



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO.207 OF 1997

IN THE MATTER OF ESTATE OF DANIEL KARURI KOGI (DECEASED)

JOHNSON MATHENGE KARURI.....APPLICANT

BETWEEN

GRACE NYACHOMBA MWANIKI....RESPONDENT

JUDGMENT

Daniel Karuri Kogi died on 28th December 1985 aged 81 years. According to the letter from the chief Ngarano Location dated 14th August 2006. The following were his survivors: -

1. Mariam Nyathigi Kahiga -Daughter in law
2. Johnson Mathenge Karuri - Son
3. Patrick Karuri Muriithi -Son
4. Richard Warui Karuri - Son
5. Wambui Karuri -Daughter
6. Grace Nyachomba Mwaniki-Daughter
7. Teresa Wamucii Kiruru -Daughter

He left the following properties:-

- i. Narumoru/Narumoru/Kieni/East Blk 1/1
- ii. Narumoru/Kiamathage Blk 1/128
- iii. Ruguru/Karuthi/361
- iv. Ruguru/Karuthi/676

Wambui Karuri filed for and was issued with grant of letters of administration on 6th January 1999 and the same was confirmed on 22nd November 2002 – distributing the deceased's estate which now initiated;

- i. LR Matanya 1683
- ii. LR Gatuamba
- iii. LR Gitero/Narumoru

iv. LR Bithi/Nyahururu

v. Plot 18 Hiriga

vi. Plot No.12 Gatuang'ang'a

All were share equally among Mathenge Karuri, Muriithi Karuri and Waweru Karuri except for Ruguru/Karuthi/361 among Mathenge Karuri 3.0 Acres, Wambui Karuri 1.0 acres, Mathenge Karuri, Muriithi Karuri, Waweru Karuri 0.96 acres each.

This provoked through summons for revocation of the grant dated 20th May 2008 by Grace Nyachomba Mwaniki, and another dated 10th December 2008 by Johnson Mathenge Karuri.

On 25th November 2009, the 2 applications were compromised before Makhandia J as he then. Grace Nyachomba Mwaniki filed summons for confirmation of grant on 10th February 2010. She listed the beneficiaries of the Estate as:-

i. Herself

ii. Patrick Karuri Muriithi

iii. Miriam Nyathigi Kahiga

iv. Richard Warui Karuri

v. Johnson Mathenge Karuri

vi. Wambui Karuri

vii. Teresa Wamucii Kiruru

Her proposed mode of distribution was confirmed by Sergon J 22nd March 2010. Those orders provoked the summons for revocation of grant/Annulment of grant dated 10th November 2011 filed by Johnson Mathenge Karuri. This was responded to by an affidavit sworn on 17th May 2012 of the petitioner/respondent.

After a full hearing of the protesters and the applicant, I delivered judgment on 12th April 2018 in which the grant was revoked, and a fresh grant issued to the four administrators, with each having the liberty to file and serve summons for confirmation of grant.

On 22nd January 2019, Richard Warui Karuri filed summons for confirmation of grant. The beneficiaries had changed as listed in paragraph 2;

a. Leah Nyagitha Karuri (Dcd)

b. Michael Kahiga Karuri (Dcd)

c. Julia Chaki Mbogo

d. Patrick Karuri Muriithi

e. Johnson Mathenge Karuri (Dcd)

f. Wambui Karuri

g. Veronicah Nyaitheya

h. Zipporah Wangechi

i. Lucy Chaki Karuri

j. Richard Warui Karuri

k. Grace Nyachomba

l. Teresah Wamucii

m. Grace Wangui Muriithi

He also made proposals on the mode of distribution;

ASSETS/LAND PARCEL	BENEFICIARY	ACREAGE
RUGURU/KARUTHI/361 (5.9 ACRES)	<ol style="list-style-type: none"> 1. Johnson Mathenge Karuri (Dcd) 2. Wambui Karuri 3. Prisca Muthoni Karuri(Dcd) 4. Ann Nyaguthi Karuri(Dcd) 5. Phoebe Wairimu Karuri(Dcd) 	<p>3 Acres</p> <p>1 Acre</p> <p>1.9 Acres jointly</p>
RUGURU/KARUTHI/767	<p>(UPPER SIDE)</p> <p>Richard Warui Karuri</p> <p>Johnson Mathenge Karuri (DCD)</p> <p>Patrick Karuri Muriithi</p> <p>(LOWER SIDE)</p> <p>Michael Karuri(Dcd) Kahiga</p> <p>Richard Warui Karuri</p>	<p>2.3 Acres</p> <p>2.3 Acres</p> <p>2.3 Acres</p> <p>1.4 Acres</p> <p>3 Acres</p>
NAROMORU/KIAMATHAGE BLOCK 1/128 (7.7 Acres)	<p>LeahNyagitha Karuri(Dcd)</p> <p>Julia Chaki Mbogo</p> <p>Wambui Karuri</p> <p>Lucy Chaki Karuri</p> <p>Veronica Nyaithenya</p> <p>Zipporah Wangechi</p> <p>Grace Wangui Muriithi</p>	<p>1. Acres</p> <p>1. Acres</p> <p>1. Acres</p> <p>1. Acres</p> <p>1. Acres</p> <p>1. Acres</p> <p>1. Acres</p>
LAIKIPIA/TIGITHI/MATANYA BLK 3/683	<p>LeahNyagithaKaruri(Dcd)</p> <p>Julia Chaki Mbogo</p> <p>Wambui Karuri</p> <p>Lucy Chaki Karuri</p> <p>Veronica Nyaithenya</p>	<p>TO BE SOLD AND THE PROCEEDS SHARED EQUALLY</p>

		Zipporah Wangechi Grace Wangui Muriithi	
NAROMORU/NAROMORU 1/KIENI/612	BLK	Grace Nyachomba Karuri	ABSOLUTE
LAIKIPIA/SALAMA/MURUKU (KIENI EAST)	BLK 1/ 4	Nyathiigi Kahiga Johnson Mathenge Karuri (Dcd) Patrick Karuri Muriithi Richard Warui Karuri	REGISTERED JOINTLY
NAROMORU/NAROMORU EAST /1	BLK 1/KIENI	Patrick Karuri Muriithi Grace Nyachomba Karuri Teresa Wamucii Karuri Michael Kahiga(Dcd)	5.4 Acres 2.2 Acres 2.2 Acres 1 Acre

The mode of distribution was consented by consent filed on 21st February 2019 by all the beneficiaries except Grace Nyachomba who filed protest on 20th February 2019.

That the agreement on the new mode of distribution was arrived at on 26th April 2018 in a meeting held at the deceased's home and that she was not invited. That the mode of distribution was discriminatory to the women in the family.

She consented to the distribution of **Kiamathege/Block 1/128** (7.7 acres) and **Narumoru/Narumoru/ Block 1/ Kieni East/1**.

That for **Ruguru/Karuthi/361** she proposed that one acre be subtracted for Wambui Karuri- and the balance 4.9 acres – Mathenge s/o Karuri to get 2.47 acres and the balance be shared among the 3 houses at 0.61 acres.

That **Ruguru/Karuthi/767** be shared into 4 equal shares amount the houses at 2.5 acres.

That Laikipia/Salama/Muruku Block 1/4 Kieni East- to get ¼ share.

That Plot 18 Hiriga – be shared equally among Miriam Nyagithi, Patrick Karuri Muriithi, Charles Mathenge Karuri for his siblings and Richard Warui Karuri.

In her testimony her compliant was basically that her mother's house had been treated badly and denied a share of their father's estate. She also felt that the 'girls' had been treated badly given the share of the land that was not yet registered in their father's name. She said she was not disputing the discussions culminating into the distribution mode by the petitioner but that she wanted the estate shared among the mothers before –devolving to the children.

The applicant produced the minutes of the meeting of 10th June 2018. He testified that all parties had agreed and signed the typed proceedings except the protester who said she would go by the court's decision. She also said that she too was tired of court cases.

According to the applicant there is a way in which their father had distributed the estate before he died and for that reason No.361 and 767 would not be redistributed – they shared the estate among the children not among their mothers.

He insisted that the Laikipia Salama land was left for the sons. That if the protester had requested they would have given her ¼ of the Salama land but she never asked.

The applicant confirmed that the four administrators never sat to discuss the distribution of the estate. He also said that during the meeting, the women told the men to go and discuss the mode of distribution. It was also evident that the women did not participate in the discussion on the mode of distribution of the estate.

He could not confirm whether the protester had received the typed copies of the proceedings of 10th June 2018.

After this it was left to the court to determine the issue.

I have carefully considered the evidence before me. This is the 2nd ruling this court is writing in this matter. The court also gave the parties an opportunity to settle the distribution dispute. However, even though it was said that parties had agreed, the protester still felt that her mother's house had been treated badly.

It was evident that all along that the rest of the family was not pleased by the fact that the protester, a married woman had filed this cause in the first place, and purported to distribute their father's estate.

Neither was it hidden that the male members of this family felt entitled to certain specific portions of the estate without any evidence of gifts inter-vivos by the deceased.

The only issue therefore is how this estate ought to be distributed among the deceased's beneficiaries.

The applicant's position is that it should be shared among the children. The protester's views are that the estate should be shared equally among the four houses taking into account the conceded gifts inter vivos to a few family members.

The court gave the parties the opportunity to hold a family discussion and agree. A report was filed by DW2 showing how the parties agreed. However, from evidence received the women sat aside as the men discussed. It also emerged that the administrators did not put their collective minds to the proposed distribution. The men after discussing put it on paper and everyone put their hand on it. The protester was not consulted neither were her views sought before the final list was made. Clearly therefor there lies the answer for the lack of consensus. It is not right to view the protester as 'sumbua' or uncooperative. She was appointed an administrator for a reason and those holding the discussions needed to involve her as well. Ignoring her either for being a woman or old was not proper.

The deceased died intestate. He was polygamous. None of his spouses is alive as it appears they pre deceased him. There were no discernible wishes save for the uncontested distribution of no. 361 to take acre of two other beneficiaries' shares before those of all the beneficiaries.

Determination.

Section 38 of the LOSA is applicable with modifications to ensure that the property is not distributed into miniscule sizes. It provides

38. Where intestate has left a surviving child or children but no spouse Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

I therefore make the following orders: That

1. Ruguru/Karuthi/361 5.9 acres

one acre to Wambui Karuri-

Mathenge s/o Karuri to get 2.45 acres

The balance 2.5 acres be shared equally among the rest of the beneficiaries so that those from the same house get a consolidated share to be registered in their joint names.

2. Ruguru/Karuthi/767

This was the home. To be shared equally among the beneficiaries so that those from the same house get a consolidated share to be registered in their joint names.

The rest of the estate to be shared equally among all the beneficiaries.

3. LAIKIPIA/SALAMA/MARUKU/BLOCK 1 /4 (KIENI EAST) (8 Acres)

4. NAROMORU/NAROMORU BLK 1/KIENI/612

6. NAROMORU/NAROMORU BLK 1/KIENI EAST /1

7. NAROMORU/KIAMATHAGE BLOCK 1/128 (7.7 Acres)

8. LAIKIPIA/TIGITHI/MATANYA BLK 3/683 for the Hiriga Plot whose existence and documentation was in dispute, will not form part of the estate

For those beneficiaries who are deceased, it will be upon the administrators to provide evidence of their administrator's ad litem for purposes of transmission

No orders as to costs.

Dated, delivered and signed at Nyeri this 7th Day of June 2019.

Mumbua T.Matheka

Judge

In the presence of:-

Court Assistant: Nancy

Ombongi for applicants

Respondent in person

Parties present

Right of Appeal 30 Days

Judge