



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 81 OF 2017**

**IN THE MATTER OF THE ESTATE OF MUNIU KIHARA *alias* JOSEPH MUNIU KIHARA (DECEASED)**

**R U L I N G**

1. Before me is the Summons filed on 1<sup>st</sup> February, 2018, for Confirmation of Grant of letters of administration in respect of the estate of ***Muniu Kihara alias Joseph Muniu Kihara (Deceased)*** made to **Wambui Muniu, Solomon Kamau Muniu & Regina Njeri Muniu** on 16<sup>th</sup> January, 2018.

2. Regina Njeri Muniu swore a supporting affidavit in support of the Summons. She listed the children of the deceased as follows;-

- i. Lucy Nyokabi Ndungu
- ii. Solomon Kamau Muniu
- iii. Daniel Kungu Muniu
- iv. Moses Ngure Muniu
- v. James Mureithi Muniu
- vi. Mary Wangui Muniu
- vii. Cecilia Njoki Muniu
- viii. Regina Njeri Muniu

3. Other dependants were identified as follows:-

- i. Wambui Muniu-Widow
- ii. Lucy Nyokabi Ndungu-Daughter-in-law
- iii. Peter Kamau Kungu-Son-in-law

4. The shares of all persons entitled to the estate were proposed follows:

**L. R NO. GITHUNGURI/KANJAI/526**

- i. Wambui Muniu.....0.48 HA
- ii. Lucy Nyokabi Ndungu.....0.48 HA
- iii. Solomon Kamau Muniu.....0.48 HA
- iv. Daniel Kungu Muniu.....0.48 HA
- v. Moses Ngure Muniu.....0.48 HA

- vi. James Mureithi Muniu.....0.48 HA
- vii. Peter Kamau Kungu.....0.48 HA
- viii. Mary Wangui Muniu.....0.48 HA
- ix. Cecilia Njoki Muniu.....0.48 HA
- x. Regina Njeri Muniu.....0.48 HA

5. Further, she deponed that Shares in Rioki Estate Co. Ltd. Certificate No. 3317 (1201), Shares in Mapa House Certificate No. 5361 and Shares in Ndumberi Farmers Co. Ltd. Certificate No. 13317 were to devolve upon **Wambui Muniu**.

6. **Solomon Kamau Muniu, Daniel Kung'u Muniu, Moses Ngure Muniu and Lucy Nyokabi Ndung'u** filed their affidavit in protest to the confirmation of grant. They deposed that they are opposed to the Applicant's proposed mode of distribution as the Applicant had concealed material facts with the aim of disinheriting them. They proposed their own mode of distribution which they urged the court to adopt. The court was also urged to include assets that form part of the deceased estate that were not included in the application for confirmation of grant.

7. The Summons for confirmation of Grant were canvassed by way of oral submissions. Mr. Baiya for the Applicant submitted that the main assets were amalgamated pursuant to the order of Musyoka J. He urged the court to distribute the estate as per the Applicant's proposed mode of distribution.

8. Solomon Kamau Muniu one of the protestors submitted that he is opposed to the Applicant's mode of distribution and urged the court to distribute the estate in accordance with the protestors proposed mode of distribution. He indicated that his mother Wambui Muniu ought not to be included in distribution of the land assets as she was to occupy the same parcel of land as her daughter **Mary Wangui Muniu** who lives on the same parcel of land.

9. Esther Wambui Muniu asserted that she is the widow of the deceased and that she wanted her own title deed, separate from the children. She denied that she was in agreement that her portion should be in Mary Wangui's name. She insisted that everybody should get their portion.

10. The court has considered the rival affidavit material and brief submissions made at the hearing. There is no dispute that the deceased died possessed of the following assets:

- a) Land parcel **No. LR Githunguri/Kanjai/526** measuring 11.86 acres
- b) Shares in:
  - i) Rioki Estate Co. (1970) Ltd vide certificate No.3317 (120)
  - ii) Mapa House vide certificate No.5361
  - iii) Ndumberi Farmers Co. Ltd vide certificate No.13317

11. The Protestors have asserted that the deceased also held shares in **Njamba Ti Ikere Co. Ltd vide certificate No. 2040** and in **Githunguri Dairy and Pyrethrum Board Membership Certificate No.0864 – 01**. They also assert that the deceased held an account **No. 155117241** with the Kenya Commercial Bank Ltd. However, no evidence was tendered to support the alleged existence of these assets.

12. The deceased was survived by his widow **Wambui Muniu** and nine children, namely;

- 1) Lucy Nyokabi Ndung'u - daughter-in-law
- 2) Solomon Kamau Muniu - son
- 3) Daniel Kungu Muniu - son
- 4) Moses Ngure Muniu - son
- 5) James Mureithi Muniu - son
- 6) Mary Wangui Muniu - son
- 7) Cecilia Njoki Muniu - daughter

8) Regina Njeri Muniu - daughter

9) Jane Wanjiku Muniu - deceased, represented

Peter Kamau Kung'u

13. The key difference between the modes of distribution proposed by the Applicants on the one hand, and the Protestors on the other is that the latter exclude their mother and widow of the deceased, **Wambui Muniu** as a beneficiary. One of the Protestors **Solomon Kamau Muniu** explained during the hearing that the widow is to occupy/inherit the same portion assigned to one sister **Mary Wangui** as the two reside on the same compound. The widow would hear none of it, insisting that she wanted her own separate title and not to be lumped together with **Mary Wangui** and her son, who lived at her homestead. She asserted on oath that she did not get along with the said **Mary Wangui**.

14. The rival groups however agree that the shares in **Rioki Estate Ltd, Maya House and Ndumberi farmers Co. Ltd** should exclusively devolve on the widow. All agree in principal that the landed asset ought to be shared equally among the beneficiaries. The entire land parcel **LR Githunguri/Kanjai/526** measures 11.86 acres, or 4.8 ha. In addition to the shares in **Rioki Estate Ltd, Maya House and Ndumberi Farmers Co. Ltd**, the court directs that the widow Wambui Muniu receives 0.75 acres or 0.304 ha. of the Land Parcel No. **Githunguri/Kanjai/526**. The said parcel ought to be located around her current homestead.

15. The balance is 4.496 ha or 11.1098 acres. This remaining parcel will be shared in nine equal portions of 1.23 acres or 0.497 ha. odd each by the children of the deceased as follows:

1) Lucy Nyokabi Ndungu

2) Solomon Kamau Muniu

3) Daniel Kungu Muniu

4) Moses Ngure Muniu

5) James Mureithi Muniu

6) Peter Kamau Kungu

7) Mary Wangui Muniu

8) Cecilia Njoki Muniu

9) Regina Njeri Muniu

16. For the avoidance of doubt the distribution of assets is as follows:

A. To devolve upon Wambui Muniu

i) Shares in Rioki Estate Ltd - Whole

ii) Shares in Mapa House - Whole

iii) Shares in Ndumberi Farmers Co. Ltd - Whole

B. Portion measuring 0.75 acres or 0.304 ha out of Land Parcel LR No. Githunguri/Kianjai/526 encompassing the current homestead of Wambui Muniu to devolve upon her.

C. The balance of the Land Parcel **LR No. Githunguri/Kinjai/526** measuring 11.1098 acres or 4.496 ha to be shared as follows

i) Lucy Nyokabi Ndungu - 1.23 acres or 0.497 ha

ii) Solomon Kamau Muniu - 1.23 acres or 0.497 ha

iii) Daniel Kung'u Muniu - 1.23 acres or 0.497 ha

iv) Moses Ngure Muniu - 1.23 acres or 0.497 ha

v) James Mureithi Muniu - 1.23 acres or 0.497 ha

vi) Peter Kamau Kung'u - To hold in trust for

himself and the children of Jane Wanjiru Muniu (deceased) 1.23 acres or 0.497 ha.

vii) Mary Wangui Muniu - 1.23 acres or 0.497 ha

viii) Cecilia Njoki Muniu - 1.23 acres or 0.497 ha

ix) Regina Njoki Muniu - 1.23 acres or 0.497 ha

17. The grant is confirmed in these terms. Each party will bear own costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 28<sup>th</sup> DAY OF NOVEMBER 2019.**

**C. MEOLI**

**JUDGE**

**In the presence of:**

Mr. Baiya for Applicant

Petitioners – Absent

Court Assistant - Kevin/Nancy