



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO.135 OF 2002**

**IN THE MATTER OF THE ESTATE OF:**

**SAMUEL MWANGI MUCHIRI ..... DECEASED**

**AND**

**ANN KABURA MWANGI ..... PETITIONER**

**VERSUS**

**LUCY WANJIKU MWANGI ..... RESPONDENT**

**JUDGMENT**

The Petitioner ANN KABURA MWANGI petitioned for Grant of Letters of Administration to the estate of SAMUEL MWANGI MUCHIRI and named the following as survivors:-

- 1) ANNE KABURA SAMUEL MWANGI – Wife
- 2) KEVIN MUCHIRI MWANGI – Son
- 3) ERNEST MUI MWANGI – Son
- 4) LUCY WANJIKU MWANGI – Wife
- 5) JULIUS MUCHIRI MWANGI – Son
- 6) PHILIS MUMBI MWANGI – Daughter
- 7) JOHN MWAI MWANGI – Son
- 8) NANCY NJOKI MWANGI - Daughter

The Petitioner cited LUCY WANJIKU MWANGI and her three children who on 2nd December 2002 filed notice of appointment through the law firm of WAITHIRA MWANGI & CO. Advocates.

On 19th May 2005 the petition filed summons for confirmation of grant in which she proposed that the property of the deceased be shared equally between the two widows save for LR NO. LOC11/MARAGI/1379 to be inherited by ANN KABURA MWANGI and LR NO. LOC8/GATARA/884 to be inherited by LUCY WANJIRU MWANGI, which grant was confirmed on 27th October 2009.

On 22nd November 2010 LUCY WANJIKU MWANGI filed an application under **Rules 73, 63 (1) of Probate and Administration Rules** and **Order XLIV** in which she sought review and or setting aside the court's order given on 27th October 2009 which application was on 29th July 2011 allowed by Justice Serгон setting aside the order confirming grant.

By an application dated 27th February 2012 the petitioner ANN KABURA MWANGI filed an application now naming the following as survivors:-

- a) ANNE KABURA MWANGI- WIDOW
- b) KELVIN MUCHIRI MWANGI – SON
- c) ERNEST MWAI MWANGI – SON
- d) LUCY WANJIKU MWANGI – WIDOW
- e) JULIUS MUCHIRI – SON
- f) JOHN MWAI MWANGI – SON
- g) PHILIS MUMBI – DAUGHTER
- h) NANCY NJOKI MWANGI - DAUGHTER

The Petitioner further proposed the following mode of distribution:-

- a) Lr No. Loc11/Maragi/1379 to be inherited by Anne Kabura Mwangi, Kelvin Muchiri Mwangi and Ernest Mwai Mwangi.
- b) Lr No.Loc8/Gatara/884 to Julius Muchiri, John Mwai Mwangi, Philis Mumbi, and Nancy Njoki Mwangi.
- c) i) Plot No. Muranga Municipality Block No.2/324
- d) ii) Muranga Municipality Block No.1/707
- e) iii) Muranga Municipality Block No. 3/481
- f) v) Muranga Municipality Block No.1/675
- g) vi) Langata Development Co. Limited Share
- h) Certificate No.1811 Block G6
- i) vii) Nginda/Samara/Block1/634
- j) viii) Loc11/Maragi/2680
- k) x) Plot No.R150 Chuka
- l) Half share of each to: Ann Kabura Mwangi, Kelvin Muchiri Mwangi, Ernest Mwai Mwangi and the other half share to: Julius Muchiri, John Mwai Mwangi, Philis Mumbi and Nancy Njoki Mwangi.

On 13th April 2012 JOHN MWAI MWANGI filed an affidavit of protest in which he deponed that the Estate should be shared on the ratio of 3:5 as per the provision of **Section 40 rule**

**1 of the Law of Succession Act Cap 160.**

Directions were given that the protest be disposed off by way of written submissions and at the time of writing this judgment it was only the petitioner who had filed her submissions.

**SUBMISSIONS**

It was submitted that the only dispute is whether the deceased's widow LUCY WANJIKU MWANGI is a survivor in relation to the distribution of the deceased's estate and if she is to be included as a unit of the second house.

**Section 40(1)** of the **Law of succession** under which this dispute is premised is as follows:-

**“Where an intestate has married more than once under any system of Law permitting polygamy his personal and household effects and residue of the net estate shall in the first instance be divided amongst the houses according to the number of the children but also adding any wife surviving him as an additional unit to the number of the children.”**

The question therefore for the court to answer is whether LUCY WANJIKU MWANGI survived the deceased? My answer to this question is that she survived the deceased and therefore in the distribution of the estate of the deceased she is to be added as a unit. I am therefore not persuaded by the submission by the petitioner herein.

I would therefore agree with the protest herein that as regards the distribution of the estate of the deceased in compliance with **Section 40 (1)** of the **Law of Succession**. The distribution of the estate of the deceased herein be in the ratio of 3:5 in respect of property named in paragraph 4 (c) of the affidavit in support of the summons for confirmation of grant.

In view of the reasons stated herein I therefore allow the protest and order distribution as per the affidavit of protest filed on 13th April 2012.

This being a family dispute each party shall meet their own costs.

**Signed and dated this                      day of                      201**

**J. WAKIAGA**

**JUDGE.**

Delivered by Justice J. Ngaah on behalf of Justice J. Wakiaga on 18th day of December 201

**J. NGAAH**

**JUDGE.**

In the presence of:

----- for Petitioner

----- for Respondent