



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 997 OF 2012**

*(IN THE MATTER OF THE ESTATE OF FRANCIS MURIUKI WAHOME (DECEASED))*

**ROSE MUMBI MURIUKI.....APPLICANT**

**-VERSUS-**

**JAMES GICHERU MURIUKI.....PROTESTER**

**AND**

**1. LUCY WANJIRU MURIUKI**

**2. ROSEMARY WAMBUI MURIUKI**

**3. JOSPHAT WAHOME MURIUKI**

**4. TERESA WANJIKU MUCHOKI**

**5. MARY NGIMA MURIUKI.....INTERESTED PARTIES**

**AND**

**MAGDALENE WANGARI MACHARIA &**

**17 OTHERS.....CAVEATORS**

**JUDGMENT**

This judgment is delivered in rather unfamiliar and unprecedented circumstances. The entire world has been hit by a respiratory disease known as COVID-19 or corona virus. It is viral in nature spreading mainly through human contact although, lately, it has been suggested that it could be airborne as well. So far, it has no known cure but its spread can be contained if human contact or interactions can be restricted. Measures have been taken the world over towards this end in what is now popularly referred to as ‘social distancing’. It is for this reason that this judgment is delivered via skype communication or video conferencing.

By a summons dated 8 February 2018, the applicant sought for an order confirming a grant of letters of administration intestate made to her on 25 March 2013. The grant was in respect of the estate of her late husband, Francis Muriuki Wahome, who died on 19 April 2012. The deceased was domiciled in the Republic of Kenya and his last known place of residence was Lusoi location in Nyeri county.

The deceased had three houses and, of these houses, the applicant is, apparently, the only surviving widow. In the affidavit in support of the summons, she proposed to distribute the deceased’s estate between herself, the deceased’s children in the three houses and the caveators, who are said to have purchased part of the estate in the deceased’s lifetime.

The deceased’s children are spread out in the three houses as follows:

1. First House

(i) Joseph Wachira Muriuki

(ii) James Gichero Muriuki

(iii) Phyllis Mumbi Muriuki

2. Second House

(i) Josephat Wahome Muriuki

(ii) Teresa Wanjiku Muchoki

(iii) Mary Wambui Muriuki

(iv) Lucy Wanjiku Muriuki

(v) Ann Ngima Muriuki

3. Third House

(i) Joel Wahome Muriuki

(ii) Michael Mwangi Muriuki

As between herself and these children, she proposed to share out the estate as follows:

**1. Title No. Daiga/Umande Block 1/138 (Mukima) in Laikipia**

(i) Joseph Wachira Muriuki

(ii) Phyllis Mumbi Muriuki

(In equal shares)

**2. Title No. Iria-ini/Chehe/8**

(i) Josephat Wahome Muriuki

(ii) Teresa Wanjiku Muchoki

(iii) Mary Wambui Muriuki

(iv) Lucy Wanjiku Muriuki

(v) Ann Ngima Muriuki

(In equal shares)

**3. Title No. Iria-ini/Chehe/15**

Josephat Wahome Muriuki (Absolutely)

**4.Kshs. 2,931,989/= held by the Court**

(i) Rose Mumbi Muriuki

(ii) Joseph Wachira Muriuki

(iii) James Gichero Muriuki

(iv) Phyllis Mumbi Muriuki

(v) Josephat Wahome Muriuki

(vi) Teresa Wanjiku Muchoki

(vii) Mary Wambui Muriuki

(viii) Lucy Wanjiku Muriuki

(ix) Ann Ngima Muriuki

(x) Joel Wahome Muriuki

(xi) Michael Mwangi Muriuki

**5. 1 Share in Muriuki Wahome Investments Limited**

(i) James Gichero Muriuki 25%

(ii) Joseph Wachira Muriuki 25%

(iii) Joseph Wahome Muriuki 50%

**6. Shares in Hombe Saw Mills**

James Gichero Muriuki (absolutely)

**7. Shares in Kihari Timber Industries**

James Gichero Muriuki (absolutely)

**8. Motor vehicle registration No. KXC Peugeot 505**

James Gichero Muriuki (absolutely)

**9. Motor vehicle registration No. KRT 156**

James Gichero Muriuki (absolutely)

**10. All amount in Barclays Bank**

Rose Mumbi Muriuki (absolutely)

**11. Kshs 12,000/= owed by Anne Wambui**

Rose Mumbi Muriuki (absolutely)

**12. Kshs. 14,000/= owed by Isaac Muriuki Gichuhi**

Rose Mumbi Muriuki (absolutely)

To cater for the interest of the caveators or purchasers, she proposed to transfer the following parcels to their respective names as absolute owners; **TitleNos.Nyeri/Lusoi/1529,1535,1538,1542,1543,1547,1553,1567,1568,1569,1570,1575,1577,1602,1614,1615,1616,1622,1620.**

The protester filed an affidavit of protest against the summons for confirmation of grant alleging Title No. Iriaini/Chehe/8 is not part of the deceased's estate and that it belongs to Joseph Wachira Muriuki. He also alleged that the assets itemised as number 5 to 7 (both inclusive) do not exist. He described some of the caveators as strangers to the estate and who, for that reason, are not entitled to any share of the estate.

The protester also swore that the deceased also owned a parcel of land known as Title No. Kiine/Sagana/58 but which he acknowledged is a subject of a dispute in Nyeri Environment and Land Court Case No. 10 of 2018; in his view, this particular parcel of land should be distributed as part of the deceased's estate notwithstanding the dispute on it in the land court.

As for Title No. Iriaini/Chehe/15, the protester proposed that the same should be shared out among the following people:

(i) Josephat Wahome Muriuki

(ii) Teresa Wanjiku Muriuki

(iii) Mary Wambui Muriuki

(iv) Lucy Wanjiru Muriuki

(v) Phyliss Mumbi Muriuki

(vi) Anna Ngima Muriuki.

He further deposed that **Title No. Nyeri/Lusi/432** should devolve upon the third house while the money in the Barclays Bank should be shared equally amongst the three houses.

The caveators swore a joint affidavit largely supporting the summons for confirmation of grant and, in particular, endorsing the proposed scheme for distribution of the deceased's estate. They, however, sought to correct some of their names which had been misspelt.

Similarly, the interested parties, who are all from the second house, also swore a joint affidavit basically agreeing with the scheme put forth by the applicant for distribution of the deceased's estate; they however, sought an alteration in the division of Title Nos. Iriaini/Chehe/8 and 15 and distribution of shares in Muriuki Wahome Investments Limited.

As far as Title No. Iriaini/Chehe/8 is concerned, they proposed that it should devolve upon Josephat Wahome Muriuki absolutely while Title No. Iriaini/Chehe/15 should be shared out amongst themselves as follows:

(i) Josephat Wahome Muriuki.....2 acres

(ii) Teresa Wanjiku Muchoki.....1 acre

(iii) Lucy Wanjiru Muriuki.....1 acre

(iv) Rosemary Wambui Muriuki....2 acres

(v) Ann Ngima Muriuki.....1 acre

As for the shares in Muriuki Wahome Investments Limited they proposed that James Gicheru Muriuki and Joseph Wachira should have 25% each while the remaining 50% should be shared out equally amongst the following people:

(i) Lucy Wanjiku Muriuki

(ii) Rosemary Wambui Muriuki

(iii) Ann Ngima Muriuki

(iv) Josephat Wahime Muriuki

(v) Teresa Wanjiku Muchoki.

They further swore that their house has always settled on Title No. Iriaini/Chehe/15 and that is their home; amongst the developments on this land are their dwelling houses and tea bushes. Josephat Wahome Muriuki cultivates Title No. Iriaini/Chehe/8 and that it is why the land should devolve upon him absolutely.

When the protest came up for hearing all parties, except the protester, agreed on terms upon which the grant ought to be confirmed; in particular, they entered a consent to this effect:

(1) Kshs. 12,000/= owed by Anne Wambui over Title No. Nyeri/Lusoi/1568 to devolve upon Rose Mumbi Muriuki absolutely.

(2) Kshs. 12,000/= owed by Anne Wambui over Title No. Nyeri/Lusoi/1568 to devolve upon Rose Mumbi Muriuki absolutely.

(3) Title No. Nyeri/Lusoi/1529 to devolve upon Charles Mwangi Thugu absolutely

(4) Title No. Nyeri/Lusoi/1535 to devolve upon Jane Wanjiru Karanja absolutely.

(5) Title No. Nyeri/Lusoi/1538 to devolve upon Charity Kibindu Wamahiu absolutely.

(6) Title No. Nyeri/Lusoi/1542 to devolve upon Zachary Ndegwa Dunatoh absolutely.

(7) Title No. Nyeri/Lusoi/1543 to devolve upon Stephen Muriuki Wanjohi absolutely.

(8) Title No. Nyeri/Lusoi/1547 to devolve upon Christopher Mwitwari Kariuki absolutely.

- (9) Title No. Nyeri/Lusoi/1553 to devolve upon Peter Karume Gatenjwa absolutely.
- (10) Title No. Nyeri/Lusoi/1567 to devolve upon Moses Kamau Mwangi absolutely.
- (11) Title No. Nyeri/Lusoi/1568 to devolve upon Joyce Wambui Mbogo absolutely.
- (12) Title No. Nyeri/Lusoi/1569 to devolve upon John Mwangi Gichuhi absolutely.
- (13) Title No. Nyeri/Lusoi/1570 to devolve upon Isaac Muriuki Gichohi absolutely.
- (14) Title No. Nyeri/Lusoi/1575 to devolve upon Rachael Wangari Wamiti absolutely.
- (15) Title No. Nyeri/Lusoi/1626 to devolve upon Ann Njeri Philip absolutely.
- (16) Title No. Nyeri/Lusoi/1602 to devolve upon Mercy Wanjugu Gachingiri absolutely.
- (17) Title No. Nyeri/Lusoi/1614 to devolve upon Meria Wamuyu Mwangi absolutely.
- (18) Title No. Nyeri/Lusoi/1615 to devolve upon Meria Wamuyu Mwangi absolutely.
- (19) Title No. Nyeri/Lusoi/1616 to devolve upon Jane Wambui Mwangi absolutely.
- (20) Title No. Nyeri/Lusoi/1622 to devolve upon Kiritu Miano Wamai absolutely.
- (21) Title No. Nyeri/Lusoi/1620 to devolve upon Kiritu Miano Wamai absolutely.
- (22) Title No. Nyeri/Lusoi/1627 to devolve upon Magdalene Wangari Macharia absolutely.
- (23) Title No. Daiga/Umande Block 1/138 (Mukima) in Laikipia to devolve upon Joseph Wachira Muriuki and Phyllis Mumbi Muriuki in equal shares absolutely.
- (24) Title No. Iriaini/Chehe/15 should be shared out as follows:
- (i) Josephat Wahome Muriuki.....2 acres (absolutely)
  - (ii) Teresa Wanjiku Muchoki.....1 acre(absolutely)
  - (iii) Lucy Wanjiru Muriuki.....1 acre(absolutely)
  - (iv) Rosemary Wambui Muriuki....2 acres(absolutely)
  - (v) Ann Ngima Muriuki.....1 acre(absolutely)
- (25) The sum of Kshs. 2, 931,989/= held in court in High Court Miscellaneous Cause No. 113 of 2007, In the Matter of Francis Wahome Muriuki, be shared out equally amongst the following people:
- (i) Rose Mumbi Muriuki
  - (ii) Joseph Wachira Muriuki
  - (iii) James Gichero Muriuki
  - (iv) Phyllis Mumbi Muriuki
  - (v) Josephat Wahome Muriuki
  - (vi) Teresa Wanjiku Muchoki
  - (vii) Mary Wambui Muriuki
  - (viii) Lucy Wanjiku Muriuki
  - (ix) Ann Ngima Muriuki

(x) Joel Wahome Muriuki

(xi) Estate of Michael Mwangi Muriuki

(26) Shares in Muriuki Wahome Investments Limited

James Gicheru Muriuki and Joseph Wachira to get 25% each while the remaining 50% to be shared out equally amongst the following people equally:

(i) Lucy Wanjiku Muriuki

(ii) Rosemary Wambui Muriuki

(iii) Ann Ngima Muriuki

(iv) Josephat Wahime Muriuki

(v) Teresa Wanjiku Muchoki.

**(27) Shares in Hombe Saw Mills**

James Gichero Muriuki (absolutely)

**(28) Shares in Kihari Timber Industries**

James Gichero Muriuki (absolutely)

**(29) Motor vehicle registration No. KXC Peugeot 505**

James Gichero Muriuki (absolutely)

**(30) Motor vehicle registration No. KRT 156**

James Gichero Muriuki (absolutely)

**(31) All amount in Barclays Bank**

Rose Mumbi Muriuki (absolutely)

Subject to the protest, this agreement was adopted as the order of the court; what this meant is that if the protester could convince the court that the consent was, for whatever reason, improper, it would be set aside paving way for the court to make a determination that in its view, is meet and just, and, in any event, consistent with the law.

When he took to the witness stand, the protester testified that he had a problem Joseph Wachira Muriuki sharing Title No. Daiga/Umande Block 1/138 (Mukima) in Laikipia with his sister Phyllis Mumbi Muriuki.

His second issue was that Phyllis Mumbi Muriuki had been omitted from the list of beneficiaries of some of the assets and also that the shares ought to devolve upon houses and not individuals.

As for the amount in court, it was his position that the same should be distributed equally amongst the three houses.

The deceased was married more than once and died intestate; he was survived by one spouse and several children from his three houses. The law applicable to the distribution of his estate would be section 40 of the law the Law of Succession Act; it provides as follows:

***40. (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.***

The principle underlying the distribution of a deceased's estate where the deceased was polygamous is fairness and equity and not necessarily equality amongst the houses; nonetheless equality as the basis of distribution of the estate may well be adopted as the appropriate scheme if it results in fairness and equity. (See **Eldoret Civil Appeal No. 66 of 2002, Mary Rono versus Jane Rono & William Rono (2005) eKLR**).

The scheme proposed by the petitioner and which has been endorsed by all the deceased's three houses except the protester largely captures the letter and the spirit behind section 40 of the Act. It is a scheme that acknowledges that the three houses are settled on separate and specific parcels of land and since they have been so settled for a considerable period of time, it would be unreasonable to uproot and resettle them when they have generally agreed to retain what they have as their share of the deceased's estate. Taking all the factors into account, there is some measure of equity and fairness in the scheme proposed by the applicant and I am entitled to think that it is for this reason that the scheme has been largely endorsed by every body in this estate, more particularly, the deceased's descendants in the three houses.

Having held so, I do not find any merit in the protester's protest; in the first place it has neither been alleged nor demonstrated that the proposed scheme is contrary to section 40 of the Law of Succession Act. Secondly, the protester himself has neither suggested nor demonstrated that he has been aggrieved in any particular way. He has not, for instance, alleged that he has been allocated less than what he thinks he is entitled to, or that, some other person or house has an unfair advantage over the other should the proposed scheme be implemented.

In fact, as far as I see, all that the protester has purported to do is seek to pursue other people's cause yet those people whose interest he is purporting to represent have not raised any complaint or, to be specific, filed any protest against the proposed scheme. In this regard, I have in mind Joseph Wachira Muriuki and Phyliss Mumbi Muriuki for whom the protester is purporting to root; none of these two people have raised any issue with the scheme proposed by the petitioner.

Again, the contention that a land parcel, being Title No. Kiine/Sagana/58 ought to have been listed as part of the deceased's estate and should be distributed as such does not have any factual or legal basis; there is no evidence that the deceased owned such property and, secondly, the protester himself has admitted that the land is a subject of a dispute, apparently of ownership, in Nyeri Environment and Land Court Case No. 10 of 2018. This court cannot pre-empt the outcome of that suit and proceed as if the land is part of the deceased's estate.

For the reasons I have given I am inclined to dismiss the protester's protest dated 20 June 2018; in the same breath, I allow the petitioner's summons for confirmation of grant dated 8 February 2018 save that the estate shall be distributed in accordance with the terms of the consent adopted by this court on 3 July 2018 and which has been reproduced in this judgment. Parties will bear their respective costs. Orders accordingly.

**Dated, signed and delivered this 9<sup>th</sup> day of April, 2020**

**Ngaah Jairus**

**JUDGE**