

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 1047 of 1987

MONICA MURUGI NYONGO.....APPLICANT

VERSUS

SAMUEL KAGICA NYONGO

HANNAH WANJIRU NYONGO..... RESPONDENTS

RULING

1. This estate has been left undistributed since 1987 but on 6th February 2006, Koome J. settled the issue and made certain Orders in a bid to finalise the inheritance by the beneficiaries of the estate. Subsequently, a Certificate of Confirmation of Grant was issued by Rawal, J. on 27th June 2008 and I deem it fit to reproduce the schedule of distribution as it is pertinent to the issues to be addressed later. It reads as follows;

SCHEDULE

NAME: DESCRIPTION OF PROPERTY: SHARE OF HEIRS:

1ST HOUSE

Samuel Kagica Nyongo	L.R. No. Ngenda/Ituru/178-3 Acres L.R. No. Ngenda/Ituru 136-¼ Acres Juja Farm – 3 Acres – one Plot Plots in Kiamumbu Estate Ngenda/Githungucu Gatundu Town Msambweni Beach Plot – 1 Acres	Whole.
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2ND HOUSE

Monica Mungu Nyongo	Msambweni Beach Plot – 1 Acre Kiganjo/Handege Plot No.1138 – 9 Acres Kiganjo/Handege Plot No.1334 – 3 Acres Juja Farm – 3 Acres and one Plot Plot No.125/52 Ruiru Mukawaini	Whole.
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3RD HOUSE

Hannah Wanjiru Nyongo	Ngenda/Ituru 164 – 3 Acres Ngenda/Ituru 467 – 1 Acre Juja Farm – 3 Acres – one plot Plot No.125/62 Ruiru Town Msambweni Beach Plot	Whole.
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Samuel Kagica Nyogo	Plot No.163 Ruiru Town (Gachigu) Mombasa L.R XVIII/257 (Top safety)	To be registered in her name to hold in trust for herself and her household at the ration of 8/26.
Monica Murugi Nyongo	Plot No.163 Ruiru Town (Gachigu) Mombasa L.R. XVIII/257 (Top Safety) Mombasa plot No.XVIII/112 & 113	To be registered in her name to have a life interest and thereafter to her children at the ratio of 11/26.
Hannah Wanjiru Nyongo	Plot No.163 Ruiru Town (Gachigu) Mombasa L.R.VIII/257 (Top safety) Mombasa Plot No.XVIII/112 & 113 (visitors Inn)	To be registered in her name to have a life interest and thereafter to her children at the ration of 7/26. In equal shares and to hold on behalf of their households.
Samuel Kagica Nyongo Monica Murugi Nyongo Hannah Wanjiru Nyongo	North East of Ruiru Town L.R. No.7418/4 & Ruiru Town/267 Mombasa Msambweni Mombasa Thathii-ini 9 acres Longonot – 20 Acres Nanyuki – 20 Acres Kiganjo Location Ranching company Motor Vehicle Reg.No.KRY 794 – Pick-up Motor-vehicle Reg.No.KRY 794 – Pick-up Motor-vehicle Reg.No.KJP 656-Peugeot 404 One Compressor mixture 169 Herds of Sheet and Goats 85 Herd of cattle	Whole.
Samuel Kagica Nyongo	L.R. No.Ngenda/Ituru/178 Ngenda/Ihuru T136 Juja Farm – 3 Acres – One Plot Msambweni Beach Plot Kenya Breweries Shares Kenya Barclays Bank Shares 25 Shares at Gatunyanga Mombasa Msabweni 8/26	Whole.
Samuel Kagica Nyongo	Kiganjo/Hadege Plot No.1138 Kiganjo/Hadege Plot No.1334 Juja Farm – 3 Acres & One Plot Msambweni Beach Plot Kenya Breweries Shares Kenya Barclays Bank Shares 25 Shares at Gatunyanga Mombasa (Msambweni 11/26)	Whole

Monica
Murugi
Nyongo

Ngenda/Ituru/164 – 3 Acres
Ngenda/ituru 467 – 1 Acres
Juja Farm – 3 Acres & one Plot
Msambweni Beach plot
Kenya breweries Shares
Kenya Barclays Bank Shares
25 Shares at Gatunyanga
Mombasa (Msabweni 7/26)

Hannah
Wanjiru
Nyongo

2. What is now before me is a Summons dated 26th April 2007 by one, Monica Murugi Nyongo, seeking Orders that the judgment delivered on 6th February 2006 on the distribution of the estate be reviewed. The reasons for seeking the review are set out in paragraph 2 of the Affidavit sworn on 24th April 2007 and they are as follows;

i) That some of the land parcels are not correct.

ii) That some of the beneficiaries included in the estate are strangers and did not deserve to benefit from it including by receiving monies comprised in the estate.

iii) The distribution ought [to be] in accordance with the number of children who survived the deceased.

iv) That some non-existent parcels of land were distributed.

v) That the “homestead” comprising 125 Acres of land had already been distributed and by the [date of the] judgment some beneficiaries who had built permanent houses, schools and other developments would be affected to their detriment.

3. I also note that in the grounds on the face of the Application, the following matters have been raised that;

“a) Some of the beneficiaries given property through the judgment do not belong to the deceased family. (sic)

b There is an error in the judgment as one Mr. Joseph Karuri Nyongo (Deceased) son of the deceased herein was quoted as having left a surviving daughter who is unknown to the family.

c) Three children of the deceased died and left no surviving spouse or children [and] they are John Muiruri, Margaret Wacu and Joseph Karuri.

d) Gatundu Plot No.7 ought to be given to Hannah Wanjiru Nyongo's house (3rd house) since that house has five (5) beneficiaries while Plot No.162 a ¼ acre ought to have been given to Rebecca Nyakeru's house together with Plot No.589 which that house has developed.

e) There is a mis-description of Ruiru Plot as L.R. 7418/1 and 2 whereas the deed plans indicate L.R. 7418/1/ & 3).

f) Hannah Wanjiru Nyongo ought to take ½ of Plot No.7 Gatundu together with a ¼ of plot No.238 Gatundu.

g) The 2nd house of Monica Murugi ought to retain Ruiru Plot No.125/60 (crossing) as it has 10 beneficiaries and has used the Plot above for long enough.

h) The spirit adopted by the honourable Court on the distribution was not applied over the distribution of the most prime parcel of land at Ruiru (125 Acres). It was not distributed in accordance with the houses taking into a account the number of children in each house.

i) Following an earlier Ruling of Court dated 15th January 1991 all beneficiaries shared out L.R.7418/1 & 2 and developed permanent buildings which the applicant says ought to have been given consideration.”

I have duly noted the above issues.

4. In a Replying Affidavit in opposition to an Application filed by Hannah Nyongo dated 26th February 2008, the Applicant also stated that the 125 Acres of land at Ruiru should be distributed equally among the beneficiaries.

5. The Application aforesaid is opposed principally for reasons that it is unclear what is sought to be reviewed and in any event, that the remedy lies in an Appeal as all the grounds for review are untenable. Further, that where properties were described wrongly, a rectification was made and there is nothing left to review.

6. I have read the Submissions by the Advocates for the parties and I have also read the judgment of Koome J. What the Judge did was to resolve a long-standing dispute in a way that would bring finality to it and the question is, **has the Applicant met the threshold for review as set out in Order XLIV Rule 1 of the Old Civil Procedures Rules?** The Rule provide as follows;

“1. (1) Any person considering himself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

7. My reading of the Application together with the above **Rule** would lead me to the following opinion;

8. Firstly, the Applicant has not claimed that there is an error on the face of the record, neither has she claimed that there is new evidence which has been discovered. I gather therefore that she is saying that

there is sufficient reason given to warrant a review. I have elsewhere above set out the reasons why review is sought but to my mind none of the reasons can be sufficient to interfere with the decree. Koome, J. addressed her mind to all the interests of the parties and where errors were made in describing some properties, then rectification and not review is the remedy. As for strangers to the estate, Koome, J. was alive to the issue and ordered distribution on the basis of the evidence before her.

9. To my mind, the real reason why the review was sought is that the Applicant is unhappy with the manner in which the 125 acres of land at Ruiru was to be distributed. However, that complaint is not backed by any serious evidence that demolitions of existing properties will occur. No beneficiary who may suffer such fate has been mentioned and I agree with the Respondents that the issue was so vaguely put that no serious Court can take the issue further.

10. In the end, both on the Law and the facts, there is nothing to be reviewed and Koome J.'s judgment should be implemented to bring this matter to closure.

11. The Application dated 26th April 2007 is without merit and is best dismissed with no order as to costs.

12. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 17TH DAY OF FEBRUARY, 2012.

17/2/2012

CORAM

BEFORE LENAOLA – JUDGE

MIRON – COURT CLERK

MR. MUSYOKA HOLD BRIEF FOR MR. NJOROGE FOR 2ND AMINISTRATOR

MR. MUREITHI FOR 1ST ADMINISTRATOR

ORDER

RULING DULY DELIVERED.

ISAAC LENAOLA

JUDGE