



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 83 OF 2000**

**IN THE MATTER OF THE ESTATE OF GEOFFREY KIMANI MUCHORI – DECEASED**

**JANE WAMBOI KIMANI.....1ST APPLICANT/OBJECTOR**

**SUSAN WANJIKU KIMANI.....2ND APPLICANT/ OBJECTOR**

**VERSUS**

**GEORGE KAMAU KIMANI....1ST RESPONDENT/PETITIONER**

**JAMES MUCHORI KIMANI...2ND RESPONDENT/PETTIIONER**

**J U D G M E N T**

1. The deceased herein **Geoffrey Kimani Muchori** died on 26<sup>th</sup> April 2000. He was a polygamous man having married **Jephidah Wanjiru Kimani** and **Alice Wambui Kimani**. They were blessed with the following children.

**(A) 1<sup>st</sup> House Jephidah Wanjiru Kimani**

1. George Kamau Kimani
2. Elizabeth Njeri Kimani
3. Hannah Njoki Kimani
4. Rose Ngina Kimani
5. Josephine Wanjiku Kimani
6. Rahab Wangari Kimani
7. David Muchori Kimani
8. Jane Wambui Kimani
9. Flora Wanjiru Kimani

**(B) 2<sup>nd</sup> House Alice Wambui Kimani**

1. Nancy Wacheke Kimani
2. Janet Njeri Kimani
3. James Muchori Kimani
4. Naomi Ngina Kimani

5. Paul Kahingu Kimani
6. John Mburu Kimani
7. Babra Wangari Kimani
8. Mercy Nyambura Kimani
9. Susan Wanjiku Kimani

2. The deceased died intestate and left behind the following properties.

- 1. Waitaluk/Kapkoi Block 4/24 measuring 65 acres**
- 2. L.R. No 2116/52 Section 1 Kitale municipality (Mamboleo hotel)**
- 3. Kitale Municipality Block 4/323 Laini Member Plot**
- 4. L.R. No 416 – Gatamayo Kagwe Kiambu measuring 20 acres**
- 5. Kitale Municipality – Site and Service with Residential houses**
- 6. Rural, Urban Lodge Mitume Plot – Kitale Municipality**
- 7. Lessos Farm Plot measuring 50x100Ft**
- 8. Shares (a) B.A.T.**

- (b) Kenya Seed
- (c) ICDC
- (d) Kenya Airways
- (e) Namalo Company

**9) Motor Vehicles**

- a) KAP 437T
- b) KAE 905P – Toyota Corola
- c) KXM 273 Peoget 504 – Pick Up
- d) KAJ 153R Prime Mover
- e) Trailer 455 ZB

3. The daughters herein objected to the mode of distribution as proposed by the two administrators who are sons of the deceased too. Apparently, it appears that the daughters from both houses have “ganged” up against their brothers from the two houses.

4. From the pleadings on record the properties have been developed and none of the beneficiaries suggested in any way that they were not developed by the deceased or his two wives who have also passed on.

5. The affidavits on record shows that they all seemed to enjoy the use and proceeds from the commercial properties as well as the agricultural land.

6. Parcel No. Waitaluk/Kapkoi Block 4 Waitaluk/149 has been transferred to George Kimani as per a search annexed in the affidavit of Jane Wambui Kimani dated 27/2/2018. If this is true then the same was unlawful as the grant issued on 28/10/2011 has not been confirmed.

The said title should therefore revert to the name of the deceased. The said George Kamau Kimani should sort himself with the financiers (Barclays Bank of Kenya) as the transfer was unlawful.

7. The petitioners have equally stated that Lessos Plot Measuring 50 Ft x 100Ft does not exist. The objector seemed to suggest that it exist. Be it as it may the same if it exist ought to be distributed like the rest of the properties.

8. The law governing such intestate estate is contained in Section 40 of the Succession Act Cap 160 Laws of Kenya which state as follows:

***“40(1) where any 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 his as an additional unit to the number of children.”***

9. As stated earlier, this dispute revolves around sisters and brothers rivalry. The girls from both houses are disputing how the property is being handled and managed by their brothers, again from both houses.

10. The above portion of the law does suggest that if the daughters are married or not they should be considered. However, and practically, there is always an assumption that the married daughters should not get equal share from the estate of their deceased parents. Although there was such suggestion from the petitioners perspective there was no solid evidence provided.

11. Taking the facts as presented herein it is my considered opinion that the deceased properties be shared between the two houses equally. My conclusion is based on the facts that both houses have 9 children each regardless of gender. Their mothers have both died.

12. The deceased during his lifetime seemed not to have apportioned the two families thier respective assets or in anyway suggested how they were to stay. Infact the properties seemed to have been developed without due regard to how they were to be inherited. All the houses in one way or another are benefiting from the proceeds of the estate, be it real estate or agricultural.

13. In dividing it into houses, each house shall thereafter determine a formular of sharing within each respective house. Where the beneficiaries have died, their estate shall be apportioned appropriately.

14. Should the parties whether through their houses or any other arrangements agree to vary the mode of sharing, nothing shall stop them from stating so and filing their memorandum of undertaking, if any.

15. The parties shall equally be at liberty to value the same and liquidate and share the proceeds as they shall deem appropriate.

16. For the foregoing reasons, the estate shall be shared equally as follows.

- 1. Waitaluk/Kapkoi Block 4/24 – 65 acres**
- 2. L.R. No. 2116/52 Section 1 – Mamboleo Hotel**
- 3. Kitale Municipality Block 4/323 Laini Member Plot.**
- 4. L.R. No. 416 – Gatamayo Kagwe – 20 acres**
- 5. Kitale Municipality Site and Service Residential houses**
- 6. Rural, Urban Lodges Mitume Plot.**

All the above to be divided equally or in equal shares between the children of the two houses of **Jephidah Wanjiru Kimani** and **Alice Wambui Kimani**

**7. Shares** a) B.A.T.

(b) Kenya Seed

(c) ICDC

(d) Kenya Airways

(e) Namalo Company

All to be shared equally between the house of **Jephidah Wanjiru Kimani** and **Alice Wambui Kimani**.

**8. Machinery**

a) KAP 437T

b) KAE 905P – Toyota Corola

c) KXM 273 Peoget 504 – Pick Up

To be inherited by the house of **Alice Wambui Kimani**.

d) KAJ 153R Prime Mover

e) Trailer 455 ZB

To be inherited by the house of **Jepidah Wanjiru Kimani**.

17. As stated above each of the respective houses shall get an appropriate formular on how it shall share the assets once apportioned to them.

18. Let the grant thereafter issued on 28/10/2011 be confirmed as per the above directions.

19. Should there be any liability in the estate, which should arise, the same shall be shared equally by the two respective houses.

20. Each party shall meet their respective costs.

**Delivered, signed and dated at Kitale on this 31st day of May 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**31/5/18**

**In the presence of:**

**Arunga for the Objector**

**Barongo holding brief for Onyancha**

**Judgment read in open court.**