



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 941 OF 2000**  
**IN THE MATTER OF THE ESTATE OF MONICAH WAMBUI NGUTHIRU(DECEASED)**

**RULING**

1. The first Petitioner/Administrator JOHN WAWERU NGUTHIRU filed a Summons for Confirmation dated 16/1/2017 which were opposed by the 2<sup>nd</sup> Administrator PETER NDUNGU NGUTHIRU who filed an Affidavit of Protest dated 31.1.2017 filed in Court on 2.2.2017.
2. The genesis of the dispute is a portion of land measuring 0.5 acres which the deceased gave the 1<sup>st</sup> Administrator JOHN WAWERU NGUTHIRU during her life time. This happened after the 2<sup>nd</sup> Administrator PETER NDUNGU NGUTHIRU had assaulted the 1<sup>st</sup> administrator.
3. The 1<sup>st</sup> Administrator who testified as Pw2 called two witnesses – MARY WOKI (Pw1) and DAVID KARUKU (Pw3) while the 2<sup>nd</sup> administrator PETER NDUNGU NGUTHIRU (RW 1) called three witnesses – PETER NJENGA WANJIRU (RW 2), CATHERINE WAMBUI GITAU (RW 3) and FATHER MATHIAS JOSEPH KAMAU (RW4).
4. I find there is evidence that the deceased sold her share of 0.5 acres during her life time. There is also evidence that she distributed ½ acre to each of her children where they are settled to date.
5. The issues for determination in this Ruling are as follows:
  - (i) **Whether the deceased had given 0.5 acres to the 1<sup>st</sup> Administrator as a gift *inter vivos*.**
  - (ii) **Whether the subdivision which was done by the Deceased before her demise was valid.**
  - (iii) **Whether the estate should be re-distributed.**
  - (iv) **Who pays the costs of this Application?**
6. On the issue as to whether the deceased had gifted the 1<sup>st</sup> Administrator with 0.5 acres *inter vivos* , I find that the same is provided for under Section 42 of the Law of Succession Act as follows;-

42. Previous benefits to be brought into account 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 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

7. In her decision in **Re Estate of The Late GedionManthiNzioka (Deceased) [2015]eKLR** relied on by the petitioners, Nyamweya J stated as follows:

*“In law, gifts are of two types. There are the gifts made between living persons (gifts *inter vivos*), and gifts made in contemplation of death (gifts *mortis causa*). Section 31 of the Law of Succession Act provides as follows with respect to gifts made in contemplation of death:*

*...For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”*

8. I find that there is evidence that the 1<sup>st</sup> Administrator JOHN WAWERU NGUTHIRU was assaulted by the 2<sup>nd</sup> Administrator PETER NDUNGU NGUTHIRU and later was arrested together with his sons.
9. The witnesses testified that the reason for the assault was that the 2<sup>nd</sup> Administrator PETER NDUNGU NGUTHIRU had sold a parcel of land Plot No. DAGORETTI/MUTUINI/T.90 to one SAMUEL NGUKU but he refused to give his brothers their rightful shares of the proceeds of Ksh.32,000 from the sale.
10. There is evidence that the deceased offered the 1<sup>st</sup> Administrator JOHN WAWERU NGUTHIRU her share of 0.5 acres as compensation for the assault and the 1<sup>st</sup> Administrator withdrew the case and the matter was settled.
11. There is evidence that the deceased did all that was required to be done to hand over possession of her share to the buyers during her life time.
12. I find that the 0.5 acres qualify to be a gift intervivos and the same is not part of the estate but the same has to be taken into consideration in the subdivision of the Estate.
13. In this particular case, there is evidence that the deceased went ahead and distributed the remaining parcel into ½ acres for each of the beneficiaries where they are settled.
14. I find that her intention was made clear that the 0.5 acres was compensation and therefore it did not form part of the estate.
15. I find that the 2<sup>nd</sup> Administrator PETER NDUNGU NGUTHIRU has no justification for demanding a bigger share of the estate.
16. I find that the proposal by the 1<sup>st</sup> administrator is fair and just in view of the circumstances of this case.
17. I accordingly overrule the objection and allow the summons for confirmation dated 16.1.2017 in the following terms:

**(i) THAT the grant of letters of administration made to JOHN WAWERU NGUTHIRU and PETER NDUNGU NGUTHIRU on 5.7.2010 be and is hereby confirmed.**

**(ii) THAT the Properties known as Title No. DAGORETTI/MUTUINI/94 be shared as follows:**

**(a) The Estate of KarukuNguthru – 0.6 Acres**

**(b) Peter Ndungunguthiru – 0.75 Acres**

**(c) The Estate of WanjiruNguthiru - 0.6 Acres**

**(d) John WaweruNguthiru – 0.75 Acres**

**(e) Virgin Mary or Orthodox Church Mutuini – 0.5 acres**

**(iii) THAT each of the Beneficiaries should settle according to the demarcation by the deceased.**

**(iv) THAT this being a family matter, each party to bear its own costs of this suit.**

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2020**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**