



REPUBLIC OF KENYA



In re Estate of Naomi Waithera Kiarie (Deceased) (Succession Cause 216 of 2010) [2023] KEHC 18543 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 216 OF 2010
RN NYAKUNDI, J
JUNE 15, 2023
IN THE MATTER OF THE ESTATE OF THE LATE NAOMI WAITHERA KIARIE

IN THE MATTER OF
NASON MWANGI KIARIE PETITIONER**

RULING

1. What is Pending before this court is the summons for confirmation of grant dated August 28, 2021. The deceased was survived by the following dependants;
 1. Nason Mwangi Kiarie
 2. Peter Kariuki Kiarie
 3. Joseph Karoke Kiarie
 4. Stephen Kamau Kiarie
 5. Abraham Karanja Kiarie
 6. Lilian Njoki
 7. Miriam Muthoni
2. The petitioner filed an affidavit on April 14, 2023 with the purpose of informing the court of all the properties that formed the estate of the deceased. From the petition for grant of letters of administration of the estate of the deceased, and the contents of the affidavit, the following properties comprise the estate of the deceased;
 1. Kapsaret/Kapsaret/BLOCK 1 (Yamumbi) 584 – 1.6 HA
 2. Kapsaret/Kapsaret/Block 1 (Yamumbi) 581 – 0.7 Ha
 3. Bahati/kabatini/block 1/11004 – 0.101 HA



4. Nyandarua/ Kirima Settlement Scheme/1318 – 3.0 ACRES
3. The petitioner deposed that they had agreed to share the parcel at Nyandarua and as such he had not included it initially. He proposed that the properties be distributed as follows;

Nyandarua/ Kirima Settlement Scheme/1318 – 3.0 ACRES

1. Nason Mwangi Kiarie Plot No.1
2. Joseph Gathuri Kinyanjui Plot No.2
3. Daniel Karangathi Kiarie Plot No.3
4. Kiarie Plot No.4
5. Kiarie Plot No.5
6. Kamau Kiarie Plot No.6
7. Karanja Kiarie Plot No.7
8. Paul Charagu Kiarie Plot No.8
9. Peter Maringu Kiarie Plot No.9

Bahati/Kabatini/Block 1/11004 – 0.101 HA

1. Lilian Njoki Kiarie Plot No.1
2. Ann Mukama Kiarie Plot No.2
3. Mary Muthoni Kiarie Plot No.3

4. The petitioner proposed that his portion of inheritance being Bahati/Kabatini/Block 1/11004 and he be allowed to have the remaining properties as follows;

1. Kapsaret/Kapsaret/Block 1 (Yamumbi) 584 – 1.6 HA
2. Kapsaret/Block 1 (Yamumbi) 581 – 0.7 HA

Determination

5. The applicable law: The provisions to Section 71 (2) of the Act and Rule (4) expressly states as follows: “ Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled, and when confirmed the grant shall specify all such persons and their respective shares. Also where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.”
6. Further in Section 35 where intestate has left one surviving spouse and child or children
 1. Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to :
 - a. The personal and household effects of the deceased absolutely and



- b. A life interest in the whole residue of the net intestate estate: provided that if surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
2. A surviving spouse shall, during the continuation of the life interest provided by subsection (1) have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
3. Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what orders, shall have regard to:
 - a. The nature and amount of deceased's property
 - b. Any past, present or future capital or income from any source of the applicant and of the surviving spouse
 - c. The existing and future means and needs of the applicant and the surviving spouse
 - d. Whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will
 - e. The conduct of the applicant in relation to the deceased and to the surviving spouse
 - f. The situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any) and
 - g. The general circumstances of the case including the surviving spouses, reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section
4. Subject to the provisions of section 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.
7. 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 Section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
8. Upon considering the summons and the affidavits thereto, I hereby confirm the grant and direct that the estate shall be distributed as follows;

Nyandarua/ Kirima Settlement Scheme/1318 – 3.0 Acres



1. Nason Mwangi Kiarie Plot No.1
2. Joseph Gathuri Kinyanjui Plot No.2
3. Daniel Karangathi Kiarie Plot No.3
4. Njagi Kiarie Plot No.4
5. Karoili Kiarie Plot No.5
6. Kamau Kiarie Plot No.6
7. Karanja Kiarie Plot No.7
8. Paul Charagu Kiarie Plot No.8
9. Peter Maringu Kiarie Plot No.9
Bahati/Kabatini/Block 1/11004 – 0.101 HA
1. Lilian Njoki Kiarie Plot No.1
2. Ann Mukama Kiarie Plot No.2
3. Mary Muthoni Kiarie Plot No.3
Kapsaret/Kapsaret Block 1 (Yamumbi) 584 – 1.6 HA
1. Nason Mwangi Kiarie Whole
Kapsaret/Kapsaret Block 1 (Yamumbi) 581 – 0.7 HA
1. Nason Mwangi Kiarie Whole
9. The administrator to expedite the distribution and render accounts to the court pursuant to Section 83(g) & (h) of the *Succession Act* which provides as follows: “ That within six months from the date of confirmation of the grant, or such longer periods as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration, to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, 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.
10. The upshot of it the Deputy Registrar is hereby instructed to issue a certificate of confirmation of grant to be endorsed by this court to facilitate transmission of the estate to the beneficiaries survived of the deceased.

No orders as to costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF JUNE 2023

In the Presence of:

.....

R. NYAKUNDI

JUDGE

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