



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CASE NO 6 OF 2017

EVANSON MBUGUA THONG'OTE(DECEASED)

JUDGMENT

(Incorporating Corrections to paragraphs 15 and 16 vide order of 22.06.2020)

1. Before me is the Summons filed on 22nd October, 2018, seeking Confirmation of Grant of letters of administration to the estate of Evanson Mbugua Thong'ote(Deceased). This is pursuant to the order of the Court of Appeal issued on 24th November, 2017 in its judgment on an appeal arising from this cause. The grant herein had been issued to GRACE NJERI MBUGUA and HANNAH WANJIKU MBUGUA on 29th September, 2004 and amended on 25th November, 2016. The Summons for confirmation is supported by the affidavit of Grace Njeri Mbugua.

2. The court directed that the beneficiaries herein to put in affidavits proposing their preferred mode of distribution followed by written submissions.

3. Grace Njeri Mbugua relied on her affidavit in support of the Summons for Confirmation of grant. Thereto she attached her schedule of distribution. She identified sixteen beneficiaries namely;- Grace Njeri Mbugua, Hannah Wanjiku Mbugua, Naomi Wairimu Mbugua, Elizabeth Wangari Mwangi, Nelson Njuguna Mbugua, George Gitau Mbugua Joseph Karanja Mbugua, Lawrence Njuguna Mbugua, James Mungai Mbugua Evans, James Mungai Mbugua, Lucy Wanjiku Mbugua alias Karumba, Paul Kamau Mbugua, Moses Kabucho Mbugua, Nicholas Ndung'u Mbugua, Wanjiru Matheri and Teresiah Nyokabi Mbugua alias Njeru.

4. She also identified the shares of all persons beneficially entitled to the estate which were ascertained as follows: -

1. MEGA FARM LR NO. 12368 NORTH WEST OF KIKUYU STATION-10 ACRES.....TO BE SHARED EQUALLY
2. NDEIYA/MAKUTANO 833-6 ACRES.....TO BE SHARED EQUALLY
3. RARE FARM-14 ACRES.....TO BE SHARED EQUALLY
4. KIJABE/KIJABE 1/818-5 ACRES.....TO BE SHARED EQUALLY
5. ELEMENTAITA/OLJORAI LR NO. 10242/14- 10 ACRES...TO BE SHARED EQUALLY
6. NYANDARUA/GATIMU/GATHANJE B/1/306- 6 ACRES...TO BE SHARED EQUALLY
7. NDERI SHOP PLOT...TO BE SOLD AND PROCEEDS SHARED EQUALLY
8. 383 SHARES WITH MUGUGA INVESTMENTS CO. LIMITED.....TO BE SHARED EQUALLY
9. CASH IN KENYA COMMERCIAL BANK, KIKUYU BRANCH A/C NO. 100214406.....TO CATER FOR THE COST OF ASSET DISTRIBUTION AND THE BALANCE SHARED EQUALLY
10. SHARES IN MUGUGA PYRETHRUM BOARD & KIAMBU DAIRY BOARD BANK ACCOUNTS....TO BE SOLD AND PROCEEDS SHARED EQUALLY
11. SHARES WITH KENYA COMMERCIAL BANK.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
12. GATINA FARM SHARES & BENEFITS.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
13. SHARES WITH KENYA AIRWAYS LIMITED.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
14. SHARES WITH STANDARD CHARTERED BANK.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
15. SHARES WITH KENYA BREWERIES LIMITED.....TO BE SOLD AND PROCEEDS SHARED EQUALLY

6. Hannah Wanjiku Thong'ote filed her affidavit in respect of her proposal for distribution of the deceased's estate as follows;-

ASSET

NAMES

**SHARE OF HEIRS**

**1 . LR NO 12368 SITUATED IN NORTHWEST OF KIKUYU STATION (4.047HA)10 ACRES**

a.NJUGUNA MBUGUA

b.MUNGAI MBUGUA

c. KAMAU MBUGUA

1.349 HA

1.349 HA

1.349 HA.

**2 . L.R NO 10242/14 IN OLJORO OROK SOUTH OF NAKURU (3.962HA) (Elementaita/OlJORai)**

a. NDUNGU MBUGUA

b. WANJIKU MBUGUA

1.981 HA

1.981 HA

**3 . NDEIYA / MAKUTANO /1818**

a. NJUGUNA MBUGUA

b. MUNGAI MBUGUA

c. KAMAU MBUGUA

**TO BE SHARED EQUALLY**

**4 . KIJABE/KIJABE BLOCK 1/1818**

a. MUNGAI MBUGUA

**ABSOLUTELY**

**5 . PROPERTY IN MAI MAHIU ( RARE FARM) ACRES)**

a.KARANJA MBUGUA

b.KABUCHO MBUGUA

7 ACRES

7 ACRES

**6 . PROPERTY IN NYAHURURU(Nyandarua/Gatimu/Gathanje)**

**CONTAINED IN A SHARE WITH NJUNO LIMITED NJUNU B1 (18 ACRES)**

a. NJUGUNA MBUGUA

b. KAMAU MBUGUA

9 ACRES

9 ACRES

**7 . PLOT NO 6 NDERI B**

a. MUNGAI MBUGUA

**ABSOLUTELY**

**8 . TITLE 107 CERTIFICATE NO.07 WITH MUGUGA INVESTMENT COMPANY LIMITED 'B'**

- a. GITAU MBUGUA
- b. MUNGAI MBUGUA
- TO BE DIVIDED IN EQUAL SHARES

**9. DIVIDEND IN SHARES IN THE FOLLOWING COMPANIES:**

- i) SHARES WITH KENYA COMMERCIAL BANK CERTIFICATE NO.00065625 AND ACCOUNT NO. 000067127
- ii) KENYA AIRWAYS SHARES CERTIFICATE NO 62215
- iii) SHARES WITH STANDARD CHARTERED BANK LIMITED SHARE CERTIFICATE NO. 103101 & MEMBERSHIP NO. 00018058
- iv) SHARES WITH KENYA BREWERIES ACCOUNT NO. 5025018
- a. GITAU MBUGUA
- b. NJUGUNA MBUGUA
- c. MUNGAI MBUGUA
- d. KAMAU MBUGUA

EQUALLY

**10 . MONEY HELD IN KENYA COMMERCIAL BANK**

- a. GITAU MBUGUA
- b. NJUGUNA MBUGUA
- c. MUNGAI MBUGUA
- d. KAMAU MBUGUA
- TO BE DIVIDED IN EQUAL SHARES

7. Subsequently, Grace Njeri Mbugua submitted through her counsel that the deceased's property should be divided between the two houses of the wives of the deceased according to the number of children in each house plus the two widows as proposed by her, and that the deceased's property be shared equally among all the sixteen beneficiaries. Counsel asserted that the Applicant's mode of distribution is fair. The Objector's proposed mode of distribution was attacked as lacking a basis and rationale, confusing and contrary to the judgment of the Court of Appeal.

8. Hannah Wanjiku Thong'ote filed her written submissions as well. In defence of her proposal on distribution, it was her submission that the deceased had intended to write a will and that she had previously produced a draft will which the Court of Appeal held did not meet the threshold of an oral will. She contended that the contents of the will were not disputed and as such represented the wishes of the deceased. Hence her proposal. Counsel submitted that it was properly indicated in the alleged will which house the beneficiaries with similar names belonged to. Further, regarding the Nyahururu landed asset it was stated that there was intermeddling; that the asset was 18 acres while the house of Grace Njeri Mbugua asserted that it to be 6 acres. Lastly, counsel submitted that some beneficiaries had been given land during the lifetime of the deceased and as such it would be unfair for the estate to be shared equally amongst all beneficiaries.

9. The court has considered the material canvassed by the respective parties. Some of the assertions contained in submissions properly belong to affidavits. The instant application for confirmation of the grant issued on 29th September 2004 and amended vide the decision of Musyoka J on 25th November 2016, was filed pursuant to the judgment of the Court of Appeal in Nairobi Civil Appeal No.15 of 2017 Grace Njeri Mbugua v Hannah Wanjiku Thong'ote. These parties are respectively the 2nd and 3rd surviving widows of the deceased herein. Evidently, the first widow, Jane Njambi Mbugua is now deceased, and had no children in her life time.

10. By its judgment, delivered on 24th November 2017 the Court of Appeal overturned the decision of Musyoka J to the effect that the deceased died testate, and stating inter alia that that:

"Accordingly, we allow the appeal and set aside the judgment of the High Court (W. Musyoka, J) delivered on 25th November 2016 in Succession Case No. 2519 of 1998. The heirs to the estate of the deceased shall be determined on the basis that the deceased died intestate. We so order. The matter shall for this purpose be heard again in the High Court."

11. Upon considering the material canvassed in respect of the application which is the subject of this judgment, the court finds that there is hardly any dispute as to the identities of the beneficiaries. The deceased had three wives in his lifetime but only two, the 2nd and 3rd are

alive and have children, in total 14 children between them. The list of assets is hardly in dispute. The only discrepancies relate to the inclusion by the Applicant Grace Njeri Mbugua of two extra assets, namely, accounts in respect of Muguga Pyrethrum Board and Kiambu Dairy Board, as well as shares in Gatina Farm. Additionally while a land parcel in Nyandarua i.e. Nyandarua/Gatimu/Gathanje/B/1/306 is stated by the Application to measure 6 acres, the acreage given by Hannah Wanjiku Thong'ote for the same property is 18 acres. However, none of the parties deemed it necessary to attach recent search certificates in respect of the land parcels forming part of the estate.

12. The deceased was polygamous and for purposes of distribution of his estate, the law applicable is found in Section 40 of the Law of Succession Act which provides that:

“(1) 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.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

13. It appears from the mode of distribution proposed by the 3rd house of Hannah Wanjiku Thong'ote and submissions, that the said widow is intent on enforcing the will that was declared invalid by the Court of Appeal. That invalidated will cannot be the basis of distribution in light of the judgment of the Court of Appeal. Moreover, there is no firm evidence to support claims that some beneficiaries had already benefited from gifts made to them by the deceased during his life time, or that the extent of the estate is not accurately stated in the application. More significantly, the proposed mode of distribution is prejudicial to the female beneficiaries and vests the lion's share of the estate upon a select number of male beneficiaries. The Law of Succession does not distinguish between male and female children of an intestate.

14. On her part Grace Njeri Mbugua has proposed that all properties be shared equally between the widows and children of the deceased. This despite the fact that her house comprised of herself and 8 children would be entitled to 9 units against Hannah Wanjiku's total of 7 units (Hannah Wanjiku Thong'ote and her six children) which they would then be shared equally as provided in section 40 of the Law of Succession. In the circumstances, the court is persuaded to adopt the mode of distribution proposed by Grace Njeri Mbugua as it is more consistent with the law.

15. For the avoidance of doubt the beneficiaries of the deceased are as follows:

| A.          | 2nd        |         |           | House   |
|-------------|------------|---------|-----------|---------|
| 1. Grace    | Njeri      | Mbugua  | -         | widow   |
| 2.          | Naomi      | Wairimu | Mbugua    | - child |
| 3.          | Nelson     | Njuguna | Mbugua    | - child |
| 4.          | Joseph     | Karanja | Mbugua    | - child |
| 5. James    | Mungai     | Mbugua  | -         | child   |
| 6.          | Lucy       | Wanjiku | Mbugua    | - child |
| 7. Moses    | Kabucho    | Mbugua  | -         | child   |
| 8. Nicholas | Ndungu     | Mbugua  | -         | child   |
| 9. Teresiah | Nyokabi    | Mbugua  | -         | child   |
| B. 3rd      | House      |         |           |         |
| 1.          | Hannah     | Wanjiku | Thong'ote | - widow |
| 2.          | Elizabeth  | Wangari | Mwangi    | - child |
| 3.          | Mary       | Wanjiru | Matheri   | - child |
| 4.          | George     | Gitau   | Mbugua    | - child |
| 5.          | Lawrence   | Njuguna | Mbugua    | - child |
| 6.          | James      | Mungai  | Mbugua    | - child |
| 7.          | Paul Kamau | Mbugua  | -         | child   |

16. The estate of the deceased is comprised of the following assets

- a) Land parcel LR No. 12368 North West of Kikuyu Station (MEGA FARM) - 10 acres
- b) Land parcel LR No. NDEIYA/MAKUTANO /833- 6 acres

- c) Land parcel known as Rare Farm (Mai Mahiu) — 14 acres
- d) LR KIJABE/KIJABE BLOCK I/818 - 5 acres
- e) Land parcel LR No. 10242/14 South of Nakuru Municipality — 10 acres
- f) Land parcel LR No. NYANDARUA/GATIMU/GATHANJE/B/1 306 — 6 acres
- g) PLOT NO. 6 NDERI “B” ---size unstated
- h) 383 shares in Muguga Investments Co. Ltd
- i) Money held in Kenya Commercial Bank Kikuyu Account No. 100 214406
- j) 100 shares in Kenya Commercial Bank – Certificate No.00065625, Account No. 00067127
- k) Shares in Kenya Airways Ltd certificate No. 62215
- l) Shares in standard Chartered Bank Ltd certificate No. 103101
- m) Shares in Kenya Breweries Ltd certificate No. 5025018
- n) Shares and benefits in Gatina Farm
- o) Proceeds in accounts in respect of Muguga Pyrethrum Board and Kiambu Dairy Milk Board.

17. The court orders that the assets listed as items (a) to (g) above be distributed in the first instance into two halves to go to each house, and then shared equally by all the beneficiaries in each respective house. Ditto for shares and proceeds listed as items (h), (j) to (o) above.

18. Regarding the asset at item (i), being monies held in the bank, these will in the first instance be applied to funding the cost of distribution of the estate and the balance remaining to be shared equally among all the 16 beneficiaries. In the event that the monies in the said account are inadequate for the stated purpose, the court directs that in the alternative, the NDERI Plot (item g) be sold to offset any outstanding distribution expenses and any balance of proceeds remaining to be shared equally among all the 16 beneficiaries. The grant is confirmed in these terms. Parties will bear own costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 6TH DAY OF FEBRUARY 2020.**

**C. MEOLI  
JUDGE**

In the Presence of :  
Mr. Wachira for Hannah Wanjiku  
Mr. Kinyanjui holding brief for Mr. Kimani for Grace Njeri Mbugua  
Court Assistant Nancy/ Kevin

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**SUCCESSION CASE NO 6 OF 2017**

**EVANSON MBUGUA THONGOTE (DECEASED)**

**JUDGMENT**

1. Before me is Summons filed on 22<sup>nd</sup> October, 2018, for Confirmation of Grant of letters of administration to the Estate of Evanson Mbugua Thongote (Deceased). The Grant to be confirmed, pursuant to the orders of the Court of Appeal issued on 24<sup>th</sup> November, 2017, was made to GRACE NJERI MBUGUA and HANNAH WANJIKU MBUGUA on 29<sup>th</sup> September, 2004 and amended on 25<sup>th</sup> November, 2016. The Summons is supported by the affidavit of Grace Njeri Mbugua.

2. The court directed the parties to put in affidavits proposing the mode of distribution they prefer followed by written submissions.
3. Grace Njeri Mbugua filed her affidavit in support of the Summons for Confirmation of grant on 22<sup>nd</sup> October, 2018 as one of the administrators of the deceased's estate herein.
4. She provided her schedule of distribution. She identified sixteen dependants namely;- Grace Njeri Mbugua, Hannah Wanjiku Mbugua, Naomi Wairimu Mbugua, Elizabeth Wangari Mwangi, Nelson Njuguna Mbugua, George Gitau Mbugua Joseph Karanja Mbugua, Lawrence Njuguna Mbugua, James Mungai Mbugua Evans, James Mungai Mbugua, Lucy Wanjiku Mbugua alias Karumba, Paul Kamau Mbugua, Moses Kabucho Mbugua, Nicholas Ndung'u Mbugua, Wanjiru Matheri and Teresiah Nyokabi Mbugua alias Njeru.
5. She also identified the shares of all persons beneficially entitled to the estate which were ascertained as follows:-
- i. MEGA FARM LR NO. 12368 NORTH WEST OF KIKUYU STATION-10 ACRES.....TO BE SHARED EQUALLY
  - ii. NDEIYA/MAKUTANO 833-6 ACRES.....TO BE SHARED EQUALLY
  - iii. RARE FARM-14 ACRES.....TO BE SHARED EQUALLY
  - iv. KIJABE/KIJABE 1/818-5 ACRES.....TO BE SHARED EQUALLY
  - v. ELEMENTAITA/OLJORAI LR NO. 10242/14- 10 ACRES.....TO BE SHARED EQUALLY
  - vi. NYANDARUA/GATIMU/GATHANJE B/1/306- 6 ACRES.....TO BE SHARED EQUALLY
    - i. NDERI SHOP PLOT...TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - ii. 383 SHARES WITH MUGUGA INVESTMENTS CO. LIMITED.....TO BE SHARED EQUALLY
    - iii. KENYA COMMERCIAL BANK, KIKUYU BRANCH A/C NO. 100214406.....TO CATER FOR THE COST OF ASSET DISTRIBUTIONAND THE BALANCE SHARED EQUALLY
    - iv. MUGUGA PYRETHRUM BOARD & KIAMBU DAIRY BOARD BANK ACCOUNTS.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - v. SHARES WITH KENYA COMMERCIAL BANK.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - vi. GATINA FARM SHARES & BENEFITS.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - vii. SHARES WITH KENYA AIRWAYS LIMITED.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - viii. SHARES WITH STANDARD CHARTERED BANK.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
    - ix. SHARES WITH KENYA BREWERIES LIMITED.....TO BE SOLD AND PROCEEDS SHARED EQUALLY
6. Hannah Wanjiku Thong'ote filed her affidavit in respect of her proposal for distribution of the deceased's estate as follows;-

| ITEM | ASSET   | NAMES  | SHARE OF HEIRS                    |
|------|---|--|-----------------------------------|
| 1    | LR NO 12368 SITUATED IN NORTHWEST OF KIKUYU STATION (4.047HA)10 ACRES | 1.NJUGUNA MBUGUA<br>2.MUNGAI MBUGUA<br>3. KAMAU MBUGUA | 1.349 HA<br>1.349 HA<br>1.349 HA. |
| 2    | L.R NO 10242/14 IN OLJOROROK SOUTH OF NAKURU (93.962HA)               | 1. NDUNGU MBUGUA                                       | 1.981 HA                          |

|    |   |  |                                  |
|----|---|--|----------------------------------|
|    |   | 2. WANJIKU<br>MBUGUA   | 1.981 HA                         |
| 3  | NDEIYA / MAKUTANO /1818   | 1.NJUGUNA<br>MBUGUA<br><br>2.MUNGAI<br>MBUGUA<br><br>3.KAMAU<br>MBUGUA                           | TO BE SHARED<br>EQUALLY          |
| 4  | KIJABE/KIJABE BLOCK 1/1818  | MUNGAI<br>MBUGUA   | ABSOLUTELY                       |
| 5  | PROPERTY IN MAI MAHIU IN SHARE ISSUED BY RARRER FARMERS<br>KNOWN AS 132 RARRE FARMERS (14 ACRES)  | 1.KARANJA<br>MBUGUA<br><br>2.KABUCHO<br>MBUGUA   | 7 ACRES<br><br>7 ACRES           |
| 6  | PROPERTY IN NYAHURURU CONTAINED IN A SHARE WITH NJUNO<br>LIMITED NJUNU B1 (18 ACRES)  | 1.NJUGUNA<br>MBUGUA<br><br>2.KAMAU<br>MBUGUA   | 9 ACRES<br><br>9 ACRES           |
| 7  | PLOT NO 6 NDERI B   | MUNGAI<br>MBUGUA   | ABSOLUTELY                       |
| 8  | TITLE 107 CERTIFICATE NO.07 WITH MUGUGA INVESTMENT<br>COMPANY LIMITED 'B'   | 1.GITAU<br>MBUGUA<br><br>2.MUNGAI<br>MBUGUA  | TO BE DIVIDED IN<br>EQUAL SHARES |
| 9  | DIVIDEND IN SHARES IN THE FOLLOWING COMPANIES 100 SHARES<br>WITH KENYA COMMERCIAL BANK CERTIFICATE NO.00065625 AND<br>ACCOUNT NO. 000067127<br><br>KENYA AIRWAYS SHARE CERTIFICATE NO 62215<br><br>SHARES WITH STANDARD CHARTERED BANK LIMITED SHARE<br>CERTIFICATE NO. 103101 & MEMBERSHIP NO. 00018058<br><br>SHARES WITH KENYA BREWERIES ACCOUNT NO. 5025018 | 1.GITAU<br>MBUGUA<br><br>2.NJUGUNA<br>MBUGUA<br><br>3.MUNGAI<br>MBUGUA<br><br>4. KAMAU<br>MBUGUA | EQUALLY                          |
| 10 | MONEY HELD IN KENYA COMMERCIAL BANK   | 1.GITAU<br>MBUGUA<br><br>2.NJUGUNA<br>MBUGUA   | TO BE DIVIDED IN<br>EQUAL SHARES |

|  |  |                            |  |
|--|--|----------------------------|--|
|  |  | <b>3.MUNGAI<br/>MBUGUA</b> |  |
|  |  | <b>4. KAMAU<br/>MBUGUA</b> |  |

7. Grace Njeri Mbugua filed her submissions in support of her summons for confirmation of grant and mode of distribution through her counsel. It was submitted that the deceased's property should be divided among houses according to the number of children in each house as proposed by the Applicant who took all the fourteen children of the deceased plus the two widows and proposed that the deceased's property be shared equally among all the sixteen beneficiaries. Counsel contended that the Applicant's mode of distribution is fair. The Objector's proposed mode of distribution was said to have no basis as to how she arrived on her proposed mode of distribution in regard to who gets which property and not the other and that she was not clear as to who gets exactly what parcel of land as she failed to indicate which house the beneficiaries with similar names belong to. She urged the court to adopt her proposed mode of distribution and the summons for confirmation of grant be confirmed thereto.

8. Hannah Wanjiku Thong'ote filed her written submissions as well. It was her submissions that Nancy Wambui Kangethe-Ikinu (Advocate) testified that the deceased intended to write a will and that she produced a draft will which the Court of Appeal held that the same did not meet the threshold of an oral will. She contended that the contents of the will were not disputed and as such the wishes of the deceased. Counsel submitted that it was properly indicated in the alleged will which house the dependants with similar names belonged to. It was submitted that there was intermeddling with the Nyahururu property which is said to be 18 acres while the 1<sup>st</sup> House mentions the same to be 6 acres. Lastly, counsel submitted that some beneficiaries had been given land during the lifetime of the deceased and as such it would be unfair for the estate to be shared equally amongst all dependants given that some have already benefited. In the upshot, the court was urged to adopt the 2<sup>nd</sup> House proposal as to the mode of distribution in regard to the estate of the deceased.

9. The application for confirmation of the grant issued on 29<sup>th</sup> September 2004 and amended vide the ruling of **Musyoka J** on 25<sup>th</sup> November 2016 was made pursuant to the judgment of the Court of Appeal in **Nairobi Civil Appeal No.15 of 2017 Grace Njeri Mbugua v Hannah Wanjiku Thong'ote**. These parties are respectively the 2<sup>nd</sup> and 3<sup>rd</sup> surviving widows of the deceased herein. Evidently, the first widow, Jane Njambi Mbugua is now deceased, and had no children in her life time. But its judgment, delivered on 24<sup>th</sup> November, 2017 the Court of Appeal overturned the judgment of **Musyoka J** to the effect that the deceased died testate, stating that:

“Accordingly, we allow the appeal and set aside the judgment of the High Court (**W. Musyoka, J**) delivered on 25<sup>th</sup> November 2016 in Succession Case No. 2519 of 1998. The heirs' t the estate of the deceased shall be determined on the basis that the deceased died intestate. We so order. The matter shall for this purpose be heard again in the High Court. Having considered the material canvassed in respect of the application which is the subject of this judgment, the court finds that there is hardly any dispute as to the identities of the beneficiaries. The deceased had three wives in his lifetime but only two, the 2<sup>nd</sup> and 3<sup>rd</sup> are alive and have children, in total 14 children between them. The list of assets is hardly in dispute. The only discrepancies relate to the inclusion by the Applicant Grace Njeri of two extra assets, namely accounts in respect of Muguga Pyrethrum Board and Kiambu Dairy Board as well as shares in Gatina Farm. Additionally while a land parcel in Nyandarua i.e. Nyandarua/Gatimu/Gathanje/B/1/306 is stated by the Application to be 6 acres, the acreage given by Hannah Wanjiku Thongote for the same property is 18 acres.

10. The deceased was polygamous for purposes of distribution of his estate the law applicable is found in Section 40 of the Law of Succession Act which provides that:

(1) 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.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

11. It appears from the mode of distribution proposed by the 3<sup>rd</sup> house of **Hannah Wanjiku Thongote** and submissions that the said widow is intent on enforcing the will that was found invalid by the court of appeal. That is validated will cannot be the basis of distribution in light of the judgment of the court of appeal. Moreover, there is no firm evidence to support claims that some beneficiaries had already benefited from gifts made to them by the deceased during his life time or that the extent of the estate is not accurately stated in the application her part **Grace Njeri Mbugua** has proposed that all properties be shared equally between the widows and children of the deceased. This despite the fact that her house comprised of herself and 8 children would be entitled to 9 units against Hannah Wanjiku's total of 7 units (Hannah Wanjiku Thongote and her six children) which they would then share equally as provided in section 40 of the Law of Succession. In the circumstances, the court is persuaded to adopt the mode of distribution proposed by **Grace Njeri Mbugua** as it is more consistent with the law.

12. For the avoidance of doubt the beneficiaries of the deceased are as follows:

**A 2<sup>nd</sup> House**

1. Grace Njeri Mbugua - widow
2. Naomi Wairimu Mbugua - child

3. Nelson Njuguna Mbuga - child
4. Joseph Karanja Mbugua - child
5. James Mungai Mbugua - child
6. Lucy Wanjiku Mbugua - child
7. Moses Kabucho Mbugua - child
8. Nicholas Ndungu Mbuga - child
9. Teresiah Nyokabi Mbugua - child

**B 3<sup>rd</sup> House**

1. Hannah wanjiku Thongote - widow
2. Naomi Wairimu Mbugua - child
3. Elizabeth Wangui Mwangi - child
4. Mary Wanjiru Matheri - child
5. George Gitau Mbugua - child
6. Lawrence Njuguna Mbugua - child
7. James Mungai Mbugua - child
8. Paul Kamau Mbugua - child

The estate is comprised of the following assets

- a. LR No. 12368 (MEGA FARM) - 10 acres
- b. LR No. NDEIYA/MAKUTANO 1833 - 6 acres
- c. 14 acres in Rare Farm (Mai Mahiu)
- d. LR KIJABE/KIJABE BLOCK 1/1818 - 5 acres
- e. LR No. ELEMENTAITA/OLJORAI/102 42/14 in Oljororok – 10 acres
- f. LR NYANDARUA/GATIMU/GITHANJE/B/1 306 – 6 acres
- g. PLOT NO. 6 – NDERI
- h. 383 shares in Muguga Investments Co. Ltd
- i. Money held in Kenya Commercial Bank Kikuyu Account No. 100 214406
- j. 100 shares in Kenya Commercial Bank – Certificate No.00065625, Account No. 00067127
- k. Share in Kenya Airways Ltd certificate No. 66215
- l. Shares in standard Chartered Bank Ltd certificate No. 10301
- m. Shares in Kenya Breweries Ltd certificate No. 5025018
- n. Shares in Gatina Farm
- o. Proceeds in accounts in respect of Muguga Pyrethrum Board and Kiambu Dairy Milk Board.

The court directs that assets at items (a) to (g) be distributed in the first instance into two halves and then shared equally all the beneficiaries in each respective house. Ditto for shares and proceeds listed as items (h), (j) to (o).

Regarding item (i) being monies held in the bank, these will be first applied to finding the cost of distribution and the balance remaining to be shared equally among all the beneficiaries. In the event that the monies in the said account are inadequate for the purpose, the court directs that in the alternative, that the NDERI Plot (item g) be sold to offset any distribution expenses and balances remaining to be shared

among all the beneficiaries. The grant is confirmed in these terms. Parties will bear own costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 6<sup>TH</sup> DAY OF FEBRUARY 2020**

.....

**C. MEOLI**

**JUDGE**

**In the Presence of :**

Mr. Wachira for Hannah Wanjiku

Mr. Kinyanjui holding brief for Mr. Kimani for Grace Njeri Mbugua

Court Assistant – Nancy/Kevin