



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 26 OF 1989

IN THE MATTER OF THE ESTATE OF PHILIP WAWERU KARUMBA

AND

ZULEHA WAMAITHA.....APPLICANT

versus

MARY NJERI WAWERU.....RESPONDENT

RULING

A grant of letters of administration intestate in respect of the estate of Philip Waweru Karumba, deceased was made jointly to Mary Njeri Waweru, the Respondent herein and Zuleha Wamaitha, the Applicant herein on 18th September 2009. The applicant has now filed a summons for confirmation of grant dated 12th February 2010 in which she sought for the grant to be confirmed. She proposed for the estate to be shared as follows:

- (i) **LOC. 11/MARAGI/2602** to be shared equally between Mary Njeri Waweru and Zuleha Wamaitha Komu.
- (ii) **LOC. 11/MARAGI/1965** to be shared equally between Mary Njeri Waweru and Zuleha Wamaitha Komu.
- (iii) **LOC. 11/MARAGI/1964** to be shared equally between Mary Njeri Waweru and Zuleha Wamaitha Komu.
- (iv) **LOC. 11/MARAGI/1963** to be shared equally between Mary Njeri Waweru and Zuleha Wamaitha Komu.

- (v) **LOC. 11/MARAGI/1960** to be registered in the names of Mary Njeri Waweru.
- (vi) **LOC. 20/KAMBIRWA/1452** to be registered in the names of Peter Mwangi Waweru.

- (vii) **LOC. 20/KAMBIRWA/233** to be shared equally of Mary Njeri Waweru and Zuleha Wamaitha Komu.
- (viii) **PLOT NO. 1193/23 MUKUYU MARKET** To be shared equally between Peter Mwangi Waweru & Zuleha Wamaitha Komu.

- (ix) **45% OF PLOT NO. 99 MURANG'A TOWN** to be shared equally between Mary Njeri Waweru and Zuleha Wamaitha Komu.
- (x) **6.4% OF PLOT NO. MURANG'A BLOCK 111/21** to be given to Zuleha Wamaitha Komu.

Mary Njeri Waweru, the Respondent herein, filed an affidavit of protest to oppose the summons. On her part she proposed for the deceased's estate to be shared in the following manner:

- a) **LAND PARCEL NO. LOC. 11/MARAGI/2602** to be registered in the names of Mary Njeri Waweru as the sole proprietor.

- b) **LAND PARCEL NO. LOC.11/MARAGI/1965** to be shared by the following in equal shares:
 - 1. Mary Njeri Waweru
 - 2. Angeline Wanjiku Waweru
 - 3. Josephine Wambui Waweru
 - 4. Bernard Mwangi Waweru
 - 5. Elizabeth Wanja Waweru
 - 6. Joseph Hinyu Waweru
 - 7. Kenneth Karanja Waweru
 - 8. Rahab Wamaitha Waweru
 - 9. Peter Ritho Waweru
 - 10. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi

- c) **LAND PARCEL NO. LOC.11/MARGI/1964** to be registered in the names of Mary Njeri Waweru as the sole proprietor.

- d) **LAND PARCEL NO. LOC.11/MARAGI/1963** to be registered in the names of Mary Njeri Waweru as the sole proprietor.

- e) **LAND PARCEL NO. LOC.11/MARAGI/1960** to be registered in the names of Mary Njeri Waweru as the sole proprietor as she is the one who completed the construction work thereon and paid the loan left by the deceased herein.

- f) **LAND PARCEL NO.LOC.20/KAMBIRWA/1452** to be registered in the names of Peter Mwani Waweru as the sole proprietor.

- g) **LAND PARCEL NO.LOC.20/KAMBIRWA/233** to be registered in the names of Bernard Mwangi Waweru as the sole proprietor.

h) **45% OF PLOT NO. 99 MURANG'A TOWN** to be shared by the following in equal shares:

1. Mary Njeri Waweru
2. Angeline Wanjiku Waweru
3. Josephine Wambui Waweru
4. Bernard Mwangi Waweru
5. Elizabeth Wanja Waweru
6. Joseph Hinyu Waweru
7. Kenneth Karanja Waweru
8. Rahab Wamaitha Waweru
9. Peter Ritho Waweru
10. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi

i) **6.4% OF PLOT NO. MURANG'A BLOCK 111/21** to be shared equally by the following:

1. Peter Mwangi Waweru
2. Zuleha Wamaitha Waweru
3. Margaret Wanjiku

j) **PLOT NO. 1193/23 MUKUYU MARKET** to be shared equally by the following:

1. Peter Mwangi Waweru
2. Zuleha Wamaitha Waweru
3. Margaret Wanjiku

k) **MONEY IN A/C NO. 005-1002911 BACLAYS BANK OF KENYA LTD.** to be shared equally among the thirteen dependants of the deceased.

1. Mary Njeri Waweru
2. Angeline Wanjiku Waweru
3. Josephine Wambui Waweru
4. Bernard Mwangi Waweru
5. Elizabeth Wanja Waweru
6. Joseph Hinyu Waweru
7. Kenneth Karanja Waweru
8. Rahab Wamaitha Waweru
9. Peter Ritho Waweru
10. Margaret Wanjiku
11. Peter Mwangi Waweru
12. Zuleha Wamaitha Waweru
13. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi.

l) **WANGU INVESTMENT SHARES** to be shared equally among the following:

1. Mary Njeri Waweru
2. Angeline Wanjiku Waweru
3. Josephine Wambui Waweru
4. Bernard Mwangi Waweru
5. Elizabeth Wanja Waweru
6. Joseph Hinyu Waweru
7. Kenneth Karanja Waweru
8. Rahab Wamaitha Waweru
9. Peter Ritho Waweru
10. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi

m) **GEMA SHARE IN RUMURUTI (2 ACRES)** To be shared equally among the following:

1. Mary Njeri Waweru
2. Angeline Wanjiku Waweru
3. Josephine Wambui Waweru
4. Bernard Mwangi Waweru
5. Elizabeth Wanja Waweru
6. Joseph Hinyu Waweru
7. Kenneth Karanja Waweru
8. Rahab Wamaitha Waweru
9. Peter Ritho Waweru
10. Margaret Wanjiku
11. Peter Mwangi Waweru
12. Zuleha Wamaitha Waweru
13. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi.

n) **GEMA SHARE IN GILGIL (5 ACRES)** to be shared equally among the following:

1. Mary Njeri Waweru
2. Angeline Wanjiku Waweru
3. Josephine Wambui Waweru
4. Bernard Mwangi Waweru
5. Elizabeth Wanja Waweru
6. Joseph Hinyu Waweru
7. Kenneth Karanja Waweru
8. Rahab Wamaitha Waweru
9. Peter Ritho Waweru
10. Margaret Wanjiku
11. Peter Mwangi Waweru
12. Zuleha Wamaitha Waweru
13. Offsprings of Jemimah Njoki (dcd) namely Philip Waweru, Juliet Njeri and Chris Mwangi.

One Stephen Kamau Mwangi, also filed an affidavit of protest claiming that his late father, Maina Wangwaci alias Samson Maina Wangwaci's estate was entitled to 45% of plot no. 99 Murang'a town.

When the summons and the protest came up for hearing, learned counsels appearing in this matter recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions. I have looked at those submissions plus the facts deponed in the affidavits . From the aforesaid material, two things are not in dispute. first, is the identification of the deceased estate's assets and the beneficiaries. What appears to be in dispute is the manner of sharing. According to the Respondent, she is of the view that since she paid and cleared the outstanding loan due to Jimba Credit Corporation Ltd to have the charge registered against plot no. Loc.11/Maragi/1965 discharge, the aforesaid plot should be transmitted to her to settle the debt. The other protestor, Stephen Kamau Mwangi is only pursuing 45% of plot no. 99 Murang'a town on behalf of the estate of Samson Maina Wangwaci. From the pleadings, the affidavit evidence and the submissions two issues have arisen. First, is whether or not the liabilities of the estate have been settled? If not what should be done?

Secondly what is the applicable criteria in distributing such an estate?

On the first issue, it is obvious that Respondent and the other protestor are basically saying that the deceased's estate owes them a debt which must be settled before the distribution can be done. With respect, I agree with them. Let the administratrixes first clear with the debtors before purporting to share out the estate. The duo should establish their claim before the administratrixes. It is trite law that what is available for distribution in an estate is the net estate of a deceased person. In other words debts must be identified and settled first. On this score, I find the protests to be well founded.

Having disposed of the first issue, let me determine the second question as to what is the applicable law in distributing this estate? The estate comprises of two widows. Those widows are the Respondent and the applicant. The estate is also comprised of children. The applicable law therefore is section 40 of the Law of Succession Act.

In the end I find the protests to be well founded. The confirmation of grant is postponed until the liabilities of the estate is identified and settled after which the estate should be distributed in accordance with the provisions of section 40 of the Law of Succession Act. Each party to meet his or her own costs.

Mention on 7th October 2011 to confirm whether the aforesaid directive has been complied with by the administratrixes.

Dated and delivered this 15th day of July 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Kinuthia for the 1st Objector Kirubi H/b Mwaniki for the petitioner and Kirubi for 2nd Objector.

J.K. SERGON

JUDGE