



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 259 OF 2011

IN THE MATTER OF THE ESTATE OF ELIUD NDEGWA MAHENIA (DECEASED)

JAMES WAWERU NDEGWA.....ADMINISTRATOR/APPLICANT

VERSUS

GICHUKI NDEGWA.....1ST ADMINISTRATOR/PROTESTOR

JOHN KARIUKI NDEGWA.....2ND ADMINISTRATOR/PROTESTOR

THOMPSON MAHENIA NDEGWA.....3RD ADMINSTRATOR/PROTESTOR

R U L I N G

1. Eliud Ndegwa Mahenia died on 28th May 1986.
2. A grant of letters of administration intestate was issued to James Waweru Ndegwa (now deceased) and replaced by Cyrus Ndegwa) Gichuki Ndegwa, John Kariuki Ndegwa and Thompson Mahenia Ndegwa on 2nd November 2011.
3. The deceased had five (5) wives hence five (5) houses and was survived by children from each of the houses.

1st house

- (a) GICHUKI NDEGWA
- (b) FRANCIS KIERE NDEGWA
- (c) FELIX GIKONYO NDEGWA

2nd house

- (a) FRANCIS RUTERE NDEGWA
- (b) JAMES WAWERU NDEGWA
- (c) MOSES WAICHUNGO NDEGWA

3rd house

- (a) MARGARET WANJIRU – married
- (b) JANE WANGECHI – married
- (c) DUNCAN NDERITU

- (d) ELIZABETH WANGARI – married
- (e) MIRIAM WANJIKU – married
- (f) JOHN KARIUKI
- (g) JOHN KINGORI
- (h) STEPHEN KANEGENI

4th house

- (a) MAHENIA NDEGWA
- (b) WANGARI – married
- (c) WANJIRU NDEGWA – unmarried
- (d) JOSEPH KARIUKI

5th house

- (a) DAVID NDUNGU
- (b) THOMSON MAHENIA
- (c) CYRUS KARIUKI
- (d) JOHN GICHUKI
- (e) PETER KANEGENI
- (f) LOISE WANJIRU – married
- (g) WAMBUI NDEGWA – married
- (h) JAMES GITARI
- (i) ANN WANGARI

4. He had assets which by a Summons for Confirmation of Grant dated 26th March 2014 James Waweru Ndegwa sought to distribute as follows;

(a) **Gituamba/Muhotetu Block 2/397** to be shared equally between:-

- i. JAMES WAWERU NDEGWA
- ii. FRANCIS RUTERE NDEGWA

(b) **Gituamba/Muhotetu Block 2/647** to be shared equally between:-

- i. JAMES WAWERU NDEGWA
- ii. FRANCIS RUTERE NDEGWA

(c) **2 shares at Kedong Ranch (Naivasha)** to go to

- i. JAMES WAWERU NDEGWA
- ii. FRANCIS RUTERE NDEGWA

(d) **Bellevue/Haraka** land to go to

i. MAHENIA NDEGWA

ii. JOSEPH KARIUKI NDEGWA

(e) **Tetu/Ichagachiru/213** to be shared as follows:-

i. 1ST HOUSE - GICHUKI NDEGWA, FRANCIS KIERE & FELIX GIKONYO – 3.63 acres equally

ii. 2ND HOUSE – MOSES WAICHUNGO NDEGWA & JAMES WAWERU NDEGWA to get 3.63 acres

iii. 3RD HOUSE – DUNCAN NDIRITU NDEGWA & JOHN KARIUKI NDEGWA – 3.63 acres

(f) **Marmaret/Melwa Block 1 (Muhotetu) 984** to be shared as follows;

i. FELIX GIKONYO NDEGWA – 12 acres

ii. 1. DAVID NDUNGU NDEGWA

2. THOMPSON MAHENIA NDEGWA

3. CYRUS KARIUKI NDEGWA

4. JOHN GICHUKI NDEGWA

5. JAMES GITARI NDEGWA

6. PETER KANEKENI NDEGWA..... 12 acres

(g) **Cash – Ksh. 634,000/=** to be shared equally between JAMES WAWERU NDEGWA & FRANCIS RUTERE NDEGWA.

5. On 17th December 2014 Gichuki & John K. Ndegwa filed an affidavit of protest, in which they contended that the deceased had distributed Ichagachiru Tetu No. 213, Tanyai Haraka Scheme Plot 78 (Bellevue), Gituamba/Muhotetu Block 2/397 Nyabugichi/Makutano Plot 125/NGT 1 before he died. They made their own proposal.

ICHAGACHIRU/TETU NO/ 213

To be equally shared by 1st, 2nd and 3rd houses as follows:-

1st House

Gichuki Ndegwa

Francis Kiere Ndegwa

Felix Gikonyo Ndegwa - to hold in trust for the 1st house

2nd House

Francis Rutere Ndegwa

Moses Waichungo Ndegwa

James Waweru Ndegwa - to hold in trust for the 2nd house

3rd House

Duncan Nderitu Ndegwa

John Kariuki Ndegwa - to hold in trust for the 3rd house

MAKURUMO GITUAMBA/MUHOTETU BLOCK 2/647

All the 5 houses to share equally.

Gichuki Ndegwa

John Kariuki Ndegwa

Thomas Mahenia Ndegwa

James Waweru Ndegwa - to hold in trust for all estate beneficiaries

KEDONG RANCH SHARES (2)

The proceeds to be shared equally amongst all the 5 houses of the Deceased.

TANYAI HARAKA SCHEME PLOT 78 (Bellevue)

Thomas Mahenia Ndegwa

Joseph Kariuki Ndegwa

Veronica Wanjiru Ndegwa - to hold in trust for the 4th house

GITUAMBA/MUHOTETU BLOCK 2/397

5th house

David Ndung'u Ndegwa

Thompson Mahenia Ndegwa to hold in trust for the 5th house

NYABUGICI/MAKUTANO PLOT NO. 125/NGT 1

Margaret Wanjiru Ndegwa – whole share

6. They also deponed that Marmanet/Melwa Block 1/(Muhotetu) 984 belonged to Felix Gikonyo Ndegwa and did not form part of the deceased's estate.

7. On 1st August 2015, a consent was filed by the representatives of the 1st, 3rd, 4th and 5th house that Gituamba Muhotetu Block 2/647 to be distributed such that the 1st, 2nd, 3rd and 4th houses would get four (4) acres each, and the 5th house – 15 acres.

8. Gichuki Ndegwa also passed away.

9. It emerged from the documents filed by parties that there were some contested properties. James Waweru Ndegwa filed Nyahururu **Environment and Land Court (ELC) Case Number 505 of 2017. James Waweru Ndegwa & Another vs Gichuki Ndegwa & 2 Others** over, Gituamba Muhotetu Block 2/397 & 647 Kedong Ranch shares and accrued dividends thereto.

10. That left four (4) properties (according to 2nd and 3rd administrators);

1. **Tetu/Ichagachiru/213**
2. **Tanyai Haraka Scheme Plot 78 (Bellevue)**
3. **Nyabucigi/Makutano Plot 125/NGT 1**
4. **Marmanet/Melwa Block 1 Muhotetu (984).**

11. According to the four (4) administrators, only number 1, 2 and 3 are uncontested.

12. It was agreed by consent that these assets be distributed pending the determination of the ELC case. The beneficiaries are not contested. The only dispute is who should get what in what shares. To that end, submissions were filed, for 4th administrator, by K. Wachira & Company Advocates, for 2nd and 3rd defendants by Njeri Njagua & Company Advocates.

13. I have considered the submissions and the authorities cited.

14. For the protestors, they aver that their affidavit of protest reflects how the deceased had distributed his estate before he died and that his wishes ought to be respected. They rely on **Paul Kiruhi Nyingi & Another v Francis Wanjohi Nyingi [2009] eKLR** for the proposition

that unless it is shown that there was bias, unfairness or discrimination, a deceased's wish as to the manner of distribution of his estate ought to be respected. I was also referred to in **Re Bikeri Areri [2019] eKLR**.

15. Regarding Marmanet/Melwa Block 1 Muhotetu (984) the protestors aver that they have no claim to it as it belonged to Felix Gikonyo Ndegwa, and the deceased held it in trust for him.

16. For the 4th administrator it was submitted that there was no dispute with regard to proposed distribution of Nyabugichi plot, Tanyai (Bellevue) plot. That with regard to Ichagachiru plot, he had no dispute for as long as it is shared equally among the five (5) houses and that the representatives in whose name the shares would be registered would hold the same in trust for their respective houses. The 4th administrator is not in agreement with the others about Marmanet/Melwa Block 1/Muhotetu 984, his position being that half of the property belongs to the deceased's estate and Felix had fraudulently transferred the whole parcel to himself. The 4th administrator is pursuing the same in the ELC case.

17. It appears to me that there are two (2) points of departure. Whether or not the deceased's estate owns a half share in Marmanet/Melwa Block 1/Muhotetu 984 or whether he held the whole portion in trust for Felix Gikonyo. Since there is a case in the proper forum on that, it is for determination by the ELC court.

18. The other point is with regard to the distribution of the Ichagachiru land. The 4th administrator in his Summons for Confirmation of Grant, proposed distribution to the 1st, 2nd and 3rd houses, to be held in trust by those who would be registered. This was accepted by the protestors as the proper position. In the submissions, K. Wachira advocate introduces the issue of sharing this among the five (5) houses while at the same time saying that the distribution by the protestors is acceptable to his client. Those are two different positions held in the same breath. Guided by the fact that it is the 4th administrator who made the initial proposal to distribute that land among the 1st, 2nd and 3rd houses, I would be reluctant to change that merely on the strength of submissions.

19. In conclusion the uncontested properties are three and will be distributed as follows;

1. Tetu Ichagachiru/213: To be distributed as follows :

a. Francis Kiere Ndegwa

b. Felix Gikonyo Ndegwa to hold in trust for all 3.63 acres beneficiaries of the 1st house

c. Francis Rutere Ndegwa

d. Moses Waichungo Ndegwa to hold in trust for all 3.63 acres beneficiaries of the 2nd house

e. Duncan Nderitu Ndegwa

f. John Kariuki Ndegwa to hold in trust for all 3.63 acres beneficiaries for 3rd house

2. Tanyai/Haraka Scheme Plot 78 (Bellevue)

The whole share to the 4th house. The following to hold in trust for the benefit of beneficiaries in the 4th house:-

a. Thomas Mahenia Ndegwa

b. Joseph Kariuki Ndegwa

c. Veronica Wanjiru Ndegwa

20. There is the cash of Ksh 634,000/=. The parties did not say anything about the same. There is no explanation as to why only two beneficiaries should get it. However, the protestors indicated that the same was proceeds of the Kedong shares and was already distributed among the five houses. For the avoidance of doubt this issue is before the ELC court and any sharing ought to wait the outcome.

21. Hence the rest of the distribution will await the outcome of Nyahururu ELC 505 of 2017.

22. Each party will bear its own costs.

23. Parties or the registry to fix a mention date in six (6) months hereof to confirm the position of the other assets.

Dated and Signed at Nakuru this 7th day of May, 2020.

Delivered and signed.

Mumbua T. Matheka

Judge

In the presence of:- VIA ZOOM

Edna Court Assistant

Kebuka Wachira & Company Advocates N/A

Njeri Njagua & Company Advocates N/A

Both counsels were notified but did not appear.

Mumbua T. Matheka

Judge

7/5/2020