



In re Estate of Solomon Mwangi Waweru (Deceased) (Succession Cause 488 of 2012) [2024] KEHC 1582 (KLR) (15 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 488 OF 2012
SM MOHOCHI, J
FEBRUARY 15, 2024**

BETWEEN

**ELIZABETH WANGARI MWANGI 1ST APPLICANT
DANIEL THIGA MWANGI 2ND APPLICANT
SAMUEL WAWERU MWANGI 3RD APPLICANT
TIMOTHY MUGAMBI MWANGI 4TH APPLICANT**

AND

**FRANCIS MUCHIRI MWANGI 1ST RESPONDENT
EPHANTUS KIMORI MWANGI 2ND RESPONDENT**

JUDGMENT

1. Solomon Mwangi Waweru died on the 1st May 2012 Leaving behind his widow and Seven (7) Beneficiaries. The widow is since deceased and the estate remains unsettled for the last twelve years.
2. It is noteworthy that the Seven beneficiaries could not agree and consent to a common mode of distribution towards confirmation of grant.
3. Before me are two Applications the 1st one dated 8th May 2023 by Francis Muchiri Mwangi and Ephantus Kimori Mwangi (hereinafter the referred to as the 1st Application), seeking confirmation of grant dated 14th July 2014 and that the estate be distributed as per their proposed mode.
4. The 2nd Application is a Summons dated 31st August 2023 filed pursuant to Sections 26, 27, 28, 29, 86 and 94 of the *Law of Succession Act*, Cap 160 Laws of Kenya and is supported by a sworn Affidavit of Elizabeth Wangari Mwangi dated 31st August 2023, Seeking the following Six (6) reliefs:
 - i. That, Francis Muchiri Mwangi and Ephantus Kimori Mwangi being the administrators of the Estate of Solomon Mwangi Waweru (Deceased) do within fourteen (14) days produce to the



Court a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealings therewith including parcels of land, vehicles, shares, money in bank accounts, rental income, milk and meat proceeds from 1st May, 2012 the date of the Deceased's death up to date.

- ii. That, the Respondents' / Administrators' be directed to render a true and accurate account of their administration of the Deceased's Estate including the rental income, business income and any money collected and/or received and Spent by them from 1st May, 2012 the date of the Deceased's death up to date.
 - iii. That, in the event that the Respondents'/Administrators' have neglected to get in any asset forming part of the Estate or have misapplied any such asset or subjected it to loss and damage, they be liable to make good any such loss or damage so occasioned.
 - iv. That, pending the confirmation of the grant and the distribution of the Deceased's Estate, reasonable provision be made to the applicants; Elizabeth Wangari Mwangi, Daniel Thiga Mwangi and Samuel Waweru Mwangi by way of payment of Kes. 30,000/- per month to each of them for their and upkeep out of the Net Estate.
 - v. That, the monies held in Barclays Bank Account No. xxxx be used for survey and issuance of title deed(s) and money for the Applicants' upkeep be drawn from the monies received by the Estate on daily basis,
 - vi. That, pending the confirmation of the grant and the distribution of the Deceased's Estate, this Honourable Court be pleased to order an account for the Estate be opened and the 1st Applicant and the 1st Respondent/ Administrator be made signatories on behalf of the other beneficiaries.
 - vii. That, the costs of this application be paid from the Deceased's Estate.
5. The 2nd Application is premised on the following grounds: -
- a. That, the Deceased's Estate comprises of several real properties, shares, money in bank accounts, domestic animals, business income and motor vehicles valued at approximately Kes. 124,000,000/- or thereabouts.
 - b. That, the administrators have a duty under section 83 (b) of the [Law of Succession Act](#), Cap 160 Laws of Kenya within six (6) months from the date of the grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
 - c. That, section 94 of the [Law of Succession Act](#), Cap 160 Laws of Kenya provides that when a personal representative neglect to get in any asset forming part of the estate or misapplies any such asset or subjects it to loss and damage, he shall be liable to make good any loss or damage so occasioned.
 - d. That, a grant of letters of administration intestate was made to the administrators on 17/07/2014 which is eight (8) years ago but the Respondents' / Administrators' have not produced to Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all the dealings therewith as required by section 83 (e) of the [Law of Succession Act](#), Cap 160 Laws of Kenya.
 - e. That, the 1st Respondent/Administrator has exclusively been collecting rental income from Silent Night Guest House located in Shabab along John Momanyi Road as well as proceeds



from daily farm and an orchard located in Subukia that he has not accounted for, in addition to purging livestock at will and falling trees.

- f. That, the 1st Respondent Administrator has converted milk proceeds in sale to Suka dairies for his own personal use. Additionally, he has not been paying land rates and has failed and/or refused to include the property known as Mwariki Block 2 in his proposal for distribution.
 - g. That, as a result of the Respondents'/ Administrators failure to include all the Deceased's asset in their proposal for distribution and failure to produce to Court a full and accurate account of all the dealings therewith including the rental and business income collected and spent, the Applicants are apprehensive that the Respondents'/Administrators' have neglected to get in assets forming part of the Estate and/or misapplied the assets or subjected them to loss and damage.
 - h. That, the Applicants are named in the petition for letters of administration and the summons for confirmation of grant as beneficiaries of the Deceased's Estate
 - i. That, the Applicants' herein have all attained the age of majority and hence the issue of supervision and/or trusteeship does not arise herein.
 - j. That, the Applicants are not in any gainful employment and they do not draw or receive any money from the Deceased's Estate.
 - k. That, the Applicants' have families which depend on them for their survival, maintenance and upkeep.
 - l. That, the Applicants' living expenses include food, medical expenses, utility bills, school fees, clothing, travelling and upkeep for them and their families.
 - m. That, Mr. Kamonjo Advocate has been representing the Respondents'/Administrators' upon their own request hence the KES. 1,000,000 /- claimed as legal fees from the Estate is unjustified and unfair.
 - n. That, pending the confirmation of grant and the distribution of the Estate, it is only just, equitable and reasonable that the Applicants be paid Kes. 30,000/-each per month from the Deceased's net estate to enable them pay for their and their families living expenses, medication, maintenance and upkeep.
 - o. That, there is no justifiable reason whatsoever for the Applicants and their families to live as paupers and for five siblings to be given a shopping worth Kes.8,000/- to share amongst themselves yet the Respondents'/ Administrators handle over Kes. 300,000/- alone.
6. The 2nd Application is opposed by the grounds of opposition dated 5th October 2023 on the following grounds:
- i. That, the said application is similar to the applications filed by Elizabeth Wangari for similar or related prayers for example;
 - a. Application dated 6th November, 2013;
 - b. Application dated 24th October, 2014;
 - c. Application dated 10th June, 2015; and
 - d. Application dated 4th June, 2019.



- ii. That, valuation was done by the Consent of the Parties and upon direction by the Court the Estate must pay the Valuer.
 - iii. That, legal services are due from the Estate of Solomon Mwangi Waweru and not Elizabeth Wangari and there is an existing Court Order that the same be paid, which order Elizabeth Wangari has continuously frustrated.
 - iv. That, it is the responsibility of all beneficiaries and indeed all administrators to collect and administer all the properties of the Deceased. The Respondents have not deliberately omitted any property from the estate list.
 - v. That, it is the non-co-operation by Elizabeth Wangari which has resulted in the delay in distributing the estate.
 - vi. That, this Court is set to hear and determine the issues in dispute on 17th October, 2023 and it is unwise or mischievous to seek to pre-empt any of the issues through this unnecessary application.
 - vii. That, the estate has some money in the bank that Elizabeth Wangari has vehemently opposed sharing for various unknown reasons and or just for vexatious reasons.
 - viii. That, the estate does not make the kind of money that Elizabeth Wangari imagines could be enough to pay Kshs. 30,000/- per month to each of the 7 Beneficiaries.
 - ix. That, the beneficiaries ought to co-operate in the distribution mode so that this matter can be finalized once and for all.
 - x. That Elizabeth Wangari, as a Co-Administratrix, should tell the Court what she has done to protect the estate instead of whining and playing victim all the time.
 - xi. That, the application dated 31st August, 2023 is an abuse of the process of Court.
 - xii. The Administrators have kept meticulous accounts of the running of the estate.
7. This Matter came up for directions on the 2nd March 2023 whereby the Court directed the filing of summons for confirmation and should any co-administrator or beneficiary differ with the mode of distribution proposed then they should file a protest with counter proposal within seven (7) days.
8. That the Administrators were to file a detailed statement of account of the estate within fifteen (15) days. By the 25th April 2023, the Administrators had complied while the Co-Administrator Elizabeth Wangare Mwangi was yet to comply.
9. By the 6th July 2023 the matter came up for mention for compliance and it emerged that Elizabeth Wangare Mwangi had filed a summons (the 2nd Application) seeking a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account, from 1st May, 2012, reasonable provision for adult beneficiaries, estate micromanaging orders, that an estate account be opened to be controlled and managed by the 1st Applicant and 1st Respondent and the Court further directed that the 2nd Application shall be considered concurrently with the 1st Application in open Court on the 17th October 2023.
10. On the 17th October 2023 the 1st Co-Administrator Francis Muchiri Mwangi appeared and testified under oath that, he is a barber resident of Kenlands in Shabab Nakuru and has been running the day to day activities of the estate in consultation with his elder brother and co-Administrator Ephantus Kimori Mwangi who is based in the USA.



11. That the estate has a farm in Subukia (60acres) engaged in day farming with two employees paid on a monthly salary basis and one employee retained on a casual basis and that the farm generates some dairy income from sale of dairy products to Suka Farmers' Cooperative. That this business has faced headwinds for the last two years and they have since improved to the extent of being recognised as the 2nd best dairy farm by the cooperative society. That he undertakes periodic maintenance at the farm for example the barn collapsed in 2017 and he had to fell two trees for this repair with the permission of the area chief.
12. That the farm has 34 cattle and 70 sheep and during the draught season he has to collect hay as far as Narok and Maua. That the farm has avocado trees that have been affected by draught.
13. This witness gave detailed explanation relating to the overall management of the estate payments of rates and rent, use of motor vehicle KBN 645U to manage the estate, its, fuel and comprehensive insurance as an expense to the estate, security guards expense in Freehold Block 2/759 and Shabab Block 3/513.
14. Francis Muchiri Mwangi was of the view that, he takes care of his elder siblings including medical expenses and living expenses and that for eleven (11) years he has had to purchase monthly shopping for everyone to share, which is well documented.
15. The witness equally testified on the litigation related expenses and he produced three suitcases of records and receipts for scrutiny. The Protestors were of the view that the records thus produced should be Audited.
16. The Witness equally laid out his proposed mode of distribution which he had prepared and circulated to all his siblings only for three of them the Applicants in the 2nd Application to reject the same.
17. That his proposal was as follows:



No.	Property Description	Beneficiary(es)	Share
a	<p>Nakuru Municipality Block 2/759</p> <p>which measures approximately 0.771 of an acre.</p> <p>With;</p> <p>1) The main house,</p> <p>2) 2(3)-bedroom house</p> <p>3) 4(2)-bedroom house</p> <p>4) The remaining space</p>		
	The main house	Ephantus Kimori Mwangi, Francis Muchiri Mwangi and Elizabeth Wangari Mwangi in trust themselves and beneficiaries.	The Main House, To be refurbished followed by Suitable arrangements for use of the family home by all beneficiaries of the Estate.
	2(3)-bedroom house	Elizabeth Wangari Mwangi	2(3)-bedroom house whose built up area 1,468 sq ft approximately Whole share
	4(2)-bedroom house	Timothy Mugambi Mwangi Daniel Thiga Mwangi	4(2)-bedroom house Size 2663sq ft approximately to be shared equally.
	The remaining space	Ephantus Kimori Mwangi Francis Muchiri Mwangi	The remaining part is be further subdivided into six (6) plots and shared equally among the



		Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	beneficiaries.
b)	<p>Kiambogo/ Kiambogo Block2/17160</p> <p>Kiambogo/ Kiambogo Block2/17153</p> <p>Kiambogo/ Kiambogo Block2/17154</p> <p>Kiambogo/ Kiambogo Block2/17163</p> <p>Kiambogo/ Kiambogo Block2/17218</p> <p>Kiambogo/ Kiambogo Block2/17217</p>	Ephantus Kimori Mwangi	Whole Share
	<p>Kiambogo/ Kiambogo Block2/17193</p> <p>Kiambogo/ Kiambogo Block2/17195</p> <p>Kiambogo/ Kiambogo Block2/17190</p> <p>Kiambogo/ Kiambogo Block2/17203</p>	Francis Muchiri Mwangi	Whole Share



<p>Kiambogo/ Kiambogo Block, 2/17219</p> <p>Kiambogo/ Kiambogo Block2/17164</p>		
<p>Kiambogo/ Kiambogo Block,2/17180</p> <p>Kiambogo/ Kiambogo Block2/17182</p> <p>Kiambogo/ Kiambogo Block2/17174</p> <p>Kiambogo/ Kiambogo Block2/17209</p> <p>Kiambogo/ Kiambogo Block2/17172</p> <p>Kiambogo/ Kiambogo Block2/17171</p> <p>Kiambogo/ Kiambogo Block2/17181.</p>	<p>Elizabeth Wangari Mwangi</p>	<p>Whole Share</p>
<p>Kiambogo/ Kiambogo Block2/17216</p> <p>Kiambogo/ Kiambogo Block2/17215</p> <p>Kiambogo/ Kiambogo Block2/17214</p> <p>Kiambogo/ Kiambogo Block 2/17213</p> <p>Kiambogo/ Kiambogo Block2/17204</p>	<p>Timothy Mugambi Mwangi</p>	<p>Whole Share</p>



	<p>Kiambogo/ Kiambogo Block2/17206</p> <p>Kiambogo/ Kiambogo Block2/17207</p> <p>Kiambogo/ Kiambogo Block2/17208</p> <p>Kiambogo / Kiambogo Block2/17173</p> <p>Kiambogo/ Kiambogo Block2/17210</p> <p>Kiambogo/ Kiambogo Block2/17212</p>	Daniel Thiga Mwangi	Whole Share	
c)	Nakuru Municipality block 2/760.	Ephantus Mwangi Francis Mwangi	Kimori Muchiri	
d)	Nakuru Municipality block 2/761	Samuel Mwangi Stephen Mwangi	Waweru Thuo	To be shared equally
e)	Nakuru Municipality Block 3/513	Ephantus Mwangi Francis Mwangi	Kimori Muchiri	To be shared equally
f)	Subukia/ SubukiaBlock 1 (Tetu)/41	Ephantus Mwangi Francis Mwangi Elizabeth Mwangi Timothy Mwangi	Kimori Muchiri Wangari Mugambi	To be shared equally at 2.5 ha. Each and the balance of the land including the house to be held in trust by the Administrators



		Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	
g)	Livestock in Subukia/ subukia 1	To be shared subject to the individual input by the beneficiaries	
h)	Ndundori/ Lanet Block 5/1309 (New Gakoe)	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally
i)	Ndondori /Lanet Block 5/1311 (New Gakoe)	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally
j)	Vehicles 1) KBN 645U 2) KAK 603T	Ephantus Kimori Mwangi	To be sold and proceed shared out equally



		Francis Mwangi Elizabeth Mwangi Timothy Mwangi Samuel Mwangi Stephen Mwangi Daniel Thiga Mwangi	Muchiri Wangari Mugambi Waweru Thuo	
k)	Shares 1. NIC Bank Limited 2. Safaricom 3. Standard Chartered Bank 4. Housing Finance Company Account 5. Eveready East Africa Limited 6. KenGen Limited Account.	Ephantus Mwangi Francis Mwangi Elizabeth Mwangi Timothy Mwangi Samuel Mwangi Stephen Mwangi Daniel Thiga Mwangi	Kimori Muchiri Wangari Mugambi Waweru Thuo	To be sold and proceed shared out equally
l)	Money Held in: 1. Barclays No.xxxx Bank 2. Standard Chartered Bank Account No. 01-501-xxxx Account	Ephantus Mwangi Francis Mwangi Elizabeth Mwangi Timothy Mwangi Samuel Mwangi Stephen Mwangi Daniel Thiga Mwangi	Kimori Muchiri Wangari Mugambi Waweru Thuo	To be shared equally after All professional and legal fees are payed (estimate 1,605,000/-)



m)	CHINGA/ KAGONGO/423	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	1acre Portion to be held in trust by the Administrators
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- i. That Lion Hill Trading Centre/20 which we have been paying the land rates due but is occupied by a stranger to be equally distributed after the dispute is resolved.
 - ii. That, Elizabeth Wangari Mwangi should account for the details of Barclays Bank Account No.xxxx known only to her.
 - iii. That between Kiambogo/ Kiambogo Block2/17201 to 2/17184 and Kiambogo/ Kiambogo Block2/17200 to 2/17185 there is an unregistered parcel of land that need to be addressed and registered.
 - iv. That the valuers fee of Kshs.605,000/= be paid to the City Scape Valuers from the money held in Barclays Bank Account No.xxxx
 - v. That the livestock in Subukia/Subukia Block 1 (Tetu)/41 to be shared equally according to input by the beneficiaries.
 - vi. That the legal fees to Kamonjo Kiburi & Co.Advocates, estimated at Ksh.1,000,000/= and other charges to be paid from the money held in Barclays Bank Account No.xxxx
 - vii. That there be a refund of monies spent by Ephantus Kimori on the affairs of this estate from the money held in Barclays Bank Account No.xxxx.
18. In cross examination by Elizabeth, the witness expressed concerns, should all beneficiaries receive their entitlement, that they shall waste the same and that the holding of common properties in trust is intended to act as a safety net and that all beneficiaries shall have access. That the livestock belong to the witness which cows are unavailable for sell and that he does not know Alice Wamaitha and that lion hill trading centre block 2 property is sold.
19. Elizabeth Mary Wangari on her part gave evidence under oath, adopting her counter proposal as is contained in the Affidavit of proposed mode of distribution filed on the 26th May 2023 as hereunder



No.	Property Description	Beneficiary(es)	Share
a	Subukia/Subukia Block 1/41 Measuring 17.81 Ha Comprising of. 1 Fam House 3 bedroom	Elizabeth Wangari Mwangi	Whole Share
	Subukia/Subukia Block 1/41 3 Structures 40 cattle 100 dober sheep 26 mature trees Hash avocado sales Milk Sales	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi.	To be shared equally.
	Nakuru Municipality Block 3/513 Comprising of: 3 shops • 24 rooms Monthly rental income of about 160, 000/-.	Ephantus Kimori Mwangi Francis Muchiri Mwangi	To be shared equally
	Nakuru Municipality Block 2/759 Nakuru Municipality Block2/760 Nakuru Municipality Block2/761 Commercial Plots	Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi.	Whole Share Whole Share Whole Share Whole Share To be demarcated and shared out equally



	<p>Comprising of.:</p> <ul style="list-style-type: none"> • Shops 1 (3-bedroom house) • 2(2-bedroom houses) 1 (3-bedroom house) • 2 (2-bedroom houses) 1 main house (3 bedroom) • Undeveloped portion • Monthly rental income of about kshs.86, 000/- 	<p>Timothy Mwangi</p> <p>Elizabeth Mwangi</p> <p>Timothy Mwangi</p> <p>Samuel Mwangi</p> <p>Stephen Mwangi</p> <p>Daniel Thiga Mwangi</p> <p>Mugambi</p> <p>Wangari</p> <p>Mugambi</p> <p>Waweru</p> <p>Thuo</p>	
b)	<p>1) Kiambogo/ Kiambogo Block 2/17219</p> <p>2) Kiambogo/ Kiambogo Block 2/17218</p> <p>3) Kiambogo/ Kiambogo Block 2/17217</p> <p>4) Kiambogo/ Kiambogo Block 2/17216</p> <p>5) Kiambogo/ Kiambogo Block 2/17215</p> <p>6) Kiambogo/ Kiambogo Block 2/17214</p> <p>7) Kiambogo/ Kiambogo Block 2/17213</p> <p>8) Kiambogo/ Kiambogo Block 2/17212</p>	<p>Ephantus Mwangi</p> <p>Francis Mwangi</p> <p>Elizabeth Mwangi</p> <p>Timothy Mwangi</p> <p>Samuel Mwangi</p> <p>Stephen Mwangi</p> <p>Daniel Thiga Mwangi</p> <p>Kimori</p> <p>Muchiri</p> <p>Wangari</p> <p>Mugambi</p> <p>Waweru</p> <p>Thuo</p>	To be shared out Equally after balloting



- 9) Kiambogo/
Kiambogo Block
2/17211
- 10) Kiambogo/
Kiambogo Block
2/17153
- 11) Kiambogo/
Kiambogo Block
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- 12) Kiambogo/
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51) Kiambogo/ Kiambogo Block 2/17190		
52) Kiambogo/ Kiambogo Block 2/17195		
53) Kiambogo/ Kiambogo Block 2/17182		
Mwariki/ Mwariki Block 2/.....	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared out Equally
Lion Hill Trading Centre Block 2 (Pipeline)	Sold	Awaiting Transfer
Ndundori/ Lanet / Block 5/1309 (New Gakoe).	Timothy Mugambi Mwangi	Whole Share
Ndundori/ Lanet / Block 5/1311 (New Gakoe)	Elizabeth Wangari Mwangi	Whole Share
ChingalKagongol423 Comprising of. 1 House • Coffee Plantation Tea Plantation	Ephantus Kimori Mwangi Francis Muchiri Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi	To be shared equally



		Stephen Thuo Mwangi Daniel Thiga Mwangi	
	MOTOR VEHICLES Registration No. KBN 645 U Registration No. KAK 603 T	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be sold and proceeds shared equally To be sold and proceeds shared equally
c)	SHARES Kengen (812 No.) Eveready (200 No.) Housing Finance (2500 No.) NIC Bank (1952 No.) Standard Chartered Bank (1750 No.) Safaricom (500 No.)	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally
d)	MONEY HELD IN: Barclays Bank of Kenya (Now ABSA) b) Standard Chartered Bank- Account no.xxxx	Alice Wamaitha Ephantus Kimori Mwangi & Francis Muchiri Mwangi Timothy Mugambi Mwangi Elizabeth Wangari Mwangi	Kshs 100,000/- Funds to be shared out equally after deducting funds for transferring properties to beneficiaries



		Samuel V Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	
e)	Silent Night Investment Ltd.	Elizabeth Wangari Mwangi	To be deregistered
f)	Postal address box 801, Nakuru.	Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To co-own

- i. That, Francis Muchiri Mwangi and Ephantus Kimori Mwangi to give statement of account for proceeds collected and held from the sale of cattle, sheep and milk from the year 2012 to date comprised in SubukialSubukia Block 1/4 which form part of the estate.
 - ii. That, Francis Muchiri Mwangi and Ephantus Kimori Mwangi to give statement of account for rent collected from Nakuru Municipality Block 3/513, Nakuru Municipality Block 2/759, Nakuru Municipality Block2/760 and Nakuru Municipality Block2/761 from the year 2012 to date which form part of the estate.
 - iii. That, the proceeds held from sale of property of rent collected as in paragraph7 and 8 above by Francis Muchiri Mwangi and Ephantus Kimori Mwangi be released immediately and shared equally among the beneficiaries of the estate. Alternatively, the same be calculated to form part of their due portion in the estate.
 - iv. That, Costs and liabilities due and payable (if any) from the estate of the deceased will be settled through deceased's money held in the bank.
 - v. That, Francis Muchiri Mwangi to release title to Mwariki/Mwariki Block 2/... held by him.
 - vi. That, each party to bear its Own litigation fees and costs arising from estate distribution dispute.
20. The Entire testimony f Elizabeth Wangari Mwangi was one of an administrator that appears detached from the estate *only making counter demands.

Analysis and Disposition

21. The Estate of the deceased as per the Cityscape valuation report dated 12th July 2021 is valued at KShs 244, 490, 000/- and that this Court has utilised the valuation report to inform this decision.



22. Francis Muchiri Mwangi left a rare impression on the Court, with regard to his performance and discharge of his duty as a co-administrator, his accounting and record keeping appeared satisfactory to this Court and the plea by the three beneficiaries that there is need for an Audit was without justification at all and unless the beneficiaries identified specific flaws then the Court remains hamstrung to order such an Audit.
23. The Beneficiaries are at liberty to either conduct their own alternative financial Audit and if any judicial pronouncement is needed then they may move the Court appropriately by way of summons.
24. The Plea by Elizabeth Wangare, to subject the fifty-three (53) Kiambogo/Kiambogo Block 2 plots to a balloting process on the basis that Francis Muchiri Mwangi and Ephantus Kimori Mwangi have allocated themselves prime parcels is allowed but only to the extent of the 42 plots subject to the City Scape Valuation report.
25. This Court finds the Summons dated 31st August 2023 to have been introduced to delay, derail and disrupt conclusion of this succession. The arguments for provision shall adequately be addressed with the partial distribution.
26. The Court equally disagrees with Francis Muchiri Mwangi and Ephantus Kimori Mwangi in seeking to create a continuing trust over beneficiaries who are adults on the basis that should they receive their shares, they shall put the same to waste. The Court shall only ratify this if All beneficiaries consent. If parties cannot agree then the Court shall issue orders of disposal by sale and the proceeds thereof be equally shared.
27. This is an interstate succession subject to Section 38 of the *Law of Succession Act* which provides that;

“Where intestate has left a surviving child or children but no spouse Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
28. The Above provision accords the Administrators the responsibility of administering the estate, hire experts on behalf of the estate, settle debts and liabilities due to the estate then finally distribute the net estate. This statutory principle should answer the arguments advanced by the Applicants questioning the experts hired including the costs incurred thereof.
29. The deceased herein died intestate. Consequently, Part V of the Act should apply to the estate herein that shall be distributed strictly in accordance with the provisions of Part V of the Act. Section 38 of the *Law of Succession Act* applies, the assets ought to be distributed equally between all the children of the deceased, irrespective of their gender or marital status. Article 27 of *the Constitution* is relevant to the matter at hand. The daughters of the deceased do not have a lesser right, on account of their gender or marital statuses. They are children of the deceased, and they are at par with the sons of the deceased in the eyes of the law.
30. The distribution proposed is unequal. The law does allow beneficiaries or survivors to agree or consent to a distribution model which is not even. See Justus Thiora Kiugu & 4 others. vs. Joyce Nkatha Kiugu & another [2015] eKLR (Visram, Koome & Otieno-Odek, JJA).
31. However, where there is no consensus or agreement on distribution of the estate in manner that departs from what the law prescribes, then the Court will have no option but to resort to the provisions of the *Law of Succession Act* to resolve the matter. See in re Estate of Juma Shiro (Deceased) [2016] eKLR (Mwita, J) In re Estate of Jackson M’ukindia M’Arangu (Deceased) [2018] eKLR (Gikonyo, J) and



Justus Thiora Kiugu & 4 others vs. Joyce Nkatha Kiugu & another [2015] eKLR (Vistam, Koome and Otieno-Odek, JJA).

32. I shall strictly apply Section 38 of the [Law of Succession Act](#), and share out the assets equally between all the 7 children of the deceased.
33. The Court however notes that the following properties have not been subjected to distribution and the administrators shall be expected to present a summons for their distribution.
- i. Lion Hill Trading Centre Block 2 (Pipeline)
 - ii. Mwariki/Mwariki Block 2/.....
 - iii. Kiambogo/Kiambogo Block2/74 (36 undeclared plots)
34. No evidence of sale or purchase of any asset of the deceased in his lifetime has been laid or presented and on the same note the Administrators have not presented evidence of there being a creditor for cash in the name of Alice Wamaitha or a sale by the deceased to a Mr. James Mwangi in 2016. Such a sale in 2016 would be humanly impossible as the deceased had succumbed and died four years earlier than the alleged sale.
35. In Stephen Gitonga M'murithi –v- Faith Ngira Murithi the Court made the following observations “Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.
- “Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each house hold of a polygamous deceased. Applying the above principles..... it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the [Law of Succession Act](#) by discriminating against the married daughters of the deceased...”
36. The term “continuing trust” is used expressly in Sections 75A, 83(g) (i) and 84 of the [Law of Succession Act](#), but it is the provision in section 84 which clearly brings out what “continuing trust” means in the context of the [Law of Succession Act](#), that is to say the life interest enjoyed by a surviving spouse and the trust held on behalf of a minor. Section 84 states as follows: -
- “84 Personal representatives to act as trustees in certain cases. Where the administration of the estate of a deceased person involves any continuing trusts, whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall, unless other trustees have been appointed by a will for the purpose of the trust, be the trustees thereof: Provided that, where valid polygamous marriages of the deceased person have resulted in the creation of more than one house, the Court may at the time of confirmation of the grant, appoint separate trustees of the property passing to each or any of those houses as provided by section 40.”
37. Trust as used in [Law of Succession Act](#), particularly in Part VII, is limited to continuing trusts and other trusts in favour of beneficiaries or creditors. It is not used in the context that the Applicants are using it in the 1st Application. The applicants have not established any trust, and the administrator herein cannot be deemed to be a trustee on their behalf. The only way such a trust may safely be created is upon consent of all siblings to the deceased and in the absence of such a consent, then the Court may proceed to order the sale of such asset(s) and proceeds thereof be shared equally amongst all beneficiaries



38. The 2nd Application equally makes alternative proposals for distribution that lack any rationale, evidence or justification except the plea for balloting of the Kiambogo/ Kiambogo Block2 plots which I agree to, owing to 3 plots being of almost double the value the two plots shall be subject to lady luck.
39. On the same property Kiambogo/ Kiambogo Block 2/74 the Court notes the official search dated 21st January 2021 the entire title is still in the name of the deceased and that of All Seventy-Eight (78) subdivided plots only forty-two (42) plots have been presented for distribution- with the Administrators not clearly disclosing the remaining thirty-six (36) plots.
40. This Court Disallows the 2nd Application as it seeks to micromanage the estate which succession Courts ought to be reluctant to do.
41. The Court is equally persuaded that Ephantus Kimori Mwangi and Francis Muchiri Mwangi's common share in the main house in Nakuru Municipality Block 2/759 shall suffice and that, the two Administrators shall not be further entitled to a portion of the open space thereon. The Court duly notes the cumulative value vis a vis the number of beneficiaries as a guide.
42. The three Administrators are urged to work together on this homerun towards conclusion of this succession and that, all costs associated to the succession shall be charged on the estate.
43. This Court finds that, it shall be in the best interests of the estate of the deceased and All beneficiaries, to be distributed amongst the beneficiaries to forestall long running sibling rivalry disputes.
44. Accordingly, the Court partially allows the Summons for confirmation of grant (1st Application) dated 8th May 2023 and disallows the Summons dated 31st August 2023, (2nd Application) in its entirety on the following terms: -
 - i. The Grant of Letters of Administration interstate made on the 14th July 2014 is hereby confirmed.
 - ii. The Estate of the deceased shall be distributed as follows:



No.	Property Description	Beneficiary(es)	Share
a	<p>Nakuru Municipality Block 2/759</p> <p>which measures approximately 0.771 of an acre with;</p> <p>1) The main house, 2) 2(3)-bedroom house 3) 4(2)-bedroom house 4) The remaining space</p>		
	The main house	<p>Ephantus Kimori Mwangi</p> <p>Francis Muchiri Mwangi</p> <p>Elizabeth Wangari Mwangi</p> <p>Timothy Mugambi Mwangi</p> <p>Samuel Waweru Mwangi</p> <p>Stephen Thuo Mwangi</p> <p>Daniel Thiga Mwangi</p>	<p>To be registered in the joint names of the three Administrators in trust of All beneficiaries and be refurbished</p> <p>for use of the family home by all beneficiaries of the Estate.</p>
	2(3)-bedroom house	Elizabeth Wangari Mwangi	2(3)-bedroom house whose built up area 1,468 sq ft approximately Whole share
	4(2)-bedroom house	Timothy Mugambi Mwangi Daniel Thiga Mwangi	4(2)-bedroom house Size 2663sq ft approximately to be shared equally.
	The remaining space	Timothy Mugambi Mwangi Samuel Waweru Mwangi	To be sold and shared equally among the beneficiaries.



		Stephen Thuo Mwangi Daniel Thiga Mwangi	
b)	<u>Kiambogo/Kiambogo Block</u> 1. 2/17153 <u>2. 2/17154</u> 3. 2/17160 4. 2/17163 5. 2/17164 6. 2/17165 7. 2/17166 8. 2/17167 9. 2/17168 10. 2/17169 11. 2/17170 12. 2/17171 13. 2/17172 14. 2/17173 15. 2/17174 16. 2/17175 17. 2/17176 18. 2/17177 19. 2/17178 20. 2/17179 21. 2/17180 22. 2/17181 <u>23. 2/17182</u> 24. 2/17189 <u>25. 2/17190</u> <u>26. 2/17193</u> <u>27. 2/17195</u> <u>28. 2/17203</u> 29. 2/17205 30. 2/17206	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To Be Shared out equally after balloting the plots with all beneficiaries participating



	<p>31. 2/17207.</p> <p>32. 2/17208</p> <p>33. 2/17209</p> <p>34. 2/17210</p> <p>35. 2/17212</p> <p>36. 2/17213</p> <p>37. 2/17214</p> <p>38. 2/17215</p> <p>39. 2/17216</p> <p>40. 2/17217</p> <p>41. 2/17218</p> <p>42. 2/17219.</p>			
c)	Nakuru Municipality block 2/760.	Ephantus Mwangi Francis Mwangi	Kimori Muchiri	To be shared equally
d)	Nakuru Municipality block 2/761	Samuel Mwangi Stephen Thuo Mwangi	Waweru	To be shared equally
e)	Nakuru Municipality Block 3/513	Ephantus Mwangi Francis Mwangi	Kimori Muchiri	To be shared equally
f)	Subukia/Subukia Block 1 (Tetu)/41	Ephantus Mwangi Francis Mwangi Elizabeth Mwangi Timothy Mwangi Samuel Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	Kimori Muchiri Wangari Mugambi Waweru	To be shared equally at 2.5 ha. Each and the balance of the land including the house to be registered in the names of All Beneficiaries



g)	Livestock in Subukia/ Subukia 1	To be shared subject to the individual input by the beneficiaries	
h)	Ndundori/ Lanet Block 5/1309 (New Gakoe)	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally
i)	Ndondori /Lanet Block 5/1311 (New Gakoe)	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally
j)	Vehicles 1) KBN 645U 2) KAK 603T	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi	To be sold and proceed shared out equally



		Daniel Thiga Mwangi	
k)	Shares 1. NIC Bank Limited 2. Safaricom 3. Standard Chartered Bank 4. Housing Finance Company Account 5. Eveready East Africa Limited 6. KenGen Limited Account.	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be sold and proceed shared out equally
l)	Money Held in: 1. Barclays No.XXXX Bank 2. Standard Chartered Bank Account No. XXXXX Account	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi Daniel Thiga Mwangi	To be shared equally after All professional and legal fees are payed (estimate 1,605,000/-)
m)	CHINGA/ KAGONGO/423	Ephantus Kimori Mwangi Francis Muchiri Mwangi Elizabeth Wangari Mwangi Timothy Mugambi Mwangi Samuel Waweru Mwangi Stephen Thuo Mwangi	To be registered in the joint names of the three Administrators in trust of All beneficiaries



- iii. The Summons dated 31st August 2023 is without merit and is accordingly dismissed.
- iv. The Executors shall cause a consent to be executed by All beneficiaries within the next Sixty (60) Days, for the Administrators being registered in trust for All Beneficiaries;
 - a. in the Main House in Nakuru Municipality Block 2/759; and
 - b. in Chinga/kagongo/423.
- v. Failure to consent in (iv) above shall lead to an order for sale with the proceeds being shared out equally amongst the seven beneficiaries.
- vi. That, the Administrators shall present to Court within the next Sixty (60) Days, the following Assets to be equally distributed to All beneficiaries.
 - a. Kiambogo/ Kiambogo Block2/74 remaining thirty-six (36) plots
 - b. Lion Hill Trading Centre Block 2 (Pipeline)
 - c. Mwariki/Mwariki Block 2/.....
- vii. That, Elizabeth Wangari Mwangi shall provide to the Court within the next Sixty (60) Days, evidence of any details of Barclays Bank Account No.4625104 and funds thereon.
- viii. That, Elizabeth Wangari Mwangi shall provide to the Court within the next Sixty (60) Days, evidence of of there being a “creditor for cash” in the name of Alice Wamaitha.
- ix. That, the Administrators should provide to the Court evidence of any property of the deceased allegedly sold, within the next sixty (60) days.
- x. The Administrators shall undertake the distribution of properties of the estate to the beneficiaries to conclude within the next six months from today subject to the remaining properties aforesaid.
- xi. This being a family matter, parties shall bear their respective costs.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 15 TH DAY OF FEBRUARY, 2024.

S. MOHOCHI

JUDGE

