



REPUBLIC OF KENYA



**In re Estate of Joseph Kamandi (Deceased) (Succession Cause  
430 of 2014) [2024] KEHC 3676 (KLR) (3 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3676 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 430 OF 2014**

**J WAKIAGA, J**

**APRIL 3, 2024**

**IN THE MATTER OF THE ESTATE OF JOSEPH KAMANDI (DECEASED)**

**BETWEEN**

**TERESIA WANJIKU WAITHAKA ..... ADMINISTRATOR**

**AND**

**PAUL MBUGIRI KAMANDI ..... PROTESTOR**

**JUDGMENT**

1. Gabriel Wanjohi Kamandi applied for grant of letters of administration in respect of the estate herein and named the following as the beneficiaries thereof;
  - a. Gabriel Wanjohi Kamandi ..... son
  - b. Teresia Wanjiku Waithaka ..... Daughter in law
  - c. Paul Mbugiri Kamandi..... Son
  - d. Francis Mukiria Kamandi ..... Son
  - e. Mary Mugechi Kamandi..... Daughter
  - f. Luka Mwangi Kamandi ..... Son
2. The estate of the deceased comprised of two parcels of land valued at Kshs. 2,000,000 namely:
  - a. LOC 11/Maragia /358
  - b. LOC11/Gakandu / 489



3. The said grant was issued on 24<sup>th</sup> October 2014. On 22<sup>nd</sup> November 2017 Teresia Wanjiku Waithaka purported to apply for confirmation of the grant of the letters herein and proposed the mode of distribution as follows:
  - a. LOC.11 /Maragi/358 to be shared equally amongst the named beneficiary.
  - b. LOC.11/Gakandu /489 to be shared equally amongst the beneficiary.
4. On 26<sup>th</sup> May 2021, the Protestor and the Applicant applied for substitution of the administrator who had died before administering the estate and a joint certificate issued on 20<sup>th</sup> September 2022
5. On the 23<sup>rd</sup> September 2022, the Protestor filed an affidavit of protest and stated that the deceased was survived by the following;
  - a. Rosemary Mukami Muriithi .....Daughter in law
  - b. Teresia Wanjiku Kagunda ..... Daughter in law
  - c. Paul Mbigiri Joseph Kamandi.....Son
  - d. Jane Wambui .....Daughter in law
  - e. Leah Muthoni Mbugua..... Daughter in law
6. It was contended that the four sons of the deceased were represented by their widows and that Leah Muthoni was not included by the Applicant yet she was a widow of one Octavian Francis Mukiria deceased and that the Applicant filed the application herein without his consent and omitted one survivor.
7. For the purposes of this judgement it is of note that the Protestor did not make any proposal on his mode of distribution.
8. Directions were given that the protest be heard by way of oral evidence and on behalf of the Protestor, he testified that the Applicant wanted them to chase away the wife of one of the sons of the deceased by the name Leah. He stated that the parcels of land should be shared equally into four since their sister had given up her share. He stated further that the Applicant's husband was the first born and that the land he had been given by the deceased he sold, while Mukamis husband had been educated through the proceeds of land which the deceased had sold.
9. In cross examination he stated that Leah was married to his younger brother and that though he was staying at Nairobi, he was in touch with what was happening at home and that he had the chief's letter to confirm that the said Leah was a beneficiary, he contended that it was the Applicant who had refused to attend the meeting at the chiefs and that Leah had been there since 2018.
10. PW2 Leah Muthoni Mbugua stated that she was married to the brother of the Protestor for thirty years and that her son was buried on the same land as her husband and that the issue of her having another husband did not arise. In cross examination she stated that her children were at home though she did not get any child with the son of the deceased he adopted her children.
11. PW3 Joseph Irungu stated that Leah was left on the land by her husband at the time of his death and therefore she ought to get her husband's portion, he supported the Protestor that the land should be divided amongst the five. In cross examination he confirmed that she lived with her husband for twenty years.



12. The Respondent Teresia Wanjiku testified that after the death of Mukuri, the clan sat down and said that since Leah had another husband, she should not take the share of the deceased son and it is on that account that the chief gave her introductory letter in which he noted that Mukiri died without a wife, his other wife having died, who was later traced and confirmed that she was ok where she had been remarried.
13. It was her evidence that when Leah's child died, they looked for her husband who wanted to burry his child on his land but Leah decided to burry him at the deceased land. In cross examination by Leah, she stated that Leah did not come with her children from the previous marriage but they used to visit her, she stated that no dowry was ever paid for her since she had been married and that during the burial the chief said that she had been disowned by the family.
14. Cross examined by the Protestor, she confirmed that Leah's husband had a house on No 489 as well as the Protestor and she denied intending to sell the portion that should go to Leah, though she confirmed having sold her husband's portion.
15. DW2 Maina Mbuguri stated that the deceased had six children but only five were alive. He stated that the clan sat down after the death of the husband of Leah and asked her for the death certificate and birth certificates for her children but she refused to give them out, they then decided not to give her land since she had another husband, who came to the clan and confirmed that since she had his children they should not give her land, he asked them to demolish her house but the clan decided to await the Courts' determination.
16. In cross examination he stated that he did not know where Leah met the deceased and that though she was married to the deceased, he did not follow the customs and that she left her children with their father when she moved in with the deceased.
17. DW3 James Mwangi stated that the husband of Leah Muthoni, Octavia died in the year 2019 and that the land should be given Kagunda, Gabriel Wanjohi, Paul Mukiri and Luka Mwangi. He stated further that Francis's land should be given to him and that there was a time Paul had taken the Petitioner to the Chief's office for cutting trees and that the Husband of Leah came when her child had died but was not told the burial date and when he came with the letter from the Chief for the body, he found that the burial had taken place.
18. It was his evidence that the Protestor did not stay in the suit property and was not interested in the affairs of the home, and that it was only the Applicant and Rosemary who followed up the issue of Succession. He contended that the second Protestor, had not lived in the land for 30 years and that she did not cooperate with the clan by producing her ID card and those of her children, so the clan decided that the Succession be completed before she is chased away. He stated that the deceased had sold land to finance the education of the Protestor and the Administrator and that the Petitioner had sold land which was given to her husband by his grandmother.
19. In cross examination he stated that he did not know when Leah was married and that they did not visit her home. He confirmed that her previous husband came home when her child had died and found when he had been buried.

### **Analysis And Determination**

20. In this matter, the issue in contention, is the status of Leah Muthoni Mbugua named herein by the Protestor as a beneficiary of the estate as a wife of one Octavian Francis Mukiria a deceased son of the deceased whose estate is the subject of this dispute.



21. The Court summoned the Area chief to assist the Court but the same opted to do a letter to Court which was produced as Protestor exhibit 1 in which he named the children of the deceased as follows:-
  - a. Michael Kagunda ..... Deceased son
  - b. Gabriel Wanjohi ..... Deceased son
  - c. Paul Mbugiri ..... Son (Protestor)
  - d. Francis Mukiria ..... Deceased son (Leah Muthoni's)
  - e. Mary Mugechi .....Daughter
  - f. Luka Mwangi .....Deceased son
22. He stated that the deceased had given his two sons namely Kagunda and Wanjohi one acre each in 656 and 491 respectively and that the rest of the land should be divided equally to the rest of the children with LOC 11/Maragia /489 being dived equally amongst the three sons.
13. At the centre of the dispute is the status of Leah Muthoni who from the evidence on record had been previously married to someone else before being married to Francis Mukuria with who they did not get children. Whereas the Protestor's case is that she was for all intent and purposes the wife of his brother and is entitled to his share, the Administrator and the clan are of the view that, since she did not have children with the deceased and since her previous husband was alive, she is not entitled to a share.
24. To enable the Court, decide on the issue herein, it is clear from the evidence on record that whereas she had been previously married and that her said husband retained the custody of the children of the said marriage, she moved in with Francis Mukuria a son of the deceased and lived with him for a period of about thirty years and that one of her children was buried on the disputed land.
25. Both the Protestor and the Administrator agree that the suit property be divided equally amongst the children of the deceased save that the point of departure being the interest of Francis Mukuria, which the Protestor wants to be given to Leah Muthoni. Does the fact that she had been previously married disqualify her to take over the interest of her husband? As at the time of the determination of this matter, there was no evidence placed before the Court to show that she had moved out of the estate and or been married to someone else including going back to her first husband and as such I find and hold that she is entitled to inherit the share that rightfully belong to Francis Mukiria.
26. It is not for the clan to decide who a wife is and would therefore agree with the Protestor and order that the two property herein be divided equally to all the children of the deceased and where the same are deceased, the shares to be taken by the wife or husband respectively.
27. Since there was evidence produced before me, but not proven that the Protestor had brought up the said Leah so as to take her interest and that the Administrator on the other hand did not want Leah to inherit so as to sell her share, and being alive to the fact that Leah has no children living on the suit land, I direct that she shall have a life interest on the property and upon her demise her interest shall be shared equally amongst the five other beneficiary named herein by both the Protestor and the Administrator.
28. In the final analysis the grant herein is confirmed and the property of the deceased shall be shared equally as herein:
  - a. LOC.11/Maragi/358 to Teresia Wanjiku Waithaka, Paul Mbugua Kamanda, Rosemary Mukami Murithii, Jane Wambui Kiarie and Leah Muthoni Mbugua (Life interest)



- b. LOC.11/Gakandu/489 to Teresia Wanjiku Waithaka, Paul Mbugiri Kamandi, Rosemary Mukami Murithi, Jane Wambui Kiarie and Leah Muthoni Mbugua (life interest).

29. This being a family dispute, each party shall bear their own cost and it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 3<sup>RD</sup> DAY OF APRIL, 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of:

Teresia Wanjiku Waithaka – Administrator

Paul Mbugiri Kamandi – Protestor

Quinteen - Court Assistant

