



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**SUCCESSION CAUSE NO. 78 OF 2015**

**IN THE MATTER OF THE ESTATE OF JAMES KAMAU GAKUIRA (DECEASED)**

**MARITHA WANJIKU KAMAU.....1<sup>ST</sup> ADMINISTRATOR**

**AND**

**JOSEPH KINYUA KAMAU.....2<sup>ND</sup> ADMINISTRATOR**

**R U L I N G**

1. The deceased herein died intestate on 11<sup>th</sup> February, 2009. Initially, two grants were issued in respect of the estate in **Nairobi High Court Succession Cause No. 925 of 2009** and **Nakuru High Court Succession No. Cause 224 of 2009**. The parties consented before me on 21/5/2015 to have both grants revoked and a fresh grant to be issued in the names of:-

1. **Joseph Kinyua Kamau** (son of the deceased)
2. **Maritha Wanjiku Kamau** (widow of the deceased)

2. Equally the beneficiaries list was agreed upon as follows:-

**First House**

- a. Alice Wambui Kinuthia - daughter
- b. Agnes Waitherero Kamau - daughter
- c. Anne Wanjiru Kamau - daughter
- d. Margaret Nyambura Kamau - daughter
- e. Joseph Kinyua Kamau - Son
- f. Peris Nungari Kamau - daughter

**Second House**

- a. Maritha Wanjiku Kamau - widow
- b. Simon Karanja Kamau - son

- c. Milliam Nyokabi Kamau - daughter
- d. Milcah Wambui Kamau - daughter
- e. Peter Mwangi Kamau - son
- f. Joseph Kinyua Kamau - son

3. There followed some delay as parties attempted to come up with an agreed list of the estate properties, and mode of distribution. This proved unsuccessful and parties were therefore directed to file affidavits in that regard to enable the court resolve the questions. This was eventually done and respective submissions filed.

4. The 1<sup>st</sup> Administrator, **Maritha Wanjiku Kamau** the surviving widow of the 2<sup>nd</sup> House identified the estate properties as follows:-

- a. L.R. No. NYANDARUA/GITHIORO/858 - 10 Acres
- b. L.R. No. NYANDARUA/GITHIORO/859 - 5 Acres
- c. L.R. No. NYANDARUA/GITHIORO/511 - 0.045 HA (co-owned with one John Nguru Nganga)
- d. L.R. No. NYANDARUA/GITHIORO/522 - 0.045 HA
- e. Plot No. 238 Nyandarua Progressive Agency (acreage unknown)
- f. Likia Farm Plot No. 646 (acreage unknown)
- g. Whole sale shop on Plot No. Nyandarua/Githioro/511
- h. Motor Vehicle Registration No. KAH 654V
- i. Seven heads of cattle.

5. Her proposal is that all the children of the first house save **Joseph Kinyua Kamau** each received 1 acre out of the land parcel **NYANDARUA/GITHIORO/858**. **Joseph Kinyua Kamau** of the first house would get 2 ½ acres of the said land. Thus a total acreage of 7.5 Acres devolves upon the 1<sup>st</sup> family. The balance of 2 ½ acres is to be shared between her son **Joseph Kinyua Kamau** (1 ½ acres) and daughter **Milliam Nyokabi Kamau** (1 acre).

6. Regarding the land parcel **NYANDARUA/GITHIORO/859**, her proposal is that her children **Simon, Peter** and **Milka** get 1 ½ acres, 1 ½ acres and 1 acre respectively while she takes the balance of the total 5 acres, which is 1 acre.

7. Further, she proposes that the second house takes and shares equally the entire plot number **NYANDARUA/GITHIORO/511** (0.045 hectares) while the first house takes and shares equally, **NYANDARUA/GITHIORO/522** which is a plot with similar acreage. Regarding **Plot Number 238 NYANDARUA PROGRESSIVE AGENCY**, she proposes that her family shares it while the 1<sup>st</sup> family shares the **LIKIA PLOT 646**.

8. She complains that after the death of the deceased, the first family invaded **L.R. NO. NYANDARUA/GITHIORO/858** and **859**, and installed their alleged mother **Maria Wamani** thereon. That further, the said family 'raided' and looted property worth Shs 2 million from the deceased's shop erected on **NYANDARUA/GITHIORO/511**, which they carried away on motor vehicle **KAH 654V**

pick-up. In addition, the said family allegedly took seven head of cattle. She seeks that the said family compensates the 2<sup>nd</sup> family for their lost share in respect of the motor vehicle, the shop goods and cattle.

9. In her submission through Mr. P. K. Njuguna, the 1<sup>st</sup> Administrator emphasized the fact that the first family's stated conduct amounted to intermeddling with the estate, and that it is fair that she be compensated for goods taken away by the said family. Mr. Njuguna relied on the decisions in **Re-estate of Musambyi Katumanga (Deceased) 2014 eKLR** and **Virginia Wanjiku Kinuthia -Vs- Muthoni Kinuthia & Anor [2014] eKLR** concerning distribution in polygamous families.

10. For his part, the second administrator also swore an affidavit. Therein, he listed the same properties identified by the 1<sup>st</sup> Administrator, save for the seven head of cattle. Also, he identified the same beneficiaries, but included his mother **Maria Wamani aka Maria Yuyu**, as a beneficiary of the deceased. I will be dealing with that matter later in this ruling.

11. He claimed that the 1<sup>st</sup> family always occupied the land parcels **NYANDARUA/GITHIORO/858** and **NYANDARUA/GITHIORO/859**. He therefore proposes that the said family should retain the two land parcels and share equally the cumulative 15 acres thereof. He asserts that the 2<sup>nd</sup> family was settled by the deceased on the **Plot No. 238 NYANDARUA PROGRESSIVE AGENCY** during his lifetime.

12. He denies the alleged intermeddling in the estate and accuses the first family of carting away stock from the whole sale shop on land parcel **NYANDARUA/GITHIORO/511**. He therefore demands compensation. He agrees that the half share of the co-owned Plot No. **NYANDARUA/GITHIORO/511** should devolve upon the second family. Ditto **Likia Farm Plot No. 646**.

13. Regarding the land parcel number **NYANDARUA/GITHIORO/522** measuring 0.045 hectares he asserts that the same should devolve upon his family to share equally. He states that the motor vehicle **KAH 654V** which the second family took over is in decrepit condition and lying waste at **Plot 511**. Thus he demands due compensation.

14. Through Mr. Mbaluka, the 2<sup>nd</sup> Administrator cited Section 29 of the Law of Succession Act in relation to the dependent status of his "deceased mother" and therefore the right to include her among the entitled beneficiaries. Parts of the submissions read like an affidavit and restate material contained in the 2<sup>nd</sup> Administrator's affidavit in so far as the properties of, and distribution of the estate is concerned.

15. I have given due consideration to all the foregoing. There is no dispute that the deceased was a polygamous man as there being no evidence that he divorced the widow of the 1<sup>st</sup> house. However, the said widow is stated in the affidavit of the 2<sup>nd</sup> Administrator filed on 24/11/2010 to be deceased. She was not named therefore as a beneficiary in the 2<sup>nd</sup> Administrator's documents filed before the **High Court in Nairobi Succession Cause Number 925 of 2009** (Later transferred to Nakuru and subsequently to this court).

16. Indeed by a letter by the Chief South Kinangop dated 19/3/2009, attached to the affidavit of the 2<sup>nd</sup> Administrator in support of the summons for confirmation of grant, filed on 24/11/2010, the said mother of the 2<sup>nd</sup> Administrator was said to be deceased. Before me on 21/5/2015 the parties' agreed list of beneficiaries did not include the said **Maria Wamani aka Yuyu** and neither has she participated in these proceedings since commencement in 2009.

17. I am willing to accept that that the deceased was a polygamous man but that his first widow, **Maria Wamani** on all accounts is dead. That in no way affects the right of her children to inherit from the estate of their father, the deceased.

18. Section 40 of the Law of Succession provides for the manner in which the estate of a polygamous man devolves upon his beneficiaries. It states:-

**“(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.”**

19. Thus, in light of the above provision, the deceased in this case was survived by six beneficiaries in each of the two houses. It is not possible, on the material presented by the parties to come to a firm conclusion that stocks in the deceased’s shop and seven head of cattle among the estate properties, were irregularly taken by a specific house.

20. Nor is it possible to tell how the vehicle **KAH 654V** ended up decrepit and abandoned. There are accusations and counter accusations, between the families. Without proper evidence, this court cannot make a finding on the existence and value of the disputed properties, and even less attribute blame upon any house for conversion of the estate property. In the circumstances, I will not, in considering the distribution of the estate, take into account the decrepit vehicle, the alleged head of cattle or the business stock.

21. The properties available for distribution are therefore the following:-

a. L.R. No. NYANDARUA/GITHIORO/858 - 10 Acres

b. L.R. No. NYANDARUA/GITHIORO/859 - 5 Acres

c. L.R. No. NYANDARUA/GITHIORO/511 - 0.045 HA

L.R. No. NYANDARUA/GITHIORO/522 - 0.045 HA

e. Plot No. 238 Nyandarua Progressive Agency (acreage unknown)

f. Likia Farm Plot No. 646 (acreage unknown)

22. Firstly, I agree that the developed plot (half share) identified in (c) above and the entire plot identified in (e) should devolve upon the second house of the widow **Maritha Wanjiku Kamau**. In order to do equity, the first house should also benefit from the remaining plots namely **Likia Farm Plot No. 646** and **NYANDARUA/GITHIORO/522** (0.045 hectares).

23. The Court of Appeal observed in **Rono -Vs- Rono [2005] EKLR** that the aim of the court in distributing an estate is not to achieve perfect equality but to ensure that there is equity in the distribution. **Waki J** emphasized that in doing so, the applicable law and all relevant factors must be taken into account.

24. The statement by the 2<sup>nd</sup> Administrator that the first family always occupied and cultivated the land parcels number **858** and **859** was not supported by evidence. The 1<sup>st</sup> Administrator claims to have been evicted therefrom by the 1<sup>st</sup> family after the demise of her husband. Whatever the case, it would be inconsiderate to allow the 1<sup>st</sup> house to benefit from both parcels measuring 15 acres, to the exclusion of the second house.

25. Equally, it is not clear to me why the 1<sup>st</sup> Administrator proposes that the daughters of the deceased should get less portions of the land parcels than the male beneficiaries. Thus doing my best, in the circumstances, I would order that the first family will receive a portion measuring 7.5 acres out of the land parcel number **NYANDARUA/GITHIORO/858**. The parcel thus be carved out should be

contingent to the actual parcel currently developed as the family residence of the first house. The balance of 2.5 acres in the land parcel **NYANDARUA/GITHIORO/858** will be combined with the 5 acre land parcel number **NYANDARUA/GITHIORO/859** and shared by the second family.

26. As the law provides, the properties identified as devolving upon the respective houses will be shared equally by the members of each respective house. In light of the nature of these proceedings, each party will bear own costs.

Delivered and signed at Naivasha this **24<sup>th</sup>** day of **May, 2017**.

In the presence of:-

Miss Kithinji holding brief for Mr. Njuguna for the 1<sup>st</sup> Administrator

Mr. Gichuki holding brief for Mr. Mbaluka or the 2<sup>nd</sup> Administrator

Court Assistant – Quinter

**C. MEOLI**

**JUDGE**