



SUCCESSION

- **Distribution**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC. CAUSE NO. 214 OF 1998

IN THE MATTER OF THE ESTATE OF FRANCIS NYAGA MUCHIRI (DECEASED)

JUDITH KAARIA NYAGA.....1ST PETITIONER

AND

MONICA KAGENDO.....2ND PETITIONER

JUDGMENT

The deceased died on 13th May 1992 leaving behind two widows and several children. Both widows jointly petitioned for grant of letters of administration interest. The first petitioner is Judith Kaaria Nyaga whilst the second petitioner is Monica Kagendo. The deceased estate is vast. The matter of distribution because of the disagreement between the two widows was referred to the District Commissioner Meru south to arbitrate. This was by an order of this court of 26th March 2001. The arbitrator's award was read before court on 17th November 2003. It was not contested by the petitioners. The matter however was referred back to the arbitrators by the court by an order dated 17th June 2002. The court requested the arbitrators to deliberate on the plot at Chuka Town C10 and a motor vehicle KTW 575 which had been left out in the first award. On that day, the parties recorded a consent to the effect that the commercial plot number C50 be shared between Mbona Nyaga and Humphrey Nyaga. The 2nd arbitrator's award was read in court on 17th November 2003. On application by the first petitioner, the court by its ruling dated 27th June 2006 set aside that second award. This judgment therefore is restricted to the consideration of the distribution of the plot Chuka town C10 and the motor vehicle KTW 575. The first award dealt with all the other assets of the estate. The 2nd petitioner in evidence stated that the motor vehicle KTW 575 was taken away by the first petitioner together with her first born son Eliphelet. That vehicle has not since then been seen. She further stated that the deceased left two plots C9 and C10 which have shops and rooms whose proceeds have all alone been received by the first petitioner. On being cross examined, she confirmed that plot C9 is in the name of the first petitioner. She said that plot C10 was developed by the deceased in his lifetime. She also confirmed that she had undeveloped plot in Chuka town namely R 106 B. On plot C10 she said that they were seven rooms for rental at the rate of Kshs. 500 per month which is received by the first petitioner. The first petitioner in evidence stated that she lived at the matrimonial home at Muthambi for 10 years after marriage. Thereafter, she joined the deceased who was a businessman and they lived together at Chuka town. At that time, she was managing their shop on plot number 4. That plot belonged to her father-in-law. She and the deceased eventually purchased plot number C10 in 1972. She confirmed that the 2nd petitioner was her younger sister whom she said she had employed as a house help. She later learnt that she had a child with her deceased husband. The deceased and her younger sister thereafter bore other children together. In 1980 the deceased gave the 2nd petitioner a parcel of land of two acres at Kiampampo Mitheru. The 2nd petitioner settled on that land and was also given by the deceased 4 cows. 2nd petitioner continued to live there whilst she, the first petitioner lived on plot C10 in Chuka town. The money that was used to purchase plot C10 was partly from the proceeds of the shop where she worked. She presently lives on plot C10 with her children. She also confirmed that she contributed to the development of that plot. On being cross examined, she stated that the 2nd petitioner made no contribution to the business which she and the deceased were running at Chuka. She further said that she did not know about the motor vehicle KTW 575. The latter statement is contrary to the consent of the parties recorded on 17th June 2002 where they requested the arbitrators to deliberate to the distribution of vehicle KTW 575 together with the plot at Chuka town. On further cross examination, the first petitioner confirmed that the deceased treated the 2nd petitioner as his wife. The question however of whether the 2nd petitioner is a wife is not before me for determination. It is clear that the 2nd petitioner was a wife and she was described as the 2nd wife in

the petitioner's joint petition before court. It therefore should be noted that for the purpose of this judgment the 2nd petitioner was a wife of the deceased. It is because of that finding that I cannot accept the evidence of DW2 Mary Ciambaka whose evidence was only meant to besmirch the character of the 2nd petitioner. That evidence is of no value to this court.

The first petitioner in evidence produced copies of documents to show that plot C9 was in her name and that she obtained it after the death of the deceased. This evidence was not contradicted by the 2nd petitioner. I have taken into account the evidence of the 1st petitioner that the plot C10 was purchased and developed from the proceeds of a business which she was running with the deceased in the absence of the 2nd petitioner. I also take into account the fact that the 2nd petitioner has been given an undeveloped plot in Chuka town namely number R106B. Bearing in mind all that, and also that the first petitioner lives on plot C10 with her children I find that she is more entitled to inherit the plot. On the issue of the motor vehicle KTW 575 I find that it was one of the assets left behind by the deceased. The award of the District Commissioner which was read in court on 10th September 2001 awarded the vehicle to the 2nd petitioner. The evidence that it was taken away by the petitioner with her first born son was not contradicted by the 1st petitioner. It is therefore necessary for the 1st petitioner to compensate the 2nd petitioner for that vehicle. No evidence was submitted before me on the likely value of that vehicle. Doing the best I can, and taking judicial notice that at the time of death that vehicle was approximately 3 or 4 years old, I value the same at Kshs. 150,000/=. The first petitioner will have to pay this amount to the 2nd petitioner as compensation and if she fails the 2nd petitioner will be granted leave to execute for that amount against the 1st petitioner. In the end, taking into account the first arbitrator's award and bearing in mind the finding of this court, I order the grant issued in this case be confirmed as follows:-

1. ***Parcel No. Muthambi/Gatua/84 to Monica Kagendo.***
2. ***Plot No. Muthambi/Gatua/1129 to Monica Kagendo.***
3. ***Plot No. Muthambi/Gatua/944 to Judith Kaaria Nyaga.***
4. ***Commercial plot No. C87 to Eliphelet Micheni.***
5. ***Commercial Plot No. C50 to be shared equally between:-***
 - (a) ***Mbura Nyaga***
 - (b) ***Humphrey Nyaga***
6. ***Parcel No. Muthambi/Gatua/1130 to Monica Kagendo.***
7. ***Parcel No. Muthambi/Gatua/640 to Monica Kagendo.***
8. ***Parcel No. Muthambi/Gatua/902 to be shared as follows:***
 - (a) ***0.21 Ha to Monica Kagendo***
 - (b) ***Balance to Judith Kaaria Nyaga***
9. ***Money held by Public Trustee Nyeri to be shared in ratio of 2:1 that is:-***
 - (a) ***Judith Kaaria Nyaga to get 2/3 (67%)***
 - (b) ***Monica Kagendo to get 1/3 (33.33%)***
10. ***The following properties to Judith Kaaria Nyaga:-***
 - (a) ***Muthambi/Gatua/53***
 - (b) ***Muthambi/Gatua/206***
 - (c) ***Muthambi/Gatua/1103***
 - (d) ***Muthambi/Gatua/1007***
 - (e) ***Muthambi/Gatua/1029***
 - (f) ***Muthambi/Gatua/1175***
 - (g) ***Karingani/Ndagani/1199***
 - (h) ***Karingani/Ndagani/2106***

11. Parcel No. Mariani Adjudication No. 777 to

(a) Monica Kagendo – 0.15 Ha.

(b) Judith Kaaria Nyaga the balance.

12. Parcel No. Mariani Adjudication No. 4734 and 219 to Monica Kagendo.

13. To Judith Kaaria Nyaga

(a) Mitheru Market Plot No. 44 “B”

(b) Chuka town plot No. 1158.

14. To Monica Kagendo

(a) Chuka town Plot No. R106 B.

15. To Judith Kaaria Nyaga motor vehicle Registration No. KTK 296.

16. To Monica Kagendo motor vehicle registration No. KSE 192 and KRK 448.

17. To Judith Kaaria Nyaga Chuka Town Plot C10.

18. Judith Kaaria Nyaga shall pay to Monica Kagendo Kshs. 150,000/= being compensation of motor vehicle registration No. KTW 575 within ninety (90) days from the date of this judgment. Failure to make that payment Monica Kagendo is granted leave to execute for the amount of Kshs. 150,000/= against Judith Kaaria Nyaga.

19. There shall be no orders as to costs.

Dated and delivered at Meru this 22nd day of October 2010.

MARY KASANGO

JUDGE