



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Succession Cause 319 of 2001**

**IN THE MATTER OF THE ESTATE OF GEOFFREY MWAURA MUTUNGURI (Deceased)**

**JUDGMENT**

The grant of letters of administration in respect of the estate of the late *Geofrey Mwaura Mutunguri* [deceased] were issued pursuant to a consent order made on 11<sup>th</sup> November 2002 to *Milka Wambui*, *John Mbugua* and *Beth Njeri Mwaura*. *John Mbugua* who is a son of the deceased passed away but he is survived by his wife; *Hannah Wanjiru Mbugua* one of the protestors herein. The other two co-administrators of the estate; *Milka Wambui* and *Beth Njeri Mwaura* who are the surviving spouses of the deceased applied for the confirmation of the grant of letters of administration.

According to the summons for confirmation and the supporting affidavit filled by the petitioners, the deceased left the following survivors;

- (a) **Milka Wambui**                      **1<sup>st</sup> wife**
- (b) **Beth Njeri Mwaura**              **2<sup>nd</sup> wife**
- (c) **Geoffrey Kamau Mwaura**        **son**
- (d) **Edward Mbugua Mwaura**        **son**
- (e) **Lydia Njeri**                        **son**
- (f) **Wairimu Mwaura**                 **daughter**
- (g) **Hanna Wanjiru**                    **daughter**
- (h) **Wambui Chege**                    **daughter**
- (i) **Benerd Ndung'u Mwaura**        **son**
- (j) **Jane Nyambura**                    **daughter**
- (k) **Lucy Waithira**                    **daughter**
- (l) **Daniel Maina**                      **son**

The properties sought to be distributed and the mode of distribution that was proposed by the petitioners is as follows: -

- a) **Milka Wambui**      **Menengai Farm Plot No.272 – 1.75 Acres – whole**
- b) **Beth Njeri Mwaura**      **Menengai Farm Plot No.273 – 1.75 Acres – whole**
- c) **Milka Wambui**      **Engashura Farm Plot No.43 – 1.5 Acres**
- d) **Beth Njeri Mwaura**      **Engashura Farm Plot No.43 – 1.5 Acres**

**Edward Mwaura Mbugua, Obadiah Mwangi Kamau** and **Anna Wanjiru Mbugua** did not consent to the application for confirmation and pursuant to the directions of this court made on 4<sup>th</sup> March 2005, they were directed to file an affidavit indicating their preferred mode of distribution. Thus **Edward Mbugua Mwaura** in his affidavit of 19<sup>th</sup> April 2006, he contended that the deceased left a written will which was read and confirmed by members of the family who were conversant with the deceased handwriting.

Secondly, he challenged the inclusion of plot at Ndeffo Farm in Engashura known as **Bahati/Kabatini Block 1/43** as part of the deceased estate. He argued that the said plot is the property of **Geoffrey Kamau Mwaura** and he attached the copy of the certificate of search which shows the registered proprietor. The protestor proposed to distribute the deceased estate as follows;

- a) **Milka Wambui Mungai**      **Menengai Farm Plot No.272 -380x100ft**
- b) **Beth Njeri**      **Menengai Farm Plot No.273 – 190x100 ft**
- c) **John Mbugua**      **Menengai Farm Plot No.273 – 100x60ft**
- d) **Daniel Maina**      **Menengai Farm Plot No.273 – 100x60ft**
- e) **Joseph Chege**      **Menengai Farm Plot No.272 – 100x50ft**
- f) **Edward Mwaura Mbugua**      **Menengai Farm Plot No.273 -190x100ft**
- g) **Benard Ndungu**      **Menengai Farm Plot No.273 -190x100ft**
- h) **Geoffrey Kamau Mwaura**      **Menengai Farm Plot No.272 – 190x100ft**

Since the administrators of the deceased estate are his spouses who are ranked higher in priority to the children, it was agreed the only issue for determination is the distribution of the deceased estate. Both the protestor and the petitioner gave evidence **Edward Mwaura Mbugua** on behalf of the protestors and **Beth Njeri Mwaura** on behalf of the petitioners. The petitioner testified that she is the step mother of the protestor, and she, had four children with the deceased. The 2<sup>nd</sup> wife of the deceased was **Lilian Wairimu** who had a total of seven children. The second wife and her children were bought for land by the deceased in Ngorika area where they lived except for one of the sons of the second wife known as **John Mbugua** who was staying with the deceased at Menengai Plot prior to the death of the deceased.

**Milka Wambui** is the 1<sup>st</sup> wife of the deceased and she had seven children with the deceased. The second wife was well provided for and so were her children including John whom the petitioner said he should inherit from his mother's share.

According to the protestor the deceased left only two properties namely; **Menengai Plot number 272** and **273**. He contended that the deceased had distributed the two properties according to his proposal and he had written his wishes in a book although the will was not signed or witnessed.

**John Mbugua Mwaura** who was also a co-administrator is the son of the deceased with the 2<sup>nd</sup> wife. **John Mbugua Mwaura** moved to stay at a **Menengai Plot number 273** even during the life time of the deceased. It was said that the deceased purchased a parcel of land for his 2<sup>nd</sup> wife where he settled her as well as her children. And that is why the 2<sup>nd</sup> wife had her children were not included in this succession cause as they were adequately provided for and settled by the deceased prior to his death.

On the part of the petitioners, **Beth Njeri Mwaura** gave evidence and supported a proposed mode of distribution so that **Milka Wambui** can hold the share for her household of seven children and she can hold the other share for her household. She contended that **John Mbugua Mwaura** should move to Ngolika where his mother had been settled by the deceased.

I have gone through the records and what the protestor claims to be a Will of the deceased does not comply with the provisions of the law. Copies of the said book which are attached to the affidavit of protest were not signed by the deceased nor were they witnessed by independent witnesses. It is also not written in the language of the court and the protestor did not even bother to have it translated, the said document is of no use to the court.

I find that the deceased died intestate and he left no Will that is capable of taking effect. The deceased estate should be determined as per **part V** of the **Law of Succession Act**. The deceased was also polygamous and his estate should be determined according to **Section 40 (i)** of the **Law of Succession Act** which provides: -

*“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”*

According to the evidence on record, it is clear that the deceased free property which is available for distribution is **Menengai Farm Plot number 272** and **Menengai Farm Plot number 273** both of which are of equal sizes. The plot known as **Bahati Plot number 1/43** is said to belong to **Geoffrey Kamau Mwaura** and a certificate of official search shows that the property was so registered in 1984. Since there was no evidence to controvert that document, am satisfied that, that is not the free property of the deceased and should not be distributed.

The proposal by the protestors seems to have left out some beneficiaries and since their consents were not obtained, I would disregard that proposal by the protestors. I am also persuaded that **Obadiah Mwangi** being a grandson of the deceased should benefit from his parent’s share and not directly from the deceased estate. It is also clear that when the deceased died, **John Mbugua Mwaura** was residing with him at **Menengai Farm Plot number 273**. **John Mbugua Mwaura** subsequently died but he is survived by his wife and children who should succeed him.

The property available is of very small proportion and it would appear that when the deceased died, **Milka Wambui** was in occupation of **Menengai Farm Plot number 272** and **Beth Njeri** was in **Menengai Farm Plot number 273**. **John Mbugua Mwaura** with his wife is also occupying **Menengai Farm Plot Number 273**.

Whichever way one looks at this matter, it is not easy to obtain an equitable distribution of an estate of this magnitude among so many beneficiaries considering that some beneficiaries have built and developed their portions of land. The petitioners are also quite elderly and it is not in the interest of justice to displace them from where they have settled.

Taking all the circumstances of this case and the inherent powers vested in this court under **Section 47** of the **Law of Succession** and **Rule 73** of the **P & A Rules** to ensure ends of justice, the following is the order of distribution: -

Ø **Milka Wambui, Menengai Farm Plot No.272** to hold in trust for her seven children in equal

shares. It is important to state that any of her children who may not wish to inherit a portion there from may renounce their interest which will be surrendered to the other beneficiaries.

Ø *John Mbugua Mwaura* was left by the deceased at Menengai Farm Plot number 273, he is now survived by his widow and children and he should get a portion of that plot.

Ø *Beth Njeri Mwaura* shall hold Menengai Farm Plot number 273 for her four children as well as the estate of *John Mbugua Mwaura* now represented by *Anna Wanjiru Mbugua*. That plot shall also be shared equally among the six beneficiaries including the widow.

This being a family matter each party shall bear their own costs. It is so ordered.

**Judgment read and delivered on 9<sup>th</sup> day of March 2007.**

**MARTHA KOOME**

**JUDGE**