



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1892 OF 1993

**IN THE MATTER OF THE ESTATE OF JAMES NJUGUNA KIONGO (DECEASED)
DAVID KINYANJUI NJUGUNA 'A'2ND ADMINISTRATOR/APPLICANT**

-VERSUS-

DAVID KINYANJUI NJUGUNA 'B' AND OTHERS.....ADMINISTRATOR/RESPONDENT

JUDGMENT ON SUMMONS FOR CONFIRMATION

The estate of the deceased herein had five houses and thus 4 Administrators representing those houses were appointed by the court vide grant dated 25th February, 2009.

The four Administrators are:

- (1) Eliud Mwaniki Kiongo**
- (2) David Kinyanjui Njuguna 'A'**
- (3) David Kinyanjui Njuguna 'B' and**
- (4) Eunice Njoki Kiongo**

By Summons dated 27th March, 2009 the 2nd Administrator, namely David Kinyanjui Njuguna 'A' seeks the order of Confirmation of the grant and makes proposals for the distribution of the estate.

Some of the beneficiaries had signed the consent on the mode of distributions and others have objected. Several affidavits in protest as well as in support have been filed thereafter. Some of them are also from the purchasers of the estate properties.

After several pre-trial meetings as directed by the court, an amended summons for confirmation dated 26th August, 2010 was filed. Several affidavits were filed and exchanged thereon.

On 21st September, 2010 following consents were recorded: viz

- (1) The properties which are mentioned in the Amended Summons for confirmation are the properties of the estate.
- (2) There are five houses of the estate.
- (3) The list of beneficiaries mentioned in the said Summons is agreed.

(4) Out of the four properties mentioned in paragraph 7 of the Affidavit in support of the Summons as being allegedly sold only one on item no. 2 i.e. 1 acre out of LR. Sigona/454 is contested.

(5) Paragraph 8 of the affidavit in support be amended to read “All five widows 40%” instead of “surviving widows 40%”.

(6) In paragraph 9 of the affidavit in support, item (i) to (iii) are agreed and (iv) to (v) are disputed.

(7) The contents of paragraph 10 of the affidavit in support not to be taken into account while distribution of estate.

(8) The parties have further agreed that property shown in –

- (i) Item no. (3) in paragraph 7 namely title no. Karai/Karai/566 was sold to James N. Muthiru and Kageni Njoya Wahinya.
- (ii) As regards properties specified on items nos. 2 and 4, the documents of the sale to be produced.
- (iii) As regards item no. 1, the evidence of payment to be shown.

It was further agreed on 7th February, 2011 that the property bearing Kijabe/Kijabe/Block/3614 being still in the name of a third party, the same be kept aside and not included as an estate property.

After the aforesaid agreements, it was further agreed that 4th house which was proposed to have been given the aforesaid property, shall be given one more plot from the property L.R. Sigona/454. To clarify further the beneficiaries from all the five houses had been proposed to be given one plot in the said property but now the 4th house would be given one more plot in the said property and the remaining portions of this property be sold and proceeds thereof be distributed equally amongst all the five houses. I do thus direct and do make orders accordingly.

Moreover, as on 22nd March, 2011, it was also agreed by all present that the estate of late Esther Wairimu Nganga (The daughter of the 1st house) be given one acre from Eleri Plot – Longonot measuring about 27 acres (listed on paragraph 5 (P) of the affidavit in support of Summons dated 268/10). The rest of the acreage in Eleri plot be sold and the proceeds thereof be distributed equally amongst the five houses. I hereby make the order accordingly.

With the above observations, consents filed and partial orders given, the court shall now proceed to deal with the issue of final distribution.

As per the affidavit in support of the Summons dated 26.8.10:-

- (1) The 1st house has 8 beneficiaries including the widow, sons; married and unmarried and the deceased married daughter,
- (2) The 2nd house has four beneficiaries including the deceased widow, sons and married daughter.
- (3) The 3rd house has 9 beneficiaries including widow, sons, married and unmarried daughters.
- (4) 4th house has 9 beneficiaries, including deceased widow, married and unmarried daughters and four sons.
- (5) 5th house has eight beneficiaries including widow, married daughter, unmarried daughters, deceased married daughter, daughter in law and one son.

The properties are listed in paragraph 5 out of which the following properties are agreed to be divided as under:-

- (1) Title No. Sigona/454.

It is divided in ¼ acre of plots amongst the beneficiaries, as stipulated in paragraph 6 of the Affidavit in Support.

However, House no. 4 shall be given one more plot of ¼ acre instead of title No. Kijabe/Kijabe/Block 1/3614 which is to be set aside from the distribution

(2)The following properties be sold and proceeds be divided as under:

(a) All the widows 40%

(b)Surviving sons and daughters in law 40%.

(c) Unmarried daughters

The properties are:

(i) Title No. Sigona/98

(ii) Nderi plot No. 15

(iii) Title No. Karai/Kamangu/T.148/27

(iv) Eleri Langonot 26/12 acreas

(v) Nanyuki – 44 acres.

(3)The following properties are sold which are agreed by the beneficiaries named:

(a) Motor vehicle KWC 572

(b) LR Kikuyu/Kikuyu/Block/Kidfarmaco 738 (381) – the proceeds shared by all houses.

(c) Shares with Uthiru Plot No. 4 sold to settle hospital bills.

(4) The following properties are sold and are disputed

(a) 0.22 acres out of Sigona/454 at Kshs.1 million by 4th house

(b) LR Karai/Karai/566 sold by 4th house at Kshs.230,000/=

Looking at the proposals for distribution, one factor which catches the court's attention and should be commended is that it has also taken into account unmarried as well as married daughters and all the beneficiaries have also agreed to give 1 acre to the estate of married daughter (1st house) from Eleri plot.

From the record of this cause, it becomes evident that during the process of hearing of this cause and as a result of directions given by the court, the initial force from the objectors became lesser and lesser and parties conceded to several proposals and facts.

Various affidavits were filed and considered by the court.

The submissions were also filed by all the parties concerned.

The real issue which is to be determined is the sale of one acre to one Peter Kamu from Sigonga/454. The 4th house is strongly objecting to the said sale. The said sale has been shown to have been agreed by many beneficiaries from all the houses, whose names are enclosed. In that regard, it is also on record that 0.22 acre from the said plot is also shown to have been sold by the widow of the 4th house. This sale is shrugged out by the 4th house as being a personal act of the widow of 4th house. Further although the sale of share of Uthiru plot has been conceded, it is contended that the sale process of shs.1.275,000/= (contended by 4th house to be shs.1.466,000/=) would have been enough for the payment of legal charges, valuers etc

I also note that the sale to Peter Ndichu Komo of one are from Sigona/454 is not yet been completed, because it is shown that only Kshs.4,000,000/= is shown to have been received out of indicated purchase

price of Kshs.7,000,000/= as per the agreement.

Over and above the said sales, the following sales of properties are on record.

I shall however, leave out sale of further 1 acre from Sigona/454 to Elizabeth Wanjiru Ndungu which was sold by the deceased and who is in occupation.

There is one more property which is sold by the 4th house which is Karai/Karai/566 at shs.230,000/=. However, it was agreed that the purchaser being in occupation it shall not be contested.

It is thus very much in evidence that after the death of the deceased, the 2nd to 5th houses sold the properties and mainly from the most expensive property being Sigona/454.

It seems thus that it is the first house which has been ousted from getting any benefit from those sales.

With this fact on the fore, I shall have to determine whether the distribution as proposed is fair. First of all, I do note that in the proposals the valuation of ¼ acre of Sigona/454 is shown at 1,000,000/=. However, the agreement of sale of 1 acre from the said property has stipulated the purchase price of Kshs.7,000,000/=. Thus the sale price definitely put the higher value for one acre than shs.4,000,000/=.

In addition to that fact, I do also note that 1st house does not get any additional benefit from the said plot, even though it has not sold any part of the said parcel of land. The other four houses have received the sale price and thus have been enriched from those sales. The first house thus should get extra portion from the said parcel of land.

No one has raised any issue on the proposals of rents received and thus I would consider it as undisputed.

Doing the best in this complex issue of distribution, I shall direct that the estate be divided as under

HOUSE OF 1ST WIFE MARTHA WAKANYI NJUGUNGA

NAME	ID NO.	PROPERTY
1. Martha Wakanyi Kiongo (Widow)	2307054	1.) Title No. Nyandarua/Karati/ 1229 (2 acres) 2) Title No. Sigona/454 (¼ acre)
2. Samuel Kiongo Njuguna (Son)	5195259	1) Title No. Nyandarua/Karati/1229 (2 acres) 2) Title No. Sigona/454 (¼ acre) 3) Title No. Sigona/454 (share two plots among the three sons 1/4 acres) on Balloting plot 1,40,16,17,18,19 and 20
3. Eliud Mwaniki Njuguna (Son)	5193915	1) Title N. Nyandarua/Karatina/1229 (2 acres) 2) Title No. Sigona/454 (¼ acres) 3) Titles No. Sigona/454 (share two plots with other 2 sons 1/4 acre) on Balloting plot
4. David Kibunja Njuguna (Son)	5194859	1) Title No. Nyandarua/Karati/1229 (2 acres) 2) Title No. Sigona/454 (¼ acres) 3) Title No Sigona/454 (share two plot acre

amongst three sons on balloting plot
1,49,16,17,18,19 & 20)

- | | | |
|---|---------|---|
| 5. Cecilia Njoki Njuguna
(unmarried Daughter) | 5193174 | 1) Title No. Nyandarua/Karati/1229
(1 acre)
2) Title No. Sigona/454(¼ acre) |
| 6. Eunice Nyambura Njuguna
(Unmarried Daughter) | 5192068 | 1) Title No. Nyandarua/Karati/1229
(1 acre)
2) Title No. Sigona/454 (¼) |
| 7. Josphine Waithera Nyarugai | | 1) Title No. Sigona/454 |
| 8. Estate of Esther Wairimu Nganga (deceased)
(married daughter) | | 1) Ereri plot
(1 acre) |

HOUSE OF 2ND WIFE – SALOME WAITHIRA NJUGUNA (WIDOW – DECEASED)

- | | | |
|---|---------|---|
| 1. Joseph Kiongo Njuguna ‘B’
(son) | 1864982 | 1) Title No. Ndeiya/Makutano/315
(1½ acres)
2) Title No. Sigona/454 (¼)
3) Title No. Sigona/454 (Shares ½ plot
Between 2 sons i.e. by balloting one of
The plots i.e. 1,40,16,17,18,19 & 20) |
| 2. Livingstone Njoroge Njuguna
(Son) | 5193291 | 1) Title No. Ndeiya/Makutano/315
(½ acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Sigona/454 (Share ? acre) plot |
- between two sons i.e by balloting one of the
plots
- | | | |
|--|--|-----------------------------------|
| 3. Hannah Wanjiku Ndungu
(married daughter) | | 1) Title No. Sigona/454 (¼ acres) |
|--|--|-----------------------------------|

HOUSE OF 3RD WIFE – BEATRICE WAIRIMU NJUGUNA

- | | | |
|--|---------|---|
| 1. Beatrice Wairimu Njuguna
(Widow) | 4329853 | 1) Title No. Ndeiya/Makutano/270
(0.7 acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Ndeiya/Kiroe T.4
(0.24 acres) |
| 2. Godfrey Kiongo Njuguna
(son) | 2306750 | 1) Title No. Ndeiya/Makutano/270
(0.7 acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Sigona/454 (share 2 plots among |
- 3 sons and balloting plots 1,40,16,17,18,19 & 20
- | | | |
|-------------------------------------|---------|--|
| 3. Johnson Njoroge Njuguna
(Son) | 2307807 | 1) Title No. Ndeiya/Makutano/270
(0.7 acres)
2) Title No. Sigona/454 (¼)
3) Title No. Sigona/454 (Share 2 plots |
|-------------------------------------|---------|--|
- among 3 sons on balloting plots 1,40,16,17,18 & 19

4. David Kinyanjui Njuguna 'A' 6242127 1) Title No. Ndeiya/Makutano/270 (0.7 acres)
2) Title No. Sigona/454 (¼ acre)
3) Title No. Sigona/454 (share 2 plots)
among 3 sons on balloting plots 1,40,16,17,18& 19)

5. Leah Wangari Njuguna (married Daughter) 1) Title No. Sigona/454 (¼ acres)

6. Hannah Wanjiku Njuguna (unmarried Daughter) 7264759 1) Title No. Ndeiya/Makutano/270 (0.2 acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Sigona/454 (share one plot)
among the 3 unmarried daughters on balloting plots 1,40,16,17,18,19 and 20

7. Flasiah Nyambura Njuguna (married daughter) 1) Title No. Sigona/454 (¼ acres)

8. Nancy Nyokabi Njuguna (unmarried daughter) 13744129 1) Title No. Ndeiya/Makutano/270 (0.2 acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Sigona/454 (share one plot)
among the 3 unmarried daughters on balloting plots 1,40,16,17,18,19 and 20)

9. Rahab Njeri Njuguna (unmarried daughter) 13533073 1) Title No. Ndeiya/Makutano/270 (0.2 acres)
2) Title No. Sigona/454 (¼ acres)
3) Title No. Sigona/454 (share one plot)
among the 3 unmarried daughters on balloting plots 1,140,16,17,18,19 & 20)

HOUSE OF 4TH WIFE – ELIZABETH WANJIKU NJUGUNA (WIDOW – DECEASED)

1. Mary Wambui Njuguna (unmarried daughter) 1) Title No. Sigona/454 (¼ acres)
2) Title No. Karai/Ringuti/T.26 (0.02 acres)
3) Title No. Embakasi/Ranching No. 11638 (share the plot between 2 sisters)

2. Joseph Kiongo Njuguna 'D' (son) 13031484 1) Title No. Sigona/454 (¼ acres)
2) Title No. Karai/Ringuti/T.44 (0.04 acres)
3) Title No. Sigona/454 (share 3 plots)
amongst 4 sons on balloting plots, 1, 40, 16, 17, 18, 19 and 20

3. Samuel Ndungu Njuguna (son) 13411215 1) Title No. Sigona/454 (¼ acres)
2) Title No. Karai/Ringuti/T.44 (0.04 acres)
3) Title No. Sigona/454 (Share 3 plots among the 4 sons on balloting plots 1,40,16,17,18,19 & 20)

4. David Kinyanjui Njuguna 'B' (son) 13800029 1) Title No. Sigona/454 (¼ acres)
2) Title No. Karai/Ringuti/T.26 (0.04 acres)
3) Title No. Sigona/454 (share 3 plots among the 4 sons on balloting plots 1, 40,16,17,18,19 & 20)

5. Geoffrey Kariuki Njuguna (son) 21878580 1) Title No. Sigona/454 (¼ acres)
2) Title No. Karai/Ringuti/T.44 (0.04 acres)
3) Title No. Sigona/454 (share 3 plots among

the 4 sons on balloting plots 1,40,16,17,18,19 & 20)

6. Stephen Machara Njuguna (son)
- 1) Title No. Sigona/454 (¼ acres)
 - 2) Title No. Karai/Ringuti/T.26 (0.04 acres)
 - 3) Title No. Sigona/454 (share 3 plots among

the 4 sons on balloting plots 1,40,16,17,18,19 & 20)

7. Jennifer Wairimu Njuguna (unmarried daughter)
- 1) Title No. Sigona/454 (¼ acres)
 - 2) Title No. Karai/Ringuti/T.26 (0.02 acres)
 - 3) Title No. Embakasi/Ranching No. 11638

(share the plot between 2 sisters)

8. Monica Nduta Kamau (married daughter)
- 1) Title No. Sigona/454(¼ acres)

HOUSE OF 5TH WIFE – EUNICE NJOKI KIOONGO

1. Eunice Njoki Kioongo (Widow) 6242621
- 1) Title Karai/Ringuti/127 (1.04 acres)
 - 2) Title No. Sigona/454(¼ acres)
 - 3) Title No. Karai/Ringuti T.32 (to be shared

among 3 daughters and parent)

2. Esther Muthoni Njogu (daughter-in-law)
- 1) Title No. Karai/Ringuti/127 (1.04 acres)
 - 2) Title No. Sigona/454 (¼ acres)
 - 3) Title No. Sigona/454 (share 12â...>

type="#_x0000_t75"> plot between the 2 sons on balloting plot 1, 40, 16, 17, 18,19 & 20)

3. Hannah Wanjiku Njoroge (Married daughter)
- 1) Title No. Sigona/454 (¼ acres)

4. Mary Nyambura Njuguna (unmarried daughter) 11536086
- 1) Title No. Karai/Ringuti/127 (0.5 acres)
 - 2) Title No. Sigona/454 (¼ acres)
 - 3) Title No. Karai/Ringuti/T.32 (to be shared

among 3 sisters and parent)

5. Samuel Waweru Njuguna (Son) 13031482
- 1) Title No. Karai/Ringuti/127 (1.04 acres)
 - 2) Title No. Sigona/454 (¼ acres)
 - 3) Title No. Sigona/454 (share ?

plot between the 2 sons on balloting plot

1,40,16,17,18,19&20

6. Jane Wambui Njuguna (unmarried daughter)
- 1) Title No. Karai/Ringuti/127 (0.5 acres)
 - 2) Title No. Sigona/454 (¼ acres)
 - 3) Title No. Karai/Ringuti T.32 (to be shared

among the 3 sisters and parents.

7. Margaret Njeri Njuguna (unmarried Daughter)
- 1) Title No. Karai/Ringuti/127 (0.5 acres)
 - 2) Title No. Sigona/454 (¼ acres)
 - 3) Title No. Karai/Ringuti/T.32 (to be shared

among the 3 sisters and parent)

I shall further direct that the balance of purchase price of 1 acre sold to Peter Ndichu Komo being shs.3,000,000/= shall be shared equally amongst the five houses.

Orders accordingly.

Dated, signed and delivered at Nairobi this 12th day of **April, 2011**

K. H. RAWAL
JUDGE
12.04.2011