



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 504 OF 2010

IN THE MATTER OF THE ESTATE OF HARUN NJUGUNA KURIA (DECEASED)

JOSHUA KURIA NJUGUNA.....1ST ADMINISTRATOR

VERSUS

HANNAH WANJIRU NJUGUNA.....1ST PROTESTOR

JAMES KARIITHI NJUGUNA.....2ND PROTESTOR/2ND ADMINISTRATOR

RULING

1. Joshua Kuria Njuguna and James Kariithi Njuguna are personal representatives of the estate of Harun Njuguna Kuria who died on 28th June 2007. A Grant of representation intestate was issued to them on 28th January, 2014.

2. Joshua Kuria Njuguna took out summons for confirmation of grant dated 25th February, 2014. In his affidavit in support of the summons sworn on the same day, he deponed that the deceased had two wives, the first having seven children and the second having ten children. He proposed the mode of distribution as follows.

DESCRIPTION OF PROPERTY	BENEFICIARY	SHARE
Limuru/Bibirioni/T.250	Joseph Ihatira Njuguna	Absolute
Limuru/Bibirioni/T.705	James Kariithi Njuguna	Absolute
Limuru/Bibirioni/T.706	Morris Karuga Njuguna	Absolute
Limuru/Bibirioni/T.787	Morris Karuga Njuguna	Absolute
Limuru/Bibirioni/T.708	Joshua Kuria Njuguna	Absolute
Limuru/Bibirioni/T.840	Joshua Kuria Njuguna	Absolute
Limuru/Bibirioni/T.628	Jane Wahu Njoroge for herself and in trust for her children with Francis Njoroge Njuguna deceased	Absolute
Limuru/Bibirioni/T.935	James Kariithi Njuguna	Absolute
Longonot/Kijabe Block 3/689(Kenton Kijabe)	Hannah Wanjiru Njuguna	½ acre
	Morris Karuga Njuguna	1 acre
	Joseph Ihatira Njuguna	1 acre

	Jane Wahu Njoroge in trust for her children James Kariithi Njuguna	1 acre 1 acre
Longonot/Kijabe Block 3/2152(Kenton Kijabe)	Joseph Ihatira Njuguna	Absolute
Longonot/Kijabe Block 3/1962(Kenton Kijabe)	Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna (deceased)	Absolute
Naivasha/Mwichiringiri Block 4/1165	Joshua Kuria Njuguna	Absolute
3 acres unregistered at white rock farm subukia	Hannah Wanjiru Njuguna	Life interest
Shares in Githiga Muiri Company Ltd	Joshua Kuria Njuguna	Absolute
4 shares in Limuru Pyrethrum Growers Co-operative society Limitedes 115 shares in Kiambu Dairy & Pyrethrum farmers Co-op Union Ltd(Mapa House) 1 share in Kenton Kijabe Pyrethrum Growers Ltd Plot at Kiambogo Trading Centre where deceased held 1/3 share 2 shares in Limuru Pyrethrum Growers Co-operative Society(Duka Shares)		To be sold by administrators and proceeds shared equally among all beneficiaries excluding Joshua Kuria Njuguna.

3. In response to the summons for confirmation, the 2nd protestor filed an affidavit of protest dated 12th May 2014. He accused the 1st administrator, Morris Karuga Njuguna and Joseph Ihatira Njuguna for proposing distribution in exclusion of the daughters of the deceased and granting themselves ½ the estate. He asserted that the 1st administrator did not consult any of the beneficiaries in coming up with his proposal. He stated that his proposal was made pursuant to a meeting held on 30th March, 2014 where family members attended and agreed as follows:

DESCRIPTION OF PROPERTY	BENEFICIARY	SHARE
Limuru/Bibirioni/T.250	Jane Wahu Njoroge Joseph Ihatira Njuguna & Mary Ngina	½ plot absolute ½ plot absolute
Limuru/Bibirioni/T.705	James Kariithi Njuguna Joshua Kuria Njuguna	In equal shares
Limuru/Bibirioni/T.706	Morris Karuga Njuguna Joyce Nyokabi Njuguna	In equal shares
Limuru/Bibirioni/T.787	Hannah Wanjiru Njuguna Jane Wahu Njoroge	0.50 acres 0.50 acres

Limuru/Bibirioni/T.708	Margaret Wangui Gacheru Alice Wambui Ng'ang'a	In equal shares
Limuru/Bibirioni/T.840	Joshua Kuria Njuguna Morris Karuga Njuguna	1 acre absolute 1 acre absolute
Limuru/Bibirioni/T.628	Florence Wangui Njuguna Jane Waithira Njuguna	In equal shares
Limuru/Bibirioni/T.935	James Kariithi Njuguna	1 acre absolute
Longonot/Kijabe Block 3/689(Kenton Kijabe)	Jane Wahu Njoroge Elizabeth Wanjiru Mbugua Hannah Wanjiru Njuguna Alice Wambui Ng'ang'a Margaret Wangui Gacheru Eunice Wanjiku Muturi Joseph Ihatira Njuguna & Mary Ngina Joyce Nyokabi Njuguna Florence Wangui Njuguna Zipporah Wambui Mbugua Martha Njeri Michael Tabitha Wanjiku Kimani Jane Waithira Njuguna Mary Nyambura Njuguna	1 acre absolute 1 acre absolute 0.75 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres to hold in equal shares 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute 0.25 acres absolute
Longonot/Kijabe Block 3/2152(Kenton Kijabe)	Eunice Wanjiku Muturi Tabitha Wanjiku Kimani Jane Wahu Njoroge	0.25 acres absolute 0.25 acre absolute 0.50 acres absolute
Longonot/Kijabe Block 3/1962(Kenton Kijabe)	Martha Njeri Michael Zipporah Wambui Mbugua Mary Nyambura Njuguna	0.25 acres absolute 0.25 acres absolute 0.25 acres absolute

	Hannah Wanjiru Njuguna	
Naivasha/Mwachiringiri Block 4/1165	James Kariithi Njuguna Joshua Kuria Njuguna Morris Karuga Njuguna	1 acre absolute 1 acre absolute 1 acre absolute
3 acres unregistered at white rock farm subukia	James Kariithi Njuguna Joshua Kuria Njuguna Jane Wahu Njoroge Morris Karuga Njuguna	To be shared equally
Shares in Githiga Muiri Company Ltd 4 shares in Limuru Pyrethrum Growers Co-operative society Limites 115 shares in Kiambu Dairy & Pyrethrum farmers Co-op Union Ltd(Mapa House) 1 share in Kenton Kijabe Pyrethrum Growers Ltd Plot at Kiambogo Trading Centre where deceased held 1/3 share 2 shares in Limiru Pyrethrum Growers Co-operative Society(Duka Shares)		To be sold by the Administrators and proceeds thereof shared equally among all children of the deceased and his surviving widow Hannah Wanjiru Njuguna

4. The summons and protest were canvassed by way of written submissions. The 1st administrator submitted that his proposed mode of distribution was informed by the need to comply with the wishes of the deceased as contained in his last will and testament and a desire to ensure equitable and fair distribution of the deceased's assets. He relied on **Section 11 and 13** of the Law of Succession Act asserting that the deceased left a will which had been disputed by the 2nd Administrator. It was his submission that the will in question had satisfied all the legal requirements and was therefore valid. He urged the court to confirm the grant and mode of distribution as proposed.

5. The 2nd protestor submitted that the 1st administrator had proposed a sharing of a bulk of the immovable assets among the deceased's sons and grandson leaving out female beneficiaries except Jane Wahu Njoroge wife of Francis Njoroge and Hannah Wanjiru Njuguna the wife to the deceased. Further, that the shares of the female beneficiaries were measly in comparison to the shares of the male beneficiaries. He asserted that the mode of distribution was biased for leaving out 12 female beneficiaries.

6. The 2nd protestor/administrator submitted that his proposal for distribution was made pursuant to a meeting held on 30th March, 2014 and fourteen(14) of the seventeen(17) beneficiaries were in agreement and had signed the consent to the proposed mode of distribution. He urged the court to rely on the provisions of **Article 27** of the Constitution which provides for freedom from discrimination based on gender. Reliance was placed **In the Matter of the Estate of Michael Warui (deceased) [2017] eKLR.**

7. He disputed claims by the 1st Administrator that the deceased left a will stating that the purported document only dealt with three immovable properties. He asserted that the deceased did not give any instructions as to distribution of his property before his demise. In conclusion he submitted that the court having issued a Grant of Letters Administration Intestate, the issue of a will had been overtaken by events.

8. Having considered all the material canvassed, the Court notes the dearth of material placed before it by the parties but nevertheless must proceed to make a determination based on what was placed before it. The issues for determination from the above are-

- i. Whether the deceased left a valid Will; and
- ii. The manner of distribution of his property

9. A copy of the disputed will was lodged on 18th March, 2010 together with the petition for a grant of probate. The attached documents are 3 separate pages of handwritten text in Kikuyu language. The first two are not dated while the third page is dated 5/7/06 and written in English language. A certificate of translation was provided. The document bears the signatures of Harun Njuguna Kuria and Joshua Kuria Njuguna at the foot of the 1st page and on the back of the 2nd page respectively. The document reads as follows:

Page 1

'1. These things I have written hereof

2. I have left all my properties to Joshua Kuria (son). Should anybody ask a question relating to these issues mentioned hereinabove he can inform him because I don't want to discuss family matters.

Page 2

Plot No. 250 in Matumayu: Kevin and Joseph

Kiambogo Plot no. - Joseph

361 - Francis Njoroge

Longonot 5 ½

Harun/Morris Karuga - 1 ½ acre

Morris Karuga - 1 acre

Joseph - 1 acre

Francis Njoroge - 1 acre

James Kariithi - 1 acre

5/7/06

Page 3

I Harun Njuguna Kuria I/D No. 187466

1819150

I Harun Njuguna have transferred my two shares to my son Joshua Kuria Njuguna of I/D No. 10670235

Harun Njuguna Kuria

Sign.....

Witness

James K. Kamande

Reg No. 847

Tigoni/Kirambaini'

10. The gist of the document is that the 1st administrator is entitled to most of the estate of the deceased while his brothers are entitled to shares in the remaining assets listed thereto. The 2nd protestor herein disputed the validity of the will stating that the deceased did not leave a will. The 1st administrator on the other hand defended the will, and asserted that it met all the requirements under **Section 11** of the Law of Succession Act asserting that it was attested to by two competent witnesses being himself and James K. Kamande.

11. The formal requirements of a valid will are provided for under section 11 of the Law of Succession Act Cap 160 Laws of Kenya. That section provides;

11. No written will shall be valid unless-

(a) The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction the of the testator;

(b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;

(c) The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

12. From the above, it is required that the will be attested by two or more competent witnesses. James K. Kamande was named as the witness who attested the will. However, there was no evidence that he attested to the will by putting his signature on the document or placing a thumb print thereon. Further no evidence was presented by the 1st administrator on the alleged attestation. The purpose of having attesting witnesses is to get evidence on the process of the making of the will should its validity be challenged. On the face of it, the will before court was not attested to by two or more competent witnesses. It has therefore failed to satisfy the requirements under **Section 11(C)** of the Act.

13. In any case, they obtained their grant of letters of administration and have come to court to confirm the grant of representation intestate. The issue of the will does not therefore arise. The deceased's estate has to be dealt with as an intestate estate. **Section 34** of the Act defines intestacy as:-

“A person is deemed to die intestate in respect of all his property of which he has not made a will which is capable of taking effect”

The court has been informed that the deceased had two wives and seventeen children. The first wife had seven children while the second wife had ten children. The 1st wife and two of her children predeceased the deceased herein. One child of the 2nd wife also predeceased the deceased herein. All the deceased children left behind grandchildren of the deceased.

Section 40 of the Law of Succession Act 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 residue of the net intestate 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.

14. The court however retains discretion during distribution of the property of the deceased to ensure that there is equitable distribution, all the time remaining alive to the fact that equitable distribution is not synonymous with equal shares. The aim of the Court is not to achieve mathematical equality between the beneficiaries but to do equity, considering the unique facts in each case. This was established in the case of **Re Estate of John Musambayi Katumanga (Deceased), [2014] eKLR** and **Rono V. Rono & Another, [2005] eKLR**

15. In the distribution of an intestate estate, there are three factors for consideration, namely: the persons who have survived the deceased, the assets available for distribution and the manner in which the assets are to be distributed amongst the survivors. In the context of this cause, there is no dispute as to the persons who survived the deceased, and there is a general consensus as to the assets available for distribution. The main area of conflict is how the estate ought to be distributed.

16. From the proposals put forth by the parties herein on the mode of distribution, it is important to assert that for as long as parties are not in agreement it is left to the court to apply the laid down law and principles to arrive at what the court would consider to be fair and just in the circumstances of the case. The 1st administrator in his proposal has completely disinherited his female siblings. He has not provided any justification why his female siblings should not benefit from their father's estate. Even the allegation that it is because they were all married and were not interested in the estate was not raised.

17. The court is not bound to accept a mode of distribution based on open discrimination of the daughters of the deceased. To do so would be to allow the perpetuation of discrimination against women for simply being women or girls or daughters. It would be to allow the desecration of the constitution. It would be an abdication to protect and defend a very key constitutional principle; non-discrimination. I am in complete agreement with Gikonyo J, who put it very succinctly in the **Matter Of The Estate of M'ngarithi M'miriti Alias Paul M'ngarithi M'miriti (Deceased) [2017] KLR**, regarding the discrimination of daughters in inheritance. The Judge had this to say:

From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when RONO vs. RONO [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which states categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of STEPHEN GITONGA M'MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR that: -

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female

siblings- are equal before the law and are entitled to equal protection of the law.

18. Accordingly, the male children of the deceased should only claim a share equal to that of their sisters. The 1st administrator's proposal is consequently rejected for being discriminatory.

19. The 2nd protestor claimed that his proposal was made pursuant to a meeting held on 30th March, 2014 where fourteen of the seventeen beneficiaries were in agreement and signed the consent to the proposed mode of distribution. I have perused through the proposal filed by the protestor. Indeed consent from the beneficiaries was obtained except from Joshua Kuria Njuguna, Morris Karuga Njuguna and Joseph Ihatira Njuguna.

20. Distribution of the estate herein is hardly an exercise of clear cut precision due to several factors, including the absence of valuations and the nature of the properties under consideration. The court notes the dearth of evidence placed before it to reach a determination on distribution of the estate. The majority of the beneficiaries are however contented with the proposed mode of distribution which was made pursuant to a family meeting. The same has maintained the principle of equity. All the beneficiaries have been given as nearly as possible equal shares amongst themselves. None of the beneficiaries has been disinherited. Since the intention was to distribute that property equally amongst the named beneficiaries, I hereby retain that formula, and the distribution as proposed by the protestors.

21. Accordingly, the order of the Court is that the estate of the deceased shall be distributed as follows:

DESCRIPTION OF PROPERTY	BENEFICIARY	SHARE
Limuru/Bibirioni/T.250	Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna Joseph Ihatira Njuguna & Mary Ngina (children of Phyllis Wanja Njuguna - deceased)	½ plot absolute ½ plot absolute
Limuru/Bibirioni/T.705	James Kariithi Njuguna Joshua Kuria Njuguna	In equal shares
Limuru/Bibirioni/T.706	Morris Karuga Njuguna Joyce Nyokabi Njuguna	In equal shares
Limuru/Bibirioni/T.787	Hannah Wanjiru Njuguna Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna(deceased)	0.50 acres 0.50 acres
Limuru/Bibirioni/T.708	Margaret Wangui Gacheru Alice Wambui Ng'ang'a	In equal shares
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Limuru/Bibirioni/T.935	James Kariithi Njuguna	1 acre absolute
Longonot/Kijabe Block 3/689(Kenton Kijabe)	Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna(deceased) Elizabeth Wanjiru Mbugua	1 acre

		Hannah Wanjiru Njuguna	1 acre
		Alice Wambui Ng'ang'a	0.75 acres
		Margaret Wangui Gacheru	0.25 acres
		Eunice Wanjiku Muturi	0.25 acres
		Joseph Ihatira Njuguna & Mary Ngina (children of Phyllis Wanja Njuguna - deceased)	0.25 acres
		Joyce Nyokabi Njuguna	0.25 acres to hold in equal shares
		Florence Wangui Njuguna	0.25 acres
		Zipporah Wambui Mbugua	0.25 acres
		Martha Njeri Michael	0.25 acres
		Tabitha Wanjiku Kimani	0.25 acres
		Jane Waithira Njuguna	0.25 acres
		Mary Nyambura Njuguna	0.25 acres
			0.25 acres
Longonot/Kijabe 3/2152(Kenton Kijabe)	Block	Eunice Wanjiku Muturi	0.25 acres
		Tabitha Wanjiku Kimani	0.25 acre
		Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna	0.50 acres
Longonot/Kijabe 3/1962(Kenton Kijabe)	Block	Martha Njeri Michael	0.25 acres
		Zipporah Wambui Mbugua	0.25 acres
		Mary Nyambura Njuguna	0.25 acres
		Hannah Wanjiru Njuguna	0.25 acres
Naivasha/Mwichiringiri Block 4/1165		James Kariithi Njuguna	1 acre absolute
		Joshua Kuria Njuguna	1 acre absolute
		Morris Karuga Njuguna	1 acre absolute
3 acres unregistered at white rock farm subukia		James Kariithi Njuguna	
		Joshua Kuria Njuguna	To be shared equally
		Jane Wahu Njoroge in trust for her children with Francis Njoroge Njuguna	

	Morris Karuga Njuguna	
<ul style="list-style-type: none"> · Shares in Githiga Muiiri Company Ltd · 4 shares in Limuru Pyrethrum Growers Co-operative society Limited · 115 shares in Kiambu Dairy & Pyrethrum farmers Co-op Union Ltd(Mapa House) · 1 share in Kenton Kijabe Pyrethrum Growers Ltd · Plot at Kiambogo Trading Centre where deceased held 1/3 share · 2 shares in Limuru Pyrethrum Growers Co-operative Society (Duka Shares) 		To be sold by the Administrators and proceeds thereof shared equally among all children of the deceased and his surviving widow Hannah Wanjiru Njuguna

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 18TH DAY OF DECEMBER, 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of Advocate for the 1st Administrator

In the presence ofAdvocate for the 1st and 2nd Protestors