



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.1353 OF 2001**

**IN THE MATTER OF THE ESTATE OF ELIZABETH WAMBUI GICHOHI (DECEASED)**

**GICHARU GICHOHI.....1<sup>ST</sup> APPLICANT**

**ESTHER MWEA NGANGA.....2<sup>ND</sup> APPLICANT**

**FAITH MARGARET NYAKIO.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**GRACE ANNE KARURA NDUNGU.....1<sup>ST</sup> RESPONDENT**

**LILLIAN NYAMBURA GICHOHI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Elizabeth Wambui Gichohi, the deceased to whose estate these proceedings relate died on 30<sup>th</sup> January 1999. Gicharu Gichohi and George Gichohi petitioned the court to be issued with a grant of letters of administration intestate. They described themselves respectively as son and grandson of the deceased. In the petition, they averred that they were the only beneficiaries to the estate of the deceased. A grant of letters of administration intestate was issued to them on 14<sup>th</sup> August 2001. However, it later emerged that the two had failed to include other children of the deceased as beneficiaries in the petition. According to the pleadings filed it became apparent that Gicharu Gichohi, being the only son of the deceased, took advantage of his status and petitioned the court without informing his five (5) sisters. The sisters are Faith Nyakio, Lillian Nyambura, Grace Anne Karura, Esther Mwea and Catherine Waringa. An objection was filed by the said sisters. They challenged the grant that was issued to Gicharu Gichohi and his son. After considering the objection, Aluoch J (as she then was) revoked the grant that had been issued to the said Gicharu Gichohi and George Gichohi Gicharu. She directed that a new grant be issued to Gicharu Gichohi, Lillian Nyambura Gichohi, Grace Anne Karura Ndungu and Esther Mwea.

The dispute that remained for determination was in respect to the properties that comprised the estate of the deceased was to be distributed to the beneficiaries. The parties agreed that the court would hear *viva voce* evidence to determine distribution. Evidence was taken before Onyancha J, the Learned Judge who heard the case. The main dispute was the contention by Gicharu Gichohi to the effect that his sisters were not entitled to inherit any of the properties belonging to their deceased mother because, under Kikuyu Customary Law, such inheritance claim was not contemplated. In his Ruling delivered on 9<sup>th</sup> December 2008, the Learned Judge had this to say:

***“The court accordingly directs the two sides to discuss distribution so as to give every party who is hungry for a share, some share. It is possible and even probable and advisable the***

***main objector to accept to release some shares to his two sisters who insist to get some share. On that basis he should talk to them for a compromise. In case a compromise fails, this court will decide the shares the specific daughters will get so that the administration will be brought to an end. Orders are made accordingly.”***

The Learned Judge also ruled that the assertion by the son that the daughters were not entitled to inherit anything from the estate of their mother was untenable. It was apparent from subsequent proceedings that the son did not follow the advice given to him by the Judge.

When the matter was placed before this court for further directions, the court directed the parties to file their proposals in regard to how they intend to distribute the assets that comprised the estate of the deceased. The proposals were duly filed. This court’s task therefore is simply to distribute the properties that comprise the estate of the deceased to the beneficiaries. In doing so, this court shall be guided by the Ruling of Onyancha J and **Section 38** of the **Law of Succession Act** which provides thus:

***“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”***

In the present case, the assets that comprise the estate of the deceased are as follows:

- I). LR. No.36/765/2 – Eastleigh
- II). 4 acres of agricultural land in Kirinyaga
- III). Stall No.58 Retail Market Landhies Road Nairobi
- IV). Savings in Coffee Growers Co-operative Society, Kirinyaga
- V). Shares in Kawaida Farm.

It was evident from the proposals and the evidence adduced before Onyancha J that the property that is contentious is the Eastleigh property. This is obvious because that is the most valuable asset of the estate. Gicharu Gichohi testified that although the property was registered in his mother’s name, the same was previously registered in their late father’s name. It was his case that he partly contributed towards the cost of purchase of the property. He reiterated this contention in his proposal. Onyancha J seems not to have found favour with this claim by the son. The Learned Judge however noted that, as the son, Gicharu Gichohi should get a slightly bigger share than the sisters. On their part, the sisters propose that the Eastleigh property be sold and the proceeds therefore be divided equally between all the children of the deceased.

Having carefully considered all the aspects of this case, this court holds that the Eastleigh property shall be sold and the proceeds therefrom shall be distributed as follows: Gicharu Gichohi shall get 50% of the value while all the sisters shall share equally the remaining 50%. The Kirinyaga property shall be inherited by Gicharu Gichohi. The savings in Coffee Growers Co-operative Society Kirinyaga and the Shares in Kawaida Farm shall be redeemed or liquidated and the proceeds therefrom shared equally among all the beneficiaries of the deceased. The Stall 58 at Retail Market Landhies Road Nairobi shall be inherited by Catherine Waringa Njoroge. The grant shall be confirmed in accordance with the above finding of the court. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2014**

**L. KIMARU**

**JUDGE**