



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2319 OF 2009

IN THE MATTER OF THE ESTATE OF PHARIS MUIGAI MWANGI (DECEASED)

IRENE NYAKAIRU MWANGI.....1ST APPLICANT/ADMINISTRATOR

GRACE WAIRIMU KAROBIA.....2ND APPLICANT/ADMINISTRATOR

VERSUS

RUTH NJOKI MWANGI.....RESPONDENT/ADMINISTRATOR

RULING

1. Pharis Muigai Mwangi, the deceased herein died intestate on 27th August, 1993 and was survived by six children namely; James Mwangi Pharis (deceased), Jane Wambui Wahuga, Margaret Wanjiru Gaiho, Grace Wairimu Karobia, Irene Nyakairu Mwangi and Alice Njeri Gikera. The main order sought in the Summons for Confirmation of Grant dated 12th June, 2017 is that the Grant of Letters of administration intestate made to Irene Nyakairu Mwangi, Grace Wairimu Karobia and Ruth Njoki Mwangi (representing the estate of James Mwangi Pharis) on 12th April, 2017 be confirmed.

2. The Applicants swore an affidavit in support of the Summons for confirmation of grant and proposed the mode of distribution as follows:-

<u>PROPERTY</u>	<u>HEIR</u>	<u>ACREAGE</u>
Loc 3/Githumu/153	Jane Wambui Wahuga	1 acre
	Margaret Wanjiru Gaiho	1 acre
	Grace Wairimu Karobia	1.3 acres
	Irene Nyakairu Mwangi	1.3 acres
	Alice Njeri Gikera	1 acre
	Ruth Njoki Mwangi	2 acres
Loc. 3/Mungaria/364	Irene Nyakairu Mwangi	0.3 acres
	(To hold in trust for herself, Jane Wambui Wahuga, Margaret Wanjiru Gaiho, Grace Wairimu Karobia, and Alice Njeri Gikera)	
Loc. 16 Ndunyu chege/194	Ruth Njoki Mwangi	1.09 acres

Loc.3/Githumu/565/10A. Grace Wairimu Karobia 1/8 Acre

(To hold in trust for herself, Jane Wambui Wahuga,
Margaret Wanjiru Gaitho, Irene Nyakairu Mwangi
and Alice Njeri Gikera)

Loc. 3/Githumu/565/68A Jane Wambui Wahuga 1/8 Acre

Loc. 3/Githumu/565/68B Jane Wambui Wahuga 1/8 Acre

Plot 658 A Githumu Grace Wairimu Karobia

Shares in Njunu Jane Wambui Wahuga 2373 Shares

Njunu Tea Factory Margaret Wanjiru Gaitho 3330 Shares

Irene Nyakairu Mwangi 3001 Shares

Shares in Nduti Ruchu Grace Wairimu Karobi 6940 Shares

Tea Factory

Shares in Ikumbi Alice Njeri Gikera 169 Shares

Tea factory

Shares in Makomboki Alice Njeri Gikera 751 Shares

Tea factory

Shares in Mugunda Self Ruth Njoki Mwangi

Help group.

3. The Applicants also filed a consent to the proposed distribution that was signed by all the other beneficiaries except Ruth Njoki Mwangi. She being a co-administrator of the estate of the deceased filed an affidavit in protest against the proposed mode of distribution and stated that the proposed mode of distribution by her co-administrators was unjust and inequitable. She proposed distribution as follows:-

PROPERTY **HEIR** **ACREAGE**

Loc. 3/Mungaria/364 Irene Nyakairu Mwangi 0.3 acres

(To hold in trust for herself, Jane Wambui Wahuga,
and Margaret Wanjiru Gaitho)

Loc. 16 Ndungu chege/194 Grace Wairimu Karobia 1.09 acres

Plot 658 A Githumu Ruth Njoki Mwangi

Plot 10 A Githumu Ruth Njoki Mwangi

Loc.3/Githumu/153 Ruth Njoki Mwangi 7.6 Acres

Shares in Njunu Tea Factory Jane Wambui Wahuga 2000 Shares

Margaret Wanjiru Gaitho 3000 Shares

Irene Nyakairu Mwangi 2674 Shares

	Ruth Njoki Mwangi	1000 Shares
Shares in Ikumbi	Alice Njeri Gikeria	169 Shares
Tea factory		
Shares in Makomboki	Grace Wairimu Makorobia	751 Shares
Tea factory		
Shares in Mugunda Self	Ruth Njoki Mwangi	
Help group.		

4. The summons were canvassed by way of written submissions. Mr. Njoroge for the Applicants submitted that the estate ought to be distributed equitably and in the manner proposed by the Applicants/petitioners. He stated that during the lifetime of the deceased the Respondent's deceased husband, whose interest she is representing in this cause had been allocated 2 acres out of Loc.3/Githumu/153 which had tea bushes.

5. It was further submitted that the permanent home built on the property was their family home with sentimental attachment and was constructed by the deceased's daughters in the late 1980s for the benefit of their parents who are now deceased. He asserted that the Respondent's husband had been allocated his own 2 acres to build and farm.

6. Learned Counsel continued that, the Respondent had no interest in Loc. 3/Mungaria/364 measuring approximately 0.3 acres, but that Loc.16/Ndunyu Chege/194 measuring approximately 1.09 acres, should be distributed to the Respondent who had always been in possession. It was also proposed that Loc.3/Githumu/565/10A, Loc.3/Githumu/565/68A and Loc.3/Githumu/565/68B with a semi-permanent building generating a monthly income of approximately Kshs. 5,000/= be distributed as proposed since the Respondent was already utilizing Loc.16/Ndunyu Chege/194 for her benefit.

7. In Nduti Ruchu, Ikumbi and Makomboki Tea Factories, Counsel for the Applicants submitted that the shares were based on the tea bushes. Further, that the Respondents' deceased husband had his own tea bushes in the two acres allocated to him from Loc. 3/Githumu/153 from which she is earning a living. He submits that the Applicants are agreeable to the Respondent receiving shares from Mugunda Self-help group.

8. In his submissions learned counsel for the Applicants Mr. Njoroge reiterated the need for the Court to equitably distribute the estate among the beneficiaries. He relied on three cases in support of his submissions namely; **Re Estate of Morris Wainaina Muchai (Deceased) [2018] EKLK**, **Estate of John Musambayi Katumanga (deceased) [2014] EKLK** and **Re Estate of Joseph Kiragu Macharia (Deceased) [2017] EKLK**.

9. In opposition to the proposed mode of distribution, learned Counsel for the Respondent Mr. Kirimi, submitted that the Respondent's right to benefit from the estate was not disputed. He asserted that the bone of contention was the property known as Loc. 3/Githumu/153. He stated that the Respondent and her children have been in possession and occupation of the property since the demise of the deceased in 1993. A permanent house is built thereon which has been the Respondent's home. He emphasized that the proposed mode of distribution by the Applicants would render the Respondent and her children homeless. It was therefore justifiable that the property be allocated to the Respondent and further that she had planted tea leaves thereon which were her only source of income.

10. Mr. Kirimi further submitted that the Respondent had since ceded ground and was willing to accept an allocation of 4.5 acres from the parcel Loc. 3/Githumu/153 in addition to Loc.16 Ndunyu Chege/194 and Loc.3/Muthangaria/364 on which the Applicants do not lay any claim. He concluded by submitting that the Respondents having been in possession of Loc. 3/Githumu/153 since 1993 have incurred great expense in developing the property. He urged the Court not to disturb that social set up. He also relied on the case of **Estate John Musambayi Katumanga (deceased) [2014] EKLK** in support of his submissions.

11. Having considered all the material canvassed, the Court notes the dearth of material placed before it by the parties but nevertheless must proceed to make a determination based on what was placed before it. From the foregoing, distribution of the estate herein is hardly an exercise of clear cut precision due to several factors, including the absence of valuations and the nature of property itself.

12. Section 38 of the Act provides that,

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.

13. The court however retains discretion when distributing the property to ensure that there is equitable distribution all the time alive to the fact that equitable is not synonymous with equal. As was established in the case of **Re Estate of John Musambayi Katumanga – (Deceased), [2014] eKLR** and **Rono V. Rono & Another, [2005] eKLR**. The aim of the Court is not to achieve mathematical equality between the beneficiaries but to do equity, considering the unique facts in each case.

14. So far as the beneficiaries of the estate are concerned, there is no dispute from the material on record, and submissions that the deceased's family included his children James Mwangi Pharis (deceased), Jane Wambui Wahuga, Margaret Wanjiru Gaitho, Grace Wairimu Karobia,

Irene Nyakairu Mwangi and Alice Njeri Gikera. Ruth Njoki Mwangi has been listed as a beneficiary by virtue of being the representative of the estate James Mwangi Pharis.

15. From the pleadings and evidence on record, the Respondent proposed that she gets the lion's share of the estate being 4.5 acres from the parcel Loc. 3/Githumu/153 in addition to Loc.16 Ndunyu Chege/194 measuring 1.09 acres, Loc.3/Muthangaria/364 measuring 0.3, shares in Magunda Self-help Group and 1000 shares from Njunu Tea Factory while the other five children of the deceased share the balance of the estate. The reason advanced for this proposal was that she had been in possession of parcel Loc. 3/Githumu/153 since the demise of the deceased in 1993 and had was living on the house built thereon. She further alluded to making great development thereon since taking possession of the property. No evidence of the developments made after the demise of the deceased was produced in support of this allegation and no other reasons were advanced for this proposal which on the face of it appears inequitable.

16. On the other hand the Applicants have proposed that the family of the deceased ought to share the property as proposed. Loc. 3/Githumu/153 to be distributed among all the beneficiaries equitably with the Respondent getting a share of 2 acres while the other beneficiaries to receive 1 acre or 1.3 acres each. It was recognised the Respondent's deceased husband had been allocated 2 acres of the property by the deceased prior to his death which was considered. They have also allocated the other properties among all the beneficiaries including the Respondent who they proposed to be allocated Loc.16 Ndunyu Chege/194 measuring 1.09 acres and all the shares Magunda Self Help Group.

17. It was not disputed that a permanent house had been built on Loc. 3/Githumu/153 which the Respondent claimed to be her home. She stated that the allocation of the property as proposed by the Applicant would render her homeless. On the other hand, the Applicants claimed to have built the property in the 80s for their parents' benefit and thus had a sentimental value attached. What is in issue is the mode of distribution of this property. No evidence was however tendered to support the claim of financial contribution made towards its development. This Court proceeds to allocate Loc. 3/Githumu/153 as proposed by the Applicants. The house built thereon will be included in the allocation of 2 acres distributed to the Respondent.

18. The allocation of Loc.3/Muthangaria/364 measuring 0.3 acres was disputed. The Applicants proposed that the property be allocated to Irene Nyakairu Mwangi to hold in trust for herself, Jane Wambui Wahuga and Margaret Wanjiru Gaitho. However, the Respondent proposed that the property be solely allocated to her and her only reason is that the Applicant had no interest therein. From the proposals presented by the parties, there is a clear dispute with both sides seeking to be allocated this parcel. This Court proceeds to allocate this parcel as proposed by the Applicants.

19. There is no dispute on the allocation of Loc.16 Ndunyu Chege 194, Loc.3/Githumu/565/10A, Loc. 3/Githumu/565/68A, Loc. 3/Githumu/565/68B, and Plot 658 A Githumu as proposed by the Applicants, in which case this Court will adopt that proposal. Another allocation agreed upon is for the shares in Nduti Ruchu tea factory which the Respondent did not make a claim on. These shares will be allocated as proposed by the Applicants.

20. There was a consensus on the allocation of shares in Ikumbi Tea Factory, Makomboki Tea factory and Mugunda self-help group. These will be distributed as proposed by the Applicants in their proposal. As for the Shares in Njunu Tea Factory, it was the Applicants proposal that they be distributed among Jane, Margaret and Irene. The Respondent on the other hand proposed that her name be included as a beneficiary to these shares. Considering that she was not allocated any shares in the other tea factories available for distribution, I agree with her proposal and allocate her 1000 shares from Njunu Tea Factory. The remaining shares will be allocated to the other beneficiaries as agreed.

21. More specifically, the estate shall be distributed as set out hereunder.

<u>PROPERTY</u>	<u>HEIR</u>	<u>ACRES</u>
A. Loc 3/Githumu/153	Jane Wambui Wahuga	1 Acre
	Margaret Wanjiru Gaitho	1 Acre
	Grace Wairimu Karobia	1.3 Acres
	Irene Nyakairu Mwangi	1.3 Acres
	Alice Njeri Gikera	1 Acre
	Ruth Njoki Mwangi	2 Acres
	(Inclusive of the house)	
B. Loc. 3/Mungaria/364	Irene Nyakairu Mwangi	0.3 Acres

(To hold in trust for herself, Jane Wambui Wahuga,

Margaret Wanjiru Gaitho, Grace Wairimu Karobia,

and Alice Njeri Gikera)

C. Loc. 16 Ndungu chege/194 Ruth Njoki Mwangi 1.09 Acres

D. Loc.3/Githumu/565/10A. Grace Wairimu Karobia 1/8 Acre

(To hold in trust for herself, Jane Wambui Wahuga, Margaret Wanjiru Gaitho, Irene Nyakairu Mwangi and Alice Njeri Gikera)

E. Loc. 3/Githumu/565/68A Jane Wambui Wahuga 1/8 Acre

F. Loc. 3/Githumu/565/68B Jane Wambui Wahuga 1/8 Acre

G. Plot 658 A Githumu Grace Wairimu Karobia

H. Shares in Njuni Jane Wambui Wahuga 2000 Shares

Tea Factory Margaret Wanjiru Gaitho 3000 Share

Irene Nyakairu Mwangi 2674 Shares

Ruth Njoki Mwangi 1000 Shares

I. Shares in Nduti Ruchu Grace Wairimu Karobi 6940 Shares

Tea Factory

J. Shares in Ikumbi Alice Njeri Gikeria 169 Shares

Tea factory

K. Shares in Makomboki Alice Njeri Gikeria 751 Shares

Tea factory

L. Shares in Mugunda Self Ruth Njoki Mwangi

Help group.

22. The grant herein is confirmed in accordance with the foregoing terms. This being a succession matter there will be no orders as to costs. Right of Appeal within 60 days from the date hereof.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF JUNE 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of Advocate for the Applicants/Administrators

In the presence of.....Advocate for the Respondent/Administrator