



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 777 OF 2012

IN THE MATTER OF THE ESTATE OF S K G (DECEASED)

JUDGMENT

BACKGROUND

1. The deceased herein SKG whose estate the proceedings herein relate died intestate on the 9th May 2010 while domiciled in Kenya. The deceased who had divorced his first wife left a widow (2nd wife) by the name of Florence W K the 1st petitioner (administratrix) herein and children namely, I N K, L W K and E W K (all minor daughters from the 2nd house) and J G K, D M K and J K K (all adult sons from the 1st house).

2. According to Form P and A 5, F W K (herein referred to as the “widow”) together with her step-sons J G K and D M K, petitioned the court for a grant of representation intestate on 20th April 2012 and listed the following assets as comprising the estate of the deceased:

Land

- (a) Ruiru East/Juja/[particulars withheld] Approx. 0.1015 Acres
- (b) Ruiru East/Juja [particulars withheld] 0.1015 Acres
- (c) Ruiru East/Juja/ [particulars withheld]. 0.225 Acres
- (d) Ruiru East/Juja [particulars withheld]. 0.225 Acres
- (e) Ruiru East/Juja [particulars withheld]. 0.225 Acres
- (f) Ruiru East/Juja [particulars withheld]. 0.225 Acres
- (g) Ruiru East/Juja [particulars withheld]. 0.225 Acres
- (h) Ruiru East/Juja [particulars withheld] Approx. 20.93 Acres
- (i) L.R. [particulars withheld]
- (j) L.R. [particulars withheld]
- (k) L.R. [particulars withheld]
- (l) L.R. [particulars withheld]. 0.1125
- (m) Title No. [particulars withheld] Approx. 0.045 Acres

Motor Vehicles

- (a) [particulars withheld] Toyota Hiace
- (b) [particulars withheld] Toyota Saloon
- (c) [particulars withheld] Datsun
- (d) [particulars withheld] Mitsubishi Lorry

Bank accounts

- (a) Standard Chartered (Kenyatta Avenue) Account No. [particulars withheld] Approx. Kshs 2,356,000
- (b) Equity bank (Kenyatta Avenue) Account No. [particulars withheld] – Kshs.2,622,700
- (c) KCB Account No. [particulars withheld] (Mombasa treasury square) approx. amount Kshs. 10,000
- (d) Standard Chartered (Muthaiga) Account No. [particulars withheld] (Game Drive) – Approx. amount Kshs 432,233
- (e) Standard Chartered Safari Junior Account No. [particulars withheld] Kshs.414,833/=
- (f) KCB Card Centre Account No. [particulars withheld] Approx. amount
Kshs. 42,000/=

3. Subsequently, the estate was gazetted On 29th June 2012 and a grant of letters of administration intestate issued on 2nd February 2012 to F W K (widow – 1st administrator), J G K (2nd Administrator) and D M K (3rd administrator) jointly. Consequently, on 12th February 2017, vide a summons for confirmation dated 9th February 2017, the widow (1st administratrix) moved the court for confirmation of the grant. Annexed to the application was a schedule to the proposed mode of distribution and a consent duly signed by herself and one beneficiary I N K her daughter. Apparently, there was no consent from the children of the second house who allegedly refused to sign despite being requested to do so by their step-mother (widow).

4. Accordingly, the widow proposed to distribute the estate as hereunder:

Land: To the 1st family: J G, D M and J K

- (i) Ruiru East/Juja Block [particulars withheld] 0.1015 Acres
- (ii) Ruiru East/Juja Block [particulars withheld] 0.1015 Acres
- (iii) Ruiru East/Juja Block [particulars withheld] 0.225 Acres
- (iv) Ruiru East/Juja Block [particulars withheld] 0.225 Acres
- (v) Ruiru East/Juja Block [particulars withheld] 0.225 Acres
- (vi) Ruiru East/Juja Block [particulars withheld] 0.225 Acres
- (vii) Ruiru East/Juja Block [particulars withheld] 0.225 Acres
- (viii) Ruiru East/Juja Block [particulars withheld] 20.93 Acres

To the second family: FW (widow) and her children IN, EW and LW

- (i) L.R. [particulars withheld] (Matrimonial home)
- (ii) CR [particulars withheld] Approx. 0.1125 acres – widow to pay contractor Nayali Enterprises its debt of 17,008,000/=
- (iii) Title No. L.R. [particulars withheld] Approx. 0.045 acres

Motor Vehicles

- (i) Motor vehicle Reg. No. [particulars withheld] – 2nd family
- (ii) Motor vehicle [particulars withheld] – held by the widow – 2nd family

- (iii) Motor vehicle Reg. No. [particulars withheld] Datsun – 1st family
- (iv) Motor vehicle Reg. No. [particulars withheld] Mitsubishi lorry – 1st family
- (v) Motor vehicle Reg. No. [particulars withheld] Hyudai – 2nd family
- (vi) Motor vehicle Reg. No. [particulars withheld] Nissan – 1st family
- (vii) Motor vehicle Reg. No. [particulars withheld] Caldina – 1st family

Bank Accounts

- (i) Standard Chartered Kenyatta Avenue A/C [particulars withheld]
- (ii) Equity Bank Account No. [particulars withheld] – Kshs.2,218,200
- (iii) KCB A/C [particulars withheld] Kshs.42,462.
- (iv) KCB A/C [particulars withheld] (Card Centre)
- (v) KCB A/C [particulars withheld]
- (vi) Standard Chartered A/C Muthaiga [particulars withheld] (Game Drive) Ksh.75,000 to be shared equally between the widow and the other half to be shared between the widow and all the deceased's children.
- (vii) Standard Chartered Safari Junior [particulars withheld] to be given to
LVW as the same was opened on her behalf
- (viii) KCB (Biashara Street) account No.
- (ix) Standard Chartered bank account No. [particulars withheld] (Dollar Account) USA Dollars 10,715 to be shared between the two families

Shares

- (i) Standard Chartered Certificate account No. [particulars withheld]

Shares

- (ii) Safaricom A/C No. [particulars withheld] Shares to be sold and shared equally between the two families

Death Gratuity

- Kshs.5,358,428.00 to be distributed in accordance with the Public Trustee Act since the money is withheld by the Public Trustee

5. Dissatisfied with the a forestated proposed mode of distribution, D M K and J G K the 2nd and 3rd co-administrators respectively, filed a joint replying affidavit on 17th March 2017 and later an affidavit of protest on 11th April 2017 but jointly sworn on 7th April 2017 challenging the proposed mode of distribution of the estate arguing that they were not consulted nor was their input sought. They further stated that the widow (step-mother) had allocated herself properties located in high end estate with a higher value than those shared out to them and instead proposed for Mombasa property to be sold and proceeds shared out equally

between the two houses.

6. In their aforesaid replying affidavit and affidavit of protest, the protestors proposed the estate to be shared out as follows:

- (i) Cash in various bank accounts be shared out equally between the two houses.
- (ii) Motor vehicle [particulars withheld] be given to Daniel Karanja as it was given to him as a gift intervivos.
- (iii) Motor vehicle [particulars withheld] which was acquired before the marriage of the widow should not be part of the estate.

(iv) LR No. [particulars withheld] Ruiru East Juja Block [particulars withheld] be shared out amongst the houses.

(v) LR No. [particulars withheld] be registered in the names of the administrators and to remain for posterity and should be used by the widow.

(vi) Mombasa property LR [particulars withheld] measuring 0.05 hectares be valued and sold and proceeds shared equally between the two houses.

(vii) LR No. Ruiru East/Juja/Block [particulars withheld] acquired by their late mother and the deceased before the widow herein was married be given to the 1st house.

(viii) Motor vehicle [particulars withheld] be deleted from the list as it is nonexistent.

(ix) L.R. [particulars withheld] at Langata worthy 15,000,000/= be sold and proceeds shared out equally between the two houses.

7. The protestors vehemently denied existence of any debt to the tune of Kshs17,008,000/= owed by the estate to [particulars withheld] Enterprises and that the same was not even reflected as a liability at the time of filing the petition. In reply to the protest and replying affidavit by the protestors, the widow filed her response vide her replying affidavit sworn on April 2017 but filed on 26th April 2017.

8. She averred that motor vehicle registration No. [particulars withheld] was not given as a gift to Daniel but instead she was the one who gave it to him after the deceased had died. She also claimed that she gave motor vehicle reg. No [particulars withheld] to J G and [particulars withheld] to J K. She asserted that the motor vehicles in question form part of the estate and should therefore be distributed according to her proposal.

9. Regarding Nyali Mombasa property, she claimed that the same was given to her and her late husband as a gift by a friend known as Jafar the year 2008 July who appreciated the deceased as a good PPO to have ever served in Coast Province. She further averred that construction in the said plot was based on a signed contract between [particulars withheld] Enterprises and the deceased and that by the time the deceased died there was an outstanding debt of Kshs 17,008,000 owed to the contractor the same being costs for labour and materials bought for construction. She however stated that she had not made any demands on L.R No. Ruiru/Juja/Block [particulars withheld], all of which were acquired after the first wife had separated (divorced) with the deceased in 1987.

10. Concerning L.R [particulars withheld] Langata which she claimed was given to her and the deceased by a Somali friend as a gift when the deceased was the PPO Nairobi Province, she maintained that it was hers and hers alone together with her children. As regards Ruiru East Juja Block [particulars withheld] she averred that although acquired during the subsistence of her marriage and the deceased, the same should be given to the first family. With regard to Plot No. L.R No. [particulars withheld], she contended that the same constitutes her matrimonial home hence her share absolutely.

11. The 1st administratrix further stated that prior to her husband's death, the deceased had had each of the three sons settled by constructing homes for them at Juja farm and a house bought jointly for them at [particulars withheld] Civil Servants Housing Scheme as a gift inter vivos although not disclosed in the list of assets. Finally, she urged the court to distribute the estate as per her proposed mode of distribution.

HEARING

1ST Petitioner's Case

12. During the hearing, PW1 FWK the 1st administratrix (widow) reiterated her averments in the affidavit in support of the application for confirmation. She however stated that Plot listed as L.R. [particulars withheld] does not exist instead it should read LR [particulars withheld]. That plot reflected as L.R. [particulars withheld] does not also exist as it is the mother title of plot No. [particulars withheld] and 8 others. She also claimed that motor vehicle registration No. [particulars withheld] does not exist hence should not be shared out. She asserted that she had no interest in any other land except for L.R. [particulars withheld] her matrimonial home in Ridgeways Kiambu Road, Mombasa Nyali property and Langata House.

13. Pertaining bank accounts, she proposed to share the same equally with the protestors. She also claimed that she had no issue with motor vehicles because she was the one who distributed them to the current users. She however changed her mind in her examination in chief and indicated that she had no problem in selling Langata property and share out the proceeds. She also told the court that she was not ready to take her step-son's property at Juja. Concerning school fees payment for her children, she contended that she does not need any help from her co-administrators as she was given Kshs.4,000,000/= to educate her children out of the harambee funds raised during the funeral preparations of her late husband.

14. PW2 Nelson Munga Ndune a police driver to the deceased recorded a witness statement dated 3rd July 2017 which he adopted as his evidence. He corroborated the evidence of PW1 to the effect that he was present when he overheard a Mr. Jafar give the Mombasa Nyali plot to the deceased and his wife as a gift. He also stated that he was aware of a house in [particulars withheld] Civil Servants Scheme which the deceased bought for his sons.

15. PW3 SSGT Vindensio Njuki an officer working with banking fraud corroborated the evidence of PW1 in his witness statement dated 7th April 2017 to the effect that he worked closely with the deceased and that he knew the deceased had settled his wife (PW1) at Ridgeways

plot and the sons at Juja Farm. PW4 Peter Muriithi a police officer also working at CID headquarters as the deceased's driver adopted his witness statement recorded on 10th January 2017 confirming also that the deceased had settled his wife in a house at Ridgeways and the children at Juja Farm. PW5 SSGT Francis Kwambai also a police officer working as a carpenter in the police force also staying in the deceased's house corroborated the testimony of PW2, PW3 and PW4.

Protestor's case

16. In response to the 1st petitioner's case (widow) JG the 1st protestor (DW1) also adopted his witness statement filed on 19th May 2017 together with annexures detailing his proposed mode of distribution of the estate. He also adopted a joint replying affidavit deponed on 17th March 2017 together with his co-protestor DK and the annexures thereof. He confirmed that before his father died, he (deceased) intended Ridgeways home to be his step-mother's (widow) home and that the same should be registered in her name and that of her three children (daughters).

17. Touching on Nyali Mombasa property, he proposed equal share between the two houses and that there was no debt owed to [**particulars withheld**] Enterprises save for 123,000/=. As to Juja properties, they claimed that they were in the names of the three sons hence their property. As to motor vehicle registration No. [**particulars withheld**], he stated that it did not exist and urged the court to expunge it from the court record. Turning to Langata property, he urged the court to share it equally between the two houses as they were in agreement. That cash in all bank accounts be shared equally so is to the shares in Safaricom and Standard Chartered.

SUBMISSIONS

18. Upon conclusion of the hearing, both counsels agreed to file written submissions within 14 days. The firm of Machio and Co. Advocates appearing together with Mrs. Morara Advocate for the 1st petitioner/administratrix filed theirs on 12th March 2018 and the firm of K.N. Mutai for the protestors filed theirs on 22nd February 2018.

1st Petitioner's/Administratrix's Submissions

19. Mrs. Machio and Mrs. Morara for the Widow reiterated the averments contained in the affidavit in support of the application for confirmation, replying affidavit and the annexures thereof. Mrs. Machio submitted that parties had agreed on distribution of the estate save for Mombasa Nyali plot which she opined that it should be bequeathed to the 1st petitioner absolutely being a gift given to her and her late husband by a friend. Learned counsel asserted that the deceased had expressed his wishes and gave Juja Farm plots to his three sons and Ridgeways to the wife hence the same should remain uninterrupted. Counsel urged that the 1st petitioner should retain life interest in Ridgeways property until the minor children attains the age of majority. To buttress her position, Counsel referred the court to the case of **In Re Estate of Onesmus Mbugua Ng'ang'a (deceased) (2009) eKLR** and **In the estate of C.K.B. alias C.K.B. (deceased) (2010) eKLR** where J. Serگون apportioned the estate according to the number of houses of the children in the ratio of 2/9 against 7/9.

20. With regard to cash in the bank, counsel submitted that the same should be shared out equally but the minors be given special preference by getting extra to cater for their education. In support of this assertion, counsel relied on the dissenting judgment of **J.A. Omollo as he then was in the case of Rono v Rono Civil Appeal No. 66/2002 at Eldoret** in which the learned Judge held that:

“Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly mark an injustice particularly in the case of a young child who is still to be maintained, educated generally and be seen through life. If such a child whether a boy or a girl were to get an equal inheritance with another one who is already working and for whom no school fees or a thing is like that need be provided for, such an inequality would work an injustice and for my part, I am satisfied the Act does not provide for that kind of equality”.

Protestor's Submissions

21. In support of the protestor's case K.N. Mutai Advocate also reiterated the averments contained in the affidavit of protest and reply to the application for confirmation. Learned counsel submitted that the estate should be shared out in accordance with Section 35 and 40 of the Law of Succession save for those properties that were given intervivos. Mr. Mutai opined that there was no proof adduced by the 1st petitioner that Langata and Mombasa Nyali Plots were gifted to her and the deceased by some friends. Learned Counsel however did not make any reference to case law in support of his submissions.

Analysis and Determination

22. I have considered the application herein for confirmation, supporting affidavit and affidavit of protest, replies and annexures attached thereof. I have also considered oral evidence tendered by the applicant and the protestors plus written submissions of their

respective counsels. Issues that render for determination are:

(a) Whether the estate herein should be shared out equally amongst the beneficiaries in accordance to Section 35 or 40 of the Law of Succession.

(b) Whether the deceased gave out some properties as gifts intervivos to some beneficiaries.

(c) Whether the estate owes any creditor or 3rd party any debt.

23. There is no dispute that the deceased died intestate leaving one widow and six children being three sons from the first house and three daughters from the surviving widow (2nd house). Both parties are in agreement that the listed survivors are the bonafide beneficiaries entitled to a share of the estate but subject to other conditionalities like the element of gift intervivos. The parties in principle agreed that the deceased had expressed his wishes in the manner in which he wished his property shared out and in fact assigned some of them as gifts intervivos before he died.

24. It is not in dispute that the deceased had a first wife with whom he separated but left three sons (the protestors) and a brother known as JK. The second wife is the widow herein. In a scenario such as this one, the law applicable in the circumstances is Section 40(1) of the Law of Succession which provides:

“where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

25. This position was reinforced in the case of **RE estate of C.K.B. alias C.B.K. (deceased)(supra)**. In this case the deceased had a first wife A.W.K. who predeceased him after getting two children. Subsequently the deceased married a second wife E.W.K. who had six children. Both parties agreed on the division of the estate according to the houses but differed on the ratio. The first house had two units and second house had 7 units making a total of 9 units. The Hon. Judge shared the property in the ratio of 2:7 hence 2/9 against 7/9 as a fraction (percentage) entitlement to each house.

26. In the case of **Charles Kagiri Mwai vs Moses Muthee Mwai (2016)Ekl**, Justice Mativo lumped put together beneficiaries from two houses hence divided the estate equally amongst them in accordance with section 40 of the law of succession. To fortify this position, the Court of appeal in **Grace Samson Komen vs William Kiprop and 2 others (2015) eKLR** endorsed that position that an estate cannot be shared equally amongst houses in a polygamous marriage. The court upheld division of the estate in accordance with units in each house.

27. In the instant case, parties have agreed on a number of properties to be shared out as per the desire and wishes of the deceased as he had given some of them as gifts intervivos before he died. Among the undisputed properties are:

(a) L.R [particulars withheld] Ridgeways home

Both parties agreed that the same be given to the 1st petitioner to hold a life interest thereon and in trust of her three daughters I N K, E W K and L W K. Indeed a matrimonial property has such significant sentimental value that is unique to the occupier or owner and the last thing any occupant would imagine of is moving out of a house he or she has lived in for several years or throughout his or her life time to start anew life elsewhere and in a new environment. Fortunately, in this case, parties are in agreement that the widow should retain her matrimonial home. Accordingly, that property shall be shared out as such and the widow shall retain a life interest thereon and in trust for her three daughters. The properties listed as L.R. [particulars withheld] and L.R [particulars withheld] which do not exist and which ownership documents were not availed according to the 1st petitioner are hereby expunged from the court record.

(b) Bank Accounts

Both parties listed several bank accounts held by the deceased and were in agreement that, cash balances held therein be shared out equally. Considering that the first house has three units and the second house four units inclusive of the widow totaling to 7 units, cash in the said accounts shall be distributed in equal share among the 7 beneficiaries. As to whether there should be provision for school fees for the two minor children, the 1st petitioner said she was comfortable with paying school fees using theKshs 4,000,000.00 set aside for school fees during the deceased’s funeral funds drive. I will not therefore make any further provision for school fees specifically.

(c) Shares in Safaricom and Standard Chartered bank.

Again, parties were in agreement that the same be shared equally. Just like the cash in the bank account, the same shall be shared equally among the 7 beneficiaries.

(d) Motor vehicles

The 1st petitioner said the motor vehicles shall remain in the possession of the beneficiaries as per her proposed mode of distribution.

(i) [particulars withheld] to the 2nd house

(ii) [particulars withheld] to the 2nd house

(iii) [particulars withheld] Datsun to the 1st house

(iv) [particulars withheld] to the 1st house

28. The protestors are equally in agreement of this arrangement for distribution of motor vehicles and I have no reason to interfere with the arrangement. However, there are three motor vehicles which were not listed in form P & A 5 as part of the estate but which the 1st petitioner introduced and included in the list of assets and shared out. These are [particulars withheld] which she claimed and also the protestors claimed, [particulars withheld] given to the first family but which the protestors alleged [particulars withheld] does not exist. Equally, the

1st petitioner listed motor vehicle [particulars withheld] but later disowned it. Since the four motor vehicles are not even listed in Form P & A 5 as being part of the estate, and considering that there is no proof by way of Log books that they belonged to the deceased, the same shall be expunged from the proposed list of distribution hence not sharable. They can be included later if proved to exist.

(e) Death Gratuity

The amount which is being held by the Public Trustee is not even contested and shall be shared equally among the 7 beneficiaries.

(f) L.R [particulars withheld] Nyali Mombasa

29. This is the most contentious property in these proceedings. According to the 1st petitioner, the property was given to her and her late husband by their friend one Jafar as a gift hence the protestors have no business claiming a share. She further claimed that the contractor by the name of [particulars withheld] who had constructed the home up to second floor is entitled to Kshs.17,008,000 upon completion of the project. She therefore claimed solely the house which she had purportedly supervised its construction so that she would complete the same and pay the contractor (debt). On the other hand, the protestors contested the same arguing that the property was bought by their dad who commenced construction but died before completion and the only amount the contractor was entitled or owed was 123,000/= which he paid himself by taking awater pump and some materials on site. They further claimed that there was no debt outstanding against the estate and if there was any creditor, then, the same should have lodged claim or given evidence. Indeed Form P & A 5 does not have any debt or creditor indicated against the estate. The law under Section 71 (2) of the Law of Succession requires that before any estate is shared out all beneficiaries must be identified before confirmation of grant meaning that all debts owing against the estate by creditors should be paid out first before the residual net intestate can be shared out and grant confirmed. Given the value attached to the entire estate as being Kshs 20,000,000/=, what will remain after deducting Kshs 17,008,000/= to the Estate? it is inconceivable.

30. Why didn't the 1st petitioner indicate the debt as a liability from the word go? There is no proof that [particulars withheld] Enterprises is owed a sum of Kshs.17,008,000/= save for a demand notice allegedly written by the said [particulars withheld] Enterprises. There was no contract document attached to proof or ascertain that the deceased entered into a contract with [particulars withheld] for that purpose and the attendant terms clearly spelt out. What was attached as Exhibit 2 to the replying affidavit of F W K (widow) sworn on 21st April 2017 is a bill of quantities showing the total cost for construction of the house which technically refers to the value of the house upon completion. Why would a contractor be paid Kshs.17,008,000 for a house worth Kshs.25,000,000 when complete yet only a skeleton of two floors has been done?

31. However, the said [particulars withheld] did not even testify or lodge any claim to justify the amount? With all these unanswered questions, it is my finding that based on the materials placed before me, there is no prima facie evidence to conclusively find a valid debt being owed by the estate. The allegation that there is a creditor owed Kshs.17,008,000 by the estate and demand letter thereof is a trick crafted by the 1st petitioner in a concerted effort with the purported contractor to obtain a prime property to the disadvantage of other beneficiaries through the backdoor thus disenfranchising them. The burden to prove that the estate owes some creditor a debt lies on he who alleges. Section 107 (1) of the Evident Act provides that:

“whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts he asserts must prove that those facts exists.”

See Daniel Toroitich Arap Moi vs Mwangi Stephen Muriithi and another (2014) eKLR.

32. In the case of Musa Nyaribari Gekone and 2 others vs Peter

Miyianda and another (2015) eKLR the court of appeal faced with a similar situation such as in this case had this to say:

“Based on that evidence, we think the learned Judge was right to hold as he did that the 1st appellant should have disclosed, when applying for the grant of letters of administration or when seeking confirmation that the 1st respondent had an interest in the property”.

33. In this case disclosure was made at the confirmation stage but the alleged creditor was not enjoined as an interested party nor was any contract between him and the deceased for payment of Kshs.17,008,000/= ever adduced. None of the witnesses (PW2, PW3, PW4 PW5) ever witnessed the 1st petitioner and her husband being given the property as a gift. Lastly, the title deed in respect of this parcel of land is in the name of the deceased alone implying that it was not a gift to her and the late husband. I am not sufficiently persuaded with the 1st petitioner's claim and prayer which to me is not meritorious. To that extent, I do agree with the protestors that the property should be shared out equally and the same can be registered in their joint names as tenants in common or be sold and proceeds shared equally amongst the seven units.

(g) L.R. No. Ruiru/Juja/Block [particulars withheld]

34. With regard to these properties, the protestors claimed that the same were acquired during the subsistence of their mother's marriage and the deceased and that their father had given to them as gifts intervivos. The 1st petitioner was in agreement and therefore had no claim over the same in accordance with paragraph 13 of her replying affidavit sworn on 21st April 2018. Accordingly, the said property shall be shared out amongst the beneficiaries in the first house in equal share.

(h) L.R Ruiru East Juja Block [particulars withheld]

35. In reference to the four parcels of land, the protestors in Paragraph 11 of their affidavit of protest proposed that the same be shared out equally among the two houses. Although the 1st petitioner was non committal of wanting a share in anticipation of taking Nyali plot and Langata plot in exchange, the arrangement does not apply now that Nyali and Langata Plots have been shared out equally. In the same vein, the four properties shall be shared out equally amongst the seven units (beneficiaries) in default the same be sold and proceeds shared out equally.

(i) L.R [particulars withheld] Langata

36. Regarding this property, the 1st petitioner claimed the same absolutely alleging that the house therein was given as a gift by a Somali friend to her and her late husband jointly. Again there is no proof that it was a gift to the two jointly as the title is in the deceased's name. However, in her examination in-chief, she indicated that she had no problem in selling the same and share out the proceeds. There is nothing to show that the 1st petitioner was a beneficiary. To that extent I do agree with the protestors that the same should be sold and proceeds shared equally in the alternative have the same registered in their joint names as joint tenants. Concerning the purchase of Ngara house where the process was never completed, the refundable amount from NHC was not listed as part of the estate hence cannot be determined at this stage.

37. Accordingly, it is my finding that the application for confirmation of grant be and is hereby allowed and the estate shared out as hereunder:

(a) L.R [particulars withheld] Ridgeways home be and is hereby given to the 1st petitioner to hold a life interest thereon and in trust of her three daughters I N K, E W K and L W K.

(b) Bank Accounts – The cash balances held therein be and are hereby shared out equally among the seven beneficiaries,

(c) Shares in Safaricom and Standard Chartered bank be and are hereby shared equally among the 7 beneficiaries.

(d) Motor vehicles– Be and are hereby distributed as per the houses

and the beneficiaries in each house to share among themselves as they may agree in default sell them and share proceeds equally.

(i) [particulars withheld] to the 2nd house

(ii) [particulars withheld] to the 2nd house

[particulars withheld] Datsun to the 1st house

(iii) [particulars withheld] to the 1st house

(e) Death Gratuity be and is hereby shared equally among the 7 beneficiaries.

(f) L.R [particulars withheld] Nyali Mombasa-To be registered in the joint names of the 7 beneficiaries as joint tenants and in the alternative the property to be sold and proceeds shared equally amongst the seven beneficiaries.

(g) L.R. No. Ruiru/Juja/Block [particulars withheld] be and are hereby shared out amongst the beneficiaries in the first house in equal share.

(h) LR Ruiru East Juja Block [particulars withheld] be and are hereby shared out equally amongst the seven beneficiaries in default the same shall be sold and proceeds shared out equally.

(i) L.R [particulars withheld] Langata be sold and proceeds shared equally amongst the seven beneficiaries.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF JULY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

M/S Nkonge H/B for Mrs. Machio & Morara....Counsels for the Applicant

Mr. Mutai.....Counsel for the objectors

Edwin.....Court Assistant