



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.659 OF 2004**  
**IN THE MATTER OF THE ESTATE OF KARIUKI NGUMI – (DECEASED)**  
**NAOMI WANGUI KARIUKI.....PETITIONER**

**JUDGEMENT**

**THE HISTORY**

The deceased Kariuki Ngumi died on the 22nd February, 1995. Naomi Wangui Kariuki, widow to the Deceased petitioned for letters of administration in respect of the estate. The said petition was gazetted vide gazette notice No.6693 on the 26th August, 2005. A grant of letters of administration was issued to the said Naomi Wangui Kariuki on 25th day of October, 2005.

By way of a summons for revocation or annulment of grant dated 13th February, 2006, Mary Wairimu Thuo seeks the revocation and/or annulment of the grant of letters of administration intestate issued to Naomi Wangui Kariuki.

That summons is premised on three (3) grounds:

(a) The Letters of Administration intestate were obtained fraudulently by making of a false statement and by the concealment from the court of material facts.

(b) The deceased died testate.

(a) The deceased had two wives which fact has not been disclosed to this Honourable Court and supported by her affidavit sworn on the 20th day of February, 2006 and further affidavit sworn on 6th November, 2007.

Mary Wairimu Thuo subsequently died in August, 2011.

No application was made for substitution and on the 20th day of March, 2012, Naomi Wangui Kariuki filed an application for the issuance of letters of administration for the estate of Kariuki Ngumi. Simultaneously was a prayer for the confirmation of the grant issued notwithstanding that 6 months would not have elapsed since the issuance of the grant.

This application elicited an affidavit of protest from John Karanja Thuo, a son of Mary Wairimu Thuo (the objector who passed on).

Matter was disposed off by way of oral evidence.

The protestor John Karanja Thuo told the court that Kariuki Ngumi was his grandfather. The deceased had two wives Naomi Wangui Kariuki and Naomi Nyambura Kariuki. Wangui had 12 children. The 2nd wife Naomi Nyambura Kariuki had three (3) children all of whom are now deceased.

He added that the deceased owned parcel of land Uasin Gishu/Illula/79 which was 5 acres. Before his death, he had subdivided the land into two (2) portions of 2½ acres, a portion each for the two (2) houses.

On cross-examination, P.W.1 said that his grandfather owned land in Nakuru. He however has not seen the title to that land. A son of the deceased was living on this land and the deceased was buried on this land. The land was in Rongai but has since been sold by Gitau a son of the deceased.

On further cross-examination, he confirmed that the petitioner had 12 children and therefore inclusive of herself that translates to 13 persons. He said it is not fair that he gets 2½ acres while the 13 members of the other house gets the same 2½ acres. He left matter to the judge to decide.

P.W.2, Joshua Njoroge confirmed that deceased had two (2) wives. The deceased sent his son one day informing him that deceased wished to sub-divide his land to his people. By then, the deceased was at the Eldoret Referral Hospital. The deceased gave some money to the petitioner to go to the market to keep her away to allow for the subdivision the land into two (2) equal portions. These were the wishes of the deceased.

The petitioner Naomi Wangui Kariuki told that court that she is a widow of the deceased and she had 12 children with him. She was a co-wife to Naomi Nyambura Kariuki who had 3 children two (2) of whom died early on. The surviving child was Mary Wairimu Thuo who was two (2) years old by the time Nyambura (her mother) died. It is the petitioner who brought her up.

The petitioner added that the deceased did not own any other land apart from parcel No.79 Illula. She denied knowledge of any subdivision of the land. She said it is not fair to subdivide the land into two (2) equal portions and her prayer is that the land be divided amongst all beneficiaries. Total number of beneficiaries would be fourteen (14) inclusive of herself.

In cross-examination, petitioner stated that parcel No.79 is sub-divided into two (2) portions. One portion is occupied by the family of Mary Wairimu Thuo. She (petitioner) leases out the other half. Her wishes are that all the children get the land.

From the material before me, it is crystal clear that the deceased herein had two (2) wives, one with 12 children and the 2nd with three (3) children - 'all deceased but survived by a grandson of the deceased. It is also clear that the deceased owned parcel of land No.UasinGishu/Illula/79.

Despite P.W.1 stating that deceased had some other land in Nakuru, a fact denied by the petitioner, no tangible evidence was laid in support of that claim.

The issue for determination therefore crystalize into 2, viz,:

1. Whether the deceased had subdivided his land into two (2) equal portions – one for each of the two (2) houses.
2. What is the mode of distribution of the property herein?

On issue No.1, the evidence available is that of Joshua Njoroge (P.W.2) who said that at one time when deceased was admitted in hospital, he instructed him (P.W.2) to go to the land and divide it into 2 equal portions. He states these were the wishes of the deceased. Notably, the exercise is acknowledged by P.W.2 as a clandestine one since he offers that the deceased gave some money to the petitioner to go to the market to keep her out of the way. On the material before me, evidence of the deceased's intent and the actual subdivision of the land is not tangible. There is no corroboration to the evidence of P.W.2 on this aspect of the proceedings. On a balance of probability, the protestor fails to prove there was such an

intent or actual subdivision.

The deceased having died after the commencement of the Law of Succession Act (Cap 160 Laws of Kenya), the applicable law on distribution of the estate herein will be found in **Section 40** thereof which makes provision for the distribution of the net estate where the deceased had married more than once. **Section 40(1)** provides:

**“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.**

In our instant case, the deceased is survived by a widow and 12 children from one of the houses and one grandchild from the other house. Taking the widow as unit, the estate should devolve to 14 units.

With the result that the only asset in the estate being L.R. No.Uasin Gishu/Illula/79, shall be divided in the ratio 1:13. This is in line with the decision in Musa Imbiakha V. Khayanga Imbiakha, [2015] eKLR.

The letters of administration are thus confirmed as follows:

1. The parcel L.R. No.Uasin Gishu/Illula/79 shall be divided between the first and the 2nd house in the ratio 1:13.
2. John Karanja Thuo shall have a 1/14 share being the portion allocated to the 1st house.
3. All the children of Naomi Wangui Kariuki shall have equal shares in the portion allocated to the 2nd house to include an equal portion for Naomi Wangui Kariuki.
4. Naomi Wangui Kariuki to hold a life interest in the portion to be allocated to her.

This being a family matter, each party to bear their own costs.

**Dated, Signed and Delivered at Nakuru this 14th day of April, 2016.**

**A. K. NDUNGU**

**JUDGE**