



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NUMBER 638 OF 2015**

**IN THE MATTER OF THE ESTATE OF SOLOMON NJUGUNA KARANJA (DECEASED)**

**JUDGMENT**

1. Solomon Njuguna Karanja died on 10/5/2013. A grant of letters of administration intestate was made to Joseph Ngigi Njuguna (administrator) on 29/12/2015.
2. The administrator moved the court vide a summons for confirmation of grant dated 5/9/2016 seeking to have the grant confirmed and proposing to distribute the estate as follows;

<b>SCHEDULE OF PROPERTY</b>	<b>BENEFICIARIES</b>	<b>SHARE</b>
Cash in Bank Kshs. 475,000/=	Mary Njeri and her 2 minor	whole
Children		
Dundori/Lanet Block 2/367	Virginia Mumbi Njuguna	Tenants in
Solomon Njuguna	common in Tabitha Nduta Njuguna	equal shares
Joseph Ngigi Njuguna		
Irene Wanjiru Njuguna		
Leah Nyambura Njuguna		
Peter Njoroge Njuguna		
John Karanja Njuguna		
Family of Ann Njeri (deceased)		

3. The summons elicited a protest from Mary Njeri Maina (hereinafter the protestor). A reading of the protest sounds like it is more of an objection to the making of a grant of representation to the estate than a protest.
4. By a consent of the parties made on 2/5/2017, it was agreed that;
  1. The objector was made a joint administrator.
  2. Three issues were to be placed before court for determination;
    - i) Who are the beneficiaries.
    - ii) The extent of the estate.
    - iii) The distribution of the estate.

5. The matter was canvassed by way of written submissions.
6. It is an admitted fact that the deceased was in a polygamous marriage. The first wife Sarah Ngendo Njuguna (deceased) had nine (9) children while the 2<sup>nd</sup> wife, Mary Njeri Maina, has four (4) children.
7. The available assets are parcel of land Ndundori/Lanet Block 2/367 measuring 1.42 ha and cash Kshs. 470,000/=.
8. As regards the beneficiaries, the petitioner is of the view that two (2) children Winfred Nyawira and Eliud Mundia who are not biological children of the deceased, should not get equal shares with the biological children.
9. A point is also raised, that all the properties were acquired by the deceased during his coverture with Sarah Ngendo, the 1<sup>st</sup> wife and the objector did not assist in acquisition of the property.
10. In respect of dependants, **Section 29** of the **Law of Succession Act** defines a dependant as;

**“29. For the purposes of this Part, “dependant” means -**

**(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**

**(b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and**

**(c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”**

11. It is quite obvious that the deceased took Winfred and Eliud as his own children. They are therefore dependants within the meaning of the Act. Indeed, it is not in dispute that the deceased married Mary the mother of the two. He therefore acquired parental responsibility of the children within the meaning of **Section 25(2)** of the **Children Act (Cap 141 Laws of Kenya)**.

12. In any event, taking these two(2) children as dependants within the meaning of **Section 29** of the **Law of Succession Act**, in making provision for them, I would be guided by **Section 27** of the **Law of Succession Act** which provides;

**“Section 27. In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”**

I would find no reason to make longer provisions to the other children and discriminate these two.

13. There would be no basis whatsoever to discriminate against these children and treat them differently.

14. In the issue of the property having been acquired during coverture with the first wife, this argument, which could find a place in equity, has no force of law behind it. The assets of the deceased available for distribution would be the free property which the deceased was legally competent freely to dispose during his lifetime and in respect of which his interest has not been terminated by his death.

15. And while a claim as to contribution by a spouse to acquisition of matrimonial property is not an idle one especially with the onset of **Matrimonial Property Act 2013**, I am persuaded that such a claim should find cannot be conveniently articulated within the structures of the Law of Succession Act and the rules made thereunder but the same can find ventilation through the invocation of the relevant jurisdiction of this court.

16. Having satisfied myself of the beneficiaries and the assets of the deceased, I now turn to the question of the mode of distribution of the estate.

17. The applicable provision in respect of the distribution herein is **Section 40** of the **Law of Succession Act**. The Section provides;

**“Section 40. (1) 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.**

**(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”**

18. The first house has nine (9) children but no surviving wife. The 2<sup>nd</sup> house has four (4) children and surviving widow. In total there shall be 14 units.

19. The available land for distribution is about 1.42 ha (about 3.5 acres). It is impractical to share out the land to the individual units (beneficiaries) who are 14 in number. It is desirable that the total shares of each of the houses be held together with the first house getting nine (9) units and 2<sup>nd</sup> house getting five (5) units.

20. The distribution of the assets should thus be in the following terms;

<b>SCHEDULE OF PROPERTY</b>	<b>BENEFICIARIES</b>	<b>SHARE</b>
Kshs. 475,000/=	All units	Equally
Ndudori/Lanet Block 2/367	1 <sup>st</sup> house	Ratio 9:5
	2 <sup>nd</sup> house	

**Dated and Delivered at Nakuru this 13<sup>th</sup> day of December, 2018.**

**A. K. NDUNG'U**

**JUDGE**