



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**SUCCESSION CAUSE NO. 3719 OF 2004**  
**IN THE MATTER OF THE ESTATE OF BEN KARIUKI MUKUGU (DECEASED)**  
**NANCY MUMBI MBURU.....APPLICANT/OBJECTORS**  
**GEORGE MUCHUHA KARIUKI.....APPLICANTS/OBJECTORS**  
**VERSUS**  
**GEOFFREY MURUA KARIUKI.....RESPONDENT**  
**JUDGMENT**

The deceased died on 21<sup>st</sup> April, 1993 as evidenced by the death certificate Number 48559.

The administrators filed summons for confirmation of grant on 17<sup>th</sup> August, 2005 brought under **Section 71 of Law of Succession Act Cap 160**. The Respondent objected to the confirmation of grant and the proposed mode of distribution.

The consents were not given by the beneficiaries and the Respondents did not formally file the affidavit of protest. Since they were unrepresented the Court allowed them to proceed with oral evidence in spite of not filing the formal protest. The Court relied on Article 159 of the Constitution that emphasizes on the determination of the subject matter based on substance rather than on technicalities alone.

PW1 Nancy Mumbi Mburu is a widow to Michael Mburu Kariuki (deceased) and son to the deceased Ben Kariuki Mukugu. Loise Wambui Kariuki (deceased) was the widow of House No. B and mother to late Michael Mburu Kariuki. Nancy Mumbi Mburu informed the court that her husband died in July, 2003 and her mother in-law died in April, 2003. She objected to the confirmation of grant because in the proposed mode of distribution annexed to the application, one of the properties was left out. This is Kiambu County Council Plot 2A/69 that was not included in the list of assets of the deceased. She produced and referred to a letter dated 13<sup>th</sup> July, 2004 that revoked the elders award of Plot 2A (1/2) share from Janet Wambui Ben (the deceased's first wife) to the original proprietor the late Ben Kariuki Mukugu (deceased).

The search certificate Ref. No. KTC/M/VOL.II/63 of 7<sup>th</sup> June, 2004 showed the Plot as belonging to Ben Mukugu and Kimani Kironyo. The Assistant Chief stopped the payment of rent to Mrs Janet Wambui Ben the widow of House A and ordered that the rent proceeds be shared between the two (2) families. PW1 claimed she had not received any rent proceeds since 2004.

PWII George Muchuha Kariuki a son of Loise Wairimu Kariuki in house B confirmed as one of the

administrators that plot Ruaka 2A/69 did not belong to Janet Wambui Ben the 1<sup>st</sup> widow but the deceased their late father as evidenced by the letter dated 13<sup>th</sup> July, 2004. He said when their father died the two (2) widows collected rent from the property and shared equally. It is a community Plot fetching Ksh. 20,000/= a month apart from that he did not object to the confirmation of grant.

PW1 Geoffrey Murua Kariuki from house A told the Court he is a Co-administrator with George Muchuha they have in the proposed mode of distribution shared all the property comprising of the deceased's estate equally between the two (2) houses/families. He told the Court that Plot 2A/69 was transferred to the name of the 1<sup>st</sup> widow as per the documents produced. These are letters from Kiambu County Council dated 23<sup>rd</sup> July, 2004 and the other later dated 12<sup>th</sup> October, 1988. Both letters confirm change of registration of the same property from the deceased to the 1<sup>st</sup> wife, Janet Wambui Ben

There is a letter of 1<sup>st</sup> December, 2014 and that of 24<sup>th</sup> February, 2015 from the records of County Council of Kiambu show the land /commercial plot belonged to Ben Kariuki Mukugu and Kimani Kironyo. It was then transferred to Janet Wambui Kariuki, his mother.

Later, PW1 Nancy Mumbi Mburu produced in Court documents to show ownership on 11<sup>th</sup> March, 2015 of the property plot 2A/69

1. Letter of allocation by Kiambu County Council allocating land /Plot half Plot 20 x 80 Hotel and Hardware to Ben Kariuki Mukugu and Kimani Kironyo by petition of 7<sup>th</sup> October, 1983.
2. The minutes of Kiambu Urban Council of 29<sup>th</sup> June, 1989 showed the same plot was transferred to Janet Wambui Ben 1<sup>st</sup> wife of the deceased
3. By letter dated 13<sup>th</sup> July, 2004 from the Provincial Administration Office of the President the transfer of the Plot 2A ½ share to Janet Wambui Ben was reversed back to the original owner the deceased the late Ben Kariuki Mukugu.

The Court has considered the evidence adduced by three (3) parties to the objection of confirmation of grant due to non inclusion of communal Plot 2A Plot. **Section 40 the Law of Succession Cap 160** provides the mode of distribution where there is a polygamous family the property the property of the deceased is distributed among the houses taking into account the widow/widower and the number of children as separate units.

In the instant case the documents produced by the three (3) witnesses depict the transfer of the suit property to Janet Wambui the widow of the 1<sup>st</sup> house in 1988. However, in 2004 the ownership reverted back to the deceased. It was the property that should have been included in the list of assets of the deceased and shared equally between the two (2) houses.

**Therefore this Court orders as follows;**

- i. **The grant is confirmed in terms of the mode of distribution attached and the inclusion of the suit property Ruaka/2A/69.**
- ii. **The proceeds of the suit property be shared equally between the two (houses) 10,000/= each house each month.**

**READ AND SIGNED IN OPEN COURT ON THIS 12<sup>TH</sup> DAY OF JUNE, 2015**

**M. MUIGAI**

**JUDGE**

***In the presence of;***

***Counsel for.....Applicant***

**Counsel for .....***Respondent*