

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1469 of 2000

IN THE MATTER OF THE ESTATE OF JOHN KARIUKI – (DECEASED)

RULING

The two matters namely Succession Cause No.1005 of 2003 and Succession Cause No.1469/00 were consolidated after Certificate of confirmation dated 4th March, 2003 was revoked. A rectified grant in Joint names of John Ndungu Kariuki and Veronica Wanjiru Kariuki was issued on 20th May, 2008.

The only issue before the court is the distribution of the estate.

In her testimony Veronica Wanjiru Kariuki stated that before the death all the beneficiaries were occupying the portions which were shown to them. According to her the 2nd wife had deserted the deceased long time ago but the children of the 2nd house have been given their portions over which they have built.

As per the Chief's letter dated 6th October, 2003, the fact that the 2nd wife was divorced is acknowledged.

The first wife Veronica stayed with him till the death of the deceased who had 4 children and the 2nd house had 3 children.

According to Veronica the distribution by the court should be left as was done by the deceased but the contention of John Ndungu Kariuki is to divide the estate in half (equal) shares. He also averred that the deceased carved out two portions for the two houses but the children of 1st house came into their portion and grabbed portions from their half share. It is contended thus that the distribution should be equal amongst the two houses.

It is not in dispute that the deceased died on 1st February, 1992 and left two properties namely Plot No.567/Nairobi/Riruta/156 and Plot No.C/68 – Ruai. The second property is not developed and no one lives there.

Both houses thus agree that the deceased showed the two houses their portions. The only difference is, 2nd house claims that the property was carved in two shares.

From the evidence of John Ndungu it is clear that one Kimani, the eldest son of the 2nd house (now deceased), only was living on the land always and that he himself had built in 1980, when he was living in Mombasa. It is not clear whether his other brothers have built on the said land, though I must hasten to state that it is not denied that they are the children of the deceased. It is further apparent from the evidence that there are many houses on the land and this court is not made aware who occupies what and whether there is any rental income derived from any of the developments. The second house also cannot deny that their mother has been divorced and not living on the land. Thus even as per the Law of Succession Act (Cap 160), the units in the 2nd house are less than those in the 1st house. Even the number of the children of the 1st home vary. As per Veronica she has five children and as per John she has four children.

I must note that the court has not been adequately assisted with clear facts.

However, doing best I could, it is not in doubt that the children of 2nd house have not been ignored by the deceased. I thus shall ask the parties to produce a plan to show the actual position on ground on LR.Dagoreti/Riruta/567 and the same be distributed as per the position on ground.

The second property Plot C/68 – Ruai be shared equally between the two houses.

After the plan is produced the same be annexed to the fresh summons for confirmation of the grant to be filed.

I shall not make any order on costs.

I shall also mention this cause on the day convenient to the parties.

Dated, signed and delivered at Nairobi this 9th day of June, 2009.

K.H. RAWAL

JUDGE

9.6.09