



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 375 of 2009

IN THE MATTER OF THE ESTATE OF KARANJA NJOROGE THUO

RUSSIAH WAITHIRA KARANJA

PHILIP MWANGI KARANJA.....PETITIONERS

JUDGMENT

In their summons dated 7th July 2010, the Petitioners/Applicants sought two orders -

(1) That the Grant of Letters of Administration Intestate made to **RUSIAH WAITHIRA KARANJA, PHILIP MWANGI KARANJA, BETH MUTHONI KARANJA AND PAUL MWANGI KARANJA** in this cause be confirmed.

(2) That the costs of this application be costs in the cause.

2. The summons was supported by the Affidavit of Rusiah Waithira Karanja and Philip Mwangi Karanja which set out their preferred mode of distribution of the deceased's estate.

3. In an affidavit sworn on 8th October 2010 and filed on 11th October 2010, Paul Mwangi Karanja, a son of the 1st House proposed his own mode of distribution of the deceased's estate. With leave of court, Rusiah Waithira Karanja and Philip Mwangi Karanja swore a Supplementary Affidavit of 25th November 2010 filed on 26th November 2010, attaching a purported will of the deceased.

4. In answer to that Supplementary Affidavit Paul Mwangi Karanja on 17th March 2011 swore and filed further affidavit on Proposed Mode of Distribution. This Affidavit was a clarification of a claim in paragraph 13 of the Supplementary Affidavit (supra), that this deponent, Paul Mwangi Karanja was not a son of the deceased.

5. In addition to the Affidavits (*which were in the main contradictory - i.e. with each house giving its own preferred mode of distribution of the deceased's estate*) counsel for the respective houses filed written submissions again setting out their respective modes of distribution of the deceased's estate. I have considered both rival affidavits as well as the rival submissions by respective counsel.

6. The law regarding the distribution of the net intestate estate of a deceased is well set out in the Law of Succession Act, (*Cap. 160 Laws of Kenya*). The relevant provision where the intestate was polygamous is S. 40 of the Act. I set it out in full, for case of reference the provisions of that Section.

40(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate, shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate within each house shall then be in accordance with the rules set out in Sections 35 to 38 (of the Act).

7. S.41 of the Act refers to children, and any property due to them beneficially is held in trust.

8. The deceased had a polygamous union. He had two wives and children by each of them. This was the composition of the two houses -

1st House

1. R N - Widow (deceased)
2. B M K - Daughter
3. J K - son
4. P M - son

2nd House

1. R W - widow
2. B M K - Daughter
3. P M - Son
4. S N - Daughter
5. R T - Son
6. R W - Daughter
7. M W - Son
8. A W - Daughter
9. Harun Njoroge - son (deceased)

9. There are altogether 12 beneficiaries including the 1 widow, and the estate of the late Harun Njoroge son in the 2nd house. There were allegations that P M K (*of the 1st house*) was not a son of the deceased. There was however no evidence led by any of the counsel that he was not the biological son of the deceased. He is therefore a lawful member of the deceased's estate.

10. The deceased's nett intestate comprised four (4) properties -

- (1) Nyandarua/Ol Kalou [particulars withheld]
- (2) Nyandarua/ [particulars withheld]
- (3) Nyandarua/Ol Kalou/ [particulars withheld]
- (4) Nyandarua [particulars withheld]

11. The paramount provision governing the distribution of the net intestate of a polygamous deceased person is Section 40 (supra) of the Act. It provides for a two stage division of the nett intestate estate.

Firstly, the net intestate shall in the first instance be divided among the houses according to the number of children in each house, adding the wife (widow) surviving the deceased as an additional unit to the number of children (in each house). The **second** stage is the distribution of the net intestate within each house in accordance with the rules set out in Sections 35 to 38 (of the Act).

12. Following the above provisions, each of the properties would be divided by the total number of the units in the two houses multiplied by the number of units in each house. The resultant area in respect of each of the net intestate is what is then divided in accordance with the rules in sections 35 to 38 of the Act.

13. Applying the above formula each of the houses would be entitled to the following areas in respect of each of the properties -

(1) Nyandarua/[particulars withheld]

1st House - Total Units - 3

2nd House - Total Units - 9

Total = 12

1st House Entitlement

$\frac{3}{12} \times 5.2 = 1.3 \text{ Ha}$

2nd House - Entitlement

$9 \times 5.2 = 3.9 \text{ Ha}$

(2) Nyandarua/[particulars withheld]

1st House Entitlement

$\frac{3}{12} \times 1.175 = 0.4375 \text{ Ha}$

2nd House Entitlement

$\frac{9}{12} \times 1.75 = 1.3125 \text{ Ha}$

(3) Nyandarua[particulars withheld]

1st House Entitlement

$\frac{3}{12} \times 7.0 = 1.75 \text{ Ha}$

2nd House Entitlement

$\frac{9}{12} \times 7.0 = 5.25 \text{ Ha}$

(4) Nyandarua[particulars withheld]

1st House Entitlement

$\frac{3}{12} \times 2.5 = 0.625 \text{ Ha}$

2nd House Entitlement

$$\frac{9}{12} \times 2.5 = 1.875 \text{ Ha}$$

14. The above therefore are entitlements of each house to the deceased's four properties. As the deceased was survived by only one spouse, Section 35 of the Law of Succession Act provides that the surviving spouse is entitled to -

- (a) the personal and household effects of the deceased absolutely and,
- (b) a life interest in the whole residue of the net intestate, except that the life interest is determined immediately such spouse re-married.

15. In this case the deceased was also survived by children, and the one child, son (Harun Njoroge died after him) and is in turn is survived by his wife and children. His wife or estate is entitled to his share from the 2nd house. It is, under section 38 of the Act, an equal share within each house. To complete the distribution therefore, each of the surviving widow and surviving children within each house would be entitled to the following share of the net intestate -

(1) Nyandarua/[particulars withheld]

1st House - Entitlement 1.3 Ha

- (1) BM- 0.4333 Ha
- (2) JK - 0.4333 Ha
- (3) PMK - 0.4333 Ha

2nd House - Entitlement 3.9 Ha

- (1) R W - widow (life interest) - 0.4333 Ha
- (2) BMK - 0.4333
- (3) P M - 0.4333
- (4) SN - 0.4333
- (5) R T - 0.4333
- (6) RW - 0.4333
- (7) MW - 0.4333
- (8) AW - 0.4333
- (9) Estate of Harun Njoroge - 0.4333 Ha to Mary Waithera w/o Harun Njoroge in trust for Lucy Waithira, Angela Gathoni and Samuel Karanja.

2. NYANDARUA [particulars withheld]

1st House - Entitlement - 0.4375

Individual Entitlement -

- (1) BM - 0.1458
- (2) JK - 0.1458
- (3) PMK - 0.1458

2nd House - Entitlement 1.3125

Individual Entitlement

- (1) R W (widow) (life interest) - 0.1458 acres
- (2) BMK - 0.1458 acres
- (3) PMK - 0.1458 acres
- (4) S N - 0.1458 acres
- (5) R T - 0.1458 acres
- (6) R W - 0.1458 acres
- (7) M W - 0.1458 acres
- (8) A W - 0.1458 acres

(9) Estate of Harun Njoroge/Mary Waithira w/o Harun Njoroge in trust for Lucy Waithera Angela Gathoni and Samuel Karanja - 0.1458 acres

3. NYANDARUA/[particulars withheld]

1st House Entitlement = 1.75 Ha

Individual Entitlement -

- (1) BM - 0.5833 Ha
- (2) JK - 0.5833 Ha
- (3) PMK - 0.5833 Ha

2nd House Entitlement - 5.25 Ha

- (1) R W (widow) (life interest) - 0.5833 Ha
- (2) BMK - 0.5833 Ha
- (3) PMK - 0.5833 Ha
- (4) S N - 0.5833 Ha
- (5) R T - 0.5833 Ha
- (6) R W - 0.5833 Ha
- (7) M W - 0.5833 Ha
- (8) A W - 0.5833 Ha

(9) Estate of Harun Njoroge/Mary Waithira w/o Harun Njoroge in trust for L W A G and S K - 0.5833 Ha

4. Nyandarua/[particulars withheld]

1st House - Entitlement 0.625 acres

Individual Entitlement

- (1) B M - 0.2083 acres
- (2) JK - 0.2083 acres

(3) Estate of Harun Karanja - 0.2083 acres

2nd House Entitlement - 1.875 acres

(1) R W (widow) (life interest) - 0.2083 acres

(2) BMK - 0.2083 acres

(3) PMK - 0.2083 acres

(4) SN - 0.2083 acres

(5) RT - 0.2083 acres

(6) RW - 0.2083 acres

(7) MW - 0.2083 acres

(8) AW - 0.2083 acres

(9) Estate of Harun Njoroge (*Mary Waithira w/o Harun Njoroge in trust for L W A G and S K - all minors*) - 0.2083 acres.

16. The foregoing is both the entitlement of each house according to the provisions of the Law of Succession Act (SS. 40 and 38 in particular). In practice, the individual beneficiaries unless they consent or agree to swap places, usually remain in the same area where they are settled, and only the boundaries of the respective entitlements are adjusted through professional survey and registration of individual titles. I expect the same to be done by the respective beneficiaries. The law does not discriminate between the male and female child or gender, hence the equal distribution herein.

Each beneficiary will bear the cost of individual survey and registration of title.

There shall be a Certificate of Confirmation as per the above distribution and an order for costs as above.

Dated, signed and delivered at Nakuru this 24th day of February, 2012.

M. J. ANYARA EMUKULE
JUDGE