



REPUBLIC OF KENYA



In re Estate of Geoffrey Kariha Gitau (Deceased) (Succession Cause 133 of 2015) [2025] KEHC 8114 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 8114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
SUCCESSION CAUSE 133 OF 2015**

GL NZIOKA, J

APRIL 8, 2025

IN THE MATTER OF THE ESTATE OF GEOFFREY KARIHA GITAU (DECEASED)

BETWEEN

NAOMI WAMBUI KARIHA APPLICANT

AND

SERAH NJIKU KARIHA RESPONDENT

RULING

1. The subject of this ruling is a summons for confirmation of grant dated 9th May 2022. It is supported by the affidavit the applicant of Naomi Wambui Kariha, a joint Administrator.
2. The applicant prays that the grant of letters of administration intestate issued on 7th April 2016, be confirmed and the costs of the application be in the cause.
3. The background facts of this matter are well captured in the ruling delivered by Hon Justice R. Mwongo on 12th March 2020. Notably, the parties were directed that:-
 - “ a) The parties will make full disclosure of all properties of the deceased by filing further supporting affidavits giving full details of the said properties;
 - b. The parties are directed to obtain copies of the Green Cards for all the following parcels of land certified by the Registrar and detailing any subdivisions and transfers made by the deceased to any of his children in respect of:
 - i. Title No Nyandarua Githioro/3054 and its offshoots:
 1. Title No Nyandarua/ Githioro/3722 and



2. Title No Nyandarua/ Githioro/3723
 - ii. Title No Nyandarua/ Githioro/2673
 - iii. Naivasha/ Maraigushu Block 17/173 (Mugane)
 - iv. Title Nos Nyandarua Githioro/2839; 3109; and 3145 mentioned in the Further Affidavit of Sarah Njiku Kariha dated 15th June 2015
- b. Should it become necessary, or where further clarity is needed, the Court may summon the Registrar of Lands to avail evidence concerning any of the aforesaid parcels of land; and or may require further particulars from the parties.
- c. The filings directed herein shall be done within sixty (60) days of the date of this order.”

However, the parties have not fully complied as directed.

4. However, in considering the summons, and in particular the affidavit in support thereof, I note that there are eleven (11) beneficiaries and three (3) parcels of land described as follows: -
 - a. L.R No. Nyandarua/Githioro 2673
 - b. Naivasha/Maraigushu Block 17/173 (Mugane)
 - c. L.R No. Nyandarua/Githioro 3722
5. However, notably the consent to allow the summons is signed by seven (7) beneficiaries only the other four (4) others have not signed it.
6. Be that as it were, the matter was subsequently referred to mediation and a partial settlement consent was reached in relation to property LR No. Nyandarua/Githioro 3722. in relation to property LR No. Nyandarua/Githioro 3722. and subsequently adopted as an order of the court. However, the distribution of the other two properties was not resolved.
7. The matter reverted to court and after hearing the parties, it became evident that, whereas the 1st House holds the view that LR No. Nyandarua/Githioro 2673 should be divided among the two Houses, the 2nd House is of the view that the same should devolve upon the 2nd House wholly.
8. In the same vein whereas the 1st House proposes that, property Naivasha/Maraigushu Block 17/173 be shared among the two Houses, the 2nd House proposes that it be given to the 1st House as they know nothing about it.
9. In further discussion with the parties and hearing from them, it became evident that they cannot agree on distribution of the subject properties, consequently, the court ordered that an inventory of all the assets of the deceased and the valuation thereof be availed. Furthermore, if any of the property of the deceased was disposed of during the lifetime it be disclosed and the beneficiaries thereof. However, that was not done.
10. To fast track, the matter the court ordered the Honorable Deputy Registrar to establish from the Registrar of Lands particulars of the subject parcels of land, in particular the acreage and registered proprietor(s). To the date of this ruling no response has been filed in court.



11. Be that as it may, noting realizing that, the parties were not intent in acting on court orders issued by Hon. Mr. Justice R. Mwangi referred to herein, and by this court, on 4th October 2023 the court ordered that, property Naivasha/ Maraigushu Block 17/173 be sold and the proceeds thereof be distributed equally among all the beneficiaries.
12. Pursuant to the aforesaid, the only property that remained for distribution is L.R. No. Nyandarua/Githioro 2673. It is said to be 9.7 acres. The 1st House is said to have been given a parcel of land measuring 6 acres.
13. From the proposed mode of distribution in the summons for confirmation of grant each beneficiary is to get equal share thereof of 0.885 acres. However, it is not acceptable to the 2nd House.
14. Consequently, the estate shall be distributed in accordance with the law. In that regard, section 40(1) of the Law of Succession Act, provides for the mode of distribution as follows: -
 - “(1) 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.”
15. The above provisions empower the court to consider the number of houses and children in each house, inclusive of the wives as a unit to the number of children.
16. In the instant matter, the deceased was survived by two widows Naomi Wambui and Serah Njiku and seven (7) and two (2) children respectively hence a total of nine (9) beneficiaries. In that regard, the subject property should be distributed equally among the eleven (11) of them.
17. However, in distributing the subject property, the provisions of section 42 of the Law of Succession Act, require the court take into account any property bequeathed to any beneficiary before demise of the deceased. It states as follows:
 - “Where—
 - (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
 - (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
18. In that regard, it is in evidence that, the 1st House was given six (6) acres of land. In the interest of justice, the 1st House cannot claim to have equal shares of the parcel of land in issue without considering what they already have.
19. It is also evident from documents produced by Serah Njiku Kariha vide supplementary affidavit dated 11th June 2023, that parcel of land described as L.R. Nyandarua/Githioro/2839 approximately 1.52 Ha is registered in the name of Naomi Wambui Kariha but was initially registered in the name of the deceased. Further, L.R. Nyandarua/Githioro/2840 approximately 1.41 Ha moved from the deceased to Nahason Gitau Kariha and LR No. Nyandarua/Githioro/2842 from the deceased to Samuel Kuria Kariha.



20. Furthermore, the deponent has produced a letter dated 29th April 2014 in which the deceased is alleged to have requested the Land Registrar to remove a caution placed on the land plot No. 2673 as he had already given Naomi Wambui Kariha, together with her sons twelve (12) acres.
21. Notably, the averments in the supplementary affidavit by Serah Njiku have not been rebutted.
22. Furthermore, Serah Njiku Kariha, deposed in an affidavit dated 7th March 2023 that, the deceased had signed all the requisite transfer documents for the subject parcel of land in favour of her House. She has annexed to that affidavit a document marked "SMK2" being transfer of land documents allegedly signed by the deceased transferring the land to Serah Njiku Kariha, I.D. No. 86XXXX. The document is dated 25th May 2013. In addition, she has provided a copy of the application for consent of Land Control Board and Letter of Consent for the transfer of the land to her.
23. Similarly, the contents of this affidavit are not controverted.
24. Pursuant to the aforesaid, and all the evidence provided, it is clear that the deceased had two widows, Naomi and Serah. The evidence reveals that before his demise, he had transferred certain parcels of land to the 1st widow Naomi and her children, Nahashon and Samuel. It is stated that the land given to the 1st House is 12 acres and 2nd House is 9.7 acres. The 1st House had seven (7) children, the 2nd house two (2) children. It is therefore clear that the 1st House cannot get any more land.
25. Indeed, had the parties assisted the court as directed all the through by the court, the court would have been able to ascertain all the properties of the estate and any earlier bequests and to whom.
26. As the parties have failed to do so, and based on the materials on record, I direct that, the property L.R. No. 2673 Nyandarua/Githioro be given to the 2nd House to be distributed equally among the widow and her children.
27. Finally, if the 2nd House has no interest in Naivasha/Maraigushu Block 17/173 (Mugane) they can relinquish their interest therein to the 1st House in which case the earlier order for the sale thereof and distribution of proceeds, will stands reviewed.
28. To facilitate transfer of the subject property L.R. No. 2673, I direct that any caution thereon be removed. Consequently, the grant herein will be confirmed in the afore terms. The costs of the application be in the cause.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF APRIL 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Njihia for the Applicant

Applicant present physically

Respondent present physically

Ms. Hannah: Court Assistant

