



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE 362 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE HANNAH NJERI KARIUKI – DECEASED

**JOHN MUTHUA KARIUKI.....1ST
PETITIONER/RESPONDENT**

**DUNCAN NDUNGU KARIUKI.....2ND
PETITIONER/RESPONDENT**

VERSUS

**RAHAB MUGURE NG'ANG'A &
OTHERS.....PROTESTORS**

AND

**NJUGUNA KAMANGA & CO.
ADVOCATES.....APPLICANT**

RULING

Hannah Njeri Kariuki, (the deceased) died on 16th July 1994, leaving six children surviving her. The children are -

Duncan Ndungu

Margaret Wanjiku

John Muthua Kariuki

Rahab Mugure

Regina Wangari

John Mungai Kariuki (grandson)

According to the Chief's letter issued under Section 45 of the Law of Succession Act, (Cap. 160, Laws of Kenya) the deceased had one property, Title Number LAIKIPIA/KINAMBA MUTHIGA/BLOCK 1/256 comprising two decimal three five three Ha (2.353 Ha). The deceased according to the Chief's letter, had indicated that the parcel of land be divided into two unequal pieces in the ratio 2:1 in favour of males and the parcel allocated to the daughters could be under the administration of Rahab Mugure

Ng'ang'a of ID No. 5963671 while the parcel for the sons would be put under the administration of John Muthua Kariuki on behalf of the male children.

While John Muthua Kariuki and Duncan Ndungu Kariuki sought a Grant of Letters of Administration Intestate they excluded the daughters, who objected to the Grant being made to the Petitioners above, and placed a caveat on the property. They also protested against the Confirmation of the Grant issued in Nyahururu Principal Magistrate's Court Succession Cause No. 30 of 2006, and had the matter transferred to this Court.

After being satisfied with the service of a Hearing Notice upon the Petitioners, the matter proceeding to hearing ex parte on 7th June 2012 when the Objectors testified.

Daniel Mugo Mungai, a resident of Mwea is a brother of the Petitioners' and Objectors' father. His testimony as OW1 (Objector's witness No. 1), corroborated the contents of the Chief's letter. The deceased his sister-in-law, had 6 children with the brother who pre-deceased her. The children were two sons and four daughters as stated by the Chief of Kinamba Location.

OW1 also testified that in an agreement reached on 7th May 2003, the family agreed upon the distribution of the property, that the land had been divided by the deceased giving 2 acres to each of the sons, and 2 acres to the daughters jointly. OW2, Margaret Wangui Karanja, testified to the like effect.

As already noted, despite service, none of the Petitioners attended court on the hearing date. They had also declined to instruct their Advocate, Njuguna Kamanga & Co. who withdrew from acting for them by orders of court granted to them on 15th March, 2012.

There are two issues arising in this cause. Firstly, who should be the administrators of the estate, and secondly, more importantly, the distribution of the estate.

In the Replying Affidavit sworn on 23rd May 2012, John Muthua Kariuki, depones that they as Petitioners sold off one acre each from the estate, and the area sold should be reduced from the portion due to his brother and/or co-administrator, Duncan Ndungu Kariuki who he has described as long disappeared (although he is known to live in Sipili, Laikipia County) and the deceased's daughters share of two acres. He has given an explanation that because the sisters are married, they should receive one acre jointly, while he remains with his two acres. I do not agree.

The Law of Succession Act is clear. Section 36 of the Act provides for equal share of the deceased's nett estate, when the deceased dies and leaves two or more children. In this case the deceased, according to the evidence of the Objectors witnesses had clearly indicated that her land be divided equitably among her sons and daughters. The sons would each have 2 acres, and the four daughters 2 acres jointly.

For reasons best known to the Petitioners they have sold 2 acres. Those are acres which they have gifted themselves, as they did not share the proceeds with the sisters. In the circumstances, I would make the following orders -

Cancel the grant made in Nyahururu P.M.C. Succession Cause No. 30 of 2006,
Grant a new Grant in the names of -

1. John Muthua Kariuki
2. Margaret Wanjiru Karanja and
3. Regina Wangari Kariuki.

Grant a Certificate of Confirmation of Grant Intestate on terms – Distribution of the Title No. LAIKIPIA/KINAMBA MITHIGA BLOCK 1/256 (Njorua) as follows -

1. Duncan Ndungu Kariuki – 1 acre,

2. John Muthua Kariuki – 1 acre,

3. Margaret Wanjiru Karanja)

Rahab Mugure Ng'ang'a)..... 2 acres jointly
Regina Wangari Karuiki)

4. Susan Wanjiru Karanja – 1 acre

5. Stephen Chege Ngwai – 1 acre

Each of the beneficiaries shall contribute equally to the costs of the sub-division and issue of individual title to their respective portions.

The costs of this application shall be borne by each of the beneficiaries.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 20th day of July, 2012

J. ANYARA EMUKULE
JUDGE