



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS - FAMILY DIVISION.

SUCCESSION CAUSE NO. 1140 OF 1990

PETER KARUMBI KEINGATI.....1ST APPLICANT
JOHN NGUGI KEINGATI.....2ND APPLICANT
JAMES KARANJA KEINGATI.....3RD APPLICANT
PHILIP GITAU KEINGATI.....4TH APPLICANT
SIMON GATHU KEINGATI.....5TH APPLICANT

VERSUS

DR ANN NYOKABI NGUITHI.....1ST RESPONDENT
ELIZABETH NJERI MWATHA.....2ND RESPONDENT
LUCY WANJIRU KANDU.....3RD RESPONDENT
REGINA WAIRIMU.....4TH RESPONDENT

AND

ANN WAMBUI WAIHARO KEINGATI.....1ST INTERESTED PARTY
MICHAEL MAINA WAIHARO KEINGATI.....2ND INTERESTED PARTY
MARY WANJIKU KEINGATI.....3RD INTERESTED PARTY

RULING

INTRODUCTION

Keingati Waiharo Keingati died on 3rd March 1990. The widow, Teresiah Keingati, filed petition for Grant of Letters of Administration intestate on 9th October 1990 and listed beneficiaries as follows;

1. Paul Waiharo Kiingati

2. **Peter Karumbi Kiingati**
3. **John Ngugi Kiingati**
4. **Phillip Gitau Kiingati**
5. **James Karanja Kiingati**
6. **Regina Wairimu Kiingati**
7. **Simon Gathu Kiingati**
8. **Raphael Kiingati**
9. **Mrs. Ann Nyokabi Nguithe**
10. **Mrs. Lucy Wanjiru Kandu**
11. **Elizabeth Njeri Kiingati**

They all gave written consents and the widow of the deceased and mother to beneficiaries was issued with grant of letters of administration intestate to the deceased's estate. The widow was the sole administrator of the estate.

The grant was confirmed on 3rd October 1991. The Administrator was to hold all the assets that comprised of the deceased's Estate in trust for herself and all sons and daughters. On 26th October 1994 Peter Karumbi Kiingati, John Ngugi Kiingati, Phillip Gitau Kiingati, James Karanja Kiingati and Simon Gathu Kiingati filed an Application for revocation of the grant issued to the Respondent, Teresiah Keingati, on the following grounds;

1. **The administrator failed completely to proceed diligently with administration of the estate**
2. **The grant had become useless and in operational through subsequent circumstances**
3. **The administrator converted the estate and proceeds emanating from the estate to her own personal use to the detriment of beneficiaries and failed in her duties as trustee**
4. **The Applicants sought audience with administrator to discuss the financial and physical state of assets and sought an account of the same. The administrator refused and threatened the Applicants they would be disinherited.**

In the alternative the Court could appoint additional three Administrators. Paul Waiharo Keingati filed a Replying affidavit and opposed the Applicants' Application. Patrick and Felista Nguyai filed an Affidavit and explained that they witnessed the deceased when he distributed the properties to the beneficiaries. They presided over the family meeting also attached the Minutes of the Arbitration meeting of Keingati's family held on 8th April 1995.

The Administrator, Teresiah Nduta Keingati, filed an Affidavit in reply and a Further Affidavit of 22nd February 1995 and 21st April 1997, respectively, which opposed the Applicants' Application, she stated that the deceased's Estate had liabilities that she paid as rates. She also reconstructed the Makadara Plot 209/4401/ 531/536 and paid legal fees for **High Court Criminal Revision No. 58 of 1991**. She assisted each of the Applicants with monetary support in instances tabulated in her affidavit, which they did not disclose or acknowledge. She also contended that some of the Applicants did not disclose that they enjoyed rent-free properties of the Estate.

The administrator stated that the deceased had distributed his estate to the beneficiaries during his lifetime. The Minutes of Keingati Waiharo Family meeting held on 15th October 1989 evidences this distribution. In her Further Affidavit she stated that the distribution was as follows;

1. **Phillip Gitau, James Karanja, Simon Gathu and Raphael Keingati to share Plot Ndumberi /Riabai /887 equally.**
2. **James Karanja and Raphael Karanja to share Ndumberi/Ndumberi/T.152 equally.**
3. **Philip Gitau and Simon Gathu to share Plot Riabai/Ndumberi/T.266 equally.**
4. **Regina Wairimu Keingati to have Plot No. Ngenda Mutomo/T.182 absolutely.**
5. **Paul Waiharo, Peter Karumbi, John Ngugi, Philip Gitau and James Karanja, Simon Gathu, Raphael Karanja to share Plot 209/10050 Dandora in equal shares.**
6. **Teresiah Nduta Keingati was to retain; Plot No. Ndumberi/Riabai/891, Plot No.209/4401/526& 531, Plot No.1/48 Kiambu Town and Ndumberi/Riabai/885.**
7. **Teresiah Nduta Keingati was to hold in trust these properties for Paul Waiharo, Peter Karumbi, John Ngugi, James Karanja, Simon Gathu, Raphael Karanja, Phillip Gitau and Regina Wairimu equally.**

On 20th December 1995, Hon Justice E. Githinji determined the dispute on revocation of grant issued to the administrator in the said Ruling as follows;

“It has come to light that the grant was confirmed contrary to law as the share of each beneficiary was not identified before the grant was confirmed. That means that the confirmed grant did not distribute the estate. Another irregularity is that the administrator was registered in respect to assets as trustee for herself and her sons and daughters. The sons and daughters were not in the confirmed grant identified by name nor were their shares identified. By S 84 of L.S.A. a personal representative can be a trustee for minor beneficiaries In the present case therefore since there are no minor beneficiaries, the administrator cannot act as a trustee for beneficiaries. She is holder of life interest as well as administrator. It is this irregular manner in which the grant was confirmed which has created disputes in the estate.....The problem will be solved if the certificate of confirmation of grant is revoked to enable disputes on distribution of the estate to be heard on its merits.”

The above position is the basis of the present Ruling. This Court has heard extensively on various aspects of administration of the deceased’s Estate.

APPLICATIONS FILED

The Applicants filed an Application on 30th November 1998 against the Respondent/Administrator seeking that there be a joint account to deposit all rent receivables from the assets of the Estate and to curtail waste and intermeddling of the Estate.

The Applicants filed another Application on 3rd July 2013 and sought the Court to restrain the Administrator in light of Ruling of 20th December 1995, from withdrawing funds from Account 0151213048600 Standard Chartered Bank Kiambu Branch, which as per the attached statement of account had accumulated Ksh. 12m. The Court granted restraining orders on 15th July 2013 and vacated the said orders on 29th September 2013.

The Respondent filed a Replying Affidavit on 6th September 2013; John Ngugi filed a Replying affidavit on 22nd October 2013 and Peter Karumbi on 23rd March 2014. The gist was that the properties allotted to

them were by the deceased during his lifetime. They were gifts and not part of the estate available for distribution. The administrator upon obtaining grant isolated the sons and she favored married daughters of the deceased. The Applicants stated that the daughters were not entitled to inherit from the estate as they were married and well to do.

The Respondent, one of the daughters Dr. Ann Nyokabi Nguithi filed Replying affidavit and deposed that as daughters of the deceased they were entitled to inherit from their father's estate irrespective of their position and status. Customary law should not be applied selectively, to curtail them from obtaining beneficial interest from the estate and yet allow their sisters in law to inherit from the estate on behalf of departed brothers. They opposed discrimination on the basis of gender and custom. The Court upheld their objection by Ruling delivered by Hon. Justice L. Kimaru on 31st July 2014. The Applicants lodged an appeal to the Court of Appeal and on 25th April 2015, the Appellate Court upheld the High Court decision that both sons and daughters are entitled to beneficial interest from the deceased's estate.

The Administrator filed an Application on 4th April 2014; the administrator questioned how and why Peter Karumbi was appointed CEO of the said Company yet the Administrator was the rightful person to represent the estate of the deceased. The administrator sought preservation of 525 shares held by Kiambu Dandora Farmers Company Limited until hearing and determination of the matter regarding confirmation of grant. The Court preserved the said shares in the deceased's name pending hearing and determination of the matter.

DISTRIBUTION OF THE DECEASED'S ESTATE

These proceedings have been a protracted dispute on the distribution of the deceased's estate. The parties broadly agreed on issues for determination as follows;

- 1. Is the widow Administrator entitled to remain as sole Administrator of the deceased's estate?**
- 2. Is the distribution of the Estate complete in terms of the properties distributed as gifts *inter vivos* by the deceased to the sons of the family?**
- 3. If it is not complete should the mode of distribution take into account the gifts *inter vivos* so that there's equitable distribution of the Estate to all beneficiaries?**
- 4. Is the widow Administrator of the Estate entitled to life interest to the properties in her name as trustee and the rental properties?**
- 5. Should the Ksh. 12million in the Administrator's account, 133 Gathara Farmers Shares and L.R 209/10050 and Kiambu Municipality -37to be distributed as part of assets that comprise of the deceased's Estate?**
- 6. How is the residue of the Estate to be distributed; what are the sons and daughters entitled to and in what proportion?**

PROPOSALS

It is not in dispute that the deceased during his lifetime had given his seven sons part of his properties as listed here below:-

- a. **L.R No. Ndumberi/Riabai No. 887** was gifted to Phillip Gitau Keingati, James Karanja Keingati, Simon Gathu Keingati and Raphael Karanja Keingati (Deceased).
- b. **L.R No. Ndumberi/Riabai No. 888** gifted to John Ngugi Keingati.
- c. **L.R No. Ndumberi/Riabai No. 889** gifted to Paul Waiharo Keingati (Deceased).

d. **L.R No. Ndumberi/Riabai No. 890** gifted to Peter Karumbi Keingati.

e. **L.R No. L.R No. Riabai/Ndumberi No. T226** gifted to Philip Gitau Keingati and Simon Gathu Keingati.

f. **L.R. No. Riabai/Ndumberi No. T152** gifted to James Karanja Keingati and Raphael Karanja Keingati.

g. **L.R No. Ndumberi/Riabai No. 965** gifted to John Ngugi Keingati.

What is in dispute is whether the distribution was partly by the deceased and partly by the administrator as alleged by 1st Respondent. I have satisfied myself that the distribution of these properties was by the deceased during his lifetime as evidenced by the minutes of Keingati Waiharo family meeting of 15th October 1989 attached to Teresia Nduta Waiharo's Affidavit of 22nd February 1995.

It is further confirmed from the Court record that the confirmed grant of 3rd October 1991 the administrator was to hold all the assets that comprised of the deceased's estate in trust for herself and all sons and daughters. The administrator did not distribute any properties to the Applicants as alleged. This is what led to among other reasons to revocation of the said confirmed grant and the matter heard on its merits.

The Applicants, sons of the deceased, deposed in the affidavits of Peter Keingati of 11th March 2015 and 24th March 2015, 4th Applicant's affidavit and the collective and final affidavit filed on 14th June 2016 on behalf of Paul Waiharo, Raphael Karanja, James Karanja, John Ngugi, Simon Gathu and Peter Karumba Keingati that there is distribution of the estate to be conducted.

The Applicants contended that the following properties should be distributed even though not equally but as equally and equitably as possible and also taking into consideration the deceased's widow, and the mother to all deceased's children has life interest:

i. **L.R No. Ndumberi/Riabai No. 885-0.036 Ha.**

ii. **L.R No. Ndumberi/Riabai No. 886-0.04 Ha.**

iii. **L.R No. Ndumberi/Riabai No. 891-0.076 Ha.**

iv. **L.R No. Ngenda/Kimunyu Plot No. 315-3.4 Acres**

v. **L.R No. Ngenda/Kimunyu Plot No. 12-1 Acre.**

vi. **L.R No. Ngenda/Mutumo No. T182-0.22 Ha.**

vii. **Kiambu Municipality Block 1/48**

viii. **L.R No. 209/4401/526 Makadara-0.0188 Ha.**

ix. **L.R No 209/4401/531 Makadara-0.0188 Ha.**

x. **L.R No. 209/10050(Kariobangi)**

xi. **L.R No. 37 (Renamed L.R No. 11/5 (In Dispute).**

xii. **525 shares in Kiambu Dandora Farmers Company Limited.**

xiii. **133 shares in Gatatha Farmers Company Limited.**

xiv. Money (12m) in the bank subject to dispute.

The Applicants proposed that taking into account the daughters did not get any allocation of land from their late father and to rectify the difference that the following properties should be distributed as follows;

i. L.R No. Ndumberi/Riabai No. 885-0.036 Ha.

ii. L.R No. Ndumberi/Riabai No. 886-0.04 Ha.

iii. L.R No. Ndumberi/Riabai No. 891-0.076 Ha.

iv. L.R No. Ngenda/Kimunyu Plot No. 315-3.4 Acres

v.	L.R	No.	Ngenda/Kimunyu	Plot	No.	12-1
Acre						

vi. L.R No. 37 (Renamed L.R No. 11/5 (In Dispute)).

vii. L.R No. Ngenda/Mutumo No. T182-0.22 Ha - To be inherited by the sons of the deceased.

viii. Kiambu Municipality Block 1/48

ix. L.R No. 209/4401/526 -Makadara-0.0188 Ha.

x. L.R.No.209/10050(Kariobangi)

xi. L.R No. 209/4401/531 Makadara-0.0188 Ha -To be inherited by the daughters of the deceased.

xii. 525 Shares in Kiambu Dandora Farmers Company Limited

xiii. 133 shares in Gatatha Farmers Company Limited.

xiv. Money in the bank subject to dispute - To be inherited by the 11 children equally.

The Respondents, daughters of the deceased deposed that the sons of the deceased had already been allocated properties. The remainder of properties currently registered in the name of the widow of the deceased and Administrator, Teresia Nduta Kiingati should hold, as trustee, in exercise of her life interest. Thereafter the properties shall be distributed as follows:

a. L.R No. 209/4401/526 Makadara – to Regina Wairimu Goko.

b. L.R No. 209/4401/531 Makadara – to Regina Wairimu Goko – both measuring 0.0367 Ha.

c. L.R No. Ndumberi/Riabai No. 885-0.036 Ha- to Ann Nyokabi Nguithi.

d. L.R No. Ndumberi/Riabai No. 886-0.04 Ha – to Lucy Wanjiru Kandu.

e. L.R No. Kiambu/Mun/Block 1/48-0.023 Ha – to Elizabeth Njeri Mwatha.

f. L.R No. Ndumberi/Riabai No. 891 – the Matrimonial home to be shared by all the beneficiaries in equal shares.

g. L.R No. Ngenda/Mutomo T. 182 – 0.22 Acres – to all the beneficiaries in equal shares.

h. L.R No. Ngenda/Kimunyu Plot 12-1 Acre – this being the Ancestral Land, the same to be

shared by all the sons of the deceased in equal shares.

i. L.R No. Ngenda/Kimuyu Plot No 315 – 3.4 Acres – to all the beneficiaries in equal shares.

j. Compensation due to the shareholders of Kiambu Dandora Farmers Company Limited once the same is realized, the proceeds of the said compensation to be shared equally among all the beneficiaries thereof.

The Respondents seem to suggest that the distribution of the deceased's estate other than the gifts *inter vivos* should be held by the administrator in life interest and should be distributed after her demise.

The Administrator, widow of the deceased, deposed that the distribution of the deceased's estate should be as follows;

The Administrator retains;

a. L.R No. Ndumberi/Riabai No. 885

b. L.R No. Ndumberi/Riabai No. 886

c. L.R No. Ndumberi/Riabai No. 891

d. L.R No. Kiambu/Mun Block 148

e. L.R No. 209/4401/526 Makadara

f. L.R No. 209/4401/531 Makadara

These properties generate Ksh 100,000/- a month, which she ought to retain for her upkeep and medical expenses.

The Administrator further contended that bank proceeds in her personal bank account in Standard Chartered Bank, Kenya Commercial Bank or any other are not estate accounts and as such the monies that she has saved over time and deposited in such accounts are purely hers and not the Estate's.

The Administrator was categorical that these monies are her source of security in old age in case need arises for medical care and if not, such money will be for the benefit of all her children upon her demise.

Further, she asserted, that the sons who are the beneficiaries of the deceased's estate each of them got valuable plots of land which they chose to dispose of and enjoy the fruits thereof without making investment for the future.

With regard to shares held in Kiambu Dandora Farmers Limited, it was agreed as a family on how much such shares should be distributed amongst all the beneficiaries and subsequent thereto the Administrator wrote to the company a letter dated 21st March, 2012 urging them to effect the transfer which transfers have not been effected because of the meddling of one of the beneficiaries Peter Karumbi Keingati who is in the management team of the Company. This was despite the fact that all the beneficiaries signed the said letter.

DETERMINATION

This Court finds, as a matter of law that the deceased died intestate and did not have a written will. He also did not have an oral will. He distributed the property to his sons as gifts *inter vivos* during his lifetime.

ADMINISTRATORS

This Court considered the various submissions by all parties to the dispute on distribution of the deceased's Estate. It is incumbent upon this Court to equally (where possible) and equitably distribute the said Estate.

At the outset this Court notes with concern the acrimony between the beneficiaries of the Estate. From the record it is clear that the sons sought distribution of the Estate without any beneficial interest to the daughters of the deceased. The daughters successfully enforced their constitutional rights and thereafter seemingly deprived the sons of any other beneficial interest. The widow on appointment as administrator with consents of all beneficiaries held all properties in exercise of life interest.

This is the scenario that has made administration of this Estate more challenging. Against this background, the Court considered that since all beneficiaries are adults and need to access their beneficial interest from the deceased's estate. The Administrator is advanced in age to adequately administer the Estate to all beneficiaries. Therefore to tamper the hostility between parties, relying on **Section 66** of the **Law of Succession Act, Cap 160** which provides that:

.... The Court shall otherwise expressly provided, have a final discretion as to the person or person to whom the letters of administration shall in the best interests of all concerned be made...

This Court takes the view, that to alleviate the tension and any allegation of favoritism by some beneficiaries over others, that all the beneficiaries ought to have access and participate in the distribution process. To facilitate the joint participation and consultation, there shall be three Administrators as follows;

1. **Teresiah Nduta Keingati**
2. **Peter Karumba Keingati**
3. **Dr Ann Nyokabi Nguithe**

LAND

It is conceded that the deceased distributed land to his seven sons during his lifetime. Today, the Estate is subject to equal or equitable distribution by the children and widow of the deceased.

This Court must take into account these properties distributed to the sons in determining the share of the net intestate estate finally accruing to each child of the deceased. **Section 42** of the **Law of Succession Act** mandates that gifts *inter vivos* shall be taken into account at the time of distribution of the estate. The Section provides that:

Where-

- a. **An intestate has, during his lifetime or by will, paid, given or settled any property for the benefit of a child, grandchild or house; or**
- b. **Property has been appointed or awarded to any child or grandchild under the provisions of section 35 of this Act,**

That property shall be taken into account in determining the share of the net interstate estate finally accruing to the child, grandchild or house.

In the instant case, the Court noted that the sons had a fair share of immovable properties, which are alleged to have been disposed of. Therefore, the daughters of the deceased ought to have a fair share of the deceased's immovable property as follows:

- a. **L.R No. Ndumberi/Riabai No. 885-0.036 Ha- shall be shared by Ann Nyokabi Nguithi and Lucy Wanjiru Kandu equally**
- b. **L.R No. Ndumberi/Riabai No. 886-0.04 Ha – shall be shared by Elizabeth Njeri Mwatha and Regina Wairimu Goko equally.**
- c. **L.R No. Kiambu/Mun/Block 1/48-0.023 Ha – shall be held by the administrator and widow of the deceased in life interest and thereafter for the daughters of the deceased to share equally.**
- d. **L.R No. Ndumberi/Riabai No. 891 –the matrimonial home, the administrator in life interest shall hold the property for herself and all beneficiaries. The same shall be available for distribution only after her demise. The Matrimonial home to be shared by all the beneficiaries in equal shares.**
- e. **L.R No. Ngenda/Mutomo T. 182 – 0.22 Acres – to be shared by the 4 daughters of the deceased in equal shares all the beneficiaries in equal shares.**
- f. **L.R No. Ngenda/Kimuyu Plot 12-1 Acre – ancestral land to the 7 sons of the deceased jointly and equally.**
- g. **L.R No. Ngenda/Kimuyu Plot No 315 – 3.4 Acres – to be shared by the 7 sons of the deceased in equal shares.**
- h. **L.R No. 209/4401/526 Makadara –**
- i. **L.R No. 209/4401/531 Makadara — both measuring 0.0367 Ha.for all beneficiaries to share rent receivables equally and after the widow’s life interest to share the property equally.**
- j. **L.R 37 (Renamed LR 11/45) as it has a dispute; it is to be allocated to sons of the deceased jointly and equally.**
- k. **L.R. 209/10050 Kariobangi – to be shared between the 7 sons of the deceased equally.**

Although the administrator deposed that she wants to retain all these properties for her upkeep and medical expenses; she has from the time she was appointed sole administrator collected rent from the said properties from 1991 to date for her own use. It is on record she has collects rent receivables of almost Ksh 150,000/- amount as shown by the Deputy Registrar’s Report (Family Division) of 21st September 2015.

As contended by the 1st Applicant, in his affidavit of 11th March 2015, he stated that as at 15th July 2013, the administrator had in her account Ksh 12, 3015, 432/- as proceeds from the said property. The Applicants sought to freeze the said funds but the Court released the same to the widow administrator. Since she obtained these proceeds from the estate properties through the years and retained the funds for her sustenance; it is imperative that all beneficiaries derive equal beneficial interest from these properties. Therefore the three Administrators shall open a joint account and deposit all rent receivables within 30 days from today. After payment of utilities the amounts shall be distributed equally to all beneficiaries pending distribution after the administrator’s life interest.

It was contended that she was left these properties by the deceased for her upkeep and maintenance. However, it is noted from the Court record that the administrator had access and utilized all properties to the exclusion of beneficiaries of the estate. They were deprived of their beneficial interest to any of the properties. Instead, upon appointment as administrator with consents of all beneficiaries she transferred to her name all properties to hold in life interest. She collected rent from the properties and retained all the immovable properties. It is against this background that the Court has to ensure that whereas the administrator enjoys life interest, the beneficiaries ought to also have a beneficial interest in some

properties. Pending distribution of the properties transferred to the administrator's name and subject to life interest, the said properties shall generate income to be shared by all beneficiaries.

MONEY IN BANK ACCOUNT (S)

The Applicants contend that the administrator accumulated Ksh 12,3015 , 432/- in Standard Chartered Bank Kiambu Branch. The statement of Account attached to the Applicant's affidavit confirmed the said money. The 1st Applicant alleged that the daughters of the deceased were in fact running the estate on behalf of their mother and had access to the properties while depriving sons of the deceased. It was further contended that the daughters of the deceased may have benefitted from the said funds to the detriment of the sons of deceased. They proposed that these funds be shared as follows;

The funds are placed in an FDR account to be shared later.

This Court considered the fact that as Administrator, the widow incurred costs in terms of maintenance and utilities of the buildings and properties. The administrator worked tirelessly with her late husband to accumulate this wealth. It is crucial that she retains funds for her upkeep and medical expenses. Since she was appointed Administrator, she collected rents and deposited in the said account.

The proposal that the funds be deposited in the bank as FDR cannot guarantee that all or any of the beneficiaries shall access and benefit and use the said funds. This shall be the source of more acrimony as to when and how the funds shall be released. Therefore, it is best left to the widow exclusively; the administrator earned the said funds from harnessing these properties and maintaining them to date. Secondly, it is not possible the funds to lie in the bank without any withdrawals while she has financial need to be met. The Administrator shall retain these funds for her own use, on condition going forward, the rent receivables from the 2 properties shall be banked, shared equally by all the beneficiaries, through the three Administrators.

SHARES

The Administrator filed an Application under Certificate of Urgency on 4th April 2014 seeking preservation of shares from Kiambu Dandora Farmers Company Limited. The Administrator claimed to have discovered these shares after the grant was issued. She sought that the said Company disclose the shares held for the Keingati family.

The administrator objected to the fact that Peter Karumbi Keingati is CEO of the Company and as administrator she was kept in the dark about the shares that are due and owing to the deceased's Estate. The Respondents contested the appointment of the 1st Applicant to the Company as representing the family.

The Respondents approached the Company officials on the issue of the shares available and or owed to the deceased's estate and their efforts were futile. Since they could not obtain any information, the Court summoned the Secretary to the said Company who gave detailed account of the deceased's estate entitlement.

With regard to Peter Karumbi Keingati's appointment, Joseph Karanja Mwangi Secretary to the said Company, produced documents that confirmed the 1st Applicant as trustee and director of the Company. He produced a decree of 14th October 1999 from the High Court of Kenya at **Nairobi Civil Case 1903 of 1999** appointing the 1st Applicant as trustee to the Company. This is a valid Court order, which unless vacated by appeal or review remains a valid order of the Court. Therefore, the 1st Applicant's appointment cannot be challenged in this forum.

With regard to the shares that comprise of the deceased's Estate; the parties depose that there are 525 shares due and owing to the deceased's estate. Initially, the company allotted the Administrator 45 plots of the 60 plots. There is still a balance o 15 plots. It is proposed that all the plots be shared equally

amongst all beneficiaries.

It was alluded that the 1st Applicant also got 36 plots as trustee of the said Company. The Respondents demanded beneficiaries share the said shares equally.

The 1st Applicant Peter Karumbi is allocated shares as trustee of Kiambu Dandora Farmers Company Limited. Those shares are not part of the deceased's estate and available for distribution by beneficiaries. On the other hand, if he retains what he is awarded by the Company as trustee, then that share shall be taken into account at the time the other shares that are available to the deceased's estate are distributed to the beneficiaries of deceased's estate.

What accrues to the 1st Applicant, as trustee and director of Company will not be withdrawn, but in distribution of the shares from the Company to the deceased's estate, the fact that he already has shares will vitiate his further allocation of shares as beneficiary.

It is in this regard that the 525 shares available to the deceased's estate from the Company shall be distributed equally amongst beneficiaries.

With regard to 133 Gatatha Farmers shares, they have not been proved to be the administrator's own property. The documents attached show Waiharo Keingati and not Teresiah Nduta Keingati, as the person who entered into an agreement. In the absence of tangible evidence of the shares as personal property of the Administrator, these shares form part of the deceased's estate and shall be shared amongst the beneficiaries after the widow's life interest. In the interim, the Administrator may collect dividends.

The parties have divergent views as to when distribution may take place. The Court considered the various options. In a scenario where a party has life interest, the beneficiaries may seek to have transfer of their properties.

This is provided by **Section 35 (3)** of the **Law of Succession Act**, which reads as follows:

Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

Secondly, a life interest is not defined in the Law of Succession Act Cap 160. However it does not mean a party or some beneficiaries hoarding all property to the exclusion of other beneficiaries who are entitled to a beneficial interest. In that context, this Court is persuaded by Hon. Musyoka J. in **TAU KATUNGI VS MARGRETHE THORNING KATUNGI AND ANOTHER, SUCCESSION CAUSE NO. 1040 OF 1991** who observed that:

“[16] “Life interest” is not defined in the Law of Succession Act. Black’s Law Dictionary, ninth edition, West, 2009, defines it as “an interest in real or personal property measured by the duration of the holder’s or another person’s life.” In the context of Section 35 it is an interest held by the surviving spouse during their life “in the whole of the residue of the net interest estate.” Its effect is that the surviving spouse first enjoys rights over the property and at his or her death the property passes to other persons. In the context of Section 35, the widow is entitled to enjoy rights over the residue of the net intestate estate, that is after taking away the chattels and settlement of liabilities, during her life time with the property passing to the children upon her demise or remarriage of she be a widow.

[17]The effect of Section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated.

[18] The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance. The other aspect is that life interest ties up with the concept of matrimonial property: the said property would in most part be property acquired during marriage and with the contribution of the surviving spouse. Direct devolution of such property to the children would deny the surviving spouse of enjoyment of their own property.

[19]Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with as if it was their own. By virtue of Section 37 of the Act, a surviving spouse cannot during life interest dispose of any property subject to that life interest without the consent of all the adult children, co-trustees and the court. This is meant to safeguard the interest of the children who are the ultimate beneficiaries of the property the subject of life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children.

[20] At life interest there is a convergence of the interests of the surviving spouse and those of the children. The device seeks to secure the interests of both. Where the deceased therefore is survived by both a spouse and children, the net intestate estate will not pass absolutely to either of the two categories of survivors during the life time of either. The holder of the life interest in this case is still alive, and has not remarried, she is therefore still entitled to the property at this time and the same cannot be conveyed to the children. Conversely, all the children of the deceased are still alive, consequently the widow cannot have the property absolutely to herself, but she is entitled to whatever income that derives from it. (Emphasis added)

In light of the above-cited case, the fact of having life interest cannot mean holding the property but having the property at one's disposal for financial sustenance but at the same time ensuring that the beneficiaries are not deprived. This Court has to facilitate a balance between the exercise of life interest and beneficial interest to the beneficiaries. The widow and one of the administrators shall continue to enjoy life interest in the properties registered in her name as trustee, except that all beneficiaries shall share rent receivables from the 2 properties **L.R No. 209/4401/526 and L.R No. 209/4401/531 Makadara** and thereafter shall be distributed to all beneficiaries equally.

The distribution of immoveable property that does not have rent receivables may be distributed and transferred forthwith. The rest shall be distributed if and when the Administrator concedes as she has life interest.

DISPOSITION

From the above analysis I find based on all facts presented, the various modes of distribution, I find that the distribution shall be as follows;

1. The Administrator -Teresiah Nduta Keingati shall retain

L.R No. Ndumberi/Riabai No. 891 – the matrimonial home that shall be distributed equally to all beneficiaries equally after life interest.

L.R No. Kiambu/Mun/Block 1/48-0.023 Ha – to be held by widow in trust and after life interest to be shared equally by the daughters of the deceased.

Proceeds in Account Kshs. 12 million absolutely to the widow of the deceased.

2. The Applicants- 7 sons of the deceased

- 1. Paul Waiharo Kiingati**
- 2. Peter Karumbi Kiingati**
- 3. John Ngugi Kiingati**
- 4. Phillip Gitau Kiingati; and**
- 5. James Karanja Kiingati,**
- 6. Someone Gathu Kiingati; and**
- 7. Raphael Kingati - shall hold jointly and severally and share equally as follows;**

L.R No. Ngenda/Kimunyu Plot 12-1 Acre –

L.R No. Ngenda/Kimuyu Plot No 315 – 3.4 Acres

L.R 37 (Renamed LR 11/45)

L.R. 209/10050 Kariobangi

3. The Respondents –4 daughters of the deceased

- 1. Mrs. Ann Nyokabi Nguithe**
- 2. Mrs. Lucy Wanjiru Kandu**
- 3. Ms.Elizabeth Njeri Kiingati**
- 4. Mrs. Regina Wairimu Goko, shall hold jointly and severally and share equally**

L.R No. Ndumberi/Riabai No. 885-

L.R No. Ndumberi/Riabai No. 886

L.R No. Ngenda/Mutomo T. 182 –

4. The following are appointed Joint Administrators

- 1. Teresiah Nduta Keingati**
- 2. Peter Karumba Keingati**
- 3. Dr Ann Nyokabi Nguithe, and they are to open a joint account to receive and deposit rent from the properties listed below. After payments for maintenance and utilities, to distribute the balance to all beneficiaries equally.**
- 4. L.R No. 209/4401/526 Makadara –**
- 5. L.R No. 209/4401/531 Makadara**

5. 525 Shares of Kiambu Dandora Farmers Company Limited shared equally amongst 11 children

6. 133 Shares of Gatatha Farmers Shares- shared equally amongst 11 children after the widow exercises life interest

7. Each party to pay own costs.

DELIVERED DATED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29th SEPTEMBER 2016.

M. W. MUIGAI

JUDGE

In the presence of:

Mr. Gitonga Muriuki for Applicants

Mr. Okatch for 4th Applicant

Mr. Mwangi for Respondents

Ms Kamau for Administrator