



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**SUCCESSION CAUSE NO. 431 OF 2012**

**IN THE MATTER OF THE ESTATE OF KANGANGI MURIRI KAMUNGE (DECEASED)**

**AND**

**ROSEMARY WANJIRU KANGANGI.....PETITIONER**

**VERSUS**

**MWANGI KARIUKI KANGANGI.....1<sup>ST</sup> PROTESTOR**

**MARY WATHEIYA KANGANGI.....2<sup>ND</sup> PROTESTOR**

**JUDGMENT**

1. This cause relates to the estate of the late **KANGANGI MURIRI KAMUNGE** (Deceased) who died intestate on 2<sup>nd</sup> September, 2006 domiciled at KITHUMBI, Kirinyaga County. The deceased left the following dependants surviving him namely;

- i. Rosemary Wanjiru Kangangi
- ii. Mwangi Kariuki Kangangi
- iii. John Waweru Kangangi
- iv. Joseph Muchoki Kangangi
- v. Flora Micere Kangangi
- vi. Mary Watheiya Kangangi
- vii. Sophia Wambui Kangangi
- viii. Monica Waruguru Kangangi

2. According to the petition for letters of administration filed by Rosemary Wanjiru Kangangi the widow and the appointed administratrix herein, the deceased left behind the following assets which comprises the estate in this cause:-

- a. **Mwerua/Kithumbu/1066** measuring approximately 2.24 ha.
- b. **Mwerua/Kithumbu/1058** measuring approximately 1.54 ha.
- c. **Mwerua/Kithumbu/1068** measuring 0.1 ha. and
- d. **Mwerua/Kithumbu/1069** measuring approximately 0.1 ha.

3. The petitioner was appointed the administratrix on 6<sup>th</sup> June, 2012. She then took out summons dated 18<sup>th</sup> December, 2012 for confirmation of the said grant and proposed to distribute the estate as follows:-

- a. **Mwerua/Kithumbu/1068** Rosemary Wanjiiru Kangangi

**b. Mwerua/Kithumbu/1069**

c. 0.42 ha out of **Mwerua/Kithumbu/1066** to be shared equally among the following:-

- i. Rosemary Wanjiru Kangangi
- ii. Flora Micere Kangangi
- iii. Sophia Wambui Kangangi
- iv. Mary Watheiya Kangangi

d. 1.20 ha out of Mwerua/Kithumbu/1066 to go to John Waweru Kangangi.

e. 0.50 ha from the same parcel to Rosemary Wanjiru Kangangi.

f. 0.1 ha from the same parcel to go to Mwangi Kariuki Kangangi.

4. Mwangi Kariuki Kangangi and Mary Watheiya Kangangi the protestors herein were dissatisfied with the petitioner's mode of distribution and filed a joint affidavit of protest sworn on 14<sup>th</sup> April, 2013 proposing their preferred mode of distribution as follows:

**a. Mwerua/Kithumbu/1068**

**Mwerua/Kithumbu/1069** Rosemary Wanjiru Kangangi

0.1 ha out of **Mwerua/Kithumbu/1066**

b. Joseph Muchoki Kangangi

i. 0.80 ha out of **Mwerua/Kithumbu/1058**

ii. 0.40 ha out of **Mwerua/Kithumbu/1066**

c. Mwangi Kariuki Kangangi

i. 0.40 ha out of **Mwerua/Kithumbu/1058**

ii. 0.40 ha out of **Mwerua/Kithumbu/1066**

d. John Waweru Kangangi

i. 0.40 ha out of **Mwerua/Kithumbu/1058**

ii. 0.40 ha out of **Mwerua/Kithumbu/1066**

e. Mary Watheiya Kangangi

0.40 ha out of **Mwerua/Kithumbu/1066**

f. Flora Micere Kangangi

Sophia Wambui Kangangi and

Monica Waruguru Kangangi to each get 0.10 ha from **Mwerua/Kithumbu/1066**.

5. The administratrix upon being served with the affidavit of protest, filed a reply justifying her proposed mode of distribution to a purported will of the deceased and exhibited the same vide her affidavit sworn on 26<sup>th</sup> March, 2013.

6. At the hearing of the protest herein which was by way of oral evidence, the administratrix told this court that she had been blessed with 12 children with the deceased but that only seven are alive and gave the names of the ones alive as per what is contained in the petition highlighted above. She faulted the 1<sup>st</sup> protestor, Mwangi Kariuki Kangangi saying that he had already benefitted from his father's share comprised in that property known as **Mwerua/Kithumbu/10**. She testified that the 2<sup>nd</sup> protestor was given a plot by her father where she currently stays after she was chased away by her husband.

7. **Mwangi Kariuki Kangangi**, the first protestor denied that Plot No. **Mwerua/Kithumbu/10** was part of the estate herein. He testified that the land belonged to him after being given by his clan in 1959 and further denied holding the property in trust of anyone. He further testified that the married daughters to the deceased equally deserve to be given a share.

8. The 2<sup>nd</sup> protestor **Mary Watheiya Kangangi** on her part conceded that her late father (the deceased herein) gave her a plot measuring approximately  $\frac{1}{8}$  of an acre. She further testified that she had had a change of mind in regard to the affidavit of protest she had filed and that she now prefers that the property be distributed equally among all the children. She accused her brothers of being violent towards her a fact she added forced her to take action by reporting them to the police. She however, indicated that she had forgiven them owing to their relationship.

9. This Court has considered the protest filed in regard to the proposed mode of distribution made by the administratrix herein. The following issues came up during the hearing of this matter:-

- i. Whether there was a valid will left behind by the deceased.
- ii. Whether that property known as **Mwerua/Kithumbu/10** is part of the estate.
- iii. Which assets comprise the estate and what proposed mode of distribution is applicable in law.

10. To begin with the first issue, it is clear that the deceased died intestate as demonstrated by the petition filed by the petitioner herein and the affidavit sworn in support of petition for letters of administration sworn on 18<sup>th</sup> January, 2012. The purported will marked as RWK1 and annexed to the petitioner's affidavit sworn on 26<sup>th</sup> March, 2013 is invalid as it does not meet the legal requirements provided under **Section 11 of Law of Succession Act Cap 160**.

11. The petitioner at the hearing of this matter testified that the 1<sup>st</sup> protestor had previously benefitted from that property known as **MWERUA/KITHUMBU/10** which she maintained belonged to the deceased herein. The same was denied by the 1<sup>st</sup> protestor. I have considered this issue and note that while the claim by the administratrix may be valid there was no evidence adduced or placed before this court to prove the fact. The official search seen by this court showed that the said property was in the name of the 1<sup>st</sup> protestor. The same cannot be treated as part of the estate in the absence of any proof that the property belonged to the deceased herein.

12. The parties in this cause are in agreement on the remaining assets comprising the estate. These are the properties listed in the petition in addition to the  $\frac{1}{8}$  of an acre plot which the 2<sup>nd</sup> protestor conceded that it is in her possession but belongs to the deceased. The details or the description of the said plot was however, not provided during the hearing of the protest herein. The estate therefore comprises the following:-

- i. **Mwerua/Kithumbu/1068** – measuring 0.1 ha.
- ii. **Mwerua/Kithumbu/1069** – measuring 0.10 ha.
- iii. **Mwerua/Kithumbu/1058** – measuring 1.54 ha.
- iv. **Mwerua/Kithumbu/1066** – measuring 2.24 ha.
- v.  $\frac{1}{8}$  of an acre plot in possession of the 2<sup>nd</sup> protestor Mary Watheiya Kangangi.

13. The provisions of **Sections 35 and 40 of the Law of Succession Act Cap 160** provides that the estate of a deceased person dying intestate shall be distributed equally among all the surviving children with the

widow being added as an additional unit to have life interest on the net estate and upon her demise or re-marriage the same shall be divided equally among the surviving children.

14. The above being the position of the law this court finds and indeed directs that all the listed assets in the estate including the  $\frac{1}{8}$  acre plot in possession of the 2<sup>nd</sup> protestor (Mary Watheiya Kangangi) shall be divided equally among the 8 dependants as follows:

- i. Rosemary Wanjiru Kangangi
- ii. Mwangi Kariuki Kangangi
- iii. Mary Watheiya Kangangi
- iv. John Waweru Kangangi
- v. Joseph Muchoki Kangangi
- vi. Flora Micere Kangangi
- vii. Sophia Wambui Kangangi and
- viii. Monica Waruguru Kangangi

The following assets comprising the estate shall be divided equally among the above 8 named dependants with the administratrix having life interest on her share and thereafter the same to devolve among the surviving children:-

- i. **Mwerua/Kithumbu/1066** measuring approximately 2.24 ha.
- ii. **Mwerua/Kithumbu/1058** measuring approximately 1.54 ha.
- iii. **Mwerua/Kithumbu/1068** measuring approximately 0.10 ha.
- iv. **Mwerua/Kithumbu/1069** measuring approximately 0.10 ha.

Mary Watheiya Kangangi shall retain  $\frac{1}{8}$  acre plot where she is residing but the surveyor is directed to factor in the share in the distribution of the above registered assets to ensure that each beneficiary gets an equal share of the estate. The costs of the county surveyor shall be paid by all the beneficiaries with the exception of the administratrix owing to her advanced age. I further direct the county surveyor when carrying out survey work to factor in where each beneficiary is currently staying to ensure that there are minimal disruptions. The share of John Waweru Kangangi should be adjacent to the share of the administratrix for convenience as this court was told that John Waweru Kangangi is currently taking care of the administratrix in her advanced age. As this is a family matter I shall make no order as to costs. I further direct the County Lands Registrar to dispense with production of title deed in respect to **Mwerua/Kithumbu/1058** in the process of sub division and transmission to the respective beneficiaries.

*Dated and delivered at Kerugoya this 19<sup>th</sup> day of May, 2016.*

**R. K. LIMO**

**JUDGE**

19.5.2016

Before: Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

English-Kikuyu

Rosemary Wanjiru present

Mwangi Kariuki Kangangi

Mary Watheiya Kangangi

**COURT:** Judgment signed, dated and delivered in the open court in the presence of Rosemary Wanjiru Kangangi the petitioner, and Mwangi Kariuki Kangangi and Mary Watheiya Kangangi the protestors in person.

**R. K. LIMO**

**JUDGE**

19.5.2016