



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 34 OF 2001**

**IN THE MATTER OF THE ESTATE OF LAMEKI GACHERU WAMBURA (DECEASED)**

**PATRICK NJOGU GACHERU.....PETITIONER**

**VERSUS**

**HARRISON MUIRURI GACHERU.....OBJECTOR**

**RULING**

1. The deceased Lameki Gacheru Wambura died intestate on 20<sup>th</sup> August 1999. He left two house:- the house by Joyce Njeri Gacheru (deceased) and the house of Anne Wanjiku Gacheru. In the house of Joyce Njeri Gacheru were the following children:-

(a) Patrick Njogu Gacheru (the petitioner);

(b) Lucy Muthoni Gacheru; and

(c) the late James Mwaura who left a family comprising of his widow Maria Nyangabi Mwaura and five children.

2. When the deceased married Anne Wanjiku Gacheru she had her own two children Harrison Muiruri Gacheru she had her own two children Harrison Muiruri Gacheru (the objector) and Mary Njeri Gacheru. With the deceased, she got two children, Margaret Nduta Gacheru and Jerusha Nyokabi Gacheru. Long after the deceased died, she bore Peter Wambura Gacheru. He was, admittedly, not the deceased's child.

3. In the affidavit by the objector, upon his mother being married to the deceased, he and his sister Mary Njeri Gacheru were taken in by the deceased who provided for all their needs including education, shelter, medicine, discipline, and so on. In other words, the two were the deceased's dependants. It is on this basis that he sought that the two to be provided for from the estate of the deceased. In the affidavit of protest dated 11<sup>th</sup> October 2017 he had indicated that he had Mary Njeri Gacheru were children of the deceased. He clarified that he and his sister Mary Njeri Gacheru were not biological children of the deceased, when the petitioner in affidavit dated 7<sup>th</sup> March 2018 swore that not all the children of Ann Wanjiku Gacheru fathered by the deceased. Mary Njeri Gacheru did not lay a claim to the estate, and the objector did not state that he was filing the objection/protest on his own behalf and on her behalf. I am unable to find that the objector has shown that he depended on the deceased. I have proceeded on the basis that dependency under **sections 26, 28 and 29** of the **Law of Succession Act** has to be proved **R.N.M. -v- R.M.N [2017] eKLR**. A mere allegation does not amount to proof. This means that from the second case, the beneficiaries are Anne Wanjiku Gacheru, Margaret Nduta Gacheru and Jerusha Nyokabi Gacheru.

4. When the petition was filed, the petitioner indicated that the estate of the deceased comprised Loc. 6/Gikarangu/2349 measuring 2.63Ha, Pundamilia Farmers Coop. Society share No. 0318, plot No C5 242 Kayole and Kibera KLS/2/242. In a subsequent affidavit, he clarified that the estate comprised Loc.6/Gikarangu/2349; Pundamilia Farmers Coop. Society Ltd. in which the deceased held a share which yielded 0.070Ha registered as Makuyu/Makuyu/4715 in the name of the deceased; and Wendano Wa Muri Co. Ltd in which the deceased had one share.

5. I am aware of the provisions of **section 40(1)** of the **Act** in relation to the distribution of an estate of a polygamous deceased. However, I consider that Ann Wanjiku Gacheru was, according to the undisputed evidence in the petitioner's replying affidavit, married to the deceased in 1996. By this time the deceased and his late first wife had acquired the property contained in the estate. That acquisition bore the contribution of the deceased's late wife (the mother to the petitioner).

6. I consider that Loc.6/Gikarangu/2349 is about 6.4961 acres. I will give Ann Wanjiku Gacheru 2 acres of the parcel which she will be

registered in her name to hold in trust for herself and her two children Margaret Nduta Gacheru and Jerusha Nyokabi Wacheru in equal shares. The balance of 4.4961 acres shall be shared equally among Patrick Njogu Gacheru, Lucy Muthoni Gacheru and Maria Nyangabi Mwaura (the later to hold in trust for the children of the late James Mwaura). Makuyu/4715 shall be registered in the joint names of Patrick Njogu Gacheru, Lucy Muthoni Gacheru and Maria Nyambagi Mwaura (the later shall hold in trust for the children of James Mwaura). Lastly, the deceased's share in Wendano Wa Muri Co. Ltd shall be registered in the name of Ann Wanjiku Gacheru to hold in trust for herself and for Margaret Nduta Gacheru and Jerusha Nyokabi Gacheru.

7. In these terms, the grant issued to the petitioner on 21<sup>st</sup> March 2001 shall be confirmed.

8. Each party shall bear own costs.

**DATED and DELIVERED at NAIROBI this 24<sup>TH</sup> day of SEPTEMBER, 2019.**

**A.O. MUCHELULE**

**JUDGE**