



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 72 OF 2016**

**(FORMERLY CHUKA S.PM SUCCESSION CAUSE NO. 45 OF 2016)**

**IN THE MATTER OF THE ESTATE OF THE LATE MAXWELL RWIGI MUGERA alias MAXWELL RWIGI MUCERA  
(DECEASED)**

**CAROLINE KEERU RWIGI.....1<sup>ST</sup> ADMINISTRATRIX/APPLICANT**

**VERSUS**

**AGGREY NYAGA RWIGI.....2<sup>ND</sup> ADMINISTRATOR/RESPONDENT**

**J U D G M E N T**

1. This cause relates to the estate of the late **MAXWEL RWIGI MUCERA** (deceased herein) who died on 26<sup>th</sup> July, 2010 at Consolata Hospital resident within Tharaka Nithi County. The deceased died intestate and according to the petition filed he left behind the following dependants:-

- (i) Grace Njeri Rwiggi
- (ii) Fedis Kagendo Mbaka
- (iii) Aggrey Nyaga Rwiggi
- (iv) Faith Gatiria Gitonga (wife to Moses Gitonga late son of the deceased).
- (v) Dorothy Kagani Rwiggi
- (vi) Kenneth Murithi Rwiggi
- (vii) James Munene Rwiggi
- (viii) Loystone Mugendi Rwiggi &
- (ix) Caroline Keeru Rwiggi

2. The properties listed as comprising the estate as follows:-

- a) L.R. Karingani/Muiru/1148
- b) L.R. No. Karingani/Ndagani/6291, 6909, 6908, 6911, 6913 and 6914.
- c) Plot No.208 within Chuka Township
- d) Plot No. Nairobi Block 120/394 original part of No.6823.

e) Post Bank Pension Account.

3. Aggrey Nyaga Rwigi and Carolyn Keeru Rwigi (the petitioners) were appointed administrator and administratrix respectively through a grant issued by this court on 26<sup>th</sup> April, 2017.

4. On 4<sup>th</sup> January, 2018, through Summons for Confirmation of Grant dated 4<sup>th</sup> January, 2018 Caroline Keeru Rwigi Co-administratrix applied for confirmation of grant and proposed to have the estate distributed as follows:-

**a) L.R. Karingani/Ndagani/6908- 015 acres**

Dorothy Kageni Rwigi - whole

**b) L.R. Karingani/Ndagani/6909 - 1.5 acres**

Aggrey Nyaga Rwigi - 0.43 acres

Fides Kagendo Mbaka

Grace Njeri Rwigi

Faith Gatiria Gitonga

Dorothy Kageni Rwigi

Kenneth Murithi Rwigi

James Munene Rwigi

Loystone Mugendi Rwigi and

Caroline Keeru Rwigi

Dorothy Kageni Rwigi - 1.07 acres

**c) L.R. Karingani/Ndagani/6911 - 0.47 acres**

Dorothy Kageni Rwigi

**d) L.R. Karingani/Ndagani/6913**

Faith Gatiria Gitonga to hold in trust for Kawira Gitonga, Grace Kathambi Gitonga and Moreen Gakii Gitonga (minor)

**e) L.R. Karingani/Ndagani/6914 - 2.10 acres**

(i) Faith Gatiria Gitonga

(ii) Caroline Keeru Rwigi

(iii) James Mugambi Gitonga and Mike Mutwiri Gitonga

**f) L.R. Karingani/Ndagani/6918 - 1.75 acres**

Aggrey Nyaga Rwigi

**g) L.R. Karingani/Ndagani/6820 - 2.10 acres**

James Munene Rwigi - whole

**h) L.R. Karingani/Ndagani/6921 - 1.53 acres**

(i) Aggrey Nyaga Rwigi - 0.17 acres

(ii) Fides Kagendo Mbaka - 0.17 acres

(iii) Faith Gatiria Gitonga - 0.17 acres

to hold in trust for herself and that of her children; James Mugambi Gitonga, Kawira Gitonga, Mike Mutwiri Gitonga, Grace Kathambi Gitonga and Moreen Gakii Gitonga.

(iv) Grace Njeri Rwigu - 0.17 acres

(v) Dorothy Kageni Rwigu - 0.17 acres

(vii) Kenneth Murithi Rwigu - 0.17 acres

(viii) Loystone Mugendi Rwigu - 0.17 acres

(ix) Caroline Keeru Rwigu - 0.17 acres

**i) L.R. Karingani/Muiru/1184 -6 acres**

(i) Aggrey Nyaga Rwigu - 4.5. acres

(ii) Loystone Mugendi Rwigu - 1.50 acres

**j) Plot M 9 Chuka Township**

(i) Aggrey Nyaga Rwigu

(ii) Fides Kagendo Mbaka

(iii) Grace Njeri Rwigu

(iv) Faith Gatiria Gitonga

(v) Dorothy Kageni Rwigu jointly

(vi) Kenneth Murithi Rwigu

(vii) James Munene Rwigu

(viii) Loystone Mugendi Rwigu

(ix) Caroline Keeru Rwigu

**(k) Plot at Mwiki Nairobi**

(i) Aggrey Nyaga Rwigu

(ii) Fides Kagendo Mbaka

(iii) Grace Njeri Rwigu

(iv) Faith Gatiria Gitonga

(v) Dorothy Kageni Rwigu jointly

(vi) Kenneth Murithi Rwigu

(vii) James Munene Rwigu

(viii) Loystone Mugendi Rwigu

(ix) Caroline Keeru Rwigu

**(l) Account in Post Bank Ltd**

(i) Aggrey Nyaga Rwigu

- (ii) Fides Kagendo Mbaka
- (iii) Grace Njeri Rwigi
- (iv) Faith Gatiria Gitonga
- (v) Dorothy Kageni Rwigi jointly
- (vi) Kenneth Murithi Rwigi
- (vii) James Munene Rwigi
- (viii) Loystone Mugendi Rwigi
- (ix) Caroline Keeru Rwigi

5. The administratrix has justified the above proposal deposing that the deceased had during his lifetime gifted the following beneficiaries with the following parcel namely:-

(i) **L.R. Karingani/Ndagani/6910 - 0.2 acres**

Kenneth Murithi Rwigi

(ii) **L.R. Karingani/Ndagani/6915 - 0.44 acres**

Lucy Ciamigwi Nyaga (first wife to Aggrey Nyaga)

(iii) **L.R. Karingani/Ndagani/6916- 2.26 acres**

Loystone Mugendi Rwigi

(iv) **L.R. Karingani/Ndagani/6917 - 1.83 acres**

Caroline Keeru Rwigi

(vi) **L.R. Karingani/Ndagani/6919 - 1.90 acres**

Kenneth Murithi Rwigi

(vii) **L.R. Karingani/Ndagani/3554- 0.81 acres**

Grace Njeri, Fides Kagendo and Caroline Keeru

(viii) **L.R. Karingani/Ndagani/3553- 0.25 acres**

Kenneth Murithi Rwigi

6. The above proposal by the administratrix elicited protest by her co- administrator, Aggrey Nyaga who though largely agreeing agreed on some parts of the proposal disagreed on some parts. In his affidavit of protest sworn on 2<sup>nd</sup> February, 2018 he agreed with the administratrix that the deceased had indeed gifted some parcels to some beneficiaries as stated above by the administratrix. He however denied Lucy Ciamigwi Nyaga is a beneficiary or a dependant deposing that she is his wife.

7. The main contention of protest by Aggrey Nyaga Rwigi is that the list of inventory of the properties comprising the estate left out the following properties which he contends forms part of the estate namely:

- (a) Karingani/Muiru/1148
- (b) Chuka Township Plot No.208
- (c) L.R Karingani/Marigani/1582

8. The protestor has also contended that land parcel No. Karingani/Muiru/1184 does not form part of the estate of the deceased herein but that the correct parcel Number is Karingani/Muiru/1148. He however does not have any objection to the parcel going to himself and Loystone Mugendi as suggested by the administratrix.

9. The protestor has given the following proposals on the distribution of the estate of the deceased:-

(a) **Karingani/Ndagani/6908 - 0.15 acres**

- (i) Dorothy Kageni Rwigi
- (ii) Fides Kagendo Mbaka
- (iii) Caroline Keeru Rwigi jointly
- (iv) Grace Njeri Rwigi

(b) **Karingani/Ndagani/6909- 1.50 acres**

0.43 acres - Family homestead to be held by;

- (i) Aggrey Nyaga
- (ii) Fides Kagendo Mbaka
- (iii) Grace Njeri Rwigi
- (iv) Faith Gatiria Gitonga
- (v) Dorothy Kageni Rwigi 0.43 acres jointly
- (vi) Kenneth Murithi Rwigi
- (vii) James Munene Rwigi
- (viii) Loystone Mugendi Rwigi
- (ix) Caroline Keeru Rwigi

- (i) Dorothy Kageni Rwigi
- (ii) Fides Kagendo Mbaka
- (iii) Grace Njeri Rwigi 1.07 acres jointly
- (iv) Caroline Keeru Rwigi

(c) **Karingani/Ndagani/6911- 0.47 acres**

Dorothy Kageni Rwigi

(d) **Karingani/Ndagani/6913- 0.25 acres**

Faith Gatiria to hold in trust for Kawira Gitonga, Grace Gitonga and Moreen Gakii Gitonga.

(e) **Karingani/Ndagani/6914 - 2.1 acres**

- (i) Faith Gatiria Gitonga

(ii) Caroline Keeru Rwigi jointly

(iii) James Mugambi Gitonga

(iv) Mike Mutwiri Gitonga

(f) **L.R. Karingani/Ndagani/6918- 1.75 acres**

Aggrey Nyaga Rwigi

(g) **L.R. Karingani/Ndagani/6920 - 2.10 acres**

James Munene

(h) **Karingani/Muiru/1148**

(i) Aggrey Nyaga Rwigi - 1.781 ha

(ii) Loystone Mugendi Rwigi - 0.646 ha

(i) **L.R. Karingani/Ndagani/6921**

(i) Loystone Mugendi Rwigi

(ii) Aggrey Nyaga Rwigi

(iii) Kenneth Murithi Rwigi jointly

(iv) Faith Gatiria Gitonga

(j) **Chuka Township/208 and Plot No.120/394 Ruai Nairobi**

(i) Aggrey Nyaga Rwigi

(ii) Caroline Keeru Rwigi

(iii) Fedis Kagendo Rwigi

(iv) Loystone Mugendi Rwigi

(v) James Munene Rwigi

(vi) Dorothy Kageni Rwigi

(vii) Faith Gatiria Gitonga

(vi) Kenneth Murithi Rwigi

(k) **Post bank Account:**

(i) Aggrey Nyaga Rwigi

(ii) Caroline Keeru Rwigi

(iii) Grace Njeri Rwigi

(iv) Loystone Mugendi Rwigi

(v) James Munene Rwigi

(vi) Dorothy Kageni Rwigi

(vii) Faith Gatiria Gitonga

(viii) Kenneth Murithi Rwigi

10. The dispute in this cause on how the estate should be distributed is not very significant. The administrator and administratrix both concur on who the dependants of the deceased's estate in this cause are.

They are further in concurrence that some of the dependants benefitted from gifts of some parcels of lands from the deceased during his lifetime and therefore the application of the provisions of **Section 42** of the Act in regard to those who benefitted. Those who benefitted are as follows:-

(i) **L.R.Karingani/Ndagani/6910- 0.2 acres**

Kenneth Murithi Rwigi

(ii) **L.R Karingani/Ndagani/6915- 0.44 acres**

Lucy Ciamigwi Nyaga (wife to Aggrey Nyaga)

(iii) **L.R Karingani/Ndagani /6916 - 2.26 acres**

Loystone Mugendi Rwigi

(iv) **L.R. Karingani/Ndagani/6917 - 1.83 acres**

Caroline Keeru Rwigi

(v) **L.R Karingani/Ndagani/6919 - 1.90 acres**

**L.R. Karingani/Ndagani/3553 - 0.25 acres**

**2.15 acres**

Kenneth Murithi Rwigi

(vi) **L.R. Karingani/Ndagani/3554**

(i) Grace Njeri

(ii) Fedis Kagendo 0.81 acres- jointly

(iii) Caroline Keeru

The dependants who apparently missed out from any gift *inter vivos* are:-

(i) Dorothy Kageni Rwigi

(ii) James Munene Rwigi

(iii) Moses Gitonga Rwigi ((late son of the deceased who left behind widow Faith Gatiria Gitonga and children.)

11. The net estate in this cause available for distribution are as follows namely;

- (i) L.R Karingani/Ndagani/6908 - 0.15 acre
- (ii) L.R. Karingani/Ndagani/6909 - 1.50 acres
- (iii) L.R. Karingani/Ndagani/6911 - 0.47 acre
- (iv) L.R. Karingani/Ndagani/6913 - 0.25 acre
- (v) L.R. Karingani/Ndagani/6914- 2.10 acres
- (vi) L.R. Karingani/Ndagani/6918 - 1.7 acres
- (vii) L.R. Karingani/Ndagani/6920 - 2.10 acres
- (viii) L.R Karingani/Ndagani/6921 - 1.53 acres
- (ix) L.R. Karingani/ Muiru/1148 - 6 acres

**15.8 acres**

Besides the total acreage of 15.8 acres, the other properties as per the list provided are plot. No. 9 Chuka Township, Nairobi Block 120/394 and Post Bank Account whose details were not provided.

12. The total number of dependants in this cause are nine and given that the total acreage of the estate is 15.8 acres it could have meant that going by the provisions of **Section 38** of Act which is applicable in this cause in distribution of the estate, each beneficiary was entitled to approximately 1.6 acres. However as already observed above the provisions of **Section 42** of the **Law of Succession Act** provides that any gift *intervivos* is taken into account when finally determining what each beneficiary would get.

13. It is apparent considering the gift *intervivos* granted by the deceased prior to his demise that the following got more than two acres. They are;

- (i) Kenneth Murithi Rwigi - 2.10 acres
- (ii) Loystone Mugendi Rwigi - 2.26 acres
- (iii) Caroline Keeru Rwigi - 2.13 acres

14. The provisions of **Section 38** provides that where a deceased dies intestate without any surviving widow, the estate is divided equally among the surviving children. All the dependants in law are equal and are treated equally therefore they deserve equal share regardless of gender or marital status. That is the guiding principle in distributing estates of deceased persons dying intestate without any spouse surviving them and that is what is applicable in this cause because of the disagreement between the administratrix and the administrator. Where there are disagreement on how the estate should be distributed the law has to prevail and that is why **Section 38** of the Act becomes imperative.

15. In the foregoing this court having considered the proposals made by both administratrix and administrator respectively and the dictates of the law, the grant issued on 26<sup>th</sup> April, 2017 is hereby confirmed under the following terms:-

**(i) L.R Karingani/Ndagani/6914 - 2.10 acres**

Faith Gatiria Gitonga to hold it in trust for herself and James Mugambi Gitonga, Kawira Gitonga, Mike Muturi Gitonga, Grace Kathambi Gitonga and Moreen Gakii Gitonga.

**(ii) L.R Karingani/Ndagani/6920 - 2.10 acres**

James Munene Rwigi

**(iii) L.R. Karingani/Ndagani/6918 - 1.75 acres**

Aggrey Nyaga Rwigi - whole (when added to share given to his wife- Lucy Ciamigwi Nyaga (**0.44 acres**) Aggrey Nyaga Rwigi will have

gotten a total of 2.19 acres).

**(iv) L.R. Karingani/Ndagani/6909.**

(a) Dorothy Kagani Rwigi - 1.07 acres

(b) Aggrey Nyaga Rwigi

Fides Kagendo Rwigi

Grace Njeri Rwigi

Faith Gatiria Gitonga

Dorothy Kagani Rwigi

Caroline Keeru Rwigi 0.43 acres jointly

Loystone Mugendi Rwigi

Kenneth Murithi Rwigi

James Munene Rwigi

**(v) L.R. Karingani/Ndagani/6908 - 0.15 acres**

Dorothy Kagani Rwigi - whole

**(vi) L.R. Karingani/Ndagani/6911 - 0.47 acres**

Dorothy Kagani Rwigi - whole

**(vii) L.R. Karingani/Ndagani/6921 - 1.53 acres**

Fides Kagendo Mbaka

**(viii) L.R. Karangani/Ndagani/6913 - 0.25**

Faith Gatiria Gitonga to hold in trust for Kiura Gitonga, Grace Kathambi Gitonga and Moreen Gakii Gitonga.

**(ix) L.R. Karingani/Muiru/1148 - 6 acres**

Fides Kagendo Mbaka - 0.65 acres

Aggrey Nyaga Rwigi

Loystone Mugendi Rwigi

Grace Njeri Rwigi

Faith Gatiria Gitonga

Dorothy Kagani Rwigi

Kenneth Murithi Rwigi equal share

James Munene Rwigi

Caroline Keeru Rwigi

(x) **Plot No. M9 Chuka Township and Nairobi Block 120/394.**

- (a) Aggrey Nyaga Rwigi
- (b) Fides Kagendo Rwigi
- (c) Faith Gatiria Gitonga
- (d) Dorothy Kageni Rwigi
- (e) Kenneth Murithi Rwigi Jointly
- (f) James Munene Rwigi
- (g) Loystone Mugendi Rwigi
- (h) Caroline Keeru Rwigi
- (i) Grace Njeri Rwigi

(xi) **Account in Post Bank**

- (a) Aggrey Nyaga Rwigi
- (b) Fides Kagendo Mbaka
- (c) Grace Njeri Rwigi
- (d) Faith Gatiria Gitonga jointly
- (e) Dorothy Kageni Rwigi
- (f) Kenneth Murithi Rwigi
- (g) James Munene Rwigi
- (h) Loystone Mugendi Rwigi
- (i) Caroline Keeru Rwigi

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

**Dated, signed and delivered at Chuka this 13<sup>th</sup> day of December,2018.**

**R.K. LIMO**

**JUDGE**

**13/12/2018**

Judgment signed, dated and delivered in the open court in the presence of Fatuma holding brief for Ithiga for protestor and Mugo for administratrix.

**R.K. LIMO**

**JUDGE**

