



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1387 OF 1998

IN THE MATTER OF THE ESTATE OF STEPHEN NJANGIRU GICHINGA (DECEASED)

RULING

1. The Deceased Stephen Njangiru Gichinga to whom these proceedings relate died on 13th May 1997. His widow Jane Nyambura Njangiru (hereinafter the widow) and Reuben Muturi Njangiru (hereinafter Reuben), one of his sons respectively, obtained Letters of Administration as Co-Administrators. They had cited Samuel Karuma Njangiru (hereinafter the Protestor) another son of the Deceased to accept or refuse the responsibility of applying for letters of administration and he had failed to answer to the Citation aforesaid. On 13th December 2013 they filed summons for confirmation of the said Grant, and the Protestor filed a protest against the said confirmation of Grant on the same date. Those who were named as beneficiaries in the list annexed to the Petition were:

1. Jane Nyambura Njangiru - widow
2. Samuel Karuma Njangiru - son
3. Reuben Muturi - sons

2. On 8th April, 2014, Kimaru J partially distributed the Estate in the presence of the parties. The said partial distribution included all the Estate of the deceased, save for two disputed properties which are an unnamed plot in **Lunga Lunga** and **L.R. No. Kibarage/Muoroto/Soweto Scheme 3/82** (hereinafter Kibarage). The court also ordered the Deputy Registrar of the Family Division, to visit the two disputed properties and determine the number of rooms on each and what developments had been effected thereon.

3. The Deputy Registrar visited the properties and filed a report dated 24th April 2014 in court. According to the Registrar's report the **Lunga Lunga plot** consists of 71 (seventy-one) single rooms made of iron sheets in an informal settlement and is serviced by two common bath rooms, three common toilets and one bath room cum toilet. There is no piped water, formal electricity supply or sewerage system. The Kibarage plot consists of two storey stone building comprising of 31 (thirty-one) single rooms, three common bath rooms and three common toilets. This property has piped water, electricity supply and a proper sewerage system.

4. Pursuant to the orders of the court issued on 11th November 2014, the Administrators and the Protestor filed separate proposed modes of distribution of the said two properties as set out below:

Administrators' proposed Mode of Distribution:

The Administrators proposed that the **Kibarage plot** be inherited by the widow of the deceased, as a whole. This, it was explained, was in recognition of the role she played in the acquisition and development of the plot and further that as the widow, she was entitled to a life interest in the residue of her deceased husband's Estate. For the **Lunga Lunga plot** the Administrators proposed distribution as hereunder:

<u>Name</u>	<u>Asset</u>
i. Reuben Muturi Njangiru	Bar and a total of 22 rooms
ii. Samuel Karuma Njangiru	Bar, Lodging and a total of 26 rooms
iii. Jane Nyambura Njangiru	7 Rooms
iv. Monica Njeri Gichinga	7 Rooms

Protestor's proposed Mode of Distribution

On his part the protestor proposed that the **Lunga Lunga Plot** be allocated to Reuben as a whole, while the **Kibarage** should be allocated to the Protestor as a whole. He also proposed that thereafter both Reuben and the protestor do make regular monthly contributions of Kshs.10,000/= each, towards the upkeep of the widow. This he argued, was because he has his two children to provide for, while the widow has only herself to cater for.

5. The Protestor further argued that it was following the inequity which became apparent in the enjoyment of his late father's Estate that his paternal uncles Mr. Chege and Mr. Kamanu, intervened and convened a family meeting in October 2001. In the said meeting it was resolved to give Reuben 54 rooms in the plot at Lunga Lunga, together with a bar and restaurant, while the Protestor was allocated the entire **Kibarage plot** which has 31 (thirty-one) rooms. In addition the protestor also got 10 rooms in the **Lunga Lunga** plot to achieve parity. The widow was allocated 20 rooms in a plot in **Lunga Lunga**, which she retains to date and which are not included in the Registrar's report.

6. The Protestor further asserts that at the time he was allocated **Kibarage/Muoroto Soweto Scheme 3/82**, the property was not painted. It also had no sewer system, electricity supply, wiring, security, piped water or any other of the necessary amenities. That for that reason it was fetching a low monthly rental income of Kshs.300/= per room, until he renovated it at his own expense, bringing the monthly rental income to Kshs.2,500/= per room. The protestor gave the estimated value of some of the distributed assets and who had inherited them as follows:

	Property	Income	Name
1.	54 Lunga Lunga room	Kshs.108,000/= Per month	
2.	Makuyu/Kariani/Block 1/327	Kshs.10,000/- per day	Reuben Muturi Njangiru
3.	Datsun pick Up KWD 748	Kshs.2000/- per day	Reuben Muturi Njangiru
4.	Makuyu/Kariani/Block 1/398	Between Kshs.70,000/- and 100,000/= per season	Jane Nyambura Njangiru

7. The points on which there is no dispute are that there was an earlier family meeting mediated by the two brothers of the deceased, to distribute the two disputed properties. In that meeting The **Kibarage** plot was allocated to the Protestor, together with ten additional rooms from the Lunga Lunga Plot, while 54 rooms of **Lunga Lunga** plot were allocated to Reuben. Further that 20 rooms of another **Lunga Lunga**

Plot were allocated to the widow which she retains to date and which have not been included in the Registrar's report, nor are they subject of the dispute in court. Lastly that the improvements on the **Kibarage** plot to bring in piped water, electricity and a proper sewerage system were done by the Protestor, at his own expense after he was allocated the said property. These improvements significantly raised the monthly income realized from the said property.

8. The Administrator's proposal for the distribution of the two plots seems to introduce one Monica Njeri Gichinga as a fourth beneficiary. This beneficiary was not included in the Petitioner's list in form P & A 5, nor in the letter of the known beneficiaries from the Area Chief as a beneficiary of the Estate of the Deceased. The Administrator's mode of distribution also seems to leave some of the rooms on the **Lunga Lunga** Plot undistributed without disclosing what fate is to befall them.

9. The Protestor's mode of distribution while appearing to be neater, poses a challenge in the enforcement of the second limb thereto. There is no certainty that the two beneficiaries will make their monthly contributions towards the upkeep of the widow for her remaining life as suggested therein. The Protestor's contention that he has two children to cater for while the widow has only herself to fend for is also neither here nor there, since those are his dependants and were not dependants of the deceased. It is up to him to fend for them.

10. After a careful consideration of all the facts pertinent to this case and in view of the foregoing observations, I am of the considered opinion that the mode of distribution which most commends itself to equity in the circumstances of this cause is as follows:

<u>Name</u>	<u>Asset</u>
v. Reuben Muturi Njangiru	one bar and 36 rooms on the Lunga Lunga Plot.
vi. Samuel Karuma Njangiru	L.R. No. Kibarage/Muoroto Soweto Scheme 3/82 which has 31 rooms as a whole.
vii. Jane Nyambura Njangiru	one bar and 35 rooms at the Lunga Lunga plot.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **18th day of February 2015.**

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L. A. ACHODE

JUDGE