



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 1041 OF 1992

IN THE MATTER OF THE ESTATE OF PETER WAMBUGU GITHINJI – (DECEASED)

VERONICA KANINI WAMBUGU APPLICANT

VERSUS

JOSEPH MUCHIRA WAMBUGU 1ST RESPONDENT

TERESIA NJOKI WAMBUGU 2ND RESPONDENT

GITHINJI WAMBUGU 3RD RESPONDENT

KABUTE WAMBUGU 4TH RESPONDENT

KARANJA WAMBUGU 5TH RESPONDENT

RULING ON DISTRIBUTION

By my earlier Ruling dated 28th January, 2008, the list of beneficiaries of the estate has been accepted and clarified. The beneficiaries, who have been denied by other parties as such, had been determined therein to be the beneficiaries.

I further directed in the said ruling that the Administrators or any of them to file the details of the beneficiaries as per the house. I also directed Co-Administratrix Veronica Wambugu to file accounts on the proceeds of the properties bearing Baragwi/Kanini/774 and Plot No.26 Kianyaga.

The details and income were filed on 26th February 2009 and further affidavit was sworn by Veronica on 13th March, 2009.

Mr. Mutiso appearing for the other parties filed the list of beneficiaries.

In the premises, I heard submissions from Mr. Ndamberi on the distribution of the estate as the issue of Accounts and income derived was withdrawn by the Respondent X-Petitioner.

The first issue to be determined is whether there are three houses or four houses in the estate.

Before Hon. Githinji J (as he then was) there were three objectors. It is not in doubt that two widows namely Lucia Wanjiku (now deceased) and Susan Gakui Wambugu with other children filed the initial objection. As per the ruling of Githinji J, it is not in doubt that Veronica is the mother of Samuel Mwea Wambugu (who was disqualified to be an administrator on his filing a petition for grant of probate with alleged will was nullified) and Charles Githinji Wambugu. Thus the three administrators appointed by Hon. Mr. Githinji J were three sons from the three houses. I added Veronica's name as an administratrix vide my ruling aforesaid. I would thus agree that the list of beneficiaries filed by Mr. Mutiso on 10th February, 2009 does not depict the correct picture. It is noteworthy that no houses are shown against the persons named in items 2 and 3 thereof i.e. the name of their mothers.

It is indisputable that the deceased had three wives namely; Veronica, Susan and Lucia.

From the ruling of Hon. Githinji J. (as he was then) it is also clear that out of three administrators appointed, Joseph was from Lucia's house and Teresio was from the house of Susan.

In the ruling of Hon. Githinji J, (as then he was) he had observed the following facts on page 2, namely:

“Deceased left Baragwi/Kanini/174 comprising of 8.8 acres and plot No.26 at Kianyaga in Kirinyaga District. The land is occupied by Petitioner's mother Veronica Kanini who lives on the land with her children. Lucia Wanjiru was living with her son Joseph Muchira in Land title Kirinyaga/Gathigiri/456 which was registered in the name of her son on 20th June, 1978. There was no evidence as to where Gakui and her children lives”.

The deceased died on 9th April, 1992, thus I may take it that the second house was given the land during his life time as I do not have any evidence to show how the said land was registered in the name of the son of Lucia who was the senior wife.

Be that as it may, I am not told what is its acreage.

The respondents have proposed that the estate – (two properties) be divided equally amongst four houses which fact I have not accepted as per the records of the case and previous ruling made herein.

On the other side Veronica has proposed division of Baragui/Kanini/174 as under:

1. 5 acres to Samson Mwea Wambugu whose petition for grant of probate of a written will was rejected when the will was found to be invalid.
2. 1.26 acres to herself to hold in trust for other children.
3. Similar portion for other two houses to hold in trust by one person.

No proposal for the division of the plot is made by her.

I have further noted that Veronica and her children have occupied the land parcel and has used the proceeds of the same till to date. I also have on record that Mr. Mutiso the learned counsel for the respondents/Cross-Petitioners had withdrawn the issue of accounts and income on 11th May, 2009.

Considering all the facts before the court and considering the fact that the house of Veronica has enjoyed the fruits of the estate properties, I find and direct that all the three houses shall have equal shares in the estate.

The property Baragwi/Kanini/174 be divided in three portions to be held by Veronica, Joseph Muchira Wambugu and Teresio Njoka Wambugu, for themselves and in trust for the children of their respective houses. Similarly the plot No.26 A Kianyaga be held jointly by the above persons in trust for the children

of their respective houses.

I shall not make any order on costs.

Dated, Signed and Delivered at Nairobi, this 20th day of July, 2009.

K.H. RAWAL

JUDGE

20.7.09