



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 602 OF 2010

IN THE MATTER OF THE ESTATE OF MORRISON KARAGU KIERU – DECEASED

GEORGE MAINA KARAGU.....PETITIONER

VERSUS

FRANCIS MWANGI KARAGU.....INTERESTED PARTY/1ST PROTESTOR

MILLICENT MUTHONI MAINA.....INTERESTED PARTY/2ND PROTESTOR

RULING

This judgment is the result of the Summons for Confirmation of grant dated 14th January 2008 and the affidavit of Protest filed thereafter. This Court adopted the consent order recorded by the parties to have the dispute resolved by the reliance of affidavit evidence and submissions.

I have considered both the affidavit evidence plus the submissions. In the Summons for confirmation of grant, George Maina Karagu, the Petitioner herein, identified the following persons to have survived the deceased:

- Eunice Njeri Ndegwa - daughter
- Millicent Muthoni Maina - daughter
- Elias Kamau Maina - Grandson
- George Maina Karagu - Son
- Francis Mwangi Karagu - Son

The Petitioner listed the following persons as the deceased's dependants:

- Esther Nyambura Wachira - Partners in Plot 6B.
- Mary Wanjiku Wanuthi - Partners in Plot 6B.

- Frashia Wanjiku Wanuthi - Partners in Plot 6B.

The Petitioner proposed the Estate to be distributed as follows:

(i) **LOC. 15 GATHUKEINI/1457/6B** –

Francis Mwangi Karagu to partner with:

- Esther Nyambura Wachira
- Mary Wanjiku Wanuthi.
- Frashia Wanjiku Wanuthi

(ii) **LOC. 15/GATHUKEINI/1390** –

- George Maina Karagu.

(iii) **LOC. 15 GATHUKEINI/607:**

- Francis Mwangi Karagu - 0.8 acres.
- George Maina Karagu - 1.4 acres.

(iv) **LOC. 14/GAKURUE/208** –

- Francis Mwangi Karagu.

(v) **Shares with Kenya Breweries Ltd:** and

(vi) **Shares with Sukuma Wiki:**

- Francis Mwangi Karagu.

(vii) **Plot No. 5 Gakurue Market:**

- George Maina Karagu

Francis Mwangi Karagu and Millicent Muthoni Maina, the 1st and 2nd Protestors each filed an affidavit of Protest to oppose the Petitioner's mode of distribution. In the affidavit of Protest of Francis Mwangi Karagu, the 1st Protestor indicated that he is opposed to the manner in which the Petitioner distributed the Estate. The 1st Protestor proposed for the Estate to be distributed as follows:

(a) ***LOC 15/GATHUKEINI/1457 be registered in the names of FRANCIS MWANGI KARAGU to partner with persons as stated.***

(b) ***LOC 15/GATHUKEINI/1390***

- (i) ***FRANCIS MWANGI KARAGU*** - ***0.5***
- (ii) ***George Maina Karagu*** - ***0.5***

(c) ***LOC 15/Gathukeini/607***

- (i) ***Francis Mwangi Karagu*** - ***0.3***
- (ii) ***George Maina Karagu*** - ***1.9***

- (d) **LOC 14/GAKURWE/208 to be registered in the names of FRANCIS MWANGI KARAGU.**
- (e) **KENYA BREWERIES SHARES to be registered in the names of FRANCIS MWANGI KARAGU.**
- (f) **SUKUMA WEEK SHARES to be registered in the names of FRANCIS MWANGI KARAGU.**

Millicent Muthoni Maina, the 2nd protestor on her part opposed the Summons. She pointed out that the people named in paragraph 3 of the Petitioner's affidavit were not dependants of the deceased but were mere partners. She alleged that the deceased owned 1/3 of Plot No. 6B. The 2nd Protestor attacked both the schedule of distribution proposed by the Petitioner and that of the 1st Protestor saying she and her sister Njeri were not provided for. On her part, she proposed the following mode of distribution:

- (i) **Title No. Loc. 15/Gathukeini/1390 measuring 1 acre to go to George Maina Karagu – absolutely, as the land was put into his possession by our late father, has erected his residential home there and has sole extensively developed the same.**
- (ii) **Title No. Loc. 14/Gakurwe/208, measuring 1.6 acres – to go to Francis Mwangi Karagu – absolutely – as the land was also put into his possession by our late father, has erected his residential home there and solely developed the same.**
- (iii) **Title No. Loc. 15/Gathukeini/607, measuring 2.2 acres – be shared as follows:**
 - a. **0.8 acres to Eunice Njeri Ndegwa.**
 - b. **0.8 acres to Millicent Muthoni Maina.**
 - c. **0.6 acres to George Maina Karagu.**
- (iv) **Plot No. 5 – Gakurwe Market – to go to – George Maina Karagu – absolutely.**
- (v) **The deceased 1/3 share interest in plot 6B, Gakurwe Market to go to Millicent Muthoni Maina – absolutely.**
- (vi) **Shares in Kenya Breweries Limited to Francis Mwangi Karagu – absolutely.**
- (vii) **Shares in Sukumawiki to Francis Mwangi Karagu – absolutely.**
- (viii) **Shares in Murata Sacco to Eunice Njeri Ndegwa – absolutely**
- (ix) **Shares in Kiru Workers to Francis Mwangi Karagu – absolutely.**

The 1st Protestor opposed the mode of distribution by the 2nd Protestor claiming Millicent Muthoni Maina and Eunice Njeri Ndegwa were married women who are happily living with their respective husbands. She claimed that the deceased had not shared his property *intervivos*. Francis Mwangi Karagu, the 1st Protestor proposed another mode of distribution in his further affidavit which is parallel to the one he proposed in the affidavit of Protest. That proposal is as follows:

- (a) **Loc 15/GATHUKIINI/1390 comprising 1.0 acre to be shared equally between GEORGE MAINA KARAGU and FRANCIS MWANGI KARAGU.**
- (b) **Loc 15/Gathukiini/208 COMPRISING 1.6 acres to be shared equally between George Maina Karagu and Francis Mwangi Karagu.**

(c) Loc 15/Gathukiini/607 comprising 2.2 acres to be shared equally between George Maina Karagu and Francis Mwangi Karagu.

(d) Built up Plot No. 5 Gakurue market to be shared equally between Millicent Muthoni Maina and Eunice Njeri Ndegwa.

(e) Built up 1/3 shared plot number 6B Gakurue market to be shared equally between Millicent Muthoni Maina and Eunice Njeri Ndegwa.

(f) Shares in Kiru workers to be registered equally in the names of Millicent Muthoni Maina and Njeri Ndegwa.

(g) Shares in Sukuma Wiki, East Africa Breweries Limited Murata Sacco to be registered in the names of Francis Mwangi Karagu.

This is basically a tussle between brothers and sisters. With respect I agree with the submissions of the 1st Protestor that though the married daughters of the deceased cannot be discriminated against, when it come to sharing the Estate of their deceased father, courts must be careful in that it should take into account the fact that neither child benefits unduly over the others. It is a matter of common notoriety that the deceased's daughters who are happily married enjoy their husband's property if any. The issue is not ably captured by the Law of Succession Act nor by our Constitution. Perhaps the issue is clearly taken care of by the customs and traditions of the tribe of the deceased, in this case, the Kikuyu Customary Law. But, that is only in respect of those Estates of persons who died before the coming into effect of the Law of Succession Act. May be, we need to give a wide interpretation and application the provisions of *Article 159(2)(c)* of the Constitution to promote traditional Dispute resolution to promote equity and equality in our societies. In the instant case it is obvious that the 2nd Protestor and her sister, Eunice Njeri do not deny that they are happily married and that they enjoy their husband's property. They have not however, renounced their rights to share the Estate of their deceased father. After anxiously considering the many proposals on the distribution of the Estate, I am convinced that the proposal made by Francis Mwangi Karagu in paragraph 9 of the further affidavit of Protest against the affidavit of Millicent Muthoni Maina sworn on 9th June 2011 is the best in the circumstances of this case. The same accommodates the disparities of the value of the land and also reasonably provides for the deceased's married daughters.

In the end I order that the grant be confirmed and the distribution be in terms of paragraph 9 of the further affidavit of protest of the 1st Protestor sworn on 9th June 2011.

Each party to bear his or her own costs.

Dated and delivered at Nyeri this 18th day of November 2011.

**J. K. SERGON
JUDGE**

In open court in the presence of Mr. Maatwa holding brief M. Kamau for the Protestor, Kirubi for Petitioner Kingori holding brief Kimunya for the 2nd Protestor.