



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NUMBER 158 OF 2013**

**IN THE MATTER OF THE ESTATE OF**

**SAMUEL KANENE MUGUCHO.....(DECEASED)**

**BEATRICE WAMAITHA MUNENE.....PETITIONER**

**JUDGMENT**

1. The summons for confirmation of grant dated 27/1/2017 is the subject matter in this ruling. The summons is taken out by Beatrice Wamaitha Kanene (Applicant) one of the administrators of the estate of Samwel Kanene Mugucho (deceased) who died on 13/11/2011. The other administrators are John Kamau Munene and Peter Kimuya Munene.

2. It is the Applicant's case that the deceased died intestate leaving the following 2 households surviving him;

**(a) Rachael Wangare 1st widow (deceased) with 3 children namely;**

**1. John Kamau Munene**

**2. Peter Kimuya munene**

**3. Hellen Munene (deceased) to be represented by Susan Muthoni Kamau (daughter).**

**(b) Beatrice Wamaitha Kanene – 2nd widow without children**

3. She has set out her proposed distribution of the estate at paragraph 5 of the supporting affidavit as follows;

**(I) THE FOLLOWING ASSETS TO BE SHARED EQUALLY AMONG BENEFICIARIES OF THE 1ST HOUSE NAMED IN PARAGRAPH 3 ABOVE**

**a. Solai/Arutani Block 2/420 (Marigu A) Approx 0.2080 Ha.**

**b. Solai/Arutani block 1/63 (Marigu A) Approx. 0.5410 Ha.**

**c. Solai Center Plot No. 1**

**d. Solai Center Plot No. 7**

**e. Solai Center Plot No. 11**

**f. Akuisi Farmers Co. Ltd. Shares**

**g. Marigu Farmers Co. Ltd. Shares**

**h. Nyandarua Progressive Agencies Ltd. Shares**

**I. Money in Barclays Bank A/c No. 0271151209**

**(II) THE REMAINDER OF THE ASSETS TO BE INHERITED BY BEATRICE WAMAITHA KANENE – 2ND WIDOW WITHOUT CHILDREN**

a. Kiambogo/Kiambogo Block 2/9919 Approx. 0.0464 Ha (being her matrimonial home)

b. Njoro Ngata Block 1/5442 (Kiamunyi) Approx. 1.161 Ha.

4. The 2nd and 3rd Administrators are not in agreement with the proposals on distribution by the Applicant and the 2nd Administrator with authority of the 3rd Administrator has filed an affidavit detailing their preferred mode of distribution.

5. The parties agree on the survivors of the deceased but there exists a divergence of views in regard to distribution. The 2nd and 3rd Administrator propose that the properties be distributed as follows;

<b><u>PROPERTY</u></b>	<b><u>HEIRS</u></b>	<b><u>ALLOCATION</u></b>
1. Solai/Arutani Block 2/420/0.2080	Susan Muthoni Kamau	Whole share
2. Kiambogo/Kiambogo block 2/9919 0.0464 Ha.	Peter Kimuya Munene	Whole share (with home)
3. Solai Arutani Block 1/63 0.5410 Ha.	Beatrice Wamaitha Munene	Whole share
4. Njoro Ngata Block 1/5442 1.161 Ha.	Beatrice Wamaitha Munene	Half(½) share (with home)
5. Njoro Ngata Block 1/5442	Peter Kimuya Munene John Kamau Munene	Half (½) share jointly
6. Solai Centre Plot No. 1	John Kamau Munene	Whole share (with home)
7. Solai Centre Plot No. 7	Peter Kimuya Munene	Whole share
8. Solai Centre Plot No. 11	John Kamau Munene	Whole share
9. Nyandarua Progressive Agencies Ltd. - 4 acres	Beatrice Wamaitha Munene Susan Muthoni Kamau	Whole share Equally
10. Money in Barclays Bank A/c No. 0271151209 (cash)	Between four (4) beneficiaries	Equally
11. Money at Barclays Bank Fixed Deposit Account	Between four (4) beneficiaries	Equally

6. Both parties filed written submissions.

7. I have had occasion to consider the petition as a whole, the summons for confirmation of grant and affidavit of protest. I have carefully read and considered learned submissions of counsel. The only issue arising for determination is what are the respective shares of the parties herein.

8. The deceased died intestate and was survived by two (2) households. The beneficiaries are;

**1ST HOUSE**

a. Peter Kimuya Munene - Son

- b. John Kamau Munene - Son
- c. Susan Muthoni Kamau - Grand daughter

**2ND HOUSE**

- a. Beatrice Muthoni Kamau - Widow (with no children)

9. To that extent, the applicable Law on distribution is **Section 40** of the **Law of Succession Act**. That section provides;

**“Section 40; (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.**

**(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.”**

10. I will be quick to point out that **Section 40** of the **Law of Succession Act** does not take away the power of the Court to distribute an estate fairly. I associate myself with the views of *Kimondo J* in **PROBATE AND ADMINISTRATION CAUSE NUMBER 244 OF 2002 – RE ESTATE OF EPHANTUS GITHATU WAITHAKA** (deceased) where he held that in line with the decision in **RONO Vs. RONO** the Section does not take away away the discretion of the Court to distribute the estate fairly. *Omollo JA* stated in **RONO Vs. RONO**;

**“I had the advantage of reading in draft form the judgment prepared by Waki JA, and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the learned judge to be laying down any principle of law that the Law of Succession Act, Cap 160, of the Laws of Kenya, lays down a requirement that heirs of a deceased person must inherit equal portions of the estate where such a deceased person dies intestate and that a Judge has no discretion but to apply the principle of equality as submitted before us by Mr. Gicheru.”**

11. In our instant suit, the values of the properties are not given. The Court is also disadvantaged in that the summons for confirmation has been prosecuted through affidavit evidence and submissions thus some necessary insights into facts are lost.

12. All is not lost, however, as looking at the affidavit evidence herein, the dispute narrows down to whether the 1st Administrator (the Applicant) is entitled to properties Kiambogo/Kiambogo Block 2/9919 and Njoro Ngata Block 1/5442. In her affidavit she avers on oath that property Kiambogo/Kiambogo Block 2/9919 is her matrimonial home. When that fact is denied in affidavit evidence, she vacillates and it is submitted on her behalf that both properties are her matrimonial home.

13. The 1st Administrator is thus not entirely candid and I read an intention or aim for a larger share of the estate on her part.

14. Though **Section 40** of the **Law of Succession Act** does not put into account factors such as where a party is settled or lives during the sharing out of an estate, I am of the view that in the interest of fairness and convenience to the parties, a Court should, where possible, share out the estate in a way that may not necessarily disrupt the lives of the beneficiaries, each case being decided on its own merit and circumstances.

15. Having considered the law and the circumstances of this case, I proceed to confirm the grant and order distribution of the estate as follows;

<b><u>PROPERTY</u></b>	<b><u>HEIRS</u></b>	<b><u>ALLOCATION</u></b>
1. Njoro/Ngata Block 1/5442	Beatrice Wamaitha Munene	Whole share
2. Kiambogo/Kiambogo Block 2/9919	Peter Kimuya Munene	Whole share
3. Solai Centre Plot No. 1	John Kamau Munene	Whole share
4. Solai Arutani Block 2/420	Susan Muthoni Kamau	Whole share
5. Nyandarua Progressive Agencies Ltd.	Susan Muthoni Kamau	2 acres
	John Kamau Munene	1 acre
	Peter Kimuya Munene	1 acre
6. Solai Centre Plot No. 11	John Kamau Munene	Whole share
7. Solai/Arutani Block 1/63	Beatrice Wamaitha Munene	Whole share

8. Solai Center Plot No. 7 Peter Kimuya Munene Whole share

7. Money in Barclays Bank Beatrice Wamaitha Munene Equally

A/c No. 0271151209

Peter Kamuya Munene

John Kamau Munene

Susan Muthoni Kamau

8. Money in Barclays Bank Beatrice Wamaitha Munene Equally

Fixed Deposit Account

Peter Kamuya Munene

John Kamau Munene

Susan Muthoni Kamau

16. Each party to bear its own costs.

Dated and Signed at Nakuru this 25th day of July, 2018.

A. K. NDUNG'U

JUDGE