



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

Succession Cause 2165 of 1996

IN THE MATTER OF THE ESTATE OF KIMANI WAYNORO – DECEASED

FINAL JUDGMENT

After I made my ruling on 15th November, 2006 the parties herein were required:-

1. To produce certificate of search and/or documents of ownership of the properties which were mentioned in the last wishes of the deceased. D Ex. 2 and 2A
2. To produce valuation of L.R. No.36/11/222 situate at Eastleigh, Nairobi and
3. The protestor Naomi Njoki Kimani was to produce an account of rent.

The two Applicants namely; Mary Njeri Kimani and Beth Wariara Kimani produced proof of ownership of estate properties as directed as well as produced valuation report of the Eastleigh property vide affidavit sworn on 11th January, 2007.

I am thus satisfied that the properties listed and/or not listed in the wishes of the deceased were estate properties and that as per the valuation report the Eastleigh property is valued at Shs.9,500,000.

The Protestor made a very feeble and unjustified attempt to give the account of the rent collected by her over the specified years. She, contrary to her averments, did not pay dues on the said property and to add insult to injury, was bold enough to show expenses for the benefit of her family as expenses of the estate. In her affidavit she has not even tried to substantiate her account. In my view, she has failed to obey the order of the court.

On the other side, the two Applicants have shown, as per affidavit sworn on 17th April, 2007 that the rent collected as from 1993 is Shs.15,200 per month. Moreover it is also shown therein that a sum of Shs.797,000 is due and payable in respect of land rates and water bills. The amount collected by Naomi thus shall come to KShs.2,675,200 as at December, 2007. That amount shall be increased if the same is to be updated upto December, 2008.

With these facts, I agree with the submissions made by Mr. K. Muriithi the learned counsel for the Applicants. I made the following orders as to distribution of the estate properties:

A. House of Mary Njeri Kimani:

- i. LR No. LARI/KIREITA/T.106
- ii. LR No. LARI/KIREITA/T.107
- iii. LR No. LARI/KIREITA/T.81
- iv. LR No.LARI/KIAMBAA/264
- v. Part of LR No.LARI/KAMBAA/83
- vi. ? share of LR No. LARI/KIRENGA/T.105
- vii. ? of LR No.36/11/222 Eastleigh – Nairobi or its equivalent value
- viii. ? share of the rents collected by the Protestor, Naomi Njoki Kimani.
- ix. ? share of KShs.588,264/65 held by the Public Trustee (see the order issued by this Court on 14th July, 2004)
- x. ? share of Shares with Barclays Bank of (K) Ltd.

B. House of Beth Wariara:

- i. LR No. LARI/KIREITA/T.105
- ii. LR No. LARI/KIREITA/T.110
- iii. Portion of LR. No.LARI/KAMBAA/83
- iv. ? share of LR No. LARI/KIRENGA/T.105
- v. ? share of LR No.36/11/222 Eastleigh – Nairobi or its equivalent value
- vi. ? share of the rents collected by the Protestor, Naomi Njoki Kimani.
- vii. ? share of KShs.588,264/65 held by the Public Trustee (see the order issued by this Court on 14th July, 2004)
- viii. ? share of Shares with Barclays Bank of (K) Ltd.

C House of Naomi Njoki Kimani

- i. LR. No.LARI/KIREITA/219
- ii. Strip of Six feet of LR. No.LARI/KAMBAA/83
- iii. ? share of LR No. LARI/KIRENGA/T.105
- iv. ? share of LR No.36/11/222 Eastleigh – Nairobi or its equivalent value
- v. ? share of the rents collected by the Protestor, Naomi Njoki Kimani.
- vi. ? share of KShs.588,264/65 held by the Public Trustee (see the order issued by this Court on 14th July, 2004)

vii. ? share of Shares with Barclays Bank of (K) Ltd.

I also note that the aforesaid distributions does take into account the purchase of two properties in the name of Naomi by the deceased during his life time i.e. a stall and business at Wakulima Market, Nairobi and LR. No.Maela/Ndabibi/892 whereon a semi permanent house was also constructed by the deceased.

I further order that in the event that Naomi fails to avail to the other two houses their respective shares of Eastleigh properties, then her share would be proportionately reduced to the amount actually found to be due and payable by her to other two houses. Till the same is settled the properties given to her **shall not** be transferred in her names.

The parties to pay their respective costs.

Dated and signed at Nairobi this 15th day of April, 2008.

K.H. RAWAL

JUDGE

15.4.08