



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 90 OF 2015

(Formerly Naivasha Chief Magistrate's Succession Cause No. 62 of 2009)

IN THE MATTER OF THE ESTATE OF MANASSEH KANYORIA KINUTHIA (DECEASED)

JAIRO KINUTHIA KANYORIA.....PETITIONER

AND

ZIPPORAH WANJIKU & 7 OTHERS.....PROTESTORS

R U L I N G

1. A grant of letters of administration was issued to **Jairo Kinuthia** (Petitioner), a son of the deceased on 2nd June, 2009, the deceased, **Manasseh Kanyoria Kinuthia** having died intestate on 4th July, 2006.
2. Before the grant could be confirmed, a caveat was filed on 1st February, 2010 by **Zipporah Wanjiku Kanyoria**, (Zipporah) a daughter of the deceased. The subsequent Summons for confirmation of the grant, lodged by the Petitioner on 10th February, 2010 was resisted by Zipporah and her sisters by an affidavit of protest.
3. The affidavit was sworn by Zipporah on her own behalf and on behalf of her siblings, namely, **Mary Wairimu Manasseh, Ruth Muniu Mwangi, Hannah Wambui Kanyoria, Hellen Wanjiku Kanyoria, Eunice Wamaitha Kanyoria, Naomi Wahu Kanyoria** and **Paul Maina Kanyoria**, the latter a son of a deceased sibling, **Esther Wangari Kanyoria**.
4. The gist of the protest as contained in the affidavit of Zipporah is that the Petitioner herein instituted the succession proceedings in respect of the estate of the deceased secretly and without seeking the involvement of his siblings, also beneficiaries of the estate of the deceased. Minutes of family meetings on the questions were relied on. While not disputing the list of beneficiaries and properties consisting of the estate, the protesters have taken issue with the mode of distribution proposed by the Petitioner in his summons for confirmation of grant.
5. By their submissions, the protesters argue that no distinction ought to be made between the male and female children of the deceased and hence they propose equal sharing of the estate. They relied on the case of **Peter Karumbi Keingati & 4 Others -Vs- Dr. Ann Nyokabi Nguthi & 4 Others (2015) eKLR** in that regard. They have proposed what they deem to be a fair mode of distribution, citing earlier clan meetings/resolutions on the matter.
6. For his part, the Petitioner has defended his institution of the succession cause, stating that his siblings had responded with disdain when summoned by the local chief to discuss the matter. He also defends the

method of distribution in his affidavit which he claims to have been in consonance with the wishes of the deceased. He too claims that a clan meeting subsequent to the filing of the protest supported this mode of distribution.

7. Having considered the material canvassed by the parties, it is evident to me that the real sticking point in this matter is the manner of distribution of the estate properties. Notwithstanding claims by the protestors that the Petitioner surreptitiously filed the present cause, all the parties appear keen on the sole issue of distribution.

8. The objection herein was made under Rule 40(6) of the Probate and Administration Rules which states:-

“Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.”

9. The Petitioner on one hand and the protestors on the other, have attempted to rely on alleged resolutions by family or clan members regarding the question of distribution of the estate. In my own view, these “resolutions” are themselves subject to dispute between the parties. They have no legal standing but merely represent efforts by the wider family of the parties to bring the siblings to agree on the mode of distribution, which obviously did not succeed. The deceased died intestate and no party can hope to gain extra mileage by purporting to assert his alleged wishes regarding the distribution of his estate among his children.

10. The Petitioner was the only son of the deceased among his nine children, eight of whom survived the deceased. In the definition of children in the Law of Succession Act, no distinction is made between male and female children. Section 38 of the Law of Succession Act governs the manner in which the estate of an intestate survived by children ought to devolve. The Section provides:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

11. This Section similarly makes no distinction between male and female children. This is consistent with Article 27 of the Constitution which prohibits discrimination on grounds of sex, inter alia. The Petitioner has claimed entitlement to a larger portion of the estate than his sisters. I cannot find any justification in his material for such a claim, except perhaps the unstated but implied fact that he was an only son of the deceased.

12. Apart from the court’s duty to ensure equity in distribution, (see **Rono –Vs- Rono [2005]eKLR**) this court is guided by the decision of the court of Appeal in **Peter Karumbi Keingati & 4 Others -Vs- Anne Nyokabi Nguthi & 4 Others [2015]eKLR**. In both decisions, the Court of Appeal asserted the equal right by male and female children to benefit from the estate of their deceased parent. Indeed in **Rono -Vs- Rono**, the Court of appeal stated that in light of the provisions of the Law of Succession Act and international human rights instruments, no justification could be used to exclude daughters from inheriting their parents’ estates or even to assign them a smaller share thereof, than the male heirs.

13. In **Keingati**, the sons of the deceased, placing reliance on Kikuyu Customary Law, sought to exclude their sisters from inheriting any part of the estate. No doubt the place of reverence for sons in general and only sons in particular, in many cultures has resulted in the belief that women, especially those who are married, ought not to benefit from their father’s estate as they were deemed to be potential beneficiaries in the families they married into. Such was the argument in Keingati’s case.

14. Though not stated explicitly in this case, it seems to me that such thinking could be the reason why the Petitioner appears to feel entitled to the lion’s share of the deceased’s estate. In the **Keingati** case which came after the 2010 Constitution, the Court of Appeal stated inter alia regarding the Constitution:-

“...it also has very strong pro-equality and non-discriminative provisions such as Article 27 which among other things, declares that all persons are equal before the law and have the right to equal protection and equal benefit before the law; that equality includes the full and equal enjoyment of all rights and fundamental freedoms; that women and men have the right to equal treatment including the right to equal opportunities in public, economic, cultural and social spheres; and prohibits direct or indirect discrimination on any ground including sex, marital status or culture.”

15. Thus in my view, the Petitioner and his female siblings must be treated equally in determining the distribution of the estate of their deceased father. It does not appear to be in dispute that some of the siblings, namely the Petitioner, **Eunice Wamaitha Kanyoria**, **Hannah Wambui** and **Paul Maina Kanyoria** the son of the late daughter of the deceased herein, have settled on the property described as **NYANDARUA/NJABINI/472** and that the other siblings also utilize certain portions thereof. Further, the protestors do admit that the Petitioner was entitled to one extra acre of that parcel being the burial site where the remains of their parents are interred.

16. In my considered view, the land parcel **No. NYANDARUA/NJABINI/472** which measures 9 acres ought to be shared as follows:-

1. Jairo Kinuthia Kanyoria	3 acres
2. Eunice Wamaitha Kanyoria	1½ acres
3. Naomi Wahu Kanyoria	1½ acres
4. Hannah Wambui Kanyoria	1½ acres
5. Paul Maina Kanyoria (son of Esther Wangari Kanyoria (Deceased))	1½ acres

17. Regarding the land parcel **No. NYANDARUA/KITIRI/2452** which measures 2 acres, the same should be shared equally between **Ruth Muniu Kanyoria** and **Mary Wairimu Kanyoria**.

18. **Zipporah Wanjiku Kanyoria** and **Hellen Wanjiku Kanyoria** will each receive 1½ acres out of the land parcels **NYANDARUA/NJABINI/2708 AND 2709** which together measure 4¼ acres in total. The remainder of the parcel, which measures 1¼ acres will be shared equally by **Ruth Muniu Kanyoria** and **Mary Wairimu Kanyoria** thus bringing the total acreage assigned to each of these two sisters to 1.625 acres of land.

19. **Mary Wairimu Kanyoria** and **Ruth Muniu Kanyoria** will therefore not partake of the proceeds of the sale of the 2660 KCB shares. The rest of the beneficiaries will share equally these proceeds. All the children of the deceased (including Paul Maina Kanyoria the son of their deceased sister) will share equally the cash in the Equity Bank account No.[particulars withheld]. Regarding the proceeds from the sale of one plot share in **Uigvano Wa Kirere Society**, these will be shared among the daughters of the deceased. The remaining one plot share will devolve upon **Jairo Kinuthia Kanyoria** exclusively.

20. A vehicle registration number KKQ 952 and cypress trees listed in the protestor's submissions have not been established to be part of the estate. Indeed these are not in the list of assets in the petition. Besides, trees on the land would naturally go to the specific beneficiary of the land parcel on which they stand and cannot be inherited separately from the land.

21. As can be seen from the foregoing, 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 property itself. The court's aim is not to achieve a mathematical equality between the beneficiaries but to do equity, considering the unique facts in each case (*see Rono –Vs- Rono*). Parties will bear own costs.

Delivered and Signed at Naivasha this 22nd day of November, 2017.

In the presence of:

Mr. Njuguna for the Petitioner

Mr. Gichuki for the Protestors

Court clerk : Barasa

C. MEOLI

JUDGE