



REPUBLIC OF KENYA

IN THE SUCCESSION CAUSE NO. 41 OF 2006

HIGH COURT OF KENYA

AT KITALE

IN THE MATTER OF THE ESTATE OF THE LATE JOHANA KAMAU MWATHI - (DECEASED)

NAOMI WAITHERA KAMAU....PETITIONER/APPLICANT

VERSES

WANJIKU KAMAU.....OBJECTOR

RULING

1. By her application dated **23rd May 2019** the Applicant has prayed that the grant issued on the 16th day of November, 2006 be confirmed. The same is supported by her affidavit sworn on the even date.
2. The objector vide her replying affidavit sworn on the 7th day of October, 2019 has opposed the said application specifically on the mode of distribution and prayed that her proposed mode be adopted.
3. The brief background of this matter is that the deceased who died intestate left behind two houses. This court on the **25th day of June, 2015** made a ruling on that matter and had the confirmed grant revoked. It went ahead to advise the parties to apply for the same to be confirmed afresh which the court did vide its ruling dated **22nd January, 2019**. The court shared the estate into two between the two houses and directed that each respective house be at liberty to apply for the distribution of the estate as they deem appropriate.
4. The application herein is therefore from the first house and they therefore seek to distribute the properties which was allotted to them vide the ruling of 22nd January, 2019. The Applicant is one of the daughters of the deceased and the objector is her mother.
5. The Applicant has given way forward on how the following properties needs to be distributed, namely, **KITALE MUNICIPALITY NO. 6156/3, NYAKINYUA NO. 105, MWAGO FARM, KAPSARA /CHERANGANY, NAIVASHA MARAIGISHU, NAIROBI BLOCK 105/301** as well as **shares** and the **machineries**.
6. Parties were ordered to file their affidavits as well as their written submissions in support of their mode of distribution which they did. It is not disputed that the beneficiaries include the applicant, the objector and PAUL MWATHI and, ESTHER NJOKI KAMAU.
7. There was no dispute regarding the distribution of shares as well as the machinery. The area of dispute however was on the share due to **Kaosa** and company advocates. In the earlier ruling of 22nd January, 2019 stated above, this court decided that the said advocates would be allotted 2 acres per each house so as to meet its legal charges.
8. The objector has argued that the same cannot be visited on her for the simple reason that she never benefited from his legal services. She said that she had her own counsel whom she paid fees separately. Consequently, her portion in LR No.6156/3 should not be touched but instead the rest of the beneficiaries ought to be penalised.
9. This argument in my considered view does not hold water for the simple reason that she has not preferred an appeal against the said decision nor a review for that matter. For her to raise the argument now is not tenable as the court must have considered sufficient reasons why it awarded the said law firm the same. At any rate if she desired that her lawyer be awarded fees from the estate, she should have raised at that juncture. For now, and for the above reasons that line of argument is disallowed.
10. Turning now to the proposed mode of distribution by the parties, it is clear from the ruling of 22nd January that the intention was for all the deceased beneficiaries to get equal shares from the estate, be it from the 1st or the 2nd house.

11. I have read the affidavit in support of the application for the confirmation by the Applicant and other than a proposed mode of distribution she has not given any reasons why they have decided to share the way she has proposed. Other than the objector, the rest of the beneficiaries seem to agree with the said mode.

12. On the other hand, and as rightly captured by the Applicant in his submission, the objector apart from the reason regarding Kaosa advocate, she has simply prayed that some of the properties be given to her and some portion be given to the rest of the beneficiaries as she had no interest. For instance, under paragraph 5 of her affidavit she has said that she should be given 0.5 acres at NAIVASHA/MARAIGISHU farm instead of 3.3 acres at NYAKINYUA farm. She has not advanced any reason for this.

13. The same applies to the rest of the beneficiaries. They each have not explain why they should be given any specific portion because of a specific special reason. They have however agreed on the machinery as well as the shares.

14. It is apparent that none of the beneficiaries has any special preference over the other. Carrying therefore the spirit of equality it is necessary that the estate in view of lack of concurrence on the capital assets be shared equally among the beneficiaries. Nothing precludes them from “trading” or “exchanging” from each other thereafter if need be and as they may deem appropriate if they wish.

15. In the premises, let the following properties be shared as hereunder;

(a) **KITALE MUNICIPALITY 6156/3** measuring 10 acres

- 1. PAUL MWATHI KAMAU.....2 ACRES
- 2. NAOMI WAITHERA KAMAU.....2 ACRES
- 3. ESTHER NJOKI KAMAU.....2 ACRES
- 4. WANJIKU KAMAU.....2 ACRES
- 5. KAOSA MOSES.....2 ACRES

(b) **NYAKINYUA NO. 105** measuring 3.3 acres

- 1. WANJIKU KAMAU.....0.825 ACRES
- 2. PAUL MWATHI KAMAU.....0.825 ACRES
- 3. NAOMI WAITHERA KAMAU.....0.825 ACRES
- 4. ESTHER NJOKI KAMAU.....0.825 ACRES

(c) **LR NO. 6628/3 CHERANGANI** measuring 41 acres.

- 1. WANJIKU KAMAU10.25 ACRES
- 2. PAUL KAMAU MWATHI.....10.25 ACRES
- 3. NAOMI WAITHERA KAMAU.....10.25 ACRES
- 4. ESTHER NJOKI KAMAU.....10.25 ACRES

(d) **CHERANGANI /KAPSARA/205** measuring 16.5 acres

- 1. WANJIKU KAMAU.....4.125 ACRES
- 2. PAUL KAMAU MWATHI.....4.125 ACRES
- 3. NAOMI WAITHERA KAMAU.....4.125 ACRES
- 4. ESTHER NJOKI KAMAU.....4.125 ACRES

(e) **NAIVASHA /MARAIGISHU BLOCK 8/424** measuring ½ acres. To be registered in their names jointly and they may choose to sell the same and share the proceeds equally and or deal with it as they find appropriate in the circumstances.

(f) **NAIROBI BLOCK 105/301** measuring 0.0870 to be registered in their joint names and they may dispose it and share the proceeds equally or as they shall find appropriate in the circumstances.

(g) MACHINERIES.

- 1. PAUL MWATHI KAMAU...**tractor, john Deere and trailer 4 tonnes.
- 2. NAOMI WAITHERA KAMAU.....** corn Sheller
- 3. ESTHER NJOKI KAMAU.....**boom sprayer/planter
- 4. WANJIKU KAMAU.....**disc harrow

(f) Accounts and shares to be shared equally between them as directed in the ruling of 22nd January, 2019.

16. Being a family matter each party shall meet its respective cost.

Dated, signed and delivered via Zoom at Kitale this 5th day of May, 2020.

H. K. CHEMITEI

JUDGE

5/5/2020