



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 652 OF 2014**

**IN THE MATTER OF THE ESTATE OF M'MBOROKI M'RACHI (DECEASED)**

**NANCY MWARI DOUGLAS &**

**ANASTACIA CIRINDI IRERI.....PETITIONERS**

**FINAL JUDGMENT**

1. On 5<sup>th</sup> July, 2018, this court gave a partial judgment whereby it directed that further evidence be taken with a view of identifying all the beneficiaries of the deceased. This therefore is the final judgment after further evidence was taken by the court on 18<sup>th</sup> September, 2018.

2. The 1<sup>st</sup> petitioner, **Nancy Mwari**, told the court that the deceased had two houses as follows:-

**a) 1<sup>st</sup> House: Teresia Kabua Mboroki**

1. Anastasia Cirindi
2. Nancy Mwari Douglas
3. Virginia Mukwanyaga
4. Catherine Kabura
5. Japheth Kaaria (unsound mind)
6. Francis Kaburu (Deceased with children)
7. Ikuu Mboroki (Deceased with no child)
8. Hilda Tiira (Deceased with children)

**b) 2<sup>nd</sup> House: Grace Gata Mboroki**

1. Florence Kainda
2. Harriet Maringa Mboroki
3. Charles Kaburu
4. Jonathan Nkonge
5. Jemimah Nkirote
6. Mary Kawira
7. Beatrice Kanini (Deceased without children)

8. Margaret Wanja (Deceased with children; Pityness Kendi, Jasper Maingi and Rosalid Makena.)

3. She told the court that from the 1<sup>st</sup> house, Francis Kaburu left behind Isaac Mutembei and Francis Mugambi Kaburu ID NO. 21866825 who should take care of Japheth Kaaria who is of unsound mind. Hilda Tiira also left behind two children namely, Caroline Wanjiru and John Murithi alias Mutembei.

4. She clarified that the estate had four properties, namely, **Plot Nos. 589, 1122, 1283 and plot No. 16A Igoji**. The last property is a commercial property which the deceased co-owned with M'Arithi Rutere M'Arasi. The property is managed by the two families. Since the deceased passed on, Jonathan Nkonge has been collecting the money on behalf of the family but spends it by himself. She proposed that the said plot be distributed to the 2<sup>nd</sup> house while the 1<sup>st</sup> house gets the other commercial **plot no. 1283**.

5. **Jonathan Nkonge** gave his sworn testimony. He testified that commercial **plot No. 16A** was held by the four sons, Francis, Japheth, Charles and himself. That they were getting Kshs.1,000/- per month. That each of the families of the four owners take rent yearly and that his family has to wait for 3 years before he can be entitled to collect any rent from that building.

6. **Nkonge** told the court that the other commercial **plot No. 1283**, had been distributed by the deceased in his lifetime to the four sons before the deceased died. That the distribution was witnessed by elders whom he named as Murithi Mutiga, Chabari Justus and Mbaabu Marete. According to him, **Plot No. 589** had been distributed whereby each son was to get 2 acres and the remaining 2 acres was given to the daughters. That the daughters of the 1<sup>st</sup> house were to have 1 acre and those of the 2<sup>nd</sup> house were to have the other 1 acre. But his share was to stretch from plot 1122 to 589. He denied blocking the administrators from administering the estate.

7. Having heard the beneficiaries, the only issue for determination is **how the estate should be distributed**. The deceased was polygamous. It follows therefore that the applicable provision is **Section 40 of the Law of Succession Act, Cap 160 of the Laws of Kenya ("the Act")**. Under that section, the estate of a polygamous is distributed equally with each child being treated as a separate unit which results in equal distribution of the estate among the children. If there be a surviving widow, she is also taken to be a separate unit by herself.

8. The beneficiaries were unable to agree on how to distribute the estate. Having considered the testimonies of **Nancy Mwari Douglas and Jonathan Nkonge**, this court was satisfied that the deceased had died intestate. There was no satisfactory evidence to show that the deceased had divided any of his property before he died.

9. The deceased had a total of four assets, two commercial plots and two non-commercial. Each house had its version how they wished the two commercial plots should be distributed. **Nancy Mwari** urged that plot No. 16A be distributed to the 2<sup>nd</sup> house while plot No. 1283 should go to the 1<sup>st</sup> house. On the other hand, **Jonathan Nkonge** told the court that the two plots were held and distributed among the sons. That Plot No. 1283 should be shared by the sons of the first house and plot No. 16A among the sons of the second house.

10. Having considered the testimonies on record and the law, and for the reason of the minute size of **Plot Nos. Igoji 16A and Igoji/Gikui/1283** which militate against any further subdivision, the estate will be distributed as follows: -

**a) Plot No. 16A Igoji Market**

Equally between Charles Kaburu and Jonathan Nkonge.

**b) Igoji/Gikui/1283 (0.05 Ha)**

Equally between Francis Mugambi Kaburu, Isaac Mutembei and Japheth Kaaria (share is to be held in trust by Francis Mugambi Kaburu)

**c) Igoji/Gikui/1122**

(Measuring 0.6 Ha)

1. Nancy Mwari Douglas - 0.3ha

2. Anastacia Cirindi Ireri - 0.3ha

**d) Igoji/Gikui/589**

(Measuring 4 Ha)

To be divided equally with each of the following getting 0.333 ha

1. Virginia Mukwanyaga

2. Catherine Kabura

3. Francis Mugambi Kaburu to hold in trust for Japheth Kaaria (unsound mind)

4. Isaac Mutembei equally

Francis Mugambi Kaburu

5. Florence Kainda

6. Harriet Maringa Mboroki

7. Charles Kaburu

8. Jonathan Nkonge

9. Jemimah Nkirote

10. Mary Kawira

11. Pityness Kendi

Jaspher Maingi equally

Rosalid Makena

12. Caroline Wanjiru equally

John Murithi alias Mutembei

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

**DATED and DELIVERED at Meru this 18<sup>th</sup> day of October, 2018.**

**A. MABEYA**

**JUDGE**