



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 919 OF 1996**

**IN THE MATTER OF THE ESTATE OF GIKARU WANGIGI - (DECEASED)**

ESTHER MBENE KANYANGIRI.....1<sup>ST</sup> APPLICANT  
LUCY WAMAITHA GIKARU.....2<sup>ND</sup> APPLICANT  
NELLY WANJUHI.....3<sup>RD</sup> APPLICANT  
EDWARD WANGIGE.....4<sup>TH</sup> APPLICANT  
MARY WANGECI .....5<sup>TH</sup> APPLICANT

**VERSUS**

JAMES WAWERU GIKARU.....1<sup>ST</sup> ADMINISTRATOR/RESPONDENT  
GEOFFREY MBUGUA GIKARU...2<sup>ND</sup> ADMINISTRATOR /RESPONDENT (DECEASED)

**AND**

JAMES MBUGUA KURIA.....1<sup>ST</sup> INTERESTED PARTY  
DANIEL MUNGAI MBUGUA.....2<sup>ND</sup> INTERESTED PARTY

**JUDGMENT**

1. The deceased Gikaru Wangigi died intestate on 24<sup>th</sup> February 1992. He left two widows who passed on. They were Njoki Gikaru and Wangari Gikaru. He was survived by the following children (beneficiaries):-

- (a) James Waweru Gikaru (1<sup>st</sup> administrator);
- (b) Geoffrey Mbugua Gikaru (2<sup>nd</sup> administrator) (deceased);
- (c) Walter Kimotho Gikaru;

- (d) Francis Ngang'a Gikaru (deceased);
- (e) Lucy Njeri Billy;
- (f) Lucy Wamaitha Gikaru (2<sup>nd</sup> applicant);
- (g) Nelly Wanjuhi Gikaru (3<sup>rd</sup> applicant);
- (h) Mary Wangeci Gikaru (5<sup>th</sup> applicant);
- (i) Esther Mbene (1<sup>st</sup> applicant);
- (j) Jenipher Wanjiku;
- (k) Emily Wangari Kiguta;
- (l) Edward Wangigi Thindu (4<sup>th</sup> applicant); and
- (m) Jenipher Wanjiku.

2. His estate comprised two properties Kabete/Kibichiku/964 and Plot No. 21 Wangige Market.

3. The administrators got a grant of letters of administration issued to them, and the same was confirmed on 29<sup>th</sup> May 2002. The grant was revoked on 5<sup>th</sup> October 2011 and the administrators asked to propose a mode of distribution including all the beneficiaries. On 18<sup>th</sup> November 2013 James Waweru Gikaru was the only surviving administrator. He filed an application for confirmation in which he proposed how the estate was to be distributed. The distribution of Kabete/ Kibichiku/964 was not contested. The deceased's children had already shared it by agreement. What was contested was his proposal in relation to Plot No. 21 Wangige Market. He proposed that he and Walter Kimotho Gikaru do get  $\frac{1}{4}$ ; and the interested parties do get  $\frac{1}{4}$  of the property each. This is a developed property with tenants who pay rent.

4. This is the proposal that aggrieved the applicants whose case was that the interested parties were not beneficiaries or dependants of the deceased. They were not the children of the deceased and therefore could not derive any benefit from the estate. To the applicants, the interested parties were strangers. They asked that the property be sold and its proceeds shared equally among the children of the deceased.

5. The cause proceeded by way of oral evidence, following which counsel for the parties filed written submissions. M/s Ndegwa represented the 1<sup>st</sup> administrator, while the applicants were represented by M/s Kamuyu and the interested parties were represented by Mr. Gatumuta. The only issue for determination was to whom Plot No. 21 Wangige Market should devolve.

6. The 1<sup>st</sup> administrator (who is the son of the deceased), his step brother Walter Kimotho Gikaru gave evidence that was similar to that of the interested parties who also testified. Their case was that the plot was allocated to the deceased about 1946 by the Kiambu County Council. He did not have money to develop it. He invited Stanley Kuria (now deceased), James Mbugua (now deceased) and Harrison Muniu (now deceased) who helped raise the money that was used to develop it. Later on, the deceased called all members of his family and asked for more contribution to partner with the three to further develop the plot. Only the 1<sup>st</sup> administrator and Walter Kimotho Gikaru contributed. Those two began receiving part of rental income. Before this, only the deceased and the three above would share in the income. The money would be pooled together and shared at the end of the year. Until the deceased died, he was the treasurer. The income is about Kshs.55,000/= per month. It is on this basis that they asked that they (the two sons of the deceased) and the three contributors be the only ones to benefit from this plot. Following the death of James Mbugua, his son Daniel Mungai Mbugua (2<sup>nd</sup> interested party) shares in the rental income. When Harrison Muniu died it is his grandchild Kibugi Frank Mbugua (3<sup>rd</sup> interested

party) who receives the rent on behalf of his family. When Stanley Kuria died his share was taken over by his son James Mbugua Kuria (1<sup>st</sup> interested party).

7. The 1<sup>st</sup> applicant was the only one who testified on behalf of the applicants. Her case was that this property belonged to the deceased who developed it. She denied that the deceased was assisted by the three to develop the plot. The three men, she said, were given a place at the plot to repair bicycles but later began laying claim to it. Somehow, however, rent was being collected by the three. And on behalf of the deceased, rent was being collected by the 1<sup>st</sup> administrator and Walter Kimotho Gikaru. She did not understand why this was the arrangement. The arrangement obtained even before the deceased died. She stated that she was born in 1947. She said as follows:-

**“When I came to know about the plot it was already built. I was about 9 or 10 when I found it built.....”**

She, however, said that the three men came to the plot subsequently. I consider it immaterial that the deceased allowed three men and only two of his sons to collect rent and share it. I find that this supports the case by the 1<sup>st</sup> administrator, Walter Kimotho Gikaru and the interested parties that they had, together with the deceased, contributed to the development of the plot. The version by the 1<sup>st</sup> applicant is discounted.

8. This plot belonged to the deceased, and on that account all his children had a stake in it. Of the family, however, only the 1<sup>st</sup> administrator and Walter Kimotho Gikaru participated in its development and improvement. It is considered that the two came into the picture after the initial development by the three men (now represented by the interested parties).

9. It is for these reasons that I order that this Plot No. 21 Wangige Market be sold so that the proceeds be shared as follows:-

(a) 1/5 to be shared equally by all the children of the deceased, including the 1<sup>st</sup> administrator and Walter Kimotho Gikaru;

(b) 1/5 to be shared equally between the 1<sup>st</sup> administrator and Walter Kimotho Gikaru; and

(c) each interested party shall get 1/5 of the proceeds on behalf of his family.

10) On this basis, and on the basis of the unchallenged distribution of Kabete/Kibichiku/964, the grant issued to the 1<sup>st</sup> administrator is hereby confirmed.

**SIGNED at NAIROBI this 14<sup>TH</sup> day of SEPTEMBER 2017.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 18<sup>TH</sup> day of SEPTEMBER 2017.**

**W. MUSYOKA**

**JUDGE**