

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 286 OF 1993

IN THE MATTER OF THE ESTATE OF GIKANGA WAITHAKA

(DECEASED)

RULING

On the 17th of November 1998, Rimita J ordered the estate of the deceased to be distributed in accordance with his judgment. The judgment was not appealed against by any of the parties. The parties were satisfied with the judgment of the said court. In the said judgment Rimita J stated at page 1:

“Simon Gikanga Waithaka gave evidence as the representative of the 2nd house. He was more concerned with the Land Nyandarua/Upper Gilgil/138/1. He said that the land measured 22 acres. He wanted Elizabeth and her three sons to have 14 acres. 8 acres according to him should be shared amongst the 1st and the 2nd house. He admitted that his father gave him 8 acres before he died. He agreed with the distribution of the plots in Nakuru.”

The said Learned Judge ordered that Sarah Wambui Gikanga be given 2 acres out of the parcel of land known as ***Nyandarua/ Upper Gilgil/138/1*** . From the above judgment it is clear that the house represented by Simon Gikanga were not involved in the distribution of Parcel No. ***Nyandarua/Upper Gilgil/138/1***. They had been provided for by the deceased and they were satisfied. As stated earlier, the decision of Rimita J was not appealed against the beneficiaries of the estate. They were satisfied. For the said Lydia Wanjiku Gikanga to purport to enter the dispute between Elizabeth Gikanga and Sarah Gikanga, yet she had already been provided for and the members of her family were satisfied, smacks of greed. I will disallow her intervention in this application. Her family represented by Simon Gikanga were provided for and were satisfied. She cannot use the back door to claim the parcel of land which can only rightly be claimed by Elizabeth Gikanga and Sarah Gikanga. Her claim for the said parcel of land fails.

The Applicant in this case states that after the said judgment was delivered, it was discovered that the land known as ***Nyandarua/Upper Gilgil/138/1*** measured twenty two acres instead of fifteen acres. Seven acres were not therefore distributed to either Sarah or Elizabeth. After reading the application filed and the affidavit filed in reply to the application and also after considering the submissions made by Counsel for Elizabeth and Counsel for Sarah, I hereby order the extra seven acres to be divided as follows: **Elizabeth shall retain four acres of the said seven acres, while Sarah shall get three acres of the said extra acres.** Otherwise the estate of the deceased shall remain distributed as ordered by Rimita J.

There shall be no orders as to costs.

DATED at NAKURU this 5th day of November, 2004.

L. KIMARU

AG. JUDGE