

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
SUCCESSION CAUSE NO. 144 OF 2004

IN THE MATTER OF THE ESTATE OF NJAGI GAKINDI (DECEASED)

VERSUS

1. RUDIA WAKINA SIMON

2. MONICA NJOKA SIMON..... PETITIONERS

ANDREW NJERU S. MACHARIA.....OBJECTOR

J U D G M E N T

The parties herein could not agree on the mode of distribution of the properties comprising the estate of the late Njagi Gakindi. The matter therefore went to full *viva voce* evidence on mode of distribution. The opposing sides submitted different schedules of the properties and the intended beneficiaries. As I tried to write the judgment, I was only able to determine or resolve the dispute in respect of some particularly contentious properties. These included **Plot No. 150 Runyenjes** which according to the proposed schedule was meant to be sub-divided among 6 persons although it is only ½ a share.

Plot No. 182 Runyenjes also elicited serious controversy with evidence being called to the effect that the deceased had left it to Dewitt Njeru Simon before he died. I believed the evidence of the old men who were the deceased's partners in that property who came to testify. They said that the plot was left to Dewitt. I therefore decided that it should go to him exclusively. I sent back the schedule with the parties for them to determine how to compensate those who would lose their shares if the said property was given to Dewitt alone.

The parties failed to agree on one schedule and instead I got 3 schedules; one from Peter Githaka Njagi, the other from Johnson Kinyua Njagi and some proposals from the objector one Andrew Njiru Macharia.

I have endeavoured to marry or reconcile the 3 lists to the best of my ability and come up with the following schedule which is annexed to this Judgment:-

IN THE HIGH COURT OF KENYA AT EMBU

IN THE MATTER OF THE ESTATE OF NJAGI GAKINDI

SCHEDULE ON MODE OF DISTRIBUTION AS ALLOWED BY THE COURT

S. NO	PROPERTY	SIZE	ALLOCATION
1.	KCB A/C 1010825276	CASH	JOHNSON K. NJAGE FOR RUNDIA'S, 6 SONS PETER GITHAKA NJAGI FOR MOTHER

			MONICA NJOKA SIMON
2.	ICDCI SHARES	198	JOHNSON KINYUAH NJAGE PETER GITHAKA NJAGI EQUAL SHARES.
DEVELOPED PLOTS			
1	PLOT NO. 150 RUNYENJES	½	ANDREW NJIRU SIMON
2	PLOT NO. 182 RUNYENJES	?	DEWITT NJERU SIMON
3	KAGAARI/KIGAA/3141	0.06 HA	MONICA NJOKA SIMON ½ JOHNSON K. NJAGE DEWITT NJERU SIMON NJIRU SIMON ½
UNDEVELOPED PLOTS			
1	KAGAARI/KIGAA 4004	0.220 HA	JOHNSON KINYUAH NJAGE
2	KAGAARI/KIGAA/4092	0.160 HA	SIMON NJAGI GAKINDI ½ & EVANS NGUU GAKINDI ½
3	KAGAARI/KIGAA/4093	0.120 HA	PIUS NJAGI MWANIKI ½ GEDION NJERU SIMON NJAGI ½
4	MBETI/GACHOKA/1795	1.6 HA	PIUS NJAGE MWANIKI DEWITT NJERU SIMON
5	EVURORE/KATHERA 2548	4.8 HA	ALL 12 SONS, ALL 5 DAUGHTERS OF LATE NJAGI GAKINDI EQUALLY, AND E.A.P.C. CHURCH (0.06 HA)

WERU – KIRINGA PLOTS			
1	KAGAARI/WERU/5314	0.054 HA	SIMON NJAGI DANIEL FOR HIS LATE FATHER
2	KAGAARI/WERU/5315	0.050 HA	PETER MBURU NJUGUNA
3	KAGAARI/WERU/5316	0.061 HA	DEWITT NJERU SIMON
4	KAGAARI/WERU/5319	0.033 HA	ANDREW NJIRU MACHARIA
5	KAGAARI/WERU/5320	0.062 HA	GEDION NJERU SIMON
6	KAGAARI/WERU/5321	0.050 HA	MARY GAKINDI MWANGI
7	KAGAARI/WERU/5322	0.050 HA	NJIRU SIMON
8	KAGAARI/WERU/5323	0.050 HA	MARGRET MAITHA NYAGA
9	KAGAARI/WERU/5324	0.050 HA	OBED NYAGA SIMON NYAGA
10	KAGAARI/WERU/5325	0.050 HA	ALVAN NDWIGA NJAGI
11	KAGAARI/WERU/5326	0.051 HA	JOHNSON KINYUAH NJAGE
12	KAGAARI/WERU/5327	0.050 HA	PIUS NJAGI MWANIKI
13	KAGAARI/WERU/5328	0.050 HA	IGNASIUS NJUE NJOKA
14	KAGAARI/WERU/5329	0.052 HA	EPHANTUS MURIUKI SIMON
15	KAGAARI/WERU/5330	0.052 HA	PETER GITHAKA NJAGI
16	KAGAARI/WERU/5331	0.116 HA	PETER GITHAKA NJAGI
17	KAGAARI/WERU/5332	0.017 HA	SAMWEL GAKINDI NJAGI

1	KAGAARI/KIGAA	0.051 HA	FAMILY CEMETRY
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The balance of the original land KAGAARI/KIGAA 3144 be allocated to Peter Mburu Njuguna, Evans Nguu Gakindi and Helen Wanja Mbaka wife of the late Paul Mwaniki Simon.

I therefore order that the Grant of letters of administration herein be confirmed to the joint administrators. The estate be shared and registered as per the schedule prepared by the court, and which forms part of this judgment.

I also order that a certificate of confirmation issues to that effect.

Each party will bear its own costs of the suit.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 9th day of December 2010

In presence of:- s. Muthoni for Ithiga for petitioner & parties present.