



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1162 OF 2016

IN THE MATTER OF THE ESTATE OF JAMES ALLAN GUAMA (DECEASED)

JAYNE RUTH GUAMA.....APPLICANT

VERSUS

CATHERINE WAMBUI GUAMA.....1ST PROTESTOR

ELIZABETH WANGARI GUAMA.....2ND PROTESTOR

AGNES NYOKABI GUAMA.....3RD PROTESTOR

ANN WANJIRU GUAMA.....4TH PROTESTOR

JENNIFER NYAMBURA GUAMA.....5TH PROTESTOR

R U L I N G

1. Pending before court is the confirmation of grant which was met with a protest as the mode of distribution as was then proposed by the administrators is not acceptable to some of the beneficiaries.
2. The deceased James Allan Guama died in the United States of America at St. Francis Hospital, Federal Mal on the 19th of February, 2014.
3. On the 15th of July 2016 Jayne Ruth Guama (widow) and Jenniffer Nyambura Guama (daughter) petitioned for letters of administration intestate. A grant was issued on 22nd of October 2016.
4. At the point of petitioning the following were listed as survivors of the estate:
 - a) Jayne Ruth Guama - widow – aged 61 years
 - b) Catherine Wambui Guama – daughter, aged 42 years
 - c) Elizabeth Wangari Guama – daughter, aged 41 years
 - d) Bob Alex Guama – son, aged 41 years
 - e) Agnes Nyokabi Guama – daughter, aged 40 years
 - f) Ann Wanjiru Guama – daughter, aged 40 years
 - g) Jenniffer Nyambura Guama – daughter, aged 39 years
 - h) Eric Peter Ndegwa Guama – son aged 35 years

- i) Daniel Victor Nderitu Gauma – son, aged 31 years
- j) Nicholas Isaac Karanja Gauma – son, aged 29 years
- k) Sylvia Wambui Guama – daughter, aged 24 years

5. The assets of the deceased valued at Kshs.21,000,000/= were listed as follows:

- CDSC Account No. [xxxx]
- 400 shares in Barclays Bank Ltd
- 200 shares in Eveready Ltd
- 450 shares in Sameer
- 1000 shares in HFCK
- 7000 shares in KCB
- 624 shares in Kengen
- 388 shares in Kenya-RE
- 500 shares in KENAIR
- 3600 shares in MSC
- 700 shares in NBK
- 1078 shares in NIC
- 77 shares in NIC Right
- 77 shares in Security Expiry
- 300 shares in SCBK
- 2600 shares in Safcom
- 757 shares in TPSEA
- b. Plot No. D124/34
- c. L.R. No. KJD/Kitengela/7697
- d. Plot Nos. 23-24 at Nairobi Block 105/328
- e. Lease I.R. N. 28102/1
- f. Lease Nairobi Block 79/703
- g. HFCK Buru Buru A/c No. [xxxx]
- h. A/c No. [.....] Standard Chartered Bank

Mama Ngina
- i. A/c No. [.....] Equity Bank Kenya Limited, Yaya

Centre
- j. 1½ acres Kipipiri

k. Plot No. P8992 Embakasi Ranching Limited

l. Plot No. P4133 Embakasi Ranching Limited

m. Plot No. P4134 Embakasi Ranching Limited

n. Plot No. P8985 Embakasi Ranching Limited

No liabilities were listed.

6. On the 10th of October 2017 Summons for confirmation of grant was filed however no consents were filed with it. The said application attracted protests from Elizabeth Wangari Guama, Catherine Wambui, Agnes Nyokabi Guama, Jenniffer Nyambura Guama and Ann Wanjiru Guama.

7. The protest brought fourth information that was missing in the petition to wit that the deceased had another wife before the 1st petitioner came in picture and some of the named beneficiaries were children of the first wife whose name is Juliana Charity Guama. Further the protestors stated that they were not involved or consulted by Applicant in arriving at the proposed mode of distribution.

8. By consent of the parties the court directed the administrators jointly and severally to appoint valuers who would place value on the entire estate.

9. The administrators were unable to agree and each of the two homes had their own valuer and 2 separate reports filed in court.

10. From the evidence and documents on record I deduce the following facts:

That the deceased and Julian Charity are married, parted ways but were not formerly divorce. The deceased also had a relationship with the 1st petitioner at the same time. The ages of their children some of whom are of the same age tell it all. The facts as to when the first wife left and whether her matrimonial home was in Uhuru Estate remain controversial. The affidavit evidence relied upon by parties did not resolve the issue. It is also not clear where the 2nd widow had her matrimonial home was it in Buru Buru or Ruai? Suffice it to say that the two wives do not and have not for over 9 years or more resided in the so called matrimonial homes.

11. From the documents first placed before court all the properties listed therein belonged to the deceased namely.

i) Property No. L.R. 209/7386 Uhuru Phase IV which was acquired December 1984. The lease from the City Council of Nairobi is in the name of James Allan Guama.

ii) Plots No. 23-24 of Nairobi Block 105/328 were fully paid for as at 10th August 2004 and in the name of James Alan Guama.

iii) KJD/Kitengela/7697 measuring 2.33 Ha. whose lease is dated 25th February 1998 was name of James Allan Guama.

iv) Plot No. 8992 Embakasi Ranching ownership, whose receipt dated 22nd non-member 2009 was in the name of James Allan Guama.

v) Plot No. P4133 Embakasi Ranching ownership; whose receipt dated 4th July 2002 was in the name of James Allan Guama.

vi) Plot No. 4134 Embakasi Ranching ownership receipt is dated 4th July 2002 and was in the name of James Allan Guama.

vii) Plot No. P8985 Embakasi Ranching ownership receipt dated 22nd November 2009 and was in the name of James Allan Guama.

12. The court takes cognisant of fact that by the time of applying for confirmation of grant some properties had changed from the deceased to the name of the 1st Petitioner. Any such attempt or transaction is illegal *abinitio* as no one had capacity whatsoever to transfer any of the estate property to himself/herself or a third party.

13. The court also notes that KJD/Kitengela/7697 was sold before the demise of the deceased and does not therefore form part of his estate.

14. In arriving at a decision on distribution the court will consider the two sets of valuation side by side in order to appreciate the values attributed to the properties. The objectors retained Gimco Limited whereas the Petitioner retained Multivillas Real Estate Consultants Ltd. The valuation reports gave values as follows:-

Property	Multivillas	Gimco
i. Embakasi 4133	12 million	12 million
ii. Embakasi 4133	1.5 million	4 million

iii. Embakasi 8985	1.5 million	4 million
iv. Embakasi 8992	1.5 million	4 million
v. Block 79/703	10.5 million	8.5 million
vi. L.R. No. 209/7386	5 million	7.5 million
vii. Plot No. 23 (original No. 105/328)	-	600,000
viii. Plot No. 24 (original 105/328)	-	600,000
ix. Nyandarua/Kipipiri 451	-	600,000

15. Since the deceased was polygamous having not divorced any of the two wives Section 40 of the Law of Succession Act comes into operation to guide distribution of his estate and read together with Section 35 & 38 of the Act.

16. Section 40 provides as follows:

“(1) where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residual of the net estate 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.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in Sections 35 to 38.

17. Guided by the above provisions of the law and taking into account that none of the widows is residing in any property and being as fair as possible, the court proceed to share the intestate’s estate as follows:

a) 1st House:

Properties:

- i. L. R. No. Block 79/107
- ii. L.R. No. 209/7386
- iii. Plot No. 105/328

To **Jacinta Charity Guama** who shall have a life interest subject to Section 35 of the Law of Succession Act and thereafter the same will revert to all her children in equal shares.

b) 2nd House:

Properties

- i. Plot No. P4133 Embakasi Ranching Limited
- ii. Plot No. P4134 Embakasi Ranching Limited
- iii. Plot No. P8985 Embakasi Ranching Limited
- iv. Plot No. P8992 Embakasi Ranching Limited
- v. Plot No. Plot No. 24 (original 105/328)

To **Jayne Ruth Guama** who shall have a life interest subject to Section 35 of the Law of Succession Act and thereafter the same will revert to all her children in equal shares.

c) Funds in:

- i. HFCK Buru Buru A/c No. [.....]
- ii. Standard Chartered Bank A/c No. [.....]
- iii. Equity Bank A/c No. [.....]

Shared equally amongst the two widows and all their children

d) Shares in:

- i. Barclays Bank
- ii. Eveready Company Ltd
- iii. Sameer Fire stone
- iv. Housing Finance
- v. Kenya Commercial Bank
- vi. Kengen
- vii. Kenya Reinsurance Plaza
- viii. Ken air company Ltd
- ix. National Bank of Kenya
- x. NIC Bank
- xi. NIC Rights
- xii. Safcom Limited
- xiii. MSC
- xiv. SCBK
- xv. T.P.S East Africa
- xvi. Central Depository and settlement corporation A/c No. B09/B [.....] 7974/4-0 and

Be sold and proceeds shared amongst the two widows and all children of the deceased equally.

18. The Grant of confirmation will issue accordingly based on paragraph 17 above.

19. The Administrators shall immediately proceed to distribute the estate accordingly. In case of any challenges the administrators be at liberty to apply.

20. Each party to meet their own costs.

Dated and Delivered in Nairobi on this 31st day of OCTOBER, 2019.

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ALI-ARONI

JUDGE