



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 132 of 1995**

1. Land Environmental Law Division
2. Subject of main suit/appeal:- Family Law Division

- i. Law of Succession
- ii. Asset of deceased LR. Karai/Karai/61
- iii. Related files

- a) CA 185/87 (Shields J)
- b) Succession Cause SRM 148/85

Kiambu court.

- c) CA137/85 Nairobi
- iv) Geoffrey Ngige Njoroge - appelliant

- a) Succession Cause SRM 148/85 at Kiambu court issues grant to appelliant. This is rectified to read appelliant and Wairimu Njoroge because of Section 58 of the Law of Succession Act continuing Trust.
- b) Before grant is confirmed appelliant transfers property to his name.
- c) Shields J had ordered grant to remain in name of parties but to be given to estate to distribute
- d) Three enjoined to grant 30.8.94
- e) Review –declined errors grounds given.

3. Appeal:-

- a) To set aside orders of 30.8.94.

4. In reply

- a) No certified copy of 30.8.94 orders, no certified copy of 25.4.91 orders

- b) Ruling or order of Shield J
- c) Dismiss appeal
- 5. Case law - Nil
- 6. Advocate.

A.W. Kinuthia of A.W. Kinuthia & Co. Advocates for the appellant – present

N.K. Njau fo Kiania Njau & Co. Advocates for the respondent – present

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 132 OF 1995**  
**GEOFFREY NGIGE NJOROGE.....APPELLANT/APPLICANT**  
**VERSUS**  
**WAMBUI NJOROGE.....**  
**WAMBUI NJOROGE “B”..... RESPONDENTS**

**JUDGMENT**

**I. PROCEDURE**

1. This is a Civil Appeal that should have been placed before the Family Division at Nairobi and not before the Land Environmental Law Division.

2. Nonetheless I did hear the parties on appeal. It is one that covers the estate of the late Njoroge Muchiri who passed away on the 2<sup>nd</sup> October, 1973. The issue of succession law arose. His son and applicant in this appeal, Geoffrey Ngige Njoroge filed a Law of Succession petition in 1987 being RM’s court Kiambu succession case 148/85. He was issued with a letter of grant that involved only one asset being LR Karai/Karai/61. The elders heard the succession cause. The applicant’s mother prayed that the award be set aside. This was duly done and a succession cause filed and or proceedings against the appellants being 70/78. Succession Cause 148/85.

3. J. Ombonyo SRM (as he then was) ordered that under Section 58 of the Law of Succession Act there are continuing trust. This means that the appellant could not be the only administration to the estate. His mother Wairimu Njoroge was enjoined as a

co administration 30<sup>th</sup> June, 1987. An appeal was lodged to the High Court being 185/87 in which Shields J gave orders on 15<sup>th</sup> April 1991 that the grant so issued should stand. He further gave orders that the only assets of the deceased Njoroge Muchori be transferred to the beneficiary of the deceased’s estate.

4. Before the grant could be confirmed the appellant and the mother to the appellant transferred the only assets to their names. The magistrate recognized that the appellant was not the only beneficiary. That there were other beneficiaries namely:

4.1. Wambui Njoroge – Widow

4.2. Wairimu Njoroge

4.3. Wambkui Njoroge – “B” widow

4.4. Muchiri Njoroge

4.5. Njenga Njoroge

4.6. Martha Njoroge

4.7. Geoffrey Ngugi Njoroge

4.8. Muchiri Njoroge “B”

4.9. Kahoro Njoroge

5. The assets was to be shared amongst the houses as follows:-

5.1. Wambui Njoroge – 1/3<sup>rd</sup> to hold in trust for her children

5.2. Geoffrey Ngige Njoroge – 1/3<sup>rd</sup>

5.3. Wambui Njoroge ‘B’ – 1/3<sup>rd</sup> to hold in trust of her children.

6. Shields J had ruled that the appellants remains as administrator but distributes the estate to the beneficiaries. An application was made to rectify the parties to the grant from the names of Wambui Njoroge and Geoffrey Ngige Njoroge to that of Wambui Njoroge, Geoffrey Ngige Njoroge and Wambui Njoroge “B”. By this time the applicant had transferred the suit land to his name and that of his mother Wambui Ngige before the confirmation of the grant. An objection was raised that this needed to go to the High Court to make such orders. The then magistrate F. M. Mucheru on 30.8.94 ruled that the grant can be rectified. In so doing, the three now became the administrators of the estate. The appellant filed a review of these proceedings and that the former advocate M. Maosa was the one who did not correctly advise him.

7. The magistrate declined to review her orders and stated that the parties ought to go to the High Court on the issue of revocation of the grant. That the grant had by now been confirmed on 10<sup>th</sup> May 1993 giving the deceased the said land to 3 beneficiaries.

7.1. Wambui Njoroge

7.2. Geoffrey Ngugi Njoroge

7.3. and Wairimu Ngige “B”

The orders that the magistrate gave effect to on 30.8.94 was that the register of Land to be rectified to include the names of three beneficiaries instead of just the appellant. The review was refused. The appellant filed this prayer/appeal before court challenging the ruling for review.

8. At the stage of directions and before an appeal is heard the other party is permitted to challenge the jurisdiction of this court. The respondent did so at the stage of the main appeal. That no decree to be appealed against was extended and filed. The appellant advocate state she was the 6<sup>th</sup> advocate to handle this matter and may explain why this was not done. This I believe was the courts fault as the High Court before admission of the appeal should confirm that a decree had been filed. (Admission was done on

17.8.95). The appellants should not be penalized for this.

## **II. APPEAL/OPINION**

9. The main intent of the appellant is to be the sole beneficiary of the suit land that belonged to his late father alone. He wished to now blame his advocate that he failed to effectively advise him. That a civil suit should have been filed and not a succession cause- that saw others lay claim to the said assets and grant.

10. I take the cue from the earlier trial magistrate who stated it is not disputed that there are beneficiaries to the estate of the deceased. I also take and give regard to Shields J orders that the applicant holds the administration of the estate for the benefit of the said beneficiaries. Many times, those rules become administration of estate interpreted to mean that all the deceased property and assets are inherited by the administration. This is not correct.

The estate of the deceased is held for distribution to the beneficiaries at the confirmation of the grant. In the Succession Cause case I am made to understand the beneficiaries had been identified as above. That the assets are to be divided into 3 in favour of the children. I do so and would accordingly give legal standing to this. Litigation must come to end.

11. The said appeal is hereby dismissed. The assets of the deceased be accordingly divided amongst the three houses to be held in trust of their children. Namely:-

11.1. Wambui Ngige Njoroge 1/3<sup>rd</sup> to be held in trust of their children.

11.2. Geoffrey Ngige Njoroge a 1/3

11.3. Wambui Ngige "B" a 1/3<sup>rd</sup> to hold in trust of the children

12. I award costs to the respondents in this appeal.

DATED THIS 12<sup>TH</sup> DAY OF MARCH 2008 AT NAIROBI

**M. A. ANG'AWA**

**JUDGE**

A.W. Kinuthia of A.W. Kinuthia & Co. Advocates for the appellant – present

N.K. Njau of Kiania Njau & Co. Advocates for the respondent – present