



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**SUCCESSION CAUSE NO. 163 OF 2016**

**IN THE MATTER OF THE ESTATE OF THE LATE NJUGUNA JOSEPH KAMAU (DECEASED)**

**CATHERINE MUGURE NJUGUNA.....1<sup>ST</sup> ADMINISTRATOR**

**VERSUS**

**ALICE WANJIKU NJUGUNA.....2<sup>ND</sup> ADMINISTRATOR/ PROTESTOR.**

**RULING**

1. The deceased herein died on 26<sup>th</sup> April 2014 and letters of administration intestate were issued to the petitioner and the protestor jointly on **30<sup>th</sup> November 2016**. They thereafter applied for the confirmation of the grant vide their application dated 14<sup>th</sup> June 2017.
2. In the said application the three properties left behind by the deceased were parcels numbers **DUNDORI /MIRORENI BLOCK 1/461 (CURA), DUNDORI/MIRORENI BLOCK 1/461(CURA) AND MUGUGA /KANYARIRI/T.418**.
3. The beneficiaries mentioned in the supporting affidavits are not disputed. What is in dispute is the mode of distribution of parcel number 461 as the rest have already been agreed as per the consent entered by the parties on **8<sup>th</sup> December 2020**.
4. The deceased had two houses or wives for that matter. The petitioner is the surviving wife while the protestor is from the other house. The protestor objects to the manner in which the said parcel is to be shared out.
5. In the rival affidavits on records it emerged that the deceased had already set out the manner in which the said parcel was to be divided among his sons as well as the surviving wife. There was already a sketch plan drawn by the surveyor as directed by the deceased which unfortunately did not reach the ultimate conclusion as he passed away.
6. After a long attempted mediation, the parties did not reach an amicable solution which necessitated the court to make this ruling. Parties were then advised to file their rival submissions. It is only the petitioner who did so. The protestor wished to rely on her affidavit on record.
7. The court has perused both the affidavit of the protestor and the submissions by the petitioner. She said that her household were not aware of the survey done by the deceased and that they were not consulted. She said that the contentious parcel be subdivided equally among the sons from the two houses. Alternatively, the same be subdivided equally among the two houses.
8. The petitioner on her part contents that the wishes of the deceased be complied with. That the subdivision was fair since all the sons from both houses each got equal share. The only contention is that her share was slightly big as the deceased had retained his portion which she directed that in the event of his death her wife would take it and she could do whatever pleases.
9. The petitioner went on to suggest that she was ready to surrender her portion as per paragraphs 6 and 7 of her affidavit dated 2<sup>nd</sup> July 2021.
10. Having stated so, the issue basically is what to do with the portion which the deceased had given to himself after carrying out the subdivision. It is not true as deponed by the objector that the deceased had not subdivided the aforesaid parcel of land. The sketch maps drawn by the surveyor which is already contained in the rival affidavits are clear. The deceased had given the sons equal shares. None got a bigger share than the other.
11. On the other hand, the widow had also gotten her share and the contentious portion is that left behind by the deceased. Who should have it.?
12. The wishes of the deceased as rightly submitted by the petitioner ought to be respected. I find that the deceased wanted all the sons from

both houses get equal share. He never discriminated. This court shall not abrogate his wishes.

13. Section 40(1) of the Law of Succession Act states as hereunder;

***“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.”(emphasis mine) .***

14. Clearly the law provided that the surviving widow shall get an additional unit in addition to her entitlement. In the case at hand the petitioner is expected to get an extra portion or unit apart from what she has already been provided for.

15. In view of the above observations I find the direction given by the deceased to be generally in tandem with the law. He desired that his wife should get extra portion from the children.

16. For the foregoing reasons the court does not find the proposal by the protestor plausible. Already the sons are aware of their respective portions. None of the houses is disadvantaged. The court in the premises agrees with the unselfish mode of distribution suggested by the petitioner as hereunder.

17. The said parcel of land **DUNDORI/MIRORENI BLOCK 1/461 (CURA)** be shared out among the beneficiaries as follows;

- (a) Catherine Mugure Njuguna .... widow.... 0.0971 ha .....plot no3
- (b) Njoroge Njuguna.....son..... 0. 0529 ha.....plot no 1
- (c) Munyua Njuguna .....son.....0.0529 ha.....plot no.2
- (d) Kamau David Njuguna.....son .....0.0529 ha.....plot no.4
- (e) Joseph Kamau Njuguna.....son....0.0529 ha.....plot no.5
- (f) James Njoroge Njuguna .....son.....0.0529 ha.....plot no. 6
- (g) Emmanuel Mbugua Njuguna.....son.....0.0529 ha.....plot no. 7.

18. The rest of the properties shared out shall remain as they are.

19. Being a family matter each party shall meet their own costs.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 4TH DAY OF NOVEMBER 2021.**

**H. K. CHEMITEI**

**JUDGE**