



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 283 of 1989

IN THE MATTER OF THE ESTATE OF SAMSON KARANJA CHORI – DECEASED

AND

PHILIS NYOKABI KARANJA.....1ST PETITIONER

JOYCE WAMUYU KARANJA.....2ND PETITIONER

JUDGMENT

Simon Karanja Chori (*hereinafter referred to as the deceased*) died on the 24th March 1977. In 1989, the two widows of the deceased, Phillis Nyokabi Karanja and Joyce Wamuyu Karanja applied for letters of administration to administer the estate of the deceased. The said letters of administration were issued on the 13th April 1994 to the said two widows of the deceased. Joyce Wamuyu Karanja died on the 9th May 2004. The letters of administration were not however confirmed due to differences that cropped up during the distribution of part of the estate of the deceased. The beneficiaries of the deceased's estate agreed to resolve the issues regarding the said distribution of part of the deceased's estate by this court hearing oral evidence.

At the hearing of the distribution proceedings, it emerged that the two houses that comprise the beneficiaries of the estate of the deceased, were in agreement as to what constituted the properties of the deceased. They had also amicably distributed a substantial portion of the deceased's estate on equal basis between the said two houses. For instance, the deceased's parcel of land at Ndimu farm, Lanet measuring forty (40) acres was divided between the two families at the ratio of 24:16 in favour of the family of Phillis Nyokabi. Title deeds to the respective portions of land were issued to the said two families. The said titles were issued directly to the beneficiaries apparently due to the fact that at the time the deceased died, the said parcels of land had not been demarcated or surveyed to enable registration of the same to be effected.

According to the evidence adduced before this court by PW1 Phillis Nyokabi Karanja, PW2 Stephen Chori Karanja, DW1 Mary Njabi Karanja and DW2 Joel Mwangi Chege, the only properties of the deceased that have to date not been distributed are the following;

- (i) *The ancestral farm inherited by the deceased at Kiawambogo, Murang'a District measuring 6 acres. Tea is planted on some portion of the said land.*
- (ii) *The shares owned by the deceased in a partnership at Rwathia Company.*
- (iii) *The shares owned by the deceased at the Shirikisho Company.*

From the evidence adduced, it was established that the original share holders of the two companies who were partners with the deceased had decided to dissolve the partnership and distribute the proceeds therefrom to the respective shareholders. In the case of Shirikisho Company, DW2 testified that the value of the shares due to the estate of the deceased, after the dissolution of the said partnership, is Ksh.8 million. The family of Phillis Nyokabi Karanja proposed that the remaining portion of the deceased's estate be distributed in accordance with the number of the children of the deceased. On the other hand the family of Joyce Wamuyu Karanja (*deceased*) asked the court to adopt the mode of distribution which the parties had previously distributed substantial portion of the deceased's estate.

I have carefully evaluated the evidence adduced in these succession proceedings. The issue for determination by this court is what mode of distribution of the remainder of the estate of the deceased should be adopted. It is evident, as stated earlier in this judgment, that the two houses that comprise the beneficiaries of the deceased's estate, distributed a substantial part of the estate of the deceased on more or less equal basis. The unit of distribution which was agreed between the parties to these proceedings was the two houses. There was no problem with the distribution of the substantial part of the deceased's estate on this basis. A problem seems to have arisen with the distribution of the proceeds after the partnership of Rwathia and Shirikisho was dissolved. It is clear to this court that the intention of the beneficiaries of the estate of the deceased, was to distribute the estate of the deceased on equal basis between the two houses. I find no reason to change the mode of distribution which was previously agreed and adopted as between the beneficiaries of the estate of the deceased.

I therefore hold that the basis upon which the remaining part of the estate of the deceased shall be distributed shall be the two houses of the deceased. The remainder of the estate of the deceased shall be distributed equally between the families of Phillis Nyokabi Karanja and Joyce Wamuyu Karanja (*deceased*). The three properties that were yet to be distributed shall be distributed equally between the two houses. For the avoidance of doubt, the said three properties shall be distributed as follows;

(i) The six acre farm at Kiawambogo, Murang'a District shall be divided into two portions and inherited respectively by the members of the family of Phillis Nyokabi Karanja and that of Joyce Wamuyu Karanja.

(ii) Shirikisho shares;

(a) The family of Phillis Nyokabi Karanja – Ksh.4 million.

(b) The family of Joyce Wamuyu Karanja (*deceased*) – Ksh. 4 million.

(iii) The Rwathia shares;

It shall be divided into two portions and inherited respectively by the family of Phillis Nyokabi Karanja and that of Joyce Wamuyu Karanja (*deceased*).

Since this was a succession dispute between family members, there shall be no orders as to costs. Each party shall bear her own costs.

DATED at NAKURU this 30th day of November 2007

L. KIMARU

JUDGE