



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.703 OF 2005

IN THE MATTER OF THE ESTATE OF GICHANA KARANJA (DECEASED)

RULING

1. The deceased Gichana Karanja died intestate on 3rd June 1986. Peter Karanja Kanyari petitioned for grant of letters of administration on 15th August 1990 and was issued with a grant of letters of administration on 21st April 1999. The objectors sought revocation of the grant on grounds that the same was obtained fraudulently by making of false statement and by concealment from court facts material to the case and that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant. On 24/03/2003 the court ordered consolidation of P&A 2646 of 2000 and Kiambu P&A 159/1999 and Kiambu P&A 49 of 2000. Parties on 5/05/2003 recorded a consent and Peter Karanja Kanyari was appointed the administrator of the deceased's estate. The petitioner sought to have the same confirmed on 8th January 2004. The objectors in their affidavit of protest dated 22nd March 2004 raised a dispute objecting to the proposed mode of distribution claiming that they are beneficiaries and had been left out and also objected to the proposed mode of distribution of the deceased estate. The court directed that parties filed affidavits on mode of distribution.

2. Peter Karanja Kanyari stated that at the time of his father's demise his father's estate comprised of ***Limuru/Ngecha/1327*** measuring 3.96 acres. That before the deceased's demise in 1986 he had pointed out that he wished that his only parcel of land be shared as follows; Peter Karanja Kanyari 1.85 acres, John Kimani Ngugi - 0.92 acres and George Njuguna Kanyari 0.92 acres. He stated that he should get 1.85 acres because he had paid all costs pertaining to the land dispute between the deceased and David Ngundi Kahanya sometime in 1952 and paid 2 goats to the elders who presided over the tribunal. That they lost their mother in 1959 and his wife took over taking care of the deceased. That during his lifetime around 1985 their late father called elders and demarcated boundaries of the land which each one of them was currently occupying. He avers that his father had 3 daughters namely Margaret Wambui Kariuki, Maria Wairimu Mungai and Irene Wabai Kamau all who are married. That George Ngugi Kariuki and Stephen Gichuhi Kariuki are sons of their late sister who at the time of her death was married to one Kariuki Gichuhi and as such they should inherit their father's land in Ngecha in Limuru Division ***L.R. Limuru/Ngecha609***. He stated that Margaret Wambui Kanyari was never allocated any land by the deceased nor were her sons as Kikuyu customary law does not provide for the same. That James Kariuki Ngundi could not be the deceased's adviser as he was too young and his father and the deceased had a long protracted land dispute. Adding that James Kariuki Ngundi is brother in law to Wallace Karira from which estate the petitioners George Ngugi Kariuki and Stephen Gichuhi are entitled to rightful claim a parcel of land and that Margaret did not construct any house in the said parcel of land as claimed and the alleged house belonged to his late father.

3. Stephen Gichuhi Kariuki and George Ngungi Kariuki sons of the late Margaret Wambui Kanyari the daughter of the deceased filed an affidavit dated 24/3/2016. They aver that at one time their mother was married to Kariuki Gichuhi until 1976 when they fell out and she returned to her father's homestead ***L.R. Ngecha/Limuru/ 1327***. It was then that the deceased hived out a portion measuring 0.75 acres of ***L.R.***

Ngecha/Limuru/1327 and gave her a go ahead to construct her residence which comprised of 3 bedroom semi-permanent house where she resided until her demise in 1977 and that this is where they have resided for over 38 years. They propose that the said parcel of land be shared as follows; Peter Karanja Kanyari – 0.98 acres, John Kimani Ngugi 0.98 acres, George Njuguna Kanyari 0.98 acres and the estate of Margaret Wambui Kariuki- 0.75 acres. In reply to Peter Karanja’s affidavit they aver that the deceased died intestate and claim that he pointed out how he wished the land to be divided does not arise nor the allegation that his wife took care of the deceased. They further claim that Peter has never sought to occupy the 1.85 acres which he claims when the deceased was alive. They aver that it is not denied that their late mother was a daughter of the deceased adding that he has failed to disclose to the court that their mother died and was buried in the said parcel of land and they have continued to occupy the said parcel of land that their mother occupied. They aver that customary law are now repugnant to justice and morality and him claiming that their mother was not officially divorced from their father should not arise. That by the alleged time period of 1985 their mother had settled in the said parcel of land and the deceased never sought to remove her from the said parcel of land. They sought to clarify that it is their aunt Maria Wairimu who occupies ***L.R. No. Limuru/Ngecha/123*** but the same belong to him after a property swap between the deceased and his deceased brother Jeremiah Kariuki Karanja adding that she has occupied the said parcel of land for over 40 years. Though the same belongs to the deceased the transfer into his names is yet to be done. They further added that Maria Wairimu inherited ***Limuru/Ngecha/123*** and it would be unfair to give a portion of ***L.R. No. Limuru/Ngecha/ 1327*** while Irene Wairimu is happily married and doubt she would want to inherit the property in issue. That with Maria Wairimu and Irene Wabai Kamau not inheriting the said parcel of land the same should be shared equally between Peter Karanja Kanyari, John Kimani Ngugi, George Njuguna Kanyari and the estate of Margaret Wambui Kariuki.

4. In a replying affidavit filed on 14th march 2016 John Kimani Ngugi and George Njuguna Kanyari aver that their father did not direct how his land should be shared amongst his children. That the father owned ***L.R. No. Limuru /Ngecha/1327*** measuring 3.69 acres and not 3.96 acres. Adding that there was no dispute between his late father and David Ngundi Kahanya and Peter Karanja and no costs were paid. That neither Peter Karanja nor his wife took care of their father but it was them that took care of him. They proposed that the said 3.69 acres should be distributed as follows; Peter Karanja Kanyari 1 acre , John Kimani Ngugi 1.00 acre, George Njuguna Kanayari 1.00 acre, Maria Wairimu 0.13 of an acre, Irene Wabai Kamau 0.13 of an acre and Margaret Wambui Kariuki 0.13 of an acre.

5. The deceased to whose the succession proceedings relate died on 3rd June 1983 and the Law of Succession Act came into operation on 1st July, 1981 as such the deceased succession is subject to the provision of the said Act. The deceased died intestate survived by children but no spouse hence the provisions of Section 38 which provide that, *“where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”*

6. The deceased had 6 children namely Peter Karanja Kanyari, John Kimani Ngugi, George Njuguna Kanyari, Maria Wairimu, Irene Wabai Kamau and Margaret Wambui Kariuki. Margaret Wambui Kariuki died on 16th August 1997 and his son George Ngugi Kariuki took out a Limited grant of letters of administration in regards to her estate in order to pursue this matter. The Act does not discriminate on gender or marital status whether male or female married or not. It is important to note that any customary law that purports to apply such measures amounting to discrimination goes contrary to the law and the same is repugnant to justice.

7. Peter Karanja Kanyari proposes to get a larger share of the deceased’s estate on grounds that he took care of the deceased after the death of their mother and had also paid tribunal members in settle of a land dispute with one David Ngundi Kihanya. In this regard I find that the petitioner has not adduced sufficient evidence to prove the same. It is not in dispute that Stephen Gichuhi Kariuki and George Ngugi Kariuki are sons of the late Margaret Wambui Kanyari a daughter to the deceased. She had prior to the death of the deceased established a home in the said parcel of land and was also buried in the said parcel of land. I find that being a daughter of the deceased she is entitled to benefit under his estate. George Ngugi Kariuki one of her sons has taken out letters of administration and hence act as representative of her estate as such

any share entitled to Margaret will devolve to her son George Ngugi Kariuki to hold the same on behalf of her estate.

8. The deceased is survived by one property parcel of land known as **L.R. Limuru/Ngecha/609** measuring 3.69 acres. The children of Margaret Wambui Kariuki have been in possession of the 0.75 acres from the time the deceased allowed their mother to take possession of the said portion. Having considered the affidavits I am of the view the property should be shared between Peter, John, George and the children of the Late Margaret Wambui Kariuki. It is apparent that Maria Wairimu resides at Limuru/Ngecha/123 as deposed by the protestors which was an inheritance from her late father’s estate. This was not challenged by the administrator nor the two brothers John Kimani Ngugi and George Njuguna Kanyari. It is also apparent that Irene Wabai is married and has not sought her portion of the land from the deceased’s estate. I agree with the mode of distribution proposed by Stephen Gichuhi Kariuki and George Ngugi Kariuki. The said parcel of land should be shared as follows;

i. Peter Karanja Kanyari, - 0.98 acres

ii. John Kimani Ngungi – 0.98 acres

iii. George Njuguna Kanyari 0.98 acres

iv. Margaret Wambui Kariuki - 0.75 acres, her share to go to George Ngugi Kariuki to hold in trust on behalf of her beneficiaries.

It is so ordered. No order as to costs being a family matter let each party bear their own costs .

Signed, dated and delivered this **21st** Day of **September** 2016.

R. E. OUGO

JUDGE

In the presence of:

.....**For the**
Petitioner

.....**For the**
Protestors

Ms. Charity

Court Clerk