



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.748 OF 2010

IN THE MATTER OF THE ESTATE OF MATU WAGENYE (DECEASED)

AND

SIMON WANGENYE KARUNGARI.....PETITIONER

VERSUS

JAMES MAINGI NDANI.....OBJECTOR

JUDGMENT

Matu Wangenye died on 18th August 2005 at the age of 92 years. According to the Aguthi location Chief's letter of 21st July 2010 he was survived by;

- 1) ROSE KARUNGARI NDANI-DAUGHTER
- 2) DADSON NDERITU NDANI-SON
- 3) JAMES MAINGI NDANI-SON
- 4) ALICE WAGUTHI GITHAIGA-DAUGHTER
- 5) PATRICIA NYARUAI NDANI-DAUGHTER
- 6) JANE WANGECHI NDANI-DAUGHTER
- 7) FRANCIS MUTHIGANI NDANI-SON
- 8) FRANCIS MAINA KIRIGO-GRANDSON
- 9) ROSE WANJIRU KIRIGO-GRANDDAUGHTER
- 10) ANN WAKIURU MUTHAMI-DAUGHTER

He left an estate comprising of

1. L.R AGUTHI/MUNGARIA/460
2. NARUMORU/NARUMORU BLOCK 2/AGUTHI/237
3. POST BANK NYERI A/C NO.KYYY20188

Rose Karungari Ndani his daughter filed for grant of letters of administration intestate on 1st October 2010. On 15th February 2011 Dadson Nderitu Ndani

James Maingi Ndani

Alice Waguthi Githaiga

Patricia Nyaruai Ndani,

Jane Wangechi Ndani

Francis Muthigani Ndani

Francis Maina Kirigo

Rose Wanjiru Kirigo and

Ann Wakiuru Muthami filed an objection to the making of the grant to Rose Karungari Ndani through James Maingi Ndani on the ground that the deceased had 2 houses and the petitioner would not take care of all the interests.

He filed a cross petition on 17th February 2011, listing the same beneficiaries as listed by Rose Karungari Ndani and the same assets except for the Post Bank A/c. Rose Karungari died on 22nd August 2011.

On 8th April 2014 –Simon Wangenye Karungari and James Maina Ndani filed a consent to be appointed as joint administrators of the estate of Matu Wangechi and the grant of letters of administration intestate was issued to both of them on 28th February 2014.

On 2nd September 2014 summons for confirmation of grant was filed in the names of both administrators but clearly signed by Simon Wangenye Karungari. He proposed that the 2 parcels of land be split into 2 equal shares between the 2 houses of the deceased: -

a) L.R NO. NAROMORU/NARUMORU BLOCK 2/AGUTHI/237

1st House

- DADSON NDERITU NDANI
- JAMES MAINGI NDANI
- FRANCIS MUTHIGANI NDANI
- JANE WANGECHI NDANI
- PATRICIA NYARUAI NDANI
- FRANCIS MAINA KIRIGO
- ROSE WANJIRU KIRIGO &
- JANE WANGECHI NDANI

2nd House

- SIMON WANGENYE KARUNGARI
- CHARLES MAINA NDERITU
- DAVID MACHARIA NDERITU

b) L.R.NO. AGUTHI/MUNGARIA/460

1st House

- DADSON NDERITU NDANI
- JAMES MAINGI NDANI
- FRANCIS MUTHIGANI NDANI
- JANE WANGECHI NDANI

- PATRICIA NYARUAI NDANI
- FRANCIS MAINA KIRIGO equal share for their mother KIRIGO NDANI
- ROSE WANJIRU KIRIGO
- JANE WANGECHI NDANI

2nd House

- SIMON WANGENYE KARUNGARI
- CHARLES MAINA NDERITU
- DAVID MACHARIA NDERITU

The consent was signed by 2 beneficiaries only, James Maina Ndani the other administrator filed a protest on 25th November 2014. His proposal was that the estate be distributed as follows: -

L.R NO. NAROMORU/NARUMORU BLOCK 2/AGUTHI/237

- FRANCIS MAINA KIRIGO
- ROSE WANJIRU KIRIGO **Equal shares**
- PATRICIA NYARUAI NDANI

L.R.NO. AGUTHI/MUNGARIA/460

- DADSON NDERITU NDANI
- JAMES MAINGI NDANI
- FRANCIS MUTHIGANI NDANI **Equal shares**
- JANE WANGECHI NDANI
- SIMON WANGENTE KARUNGARI

The protester testified and called 2 witnesses who were also beneficiaries. His position is that his father had 2 wives – one had three children among them the applicant, and the other had 8 children among them the protesters. One of the children of the 2nd wife one Kirigo died, but left children.

The applicant called 2 witnesses who supported his mode of distribution.

The only issue for determination is how the estate of the deceased should be distributed among his beneficiaries. The position of the protester is expressed in his protest and expounded in the submissions filed on 29th May 2018 that;-

- i) Naromoru/Naromoru/Block 2/Aguthi/237 measuring approximately 2.13 hectares shared equally between Francis Maina Kirigo 1.065 hectares, Rose Wanjiru Kirigo 0.355 hectares, Mary Wangari Kirigo 0.355 hectares and Patricia Nyaruai Ndani 0.355 hectares.
- ii) Aguthi/Mungaria/460 measuring approximately 7.9 acres shared equally between Dadson Nderitu Ndani 2.3 acres, James Maingi Ndani 2.0 acres, Jane Wangechi Ndani 1.2 acres and Simon Wangenye Karungari 2.4 acres.

He claims that those were the wishes of his father.

The applicant on his part filed submissions on 16th October 2018.

He is a grandson to the deceased and a son to Rose Karungari Ndani – deceased. He would like to see each of his grandfather's properties split into 2 equal shares between the two houses. He too claims that those were the wishes of his grandfather shared out his property between his 2 wives.

The Law

Each party herein claims to have been aware of the deceased's wishes before he died. However, the deceased herein died intestate. He could not have had two rivaling set of wishes. There is no evidence that he distributed his property between his 2 wives or in the manner alleged by the applicant, or among some of the beneficiaries in the manner alleged by the protester.

It is not possible that the deceased had 2 sets of wishes existing simultaneously. The beneficiaries have all taken sides depending on the side that greatly benefits them.

The fact is the deceased estate is made up of the 2 parcels of land. The deceased died leaving children but no spouses. Two of his children died, leaving children of their own, who ought to inherit their parents' shares.

The applicable law is Section 38 of the Law of Succession Act . There is no evidence that any of the children was gifted inter vivos but there is evidence that the beneficiaries are in occupation of parts of the estate.

Since the beneficiaries cannot agree on distribution, I can only invoke Section 38 and hold that the estate herein be shared equally among the children of the deceased. They are at liberty to retain their respective homesteads save that each to have an equal share of the estate.

The estate is to be shared into 9 equal portions. The children of Rose Karungari, and those of Kirigo Ndani to inherit their parents' share. The share for Rose Karungari to be registered in equal shares for her three children: - *Simon Wangenye, Charles Maina and David Macharia.*

The shares for Kirigo to be registered in the names of his children in equal shares- *Eunice Wanjiru, Francis Maina and Mary Wangari.*

It is so ordered.

No orders as to costs.

Right of Appeal: 30 days.

Delivered, dated and signed at Nyeri this 1st March 2019.

Mumbua T Matheka

Judge

In the presence of:

Court Assistant: Juliet

Parties

Simon Wangenye

David Macharia

Francis Maina

James Maingi

Anne Wakiuru

Jane Wangeci

Patricia Nyaruai

Absent: Eunice Wanjiru, Dadson Nderitu, Mary Wangari and Francis Muthigani

Delivered.

Mumbua T Matheka

Judge

