



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 229 OF 2004

IN THE MATTER OF THE ESTATE OF STANLEY KUBAI MUCHIRI (DECEASED)

POLYCARP KOOME KUBAI.....1ST PETITIONER

FELIX KOOME KUBAI.....2ND PETITIONER

MARY KUBAI.....3RD PETITIONER

JUDITH NAITORE.....4TH PETITIONER

VERSUS

SALOME KAIMURI.....OBJECTOR

J U D G M E N T

1. **STANLEY KUBAI MUCHIRI** ('the deceased') died on 25th March, 2003. He was survived by 4 widows and 13 children as follows: -

- a) Mary Kubai - widow
- b) Petronila Kubai - widow
- c) Judith kubai - widow
- d) Salome Kaimuri - widow
- e) Felix Gachamba - son
- f) Robert Kimathi - son
- g) Damaris Mwendwa - daughter
- h) Caroline Kamami - daughter
- i) Faith Ntinyari - daughter
- j) Polycarp Koome - daughter
- k) Martin Kimathi - daughter
- l) Erick Murithi - son
- m) Linda Makena - daughter
- n) Rhoda Karamuta - daughter
- o) Lucy Kawira - daughter

p) Norah Nkatha - daughter

q) Pamela Kendi - daughter

2. The petitioners petitioned for grant of letters of administration which were issued to Polycarp Koome Kubai, Felix Gachamba and Mary Kubai on 24th February, 2009. However, on 20th May 2008, the court appointed the 1st and 3rd petitioner as joint administrators.

3. Given that both the petitioner and objector gave contradictory versions as to what constitutes the assets of the deceased, by a ruling made on the court directed that the parties do file copies of titles or search certificates to prove that the properties belong to the deceased.

4. From the official searches filed, the following are the assets of the estate:-

a) Ithima/Antuambui/5275 (0.06 Ha)

b) Amwathi/Maua/3135 (0.1874Ha)

c) Amwathi/Maua/9947 (0.0396 Ha)

d) Ithima/Antuambui/5542 (0.04 Ha)

5. The following properties that had been set out in the affidavit in support of the petition were found to belong to 3rd parties and not the deceased. They are therefore not subject to distribution. These are:-

a) Plot No. 4474, Athiru Ruujine

b) Plot No. 5112, Athiru Ruujine

c) Plot No. 1748, Athiru Ruujine

d) Plot No. 2234, Amwathi Maua

6. Through their affidavits, the 1st petitioner and the objector provided their own mode of distribution of the estate. They filed their own submissions. The objector stood by her proposed mode of distribution whilst the 1st petitioner submitted that the court applies the provisions of **Section 38 of the Law of Succession Act** in distributing the estate and distribute the same equally to all the beneficiaries.

7. The main issue of determination is distribution of the estate. To determine how the estate is to be distributed, this court is guided by the provisions of **The Law of Succession Act** and **The Probate and Administration Rules**. Looking at the provisions of **Part V of the Act**, it advocates for equality amongst all the beneficiaries. Since the deceased died intestate and was polygamous, then the guiding provision would be **Section 40 of the Law of Succession Act**.

8. In **Stephen Gitonga M’Murithi v Faith Ngira Murithi [2015] eKLR** the Court of Appeal delivered itself thus:-

“As for the issue of the widow having been given an outright tangible shareholding in the net intestate estate of the deceased as opposed to a life interest, we find nothing in section 40 of the Laws of Succession Act that can prevent a court of law from looking at the peculiar circumstances of each case and then determine whether to apply strictly the rule on life interest or temper with it in the interests of justice to all the affected parties. In the circumstances of this case having found that the principle in section 38 was the appropriate applicable principle, ordering a life interest would have occasioned injustice to all the dependants as opting for such an option would have only bestowed upon the widow Naomi a hovering interest over the individual interests of all the other beneficiaries thereby making it impossible for all the beneficiaries to enjoy freely the resulting benefits from the deceased’s estate. We find it was prudent for the learned trial Judge to accord a direct unencumbered benefit to the widow Naomi as opposed to a life interest.”

9. I have considered the evidence on record. I have considered that the estate is very limited as compared to the number of beneficiaries. In this regard, I am of the view that the estate of the deceased be distributed equally amongst all the beneficiaries so that each may get to enjoy the benefits of the estate without any one of them being prejudiced.

10. One other reason, none of the parties explained to court which of the properties the several families (houses) occupied and the extent. To start distributing the properties blindly without knowledge of their occupation, it may lead to homes being brought down thereby causing hardship which can be avoided.

11. I therefore make the following orders: -

a) the grant of letters of administration issued to Polycarp Koome Kubai and Mary Kubai on 20th May 2008 be confirmed with the estate being distributed as follows:-

b) Ithima/Antuambui/5275 (0.06 Ha)

Be shared equally amongst

1. Mary Kubai - widow
2. Petronila Kubai - widow
3. Judith kubai - widow
4. Salome Kaimuri - widow
5. Felix Gachamba - son
6. Robert Kimathi - son
7. Damaris Mwendwa - daughter
8. Caroline Kamami - daughter
9. Faith Ntinyari - daughter
10. Polycarp Koome - daughter
11. Martin Kimathi - daughter
12. Erick Murithi - son
13. Lindah Makena - daughter
14. Rhoda Karamuta - daughter
15. Lucy Kawira - daughter
16. Norah Nkatha - daughter
17. Pamela Kendi - daughter

c) Amwathi/Maua/3135 (0.1874Ha)

Be shared equally amongst

1. Mary Kubai - widow
2. Petronila Kubai - widow
3. Judith kubai - widow
4. Salome Kaimuri - widow
5. Felix Gachamba - son
6. Robert Kimathi - son
7. Damaris Mwendwa - daughter
8. Caroline Kamami - daughter
9. Faith Ntinyari - daughter
10. Polycarp Koome - daughter
11. Martin Kimathi - daughter
12. Erick Murithi - son

13. Linda Makena - daughter
14. Rhoda Karamuta - daughter
15. Lucy Kawira - daughter
16. Norah Nkatha - daughter
17. Pamela Kendi - daughter

c) Amwathi/Maua/9947 (0.0396 Ha)

Be shared equally amongst

1. Mary Kubai - widow
2. Petronila Kubai - widow
3. Judith kubai - widow
4. Salome Kaimuri - widow
5. Felix Gachamba - son
6. Robert Kimathi - son
7. Damaris Mwendwa - daughter
8. Caroline Kamami - daughter
9. Faith Ntinyari - daughter
10. Polycarp Koome - daughter
11. Martin Kimathi - daughter
12. Erick Muriithi - son
13. Linda Makena - daughter
14. Rhoda Karamuta - daughter
15. Lucy Kawira - daughter
16. Norah Nkatha - daughter
17. Pamela Kendi - daughter

d) Ithima/Antuambui/5542 (0.04 Ha)

Be shared equally amongst

1. Mary Kubai - widow
2. Petronila Kubai - widow
3. Judith kubai - widow
4. Salome Kaimuri - widow
5. Felix Gachamba - son
6. Robert Kimathi - son

7. Damaris Mwendwa - daughter
8. Caroline Kamami - daughter
9. Faith Ntinyari - daughter
10. Polycarp Koome - daughter
11. Martin Kimathi - daughter
12. Erick Muriithi - son
13. Lindah Makena - daughter
14. Rhoda Karamuta - daughter
15. Lucy Kawira - daughter
16. Norah Nkatha - daughter
17. Pamela Kendi - daughter

12. This being a family matter, I make no order as to costs.

It is so decreed.

DATED and DELIVERED at Meru this 19th day of September, 2019.

A. MABEYA

JUDGE