



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**SUCCESSION CAUSE NO. 282 OF 2012**  
**IN THE MATTER OF THE ESTATE OF NJERU MURAMUKIA.....(DECEASED)**  
**AND**  
**MARGARET WANGITHI NDEGE.....PETITIONER**  
**VERSUS**  
**FAITH WANJIKU MUIGA.....PROTESTOR**

**JUDGMENT**

1. This cause relates to the estate of the late **NJERU MURAMUKIA GICHUKU ALIAS NJERU MURAMUKIA** (Deceased) who died intestate on 28<sup>th</sup> September, 1996 domiciled at Kianjege, Kirinyaga County. According to the petition for a grant of letters of administration filed by **Margaret Wangithi Ndege**, the deceased was survived by the following dependants:

- i. Margaret Wangithi Ndege
- ii. Newton Kabita Njeru
- iii. Mary Wakagio Njeru

2. Initially Margaret Wangithi Ndege had been appointed the administratrix vide a grant issued to her on 20<sup>th</sup> November, 2012. The grant was however, revoked by this Court through an application made by Faith Wanjiku Muiga who moved this court on grounds that the grant had been issued on account of inadvertent mistake and concealment. This Court in its ruling delivered on 25<sup>th</sup> February, 2015 found for the applicant and agreed with her that she had been inadvertently left out as a dependant. This Court also appointed Mary Wakagio Njeru the administratrix of the estate of the late Njeru Muramukia as the daughter of the deceased. This was after realization that Margaret Wangithi Ndege was not a wife to the deceased as wrongly described in the petition but was in fact a daughter in law to the deceased having been married to a deceased son (NJERU NDEGE). This Court gave the administratrix the liberty to administer the estate herein and apply for confirmation.

3. The administratrix vide summons for confirmation of grant dated 11<sup>th</sup> May, 2015 applied for confirmation of grant issued to her on 25<sup>th</sup> February, 2015 and proposed to distribute the estate comprised in that property known as land parcel [ particulars withheld] among the dependants of the deceased and all the children to the dependants in equal shares. Her proposal is as follows:

- i. Mary Wakagio Daniel - 0.4 acres
- ii. Newton Kabita Njeru - ½ acre
- iii. Margaret Wangithi Ndege - ½ acre
- iv. Lukas Kagio Ndege - ½ acre
- v. Joseph Mugo Kabita - ½ acre
- vi. Antony Muriuki Ndege - ½ acre
- vii. Hillary Muriithi Kabita - ½ acre
- viii. Newton Kabara Ndege - ½ acre
- ix. Peter Gichira Ndege - ½ acre
- x. Geoffrey Muthii Kabita - ½ acre
- xi. Francis Mbugu Kabita - ½ acre
- xii. Faith Wanjiku Muiga - ½ acre

4. **Faith Wanjiku Muiga**, protested against the above mode of distribution when they appeared in court in this Court on 6<sup>th</sup> October, 2015 and this Court gave directions that the protest already filed be disposed of by way of affidavits and granted liberty to anyone protesting to file any further affidavit of protest.

5. In her affidavit of protest sworn on 15<sup>th</sup> September, 2015, Faith Wanjiku Muiga, the only protestor herein deposed that the deceased had four children namely:

- i. Geoffrey Ndege (deceased)
- ii. Newton Kabita Njeru
- iii. Mary Wakagio Daniel
- iv. Nahashon Muiga (deceased)

She further deposed that the late Geoffrey Ndege was married to Margaret Wangithi Ndege while she herself was the daughter to the late Nahashon Muiga.

6. She proposed that the estate of the late NJERU MURAMUKIA (deceased) comprised in that property known as **[ particulars withheld ]** be distributed equally among the following four dependants:

- i. Mary Wakagio Daniel
- ii. Margaret Wangithi Ndege
- iii. Newton Kabita Njeru
- iv. Faith Wanjiku Muiga

7. This Court has considered the two modes of distribution proposed by both the administratrix and the protestor herein.

There are only two issues for determination in the protest filed. These are:

- i. Who are the dependants to the deceased entitled to benefit from a share in the estate herein.
- ii. What does the law provide in terms of distribution of the estate of a deceased person such as in this cause.

8. **Section 29** of the **Law of Succession Act** describes a dependant as:

*a. “wife or wives, former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death.”*

*b. “such of the deceased’s parents, step parents, grand parents, grandchildren, children to whom the deceased had taken into his family as his own.....and were being maintained by the deceased immediately prior to his death.....”*

9. This Court going by the above position in law had already determined who the dependants in this cause were vide its decision delivered on 25<sup>th</sup> day of February, 2015. The following were found to be children to the deceased:

- i. Mary Wakagio Daniel (the administratrix)
- ii. Newton Kabita Njeru

In addition to the above the following were also found to be dependants to the deceased:

- a. Margaret Wangithi Ndege
- b. Faith Wanjiku Muiga

10. The administratrix made a proposal on the mode of distribution of the estate by introducing the children of Margaret Wangithi Ndege and Newton Kabita Ndege perhaps to defeat this court’s ruling dated 25<sup>th</sup> February, 2015 and the course of justice.

11. The law under **Section 38** of the **Law of Succession Act** provides that where a deceased dies intestate and leaves behind children and no surviving spouse, the estate shall be divided equally among the surviving children.

12. The proposal made by the protestor therefore appears to be the only mode of distribution that is hinged on the law. When the matter was heard *viva voce* on the issue of summons for revocation of grant dated 17<sup>th</sup> October, 2013, the children of Newton Kabita, and Margaret Wangithi Ndege were not brought up as an issue on the question of distribution of the estate herein. This Court finds that the administratrix brought up the grandchildren to the deceased as an after-thought in order to prejudice the rights of the protestor herein as a dependant to the deceased having been brought up by the deceased as his child. This is the only distinction between her and the other grandchildren lined up by the administratrix.

13. In view of the foregoing, the estate of the late NJERU MURAMUKIA GICHUKU alias Njeru Muramukia comprised in [ **particulars withheld**] shall be distributed equally to the following four (4) dependants:

- i. Mary Wakagio Daniel
- ii. Newton Kabita Njeru
- iii. Faith Wanjiku Muiga

iv. Margaret Wangithi Ndege

The grant issued on 25<sup>th</sup> February, 2015 is hereby confirmed as per the above mode of distribution.

14. In order to bring this matter to an end this Court hereby invokes its power under **Section 47** of the **Law of Succession Act** and directs the District/County Surveyor to visit the property forming the estate herein and carry out subdivision of the property as per the confirmed grant herein and place beacons to mark out the boundaries of each of the four named beneficiaries herein.

i. The area District Officer and the Area Chief shall provide security for the exercise.

ii. The surveyor's fees shall be paid by the four beneficiaries herein in equal proportion.

iii. The District Lands Registrar is directed to dispense with production of identity cards or personal identification numbers of those beneficiaries who may be reluctant to produce the same to facilitate transmission of the respective portions to the respective beneficiaries as per the confirmed grant herein.

iv. The Deputy Registrar shall execute any requisite documents on behalf of those beneficiaries who may be reluctant to execute documents to facilitate transmission of the estate to the named beneficiaries.

I make no order as to costs for now but any party who fails to pay the surveyor's fees will be liable to pay costs in this cause. It is so ordered.

***Dated and delivered at Kerugoya this 29<sup>th</sup> day of October, 2015.***

**R. K. LIMO**

**JUDGE**

29.10.2015

Before Hon. Justice R. Limo J.,

Margaret Wangithi – petitioner present

Faith Wanjiku present

Newton Kabita present

**COURT:** Judgment signed, dated and delivered in the open court in the presence of the petitioner in person, the protestor and Newton Kabita.

**R. K. LIMO**

**JUDGE**

29.10.2015

