



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 1140 OF 1990
IN THE MATTER OF THE ESTATE OF KEINGATI WAIHARO KEINGATI
RULING

BACKGROUND

Teresiah Keingati, widow of the deceased, petitioned the court for grant of letters of administration intestate and the same was issued on 3rd March 1990 and later confirmed on 24th July 1991.

On the 26th of October 1994, Peter Karumbi Keingati, John Ngugi Keingati, Phillip Gitau Keingati, James Karanja Keingati and Simon Gathu Keingati filed an Application for revocation of the grant issued to the Respondent, Teresiah Keingati. Hon Justice E Githinji revoked the certificate of confirmation of grant on the basis that the mode of distribution had not been indicated plus the names of the sons and daughters of the deceased were not listed with their respective shares.

On the 29th of September 2016, this court by its Ruling determined the mode of distribution and appointed Teresia Nduta Keingati, Peter Karumba Keingati and Dr. Anne Nyokabi Nguithe as joint administrators of the deceased's estate.

The mode of distribution was as follows:

- **The Administrator –Teresiah Nduta Keingati shall retain L.R No. Ndumberi/Riabai No. 891 – the matrimonial home that shall be distributed equally to all beneficiaries equally after life interest, L.R No. Kiambu/Mun/Block 1/48-0.023 Ha – to be held by widow in trust and after life interest to be shared equally by the daughters of the deceased and the proceeds in Account Kshs. 12 million absolutely to the widow of the deceased.;**
- **The Applicants- 7 sons of the deceased namely, Paul Waiharo Kiingati, Peter Karumbi Keingati, John Ngugi Keingati, Phillip Gitau Keingati, James Karanja Keingati, Simon Gathu Keingati; and Raphael Keingati are to hold jointly and severally and share equally as follows; L.R No. Ngenda/Kimuyu Plot 12-1, L.R No. Ngenda/Kimuyu Plot No 315 – 3.4 Acres, L.R 37 (Renamed LR 11/45) and L.R. 209/10050 Kariobangi;**
- **The 4 daughters of the deceased, Mrs. Ann Nyokabi Nguithe, Mrs. Lucy Wanjiru Kandu, Ms.Elizabeth Njeri Kiingati and Mrs. Regina Wairimu Goko, shall hold jointly and severally and share equally L.R No. Ndumberi/Riabai No. 885-, L.R No. Ndumberi/Riabai No. 886 and L.R No. Ngenda/Mutomo T. 182**
- **525 Shares of Kiambu Dandora Farmers Company Limited were to be shared equally**

amongst 11 children; and

- **133 Shares of Gatatha Farmers Shares were also to be shared equally amongst 11 children after the widow exercises life interest.**
- **After payments for maintenance and utilities, the administrators were also ordered to distribute the balance to all beneficiaries equally.**

APPLICATIONS

The two applications are one filed by Dr Ann Nyokabi Nguithi by way of summons dated 17th November 2016, and the second one is a Chamber Summons dated 19th December 2016 filed by James Karanja Keingati. This Court directed on 18th July 2017 that the two applications be heard and determined together. The Ruling delivered on 29th September 2016 is the offshoot of the two applications.

Dr Ann Nyokabi Nguithi, in her application is seeking the following orders:

1. That the application be certified urgent and be heard ex-parte in the first instance
2. That this Honourable Court be pleased to Order the cancellation of registration of the Administrator, Teresia Nduta Kiingati as the proprietor of all parcels of land hereunder listed, and the registration of the parcels of land herein do revert to name of the deceased, Keingati Waiharo Keingati.
 - a) **L.R No. Ndumberi/Riabai No.885**
 - b) **L.R No. Ndumberi/Riabai No.886**
 - c) **L.R No. Ndumberi/Riabai No.891**
 - d) **L.R No. Ndumberi/Kimuyu/315**
 - e) **L.R No. Ngenda/Mutomo/ T.182**
 - f) **L.R No. Kiambu Municipality Block 1/48**
 - g) **L.R No. 209/4401/526**
 - h) **L.R No. 209/10050**
 - i) **L.R No.209/4401/531**
 - j) **L.R No. Ndumberi/Riabai No. T.152**
 - k) **L.R No. Ndumberi/Riabai/887**
3. That cost of this application provided for.

The main grounds for this application as stated in the summons and the supporting affidavit sworn on the 17th of November 2016 were that the properties listed above are registered under Teresia Nduta Kiingati. This therefore makes it difficult for the implementation of the disposition in the Ruling dated 29th September 2016 and the overall distribution of the deceased's estate. The cancellation sought would however not bar Teresia from having a life interest in the rental income.

James Karanja Keingati, on behalf of the 1st, 2nd, 3rd and 5th Applicant, swore an affidavit dated 24th

April 2017 in opposition to the application dated 17th November 2016 and in support of the application dated 16th December 2016. He averred that the Respondents were out to mislead the beneficiaries as the family had agreed on the issues raised in the Application during a family meeting that was held on the 10th of February 2017 at Kiambu. However, Brenda Njoki Kamau, Counsel for the 1st administrator indicated a different outcome in the letter dated 15th February, 2017. The 4th Applicant also stated that the reason behind the common understanding between their mother's advocate and the Respondents advocates is due to the fact that they are drawing their fees from the Kshs.12 million set aside for their mother.

Further, the Respondents have demolished and are now building on some of the properties namely **Kiambu/Municipality Block 1/48, L.R Number Ndumberi/Riabai No. 885** which makes it difficult for the orders relating to the depositing of the income in relation to the above properties as well as **L.R Number Ndumberi/Riabai No. 886**. The Applicant states that the funds used in construction on the properties is also emanating from the same account. The Applicant's prayers are therefore that the funds set aside for the mother and the income generated from the properties be handled by the other two administrators namely James Karanja Keingati and Dr. Anne Nyokabi Nguithi.

The Second application, dated 19th December 2016, on the other hand has been filed by James Karanja Keingati on behalf of the applicants. The application seeks orders:

1. That this application be heard alongside the Respondents application dated and filed on 17th November 2016.
2. That this Honourable Court do rectify and vary the order issued by this Court on 29th September 2016 in respect of land parcel number 37 Kiambu Municipality to the extent that the rent being collected from the property be utilized in the processing and procurement of the title to the property be utilized in the processing and procurement of the title to the property which is subject of a civil suit before this Honourable Court.
3. That this Honourable Court do hereby confirm that the balance of the 15 plots allotted to the Estate of Waiharo Keingati be allotted to Ann Wambui Waiharo Keingati and Mary Wanjiku Keingati and to Mr. Ngugi Keingati
4. That the court records in respect to the shares in Gatatha Company be amended to reflect that the said shares to date are 527 and which the court directed to be shared equally among all the beneficiaries
5. That this Honourable Court do order that all the property registered in the name of the 1st Administrator Teresia Nduta Keingati be transferred to the respective beneficiaries as per the court order.
6. That this Honourable court be pleased to issue any other order that it may deem just and expedient.

The application is premised on the grounds as stated in the grounds set out on the face of the application and the supporting affidavit sworn by James Karanja Keingati on the 16th day of December 2016. He deponed that the application was made since there are other issues that need to be addressed alongside the application made on 17th November 2016. The issues that need to be addressed relate to the Gatatha Company shares which were increased to 527 from 133 shares and their distribution, the distribution of the shares from Kiambu Dandora Farmers Company Limited, that the property plot number 37A which was processed under the name of a different person and finally that the Kiambu Dandora plots, which were to be distributed equally were not distributed to the two widows of the deceased sons. The Applicant proposed that each widow of the sons of the deceased now deceased should get 6 plots each and the remainder be given to Ngugi Keingati.

In relation to **LR 37A**, the Applicant's prayer was that the cost of processing the suit be recovered from the rents being collected from the plot. The land had been erroneously consolidated with **plot number 11/45 Kiambu** and the title issued in the names of Kiarie Mbugua. Further, the Applicant deponed that the rent to be received by the mother as well as the sons to be deposited in the joint account by and in the names of the two remaining administrators.

The Respondents, through Dr Anna Nyokabi Nguithi submitted through a replying affidavit filed on 25th May, 2017 that she has no objection to the two applications being heard simultaneously. With regards to the remainder of 15 plots, her preferred mode of distribution was that the plots are shared by those who missed out during the first sharing as follows:

- a) Ann Wambui Waihari (Paul Waiharo Keingati)- 5 plots**
- b) Mary Wanjiku Karanja (Raphael Karanja Keingati)- 5 plots**
- c) John Ngugi Keingati- 2 plots**
- d) Lucy Wanjiru Kandui- 1 plot**
- e) Elizabeth Njeri Mwatha- 1 plot**
- f) Ann Nyokabi Nguithi- 1 plot**

She further deponed that there was no evidence indicating that the shares at Gatatha were now 527 but if it was proved, there was no objection to the same being distributed equally among all beneficiaries. It was also contended that this Court did not transfer the properties to the beneficiaries aside from the properties without rent receivables. She reiterated that the Applicants were seeking to vary the terms of the court as the matter was disallowed by the Appellate Court for being time barred and therefore this court should reject the same.

On the 18th of July 2017, the matter came up before this court for mention and it was ordered that the Application of 17th November 2016 was conceded by Teresiah Keingati, the two applications be heard interpartes, the three administrators to fully administer the estate and since one of the administrators was in hospital, the remaining administrators were to administer the estate without violating Teresia's rights.

Since the first administrator Teresia Keingati was in hospital, Brenda Njoki Kamau, acting on her behalf swore an affidavit dated 10th November 2017. She deponed that the application consists of orders/prayers that should be the subject of an appeal and this Court has no appellate jurisdiction in relation to the same. Therefore, since no appeal has been instituted, Teresia has the liberty to use her money in whatever manner she so wishes. The ongoing construction at the two plots was however subject to a notice issued by the Department of Public Health, County Government of Kiambu and has enhanced the rental income. The income generated has assisted in offsetting her medical bills

With respect to the issue on the rental income, she submitted that the same has been collected by her sons and withdrawing the rental income will deny her income.

In relation to the shares held in Kiambu Dandora Farmers Limited, she averred that the mode of distribution was clear and can only be reviewed if new evidence is presented. She further deponed that matters that relate to the health of Teresiah should be determined in a separate suit.

The Applicant, through a replying affidavit dated 14th November 2017 maintained that Ms Brenda Njoki Kamau had previously attended one of the family meetings and after the meeting, wrote a letter which portrayed that she was inclined to favoring one side. This complicated the matter further and the same is attributed to the financial status of the position she is favoring. He therefore prays that the affidavit sworn by M/s Brenda Njoki Kamau be expunged from the Court's record.

He submitted that the funds in the savings account belonging to her mother had been transferred to another account which is currently being run by the Respondents who have concealed all details in relation to the income that is being generated by the properties. The cost of the renovations has also not been disclosed but it has been admitted that Teresiah's account is taking care of the construction. He therefore contends that this Court should determine the status of the Ksh 12,000,000 that was removed from their mother's account by the Respondents.

In relation to Gatatha Farmers Company shares, Kiambu Dandora Farmers Ltd Shares and the rent collection from Kiambu Block1/48, the family had a meeting on the 10th of February 2017 and it was agreed on how the assets will be distributed.

SUBMISSIONS

1ST ADMINISTRATOR'S SUBMISSIONS

The first administrator reiterated that she conceded to the grant of the orders sought in the first application but was opposed to the grant of the orders in the second application. The first reason submitted is no evidence has been provided to prove that **Title Number Plot 37** was under another person's name. Secondly, the shares in Kiambu Dandora Farmers should be distributed among the beneficiaries who had not benefited during the first distribution. Thirdly, the 1st administrator submits that the rent payable to the mother should be paid to her and not the two administrators as per the ruling of the court. She should therefore manage the properties rightfully distributed to her, notwithstanding her illness/old age. Further, the contested 12 million is not part of the estate and therefore not open to distribution.

The 1st Administrator finally submits that no order of review/appeal has been sought and the orders being sought by the Applicants have the effect of reviewing/appealing the ruling of this court.

4TH APPLICANT'S SUBMISSIONS

The argument by the fourth applicant is that the Respondents have made it impossible to implement the Ruling by this Court. It was alleged that the Respondents have demolished and started construction on one of the plots which affects the rent to be received by the 1st administrator. It was also submitted that their advocates have not been paid their legal fees due to the collusion between the daughter's advocates as well as the 1st administrator. In addition, payments that were not accounted for were made regarding the Gatatha shares. In conclusion, Counsel submitted that the account bearing the 12 million shillings plus accrued interest as well as other affairs be managed by the two remaining administrators.

1ST, 2ND, 3RD, 5TH APPLICANTS AND INTERESTED PARTIES SUBMISSIONS

Counsel for the applicants narrowed down two issues that needed this Court's intervention. These are the Kiambu plot on the rental income being used for covering the costs incurred in the pending litigation and the issue regarding the account that has the Ksh 12,000,000/=. The Applicants' contend that the Respondents and their advocates have failed to reply to their application due to the fact that they are concealing some material facts from this court.

In relation to the Kiambu plot, Counsel submitted that the land was registered under the Late Kiarie Mbugua and there is a pending suit regarding the change of title so that the land reverts back to the deceased's estate. A family meeting was held and everyone consented to the rent receivables being used to offset the legal fees incurred during the litigation process.

With regard to the Ksh. 12,000,000/= plus interest accrued, the Applicants' point out that the substance of the issue is on who will handle the 1st administrator's accounts and the transfer of funds by the daughters. It was submitted that the two additional administrators should assist in the affairs of their mother. In addition, the applicants submit that the respondents used the money from the same account to construct the buildings which they had demolished. This contravened the court order as the rent from the

demolished buildings was to be given to the 1st administrator and at the moment no rent is accruing. Counsel for the Applicant relied on the case of **ALLAN NJUGUNA T/A MWERERIA MBAO STORES V. VERONICA NYAMBURA KARUGA AND 2 OTHERS(1997) eKLR** which relates to the law not aiding wrong doers in benefitting from their deeds.

DETERMINATION

This Court delivered Ruling on 29th September 2016 detailing the mode of distribution and reasons each decision was grounded on.

The Application of 17th November 2016 and that of 19th December 2016 shall be granted **ONLY IF & WHERE IT DOES NOT VITIATE** this Court's Ruling. The Applications are brought as rectification of the Court Ruling and not review of the matter.

1. With regard to **L.R.37 (RENAMED L.R.11/45)** allocated to the sons of the deceased jointly and equally; the rent receivables shall be utilized to process and procure title of the property as it is the subject of the civil dispute in Court. This is granted as the issue will not change the allocation and distribution as per the Court Ruling. The property is allocated to the sons of the deceased and may keep or dispose the same or receive and utilize the proceeds as per their choice.

2. With regard to distribution and allocation of the 15 plots from Kiambu Dandora Farmers Company, the Court Ruling indicated that ;

With regard to the shares that comprise of the deceased's estate; the parties depose there are 525 shares due and owing to the deceased's estate. Initially, the Company allotted the Administrator 45 plots out of the 60 Plots. There is a balance of 15 Plots. It is proposed that all plots be shared equally amongst all beneficiaries.

The 525 shares and 15 Plots are part and parcel of the deceased's estate. The 525 shares are to be shared equally amongst 11 children of the deceased. It is not clear, as it was not disclosed how the 45 plots already released to 1st Administrator, widow of the deceased were distributed. If the beneficiaries have agreed on mode of distribution of the balance of **15 plots and 525 shares from Kiambu Dandora Farmers Company**, then the beneficiaries ought to sign written consents against the agreed mode of distribution and present to Court and the same will be endorsed/adopted as an order of the Court. At this stage the proposal is not granted until and unless agreed by all beneficiaries and/or determined by the Court.

3. The Court record indicated that there are **133 shares from Gatatha Farmers** as deposited by parties. If they have increased to 525 shares available for distribution in the deceased's estate, then the Applicant ought to annex the certificate to confirm the new number of shares. In the absence of any proof, for now the shares of Gatatha Farmers shall remain 133 shares available for distribution amongst 11 children until further advice is availed through evidence to this Court.

4. That this Court grants orders that all property registered in the name of 1st Administrator Teresia Nduta Keingati be transferred back to the deceased's name. This Court grants the transfer to respective beneficiaries as per the confirmed grant, gifts *inter vivos* and Court Order of 29th September 2016 except for the rent receivable properties and the widow's matrimonial home.

The Court Ruling indicated as follows;

The distribution of immovable property that does not have rent receivables may be distributed and transferred forthwith. The rest shall be distributed if and when the administrator concludes life interest.

Therefore, the Court grants the order that property in the 1st administrator's name may be transferred to

the respective beneficiaries save for income generating property that is;

- a) LR No 209/4401/526
- b) LR No 209/4401/531
- c) LR No Ndumberi/Riabai No 891- matrimonial home.

5. James Karanja Keingati filed a Replying Affidavit on 26th April 2017 and raised pertinent issues;

1. That following this Court's order of 29th September 2016 that Ksh 12 million is allocated absolutely to the widow; the 1st Respondent's advocate and the deceased's daughters' advocate are alleged to have colluded and transferred the Ksh 12million to a separate account; paid themselves legal fees for representing their respective clients and enabled the daughters to undertake construction on the following properties;

- a. **Kiambu Municipality Block1/48**
- b. **L.R.Number Ndumberi/Riabai No 885**

2. That the account of Ksh 12 million is handled without both administrators appointed by the Court in the Court's Ruling of 29th September 2016 working together with the widow of the deceased as Co-administrators.
3. As submitted by 1st 2nd& 3rd& 4th Applicants relying on the case of **ALLAN NJUGUNA T/A MWERERIA MBAO STORES V. VERONICA NYAMBURA KARUGA AND 2 OTHERS(1997) EKLR** which states as follows;

It is unacceptable that a Court should allow itself, to be a party to an unlawful act by ignoring it rather than make an order to the benefit of the wrong doer or those claiming through him.

This Court is accused of colluding with the widow and daughters of the deceased. The Court record will confirm that the issue of Ksh 12 million was considered in the Ruling of 29th September 2016 as follows;

The administrator shall retain these funds for her own use, on condition going forward, the rent receivables from the 2 properties shall be banked, shared equally by all beneficiaries through 3 administrators.

4. It is also deponed by James Karanja Keingati that the Ksh 12 m that the Court granted the widow for her use, upkeep and medical care over the years actually is in lump sum and after the Court order, it is alleged that the funds were transferred to another account that is not held jointly by the 3 administrators and the funds are utilized in the development of **L.R. No.Kiambu /Mun/Block1/48 0.023 ha & L.R Number Ndumberi/Riabai No 885**, properties that the daughters of the deceased have beneficial interest exclusively from the sons of the deceased.

A Court is moved by parties in form of pleadings, oral and written submissions. The 1st administrator was wife to the deceased; all the years, they worked hard and amassed the wealth with her husband the deceased now available to their children. Her late husband granted her income for upkeep and this Court cited at great length the case of **TAU KAKUNGI vs MAGRETHE THORNING KATUNGI & ANOR SUCCESSION CAUSE NO 1040 of 1991**

on the issue of life interest. That is why this Court left Ksh.12 million to the widow for her use and upkeep. In the absence of statement(s) of account availed to Court, the Court was of the view that Ksh. 12m was amassed over the years and available to the deceased's widow for upkeep and medical care had been used and depleted over the years.

However, it is now emerging from pleadings, submissions and annexed photographs to the present application that the funds are intact and are being utilized not as this Court mandated that the same be used by the widow for her upkeep, medical care and payment of utilities over the properties of the deceased's estate as stated in its Ruling. Instead, new activities of collusion by the widow, daughters and their respective advocates, strongly suggest that some beneficiaries are paying legal fees for their advocates and leaving out others, taking up construction which although the Kiambu County sought renovations under Public Health Regulations, the photographs depict construction of new rooms/houses. It is also not clear whether or not the 3 administrators manage the said account.

Although this Court allocated the widow the use of Ksh 12m, it is appreciated that the widow is advanced in age and may not enjoy optimum health and/or mobility. Naturally, she would carry out her tasks through assistance of her children. It is also not contested that the Ksh12m emanated from the assets that comprise the estate of the deceased. Therefore the 3 administrators ought and shall forthwith be signatories to the said account to ensure funds are withdrawn and utilized for the stated purpose and avoid some children directly benefitting from the said funds to the exclusion of others e.g. by developing properties exclusively allocated to them.

The Ksh. 12 million even though is for the sole purpose of use upkeep and medical care of the widow is derived from assets that comprise of the deceased's estate. Therefore, following this Court's Ruling, the 3 administrators ought to take over all assets that comprise the estate of the deceased. The administrators ought to jointly carry out their statutory mandate as envisaged in **Section 79 82 & 83 of Law of Succession Act Cap 60**. The 3 administrators shall file accounts in Court within 30 days to show how they expended funds for upkeep, welfare of the 1st administrator to this Court and the 2nd account for rent to be divided amongst the beneficiaries.

In the meantime to alleviate suspicion, if the said funds are used to pay legal fees for some beneficiaries advocates and not others; then ALL legal fees be paid from the said Account. If processing of titles of transfer shall be paid for only some beneficiaries, then it should be for all beneficiaries.

The 1st Respondent, through Counsel who swore an affidavit on 10th November 2017, explained that the construction complained of in the above-mentioned suit properties are pursuant to the Letter of 1st February 2017 from the County Government of Kiambu demanding through Notice to Teresia Nduta Keingati the Reconstruction/ Repair of Plot 1/48 Indian Bazaar and that is what necessitated the construction from the funds allocated to widow to the deceased, Teresia Nduta Keingati. The developments as depicted in the annexed photographs are not repairs and maintenance but constructions of new developments and will only benefit widow and daughters. This was not the intention and purpose of the Court order of 29th September 2016 that Ksh.12million be utilized by and for the widow only.

This Court's Ruling of 29th September 2016 among other orders granted is as follows;

5. The following are appointed joint administrators

1) Teresiah Nduta Keingati

2) Peter Karumba Keingati

3) Dr Anne Nyokabi Nguithe, and they are to open a joint account to receive and deposit rent from the properties listed below. After payments for maintenance and utilities, to distribute the balance to all beneficiaries.

4) L.R.No 209/4401/526 Makadara

5) L.R.No 209/4401/531 Makadara

This order has not taken effect as depicted from pleadings filed in relation to the instant applications. The

administrators should furnish the Court with proof of compliance of the said order.

DISPOSITION

The applications filed on 17th November 2016 & 19th December 2016 are disposed of as follows;

1. The properties registered in the 1st administrator, widow of the deceased's name be transferred to the respective beneficiaries as per the confirmed grant, *inter vivos* gifts and Court Ruling of 29th September 2016 until review or appeal; except for rent receivable properties and the widow's matrimonial home and farm.

2. The distribution of shares shall be upon agreement by ALL beneficiaries as to the agreed mode of distribution and written consents availed so as to be adopted as an order of the Court or the same is heard and determined by the Court.

3. The 3 administrators;

a) Teresia Nduta Keingati

b) Peter Karumba Keingati

c) Dr Ann Nyokabi Nguithe

a) To carry out their statutory mandate under Section 79 82 & 83 of Law of Succession Act Cap 160.

b) They shall jointly hold and manage for the widow Ksh 12million according to the Court order of 29th September 2016 and ensure widow's upkeep, medical care and utilities payments.

c) Since the same funds are being used to develop;

L.R. Number Kiambu /Municipality/Block1/48-0.023ha (widow's life interest then distributed to daughters of the deceased) and L.R. Number Ndumberi/Riabai No 885 (part of properties distributed to daughters of the deceased) to the exclusion of sons of the deceased without leave of the Court, then;

The administrators jointly shall pay legal fees for advocates of all beneficiaries involved in the matter and where there is a dispute the same be taxed by Deputy Registrar Family Division.

d) The administrators jointly shall pay title documents processing and transfer processes fees for all beneficiaries.

e) The administrators shall jointly operate a separate account for rent receivables for;

a) L.R.209/4401/526 Makadara

b) L.R.209/4401/531 Makadara

and distribute the rent receivables amongst all beneficiaries equally.

f) The administrators shall file accounts of the 2 accounts in Court through DR Family Division within 90 days so as to account to the Court and beneficiaries on administration of the deceased's estate.

DELIVERED, SIGNED & DATED IN OPEN COURT ON 10TH MAY 2018.

M.W.MUIGAI

JUDGE OF FAMILY DIVISION OF THE HIGH COURT

In the presence of:

MS. KAMAU FOR THE 1ST ADMINISTRATOR

MR GITONGA MURIUKI FOR 2ND, 3RD, 5TH, 6TH, 7TH APPLICANTS

MR MWANGI FOR THE 2ND, 3RD AND 4TH RESPONDENTS

MR OKATCH FOR THE 4TH APPLICANT