



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1993 OF 2008**

**IN THE MATTER OF THE ESTATE OF JAMES KAGWIMA GATHU – (DECEASED)**

**LUCY WAMBUI KAGWIMA.....ADMINISTRATRIX/APPLICANT**

**VERSUS**

**SUSAN WANJIRU GATHU.....RESPONDENT**

**RULING**

1. The summons dated 8<sup>th</sup> June 2020 by Lucy Wambui Kagwima (the applicant) was by the consent of the respondent Susan Wanjiru Gathu allowed in terms of paragraphs 4, 5, 6, 7, 8, 9 and 10 and 12 of the supporting affidavit dated 4<sup>th</sup> June 2020. Also allowed was that Limuru/Bibirioni/3203 should go to the estate of Patrick Handi Kagwima.

2. In the judgment dated 8<sup>th</sup> April 2020, parcel Longonot/Kijabe Block 3/1608 had in paragraph 17(K) been given to the applicant. She has, however, in her application for review surrendered this so that the parcel is sold and the proceeds shared equally among all the beneficiaries of the estate the deceased. I allow her request.

3. In respect of Naivasha/Maraigushu Block 9/4, the judgment in paragraph 17(i) had indicated that –

**“the proceeds of 2.01 acres of Naivasha/Maraigushu Block 9/4 that went to Ketraco shall be equally shared among the seven beneficiaries, and the balance shall be shared equally among the seven beneficiaries indicated in (a) above”**

4. I consider that when the respondent swore the affidavit dated 14<sup>th</sup> December 2016 in support of her application for confirmation she proposed that Naivasha/Maraigushu Block 9/4 be shared so that she gets 1 acre, the respondent gets 1 acre, Assumpta Mukuhi gets 1 acre, Esther Wanjiru Mwaura (to hold in trust for her children) gets 1 acre, Robert Gichungu Kagwima gets 1 acre, Beatrice Mukami Kagwima gets 1 acre and Lydia Wangari Nagi, Lucy Mukami Nagi and Alice Wanjiru Nagi jointly get 1 acre. On her part, the applicant in her affidavit of protest sworn on 10<sup>th</sup> January 2016 proposed that Assumpta gets 1 acre, 2.01 acres goes to Ketraco by dint of compulsory acquisition and the proceeds be shared equally among the beneficiaries and that would leave 4 acres which should be sold and the proceeds shared equally, unless George Gathu Kagwima wants their portion. Her case was that the deceased had bequeathed 1 acre to Assumpta Mukuhi Njenga in his lifetime.

5. The respondent agreed that the deceased had bequeathed 1 acre to Assumpta Mukubi Njenga before he died. It is trite that a gift *intervivos* be taken into consideration when distributing the estate of the deceased.

6. Consequently, the parcel Naivasha/Maraigushu/Block 9/4 shall be shared as follows:-

(a) one acre shall go to Assumpta Mukuhi Njenga;

(b) the proceeds of 2.01 acres that went to Ketraco shall be shared equally among the seven beneficiaries; and

(c) the balance of the parcel shall be shared among all beneficiaries except Assumpta Mukuhi Njenga.

7. The applicant and the respondent agree that Limuru/Bibirioni/3206 was inadvertently omitted from the distribution in the judgment. I will

include it as part of the estate of the deceased which shall be registered in the joint names of Lucy Wambui Kagwima and Robert Kagwima in trust for the beneficiaries.

8. If parcel Tigoni/Malbrouke BL 1/530 belonged to the deceased, it shall be sold and proceeds shared equally by all the beneficiaries.

9. In this limited way, the application dated 8<sup>th</sup> June 2020 for review is allowed.

**DATED at NAIROBI this 12<sup>TH</sup> day of OCTOBER 2020.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED electronically at NAIROBI this 14<sup>TH</sup> day of OCTOBER 2020.**

**A.O. MUCHELULE**

**JUDGE**