the application is to question the ruling of 26<sup>th</sup> October 2016, and to seek to vary it. It is my view the parties have to live with the distribution of 26<sup>th</sup> October 2016 and should make effort to implement it. At the time of the hearing of the application for confirmation, the parties had opportunity to place before the court the orders that were made on 21<sup>st</sup> July 2011 and 27<sup>th</sup> June 2011.

10. In the affidavits of J. Kimani Githongo Advocate and the 1<sup>st</sup> applicant, sworn on 17<sup>th</sup> September 2018 and 25<sup>th</sup> October 2018, respectively, it was deponed that the orders of 21<sup>st</sup> July 2011 and 27<sup>th</sup> June 2011 were interim orders which were made pending the confirmation of the grant. The orders had, according to them, been overtaken by events. The deponents made reference to the consent above, and the fact that the ruling of 11<sup>th</sup> May 2018 had replaced the previous orders. I find no merit in the 2<sup>nd</sup> applicant's application.

11. In conclusion, the application dated 24<sup>th</sup> July 2018 by the 2<sup>nd</sup> applicant is dismissed. Regarding the application dated 21<sup>st</sup> March 2017 by the 1<sup>st</sup> applicant, I make an order that the estate of the deceased Harrison Karanja Ng'ang'a shall be distributed in accordance with the ruling delivered on 26<sup>th</sup> October 2016 confirming the grant. It is clarified that the Standard Chartered Bank Account numbers are 0151201232100 and 0151293110300 at Ruaraka Branch and the proceeds therein shall be shared equally among all the beneficiaries of the deceased. Secondly, the ruling is reviewed to include the proceeds of Barclays Bank Account No. 0673542123 and Equity Bank Account No. 0820192970653 which shall be equally shared among all the beneficiaries of the estate of the deceased. In that limited sense, the application dated 21<sup>st</sup> March 2017 is allowed. A certificate of confirmation shall be issued in these terms. All other certificates of confirmation, if issued, are recalled and cancelled.

12. This is a family dispute. Each party shall pay own costs.

**DATED and DELIVERED at NAIROBI this 25<sup>TH</sup> day of JUNE, 2019.**

**A.O. MUCHELULE**

**JUDGE**