



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**IN THE ESTATE OF MICHAEL KAMAU MACHARIA (DECEASED)**

**SUCCESSION CAUSE 1028 OF 2008**

**RULING**

Following delivery of judgment of 10th November 2017, this Court revoked the grant issued on 22<sup>nd</sup> October 2008 and confirmed on 15<sup>th</sup> June 2011 and issued new/fresh grant.

The new administrators; Milka Njanja Kamau and Leah Waithera Kamau widows of the deceased filed Summons for confirmation on 17<sup>th</sup> September 2018 and is the supporting affidavit paragraph 4 had list of beneficiaries as follows;

- |                           |   |          |
|---------------------------|---|----------|
| a) Milka Njanja Kamau     | - | Widow    |
| b) Leah Waithera Kamau    | - | Widow    |
| c) Raphael Wamahiga Kamau | - | Son      |
| d) Joseph Ndungu Kamau    | - | Son      |
| e) Margaret Njoki Kamau   | - | Daughter |
| f) John Kangethe Kamau    | - | Son      |
| g) Patrick Gacara Kamau   | - | Son      |
| h) Stephen Gitau Kamau    | - | Son      |
| i) Teresiah Wanjiru Kamau | - | Daughter |
| j) Margaret Njoki Kamau   | - | Daughter |
| k) Wairimu Ndungu         | - | Daughter |

The list of assets and distribution are provided for in paragraph 7 as follows;

- i) L.R. No. Muguga/Muguga/T. 333 – to Milka Njanja Kamau
- ii) L.R. No. Muguga/Gitaru/T.84 “B” – to Milka Njanja Kamau
- iii) L.R. No. Kikuyu/Kikuyu/Block 1/697 – to Leah Waithera Kamau
- iv) L.R. No. Kericho/Lodiani (Kivuno)/Block 4/61 – to Milka Njanja Kamau and Leah Waithera Kamau to share equally.

The Protestor; Ms Margaret Njoki Kamau filed Protest to the Summons of Confirmation of Grant on 12<sup>th</sup> October 2018 and deponed that Gitaru/Gitaru measuring ¼ ha is one of the assets of the estate of the deceased which is illegally occupied by the late Simon Ndungu’s family without any consent from the late Michael Kamau (deceased). The 2 widows administrators have been manipulated and coerced by step

siblings to let the said property remain freely in the hands of Simon Ndungu Kamau s/o Michael Kamau Macharia's widow Wairimu Ndungu.

The protestor states that the present distribution of assets that comprise of deceased's estate should accord both widows justice by sharing the remaining property Gitaru/Gitaru equally between the 2 families.

The widows /administrators Milka Njanja Kamau and Leah Waithera Kamau Filed affidavit on 11<sup>th</sup> October, 2018 and confirmed that before the deceased's demise he allocated their son Simon Ndungu (Deceased) Parcel Muguga/Gitaru/T.84 'B' where his widow Wairimu Ndungu and his children reside. And thus should be transferred to her and their son's children.

## **DETERMINATION**

Section 71 of Law of Succession Act provides;

**...provided in cases of intestacy, the grant of letters of administration shall not be confirmed until the Court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.**

**RONO VS RONO & ANOR [2008] 1KLR(G&F) Omollo J.A as follows;**

**"I had the advantage of reading in draft form the judgment....., and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the Learned Judge to be laying down any principle of law that the Law of Succession... Cap 160 of the Laws of Kenya, lays down a requirement that heirs of a deceased person must inherit equal portions of the estate where such deceased dies intestate and that a judge has no discretion but to apply the principle of equality as submitted....I can find no such provision in the Act..."**

## **DISPOSITION;**

**1. By virtue of above law , the grant issued pursuant to this Court's judgment delivered on 10<sup>th</sup> November 2017, the grant is confirmed in terms of the list of beneficiaries, their written consents by all beneficiaries except Protestor attached to Summons of Confirmation of 17<sup>th</sup> September 2018 and the proposed mode of distribution.**

**2. The Protest filed by Protestor on 12<sup>th</sup> October 2018 is dismissed because;**

**a) The widows/administrators swore and filed affidavit on 11<sup>th</sup> October 2018 and deponed that they agreed that the suit property Muguga/Gitaru/T.84 'B' should remain with the widow of their late son and their children as the deceased bequeathed their late son the said suit property.**

**b) There is no legal requirement that the distribution of the estate of a deceased shall /must be equal but should be fair /just and equitable in the circumstances of each case as stated in the above case cited.**

**c) The proposed mode of distribution is that each widow of the deceased obtains a parcel of land where each settled on her behalf and on behalf of their children equally except from the suit property Muguga/Gitaru/T.84 'B' which was allocated to Simon Ndungu by the deceased during his lifetime.**

**DELIVERED SIGNED DATED IN OPEN COURT ON 18<sup>TH</sup> OCTOBER 2018.**

**M.W.MUIGAI**

**JUDGE FAMILY DIVISION OF HIGH COURT**

**IN THE PRESENCE OF;**

**MILKAH NJANJA KAMAU IN PERSON**

**MARGARET NJOKI KAMAU IN PERSON**