



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE 64 OF 1985**

**In the matter of the estate of Samuel WandakaNdutha (Deceased)**

**AND**

**SAMUEL NDUTHA WANDAKA.....1<sup>ST</sup> PETITIONER**

**DAVID MWANGI WANDAKA.....2<sup>ND</sup> PETITIONER**

**RULING**

A grant of Letters of Administration intestate in respect of the Estate of Samuel WandakaNdutha, deceased, was made in the joint names of EphantusNduthaWandaka, David MwangiWandaka, Stephen WamaruWandaka and Kenneth KamauWandaka on 13<sup>th</sup> May 1991. The quartet hereinafter referred to as the petitioners took out the summons for Confirmation of Grant dated 2<sup>nd</sup> August 2008 in which they proposed to distribute the Estate as follows:

- a) ***LOC.10/KOIMBI/239 to be shared equally between DAVID MWANGI WANDAKA and STEPHEN WAMARU WANDAKA.***
- b) ***LOC 10/KOIMBI/373 to be shared equally between DAVID MWANGI WANDAKA and STEPHEN WAMARU WANDAKA.***
- c) ***LOC.10/GATHINJA/344/9 to be shared equally between DAVID MWANGI WANDAKA and STEPHEN WAMARU WANDAKA.***
- d) ***LOC.10/KOIMBI/T.326, LOC.10/KOIMBI/T.16, LOC. 10/KOIMBI.T.51 to be registered in the name of STEPHEN WAMARU WANDAKA.***
- e) ***LOC.11/MARAGI/1564 to be shared equally among EPHANTUS NDUTHA WANDAKA, ISABELLA WARUINU MUNGAI, STEPHEN WAMARU WANDAKA and KENNETH KAMAU WANDAKA.***
- f) ***LOC.10/KOIMBI/257 to be registered jointly in the names of NANCY MARY N. WANDAKA and LYDIA WARUGURU WANDAKA.***
- g) ***LOC.10/KOIMBI/272 to be registered in the name of KENNETH KAMAU WANDAKA.***
- h) ***LOC.10/KOIMBI/103 to be shared equally between KENNETH KAMAU WANDAKA and EPHANTUS NDUTHA WANDAKA.***

- i) **LOC.10/KOIMBI/T.276 and LOC.10/KOIMBI/T. 282 to be registered in the name of KENNETH KAMAU WANDAKA.**
- j) **LOC.10/KOIMBI/T.144 and LOC 10/KOIMBI/T.309 to be registered in the name of KENNETH KAMAU WANDAKA.**
- k) **LOC.10/KOIMBI/T.54 to be shared equally between KENNETH KAMAU WANDAKA and EPHANTUS NDUTHA WANDAKA.**
- l) **LOC. 10/KOIMBI/1262 to be registered in the name of EPHANTUS NDUTHA WANDAKA.**
- m) **PLOT NO. 17 KOIMBI MARKET (formerly plot 12 'A') to be registered in the name of EPHANTUS NDUTHA WANDAKA.**
- n) **LOC.10/KOIMBI/T.109 and LOC 10/KOIMBI/T.154 to be registered in the name of EPHANTUS NDUTHA WANDAKA.**
- o) **LOC. 10/KOIMBI/T.310, LOC.10/KOIMBI/T.58, LOC 10/KOIMBI T.65, LOC 10/KOIMBI/KOMBI/t.55 to be registered in the name of DAVID MWANGI WANDAKA.**
- p) **LOC.10/KOIMBI/281, loc 10/KOIMBI/T.36, loc. 10/KOIMBI/T.50 and LOC. 10/KOIMBI/T.237 to be registered jointly in the names of NANCY MARY N. WANDAKA and LYDIA WARUGURU WANDAKA.**

Lydia WaruguruWandaka and Nancy marynjokiWandaka, hereinafter referred to as the protestors, filed a joint affidavit of Protest to oppose the Summons for Confirmation of Grant. The duo indicated they also represented Lucy WambuiWandaka as a Protestor. When the Summons came up for interpartes hearing, learned counsels appearing in this cause recorded a consent to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the material placed before this Court plus the rival written submissions. The Protestors are of the view that the proposed mode of distribution done by the Petitioners is not fair nor equitable. They complained that they were given meager plots while they were entitled to share equally the deceased's Estate. It is further alleged that Lucy WambuiWandaka was unfairly left out from the sharing of the Estate. The Protestors further complained that the Petitioners have failed to disclose the number of acres due to each beneficiary. It is also alleged that two of the Petitioners namely EphantusNdutha, Daniel Mwangi and Stephen Wamaru have failed to disclose the rental income they received from the buildings owned by the Estate.

The Protestors proposed to have the deceased's Estate shared as follows:

#### **A.LAND**

1. **LOC.1/KOIMBI/239 – To be shared equally between David MwangiWandaka, Stephen WamaruWandaka and Lucy WambuiWandaka.**
2. **LOC.10/KOIMBI/373 – To be shared equally between David MwangiWandaka, Stephen WamaruWandaka, Nancy Mary NjokiWandaka and Lucy WambuiWandaka.**
3. **LOC.10/KAHUTI/344/9 – To be shared equally between Stephen WamaruWandaka, David MwangiWandaka, Kenneth KamauWandaka, EphantusNduthaWandaka, Lydia WaruguruWandaka, Nancy Mary NjokiWandaka and Lucy WambuiWandaka.**
4. **LOC.11/KOIMBI/257, loc.10/KOIMBI/272, LOC 10/KOIMBI/103 and LOC. 10/KOIMBI/281 – To be shared equally between Stephen WamaruWandaka, David MwangiWandaka,**

***EphantusNduthaWandaka, Kenneth kamauWandaka, Lydia WaruguruWandaka, Nancy Mary NjokiWandaka and Kenneth KamauWandaka.***

5. ***LOC. 11/MANAGI/1564 – To be shared equally between Stephen WamaruWandaka, EphantusNduthaWandaka, David MwangiWandaka, Kenneth KamuWandaka, Lydia WaruguruWandaka, Nancy maryNjokiWandaka and Lucy WambuiWandaka.B. PLOTS***

<b><u>Plot No.</u></b>	<b><u>Proposed Beneficiary</u></b>
a) <b><i>Loc.10/KOIMBI/T326</i></b>	<b><i>Stephen WamaruWandaka</i></b>
b) <b><i>Loc.10/KOIMBI/T16</i></b>	<b><i>Nancy Mary NjokiWandaka</i></b>
c) <b><i>Loc.10/KOIMBI/T51</i></b>	<b><i>Lucy WambuiWandaka</i></b>
d) <b><i>Loc.10/KOIMBI/T276</i></b>	<b><i>Kenneth KamauWandaka</i></b>
e) <b><i>Loc.10/KOIMBI/T309</i></b>	<b><i>Lydia WaruguruWandaka</i></b>
f) <b><i>Loc.10/KOIMBI/T54 names of EphantusNdutha Kamau</i></b>	<b><i>To be jointly registered in the Wandaka and Kenneth Wandaka</i></b>
g) <b><i>Plot No. 17 Koimbi Market formerly plot 12A to be registered in the names of EphantusNdutha and Lucy WambuiWandaka.</i></b>	
h) <b><i>Loc.10/KOIMBI/T109 – To be registered in the joint names of Kenneth KamauWandaka and Nancy Mary NjokiWandaka.</i></b>	
i) <b><i>Loc.10/KOIMBI/T154 – To be registered in the joint names of Kenneth KamauWandaka and Lydia WaruguruWandaka.</i></b>	
j) <b><i>Loc.10/KOIMBI/T310 – To be registered in the name of Lucy WambuiWandaka.</i></b>	
k) <b><i>Loc.10/KOIMBI/T58 – To be registered in the name of Lydia WaruguruWandaka.</i></b>	
l) <b><i>Loc.10/KOIMBI/T65 – To be registered in the name of Nancy Mary NjokiWandaka.</i></b>	
m) <b><i>Loc.10/KOIMBI/T55 – To be registered in the name of Lydia WaruguruWandaka.</i></b>	
n) <b><i>Loc.10/KOIMBI/T50 – To be registered in the name of Stephen WamaruWandaka.</i></b>	
o) <b><i>Loc.10/KOIMBI/T237 – To be registered in the name of Kenneth KamauWandaka.</i></b>	

The protestors aver that their proposal takes into account the nature and location of the land or plots in question.

The Petitioners on their part are of the view that the protestors have been catered for hence they have not been disinherited.

After a careful consideration of the evidence and the submissions it is clear to me that the Petitioners do not deny the allegation that their proposed mode of distribution is unfair. The Petitioners have not controverted the allegation that they have been unable to disclose the rental incomes they have been receiving from the buildings owned by the Estate. I have compared the two modes of distribution and I have come to the conclusion that the mode of distribution proposed by the protestors appear to be fair and is in compliance with Section 38 of the Law of Succession Act. Consequently, I find the protest to be well

founded. The grant of letters of administration intestate is confirmed and the distribution to be done in terms of the Protestors' submissions. Since the dispute involves members of the same family, I direct that each meets his or her own costs.

Dated and delivered at Nyeri this 2<sup>nd</sup> day of August, 2012.

J. K. SERGON  
JUDGE