



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. SUCCESSION CAUSE NO. 600 OF 1998

**LUCY NDUTA KINYANJUI ..... OBJECTOR**

**V E R S U S**

**LUKA KANYINYO**

**RUTH WANJIKU KINYANJUI ..... RESPONDENTS**

**R U L I N G**

In my ruling dated 15th November, 2002 I directed the Administrators to file an application for confirmation within six weeks from the date with clarification regarding estate properties.

The properties which required clarification were L.R. No. Dagoretti/Ruthimitu/563 and L.R. No. Dagoretti/Karandini/1. The situation is now clarified by producing a certificate of confirmation of grant in the estate of Samuel Kinyanjui Luka wherein the properties including the above referred were bequeathed to the deceased herein in trust for their children except the two daughters who were married i.e. Jane Wahu and Monica Nduta. The certificate was issued on 29th September, 1995 and the present deceased who was the proprietor in trust died on 29th October, 1997 before the transfer of the properties could be effected.

The protestor Lucy Nduta Kinyanjui bitterly complains on the vast disparity in the value of the properties distributed to her and those to her three brothers. Her reasons, over and above mentioned in her earlier affidavits and submissions, are enumerated in paragraph 5 of her affidavit sworn on 14th January, 2003.

The distribution of the estate as proposed by the Administrator seems to be agreed by all the beneficiaries except the protestor.

In the initial proposal the protestor was allotted only two plots in Ruai. Thereafter all the four plots are now proposed to be given to her. Over and above that, she is given 1/3 share Dagoretti/Karandini/1 which is the share of the deceased therein. As per the official search made on 10th December, 2002, the income tax liability of Kshs.12,000,000/= is registered as an encumbrance on L.R. No. in Dagoretti/Ruthimitu/563.

The protestor's claim that there is no such liability is thus misplaced and misleading. In her own averments made in earlier affidavit sworn on 3rd October 2002 she did aver that income of Kshs.15,000/= is derived on Karandini plot. Her averment now that the plot does not derive any income once again contradicts her own earlier averment.

In the same manner, her assertion that none of the properties proposed for her share is earning any income flies flat on her averment made in affidavit of 3rd October, 2002.

Her objection to four Ruai plots also seems to me as the churning of a daughter who is dissatisfied in all circumstances. She is given two more plots over and above the two plots which are occupied by her. (see paragraph 3 of her affidavit sworn on 3rd October, 2002).

She has also now been added one more plot at Gilgil Nyakinyua. Her objection only to its valuation being unknown is once again unfair. It definitely seems that she is only eyeing on the property allocated to her brother Edward. If she is complaining on an existence of a pending High Court case on Karandini plot, there is much more serious encumbrance on the Ruthimitu plot sought to be given to Edward.

The protestor is trying to delay the distribution of the estate on constant change in nature of her objection.

Obviously, she has been succeeding in her protests because after each protest she gets more. But this court feels it should come to a stop.

As she has no objections to the shares of other brothers, I think the proposed distribution to Edward Kinyanjui is fair in view of his taking over the liability for the tax due.

I do agree with the protestor that her marital status should not be a bar to her inheritance as per law.

The court should also not ignore the wishes and sentiments of the remaining family members, when the court is not satisfied that the protestor is unfairly treated.

I therefore shall confirm the distribution of the estate as proposed by the Administrators, and grant the application to confirm the letters of administration as prayed except that each party shall bear its own costs.

Dated and delivered at Nairobi this 28th day of March, 2003.

**K. H. RAWAL**

**JUDGE.**