



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2453 OF 2015

IN THE MATTER OF THE ESTATE OF GRACE JEANIE NJERI MUHUNI alias

JEANIE NJERI NJOROGE alias JEAN NJERI NJOROGE alias

JEANIE NJERI MUHUNI alias JEANIE NJERI (DECEASED)

JOSEPH KAHUNYO MUHUNI.....1ST APPLICANT

ELIEZER JAMES NJOROGE MUHUNI.....2ND APPLICANT

- V E R S U S -

JOHNSON WAIGANJO.....RESPONDENT

JUDGMENT

PLEADINGS

The matter relates to the estate of Grace Jeanie Njeri Muhuni who died on 11th August 2015. She was predeceased by her husband James Peterson Muhuni who died on 22nd March 2002.

Representation to her estate was sought by a Petition presented to this court on 1st October 2015. The same was supported by a letter from the Chief – Kiambaa Settled Area Location dated 9th September, 2015. The letter confirmed that the deceased was survived by the two sons namely **JOSEPH KAHUNYO MUHUNI** and **ELIEZER JAMES NJOROGE MUHUNI**.

Prior to deceased's death she owned the following assets:-

Land Title Numbers under individual ownership:-

- i) L.R. No. 37/245/18 (Located in Nairobi West)**
- ii) Land Title No. Nairobi/Block 119/2086 (located in Githurai) and Nairobi/Block 119/3206**
- iii) Land Title No. Nairobi/Block 119/2148 (located in Githurai)**
- iv) Land Title No. Kakuzi/Kirimiri Block 7/43**

Land Title Numbers under joint ownership

- i) L.R. No. 209/248/20 in the names of Harrison Gicharu Nganga & Jeanie Njeri Njoroge;**
- ii) L.R. No. 4894/9 in the name of Jeanie Njeri Njoroge and James Peterson Muhuni;**
- iii) L.R. No. 37/440 (Original No. 37/326/36) in the names of Jeanie Njeri Muhuni, Joseph Kahunyo Muhuni and James Njoroge Muhuni.**

Shares

<u>Company</u>	<u>No. of Shares</u>
a) KenGen	1436 Shares
b) Safaricom	2200 shares
c) KenGen	150 shares
d) Mumias Sugar	450 shares

Bank Accounts

1. Standard Chartered Kenyatta Avenue	-	0100121257100
2. KCB-KICC	-	1102210110
3. HFCK	-	1010-0-085985-1
4. HFCK	-	200-0017980
5. KCB – City Centre	-	240720523
6. EQUITY BANK	-	640262690821
7. PENSION	-	6900634

(Deposited at KCB Nairobi City Centre)

HFCK LIFE INSURANCE

On 5th November 2015 Johnson Waiganjo Njoroge (hereinafter '**Johnson**') filed an Objection to making of grant. His interest in the estate are as follows:-

- i) There had been a sale and grant of possession of the equivalent of one (1) acre from the **Land Parcel 4849/9** by the deceased to the Objector and the only pending issue was the execution of a transfer thereof prior to the demise of the deceased.
- ii) The **Title to LR No. 4894/9** having been registered in the names of the deceased herein and one **JAMES PETERSON MUHUNI** as joint tenants, the title devolved to the deceased herein when James Peterson Muhuni predeceased the deceased herein.
- iii) Funds were transferred from the United States of America for purchase of Kenya Energy Generating Company Limited (KENGEN) but the deceased purchased the whole lot of intended shares in her name.

Johnson further stated that his grounds of objection are as follows:-

- i) There was no sufficient time for the transfer of the interests in the above mentioned properties between the return of the Objector into the county and the falling sick and ultimate demise of the deceased.
- ii) There is an apparent scheme by the Petitioners (who are the Objector's nephews) to deny the Objector the right to the properties.
- iii) There had been mutual trust between the Objector and the deceased and indeed the lady had prior to her sickness had a file clearly marked in the Objector's name of all pending commercial matters between them; and further details to obtain in the answer to petition for grant.

On 25th November 2015 Johnson filed a Petition by way of cross application for a grant. On even date he filed affidavit in support of Petition for grant by way of cross application where he stated that the deceased was his sister and his trustee for his investments while he was living in the United States of America and in particular his purchase of one (1) acre portion of her land (then jointly owned by her and James Muhuni) in LR No. 4894/9 which was purchased in exchange of a Mercedes Benz he had imported into the country in 1985, which was hived off and final approval granted. Only the release of a Deed Plan and execution of transfer were pending at her demise.

He asserts that during his visits to Kenya, he used to reside at his sister's premises and on any enquiry as to when the title to the portion sold to him the answer used to be there were pending issues at City Hall or that some files had gone missing but she had with her a file clearly marked Waiganjo at home.

He avers that she used to assure him that everything was safe since she used to settle all rates and taxes on his ratable and leasehold properties on his behalf. That in light of the foregoing, JEANIE was holding one (1) acre in LR No. 4894/9 assigned LR No. 4894/424 and 1436 KENGEN shares in trust for him and this is the only part of the estate I would wish to administer.

He went further to state that on LR No. 4894/424, he has constructed a house thereon which the petitioners and their uncles Harrison Gicharu and Stephen Mundeu have all through been aware of. He stated that even upon his return to Kenya in November 2014, he had been living in his said late sister's premise with his family and only moved to an apartment during the death and subsequent burial of his late sister to give room to Johnson Kahunyo who had returned from Canada with his wife and two (2) children.

On 24th February 2016, Eliezer James Njoroge Muhuni filed Reply to cross Application for Grant and deposed that the Co petitioner Joseph Kahunyo Muhuni resides in Canada and gave him power of attorney to attend cause or execute documents without unreasonable delay or expense;

The copy is attached as **EJM1**.

The Application of Objector's Answer to Petition, Objection and Cross Petition are premature as petition was not gazetted and grant of letters of administration have not been issued. The Applicant/Petitioner said the claim by the Objector is not supported by documents to confirm the alleged trust and/or agreement for sale signed by their deceased mother of the sale of 1 acre as alleged and/or in exchange of a motor vehicle or at all. The objector failed to produce any agreements(s) or any proof of payments he made to the deceased. The alleged motor vehicle Mercedes Benz Reg KAC 502P referred to by the Objector as the alleged consideration for transfer of the suit property to himself is still registered in the Objector's name as shown by the annexed copy of the logbook marked **EJM3**

HEARING

The hearing commenced on 6th February 2017, Johnstone Waiganjo Njoroge (PW1) Objector herein, brother to deceased Jeannie Njeri Muthoni. In relying on pleadings filed, he stated his objection to making of grant is based on claim of 1 acre of land; LR No. 4894/9 Garden Estate in exchange for the motor vehicle Mercedes Benz Reg KAC 502. The Agreement was between him, his late sister and her late husband in 1992-1993. He begun construction in 1992, built 5 bedroomed house it is fenced with concrete perimeter wall. Subdivision was already done by Director of Survey and he got new number L.R.4894/424 but the separate title was not processed.

He also stated that while in US he sent the deceased on 30th March, 2006 Ksh14, 0045 as shown by Money gram copy marked **JWN3** from Johnstone Waiganjo Njoroge which she bought KENGEN shares for him but in her name as shown in the Ordinary Share Certificate. He came back in 2014 but he did not have an identity card and he obtained it just before she died and hence the transfer was not done. He claimed documents regarding purchase of shares were lost with his briefcase that he kept in his sister's house while he lived there before he was sent away.

He claimed that he was close to his sister and she bought him various properties but were in her name, he also claimed those properties.

He stated that the Petitioners, sons of the deceased wrote an agreement of consent and he refused to sign as they were only offering ½ acre and he claims he is entitled to 1 acre of the land. He said he had an agreement for sale with her sister on the sale and/or exchange of land and motor vehicle but it went missing as his briefcase with all documents were stolen from her late sister's house when he was forced out. He engaged his brother in law to help build the house on the said land, he built the foundation in 1995.

Beatrice Njambi Ole Kiina (PW4) in support of the Objector, told the Court that motor vehicle KAC 502 P yellow in color, left hand drive was imported by the Objector PW1 in 1992. He went with Harrison Gicharu Nganga (DW4) to Mombasa to clear the vehicle. PW1 wanted to sell the vehicle and deceased agreed to buy it and in exchange gave PW1 1 acre of the 5 acres in Garden Estate and he was allowed to start building his house. Harrison Started the construction of the house in 1997 as it was swampy. PW1 built the house slowly, during the lifetime of his sister who died in 2015 and his brother in law who died in 2002. She lived with her late sister for 12 years on the said property and witnessed the transaction. The Objector completed the house in 2014 and rented it out.

Eliezer James Njoroge Muhuni (DW1) 2nd son of the deceased, testified and relied on Witness statement filed on 9th May 2015 as his evidence. In a nutshell, the Objector is their Uncle, brother to their late mother, who claimed that in exchange for Mercedes Benz Reg. KAC 502 P, their late mother gave their Uncle 1 acre of land LR No. 4894/9 Garden Estate and he built the house. They had another Mercedes Benz Reg KRB & 799. He stated after their mothers' funeral, a family meeting was held and the Objector initially claimed that he sent money to their mother's friend who lived in UK Mrs Mwangi for purchase of the land and he had the recording to this effect. When he filed Objection in Court, the Objector now claimed that 1 acre was given to him in exchange of the said motor vehicle. They asked him for any document (s) and/or witness (es) on the matter and none is forthcoming except PW4 who was not close to their mother, she lived in US and she did not visit their mother while ill she could not possibly have witnessed this alleged agreement between their mother and the Objector.

If the Objector's claim of land is true, the witness questioned why the Objector did not request/demand transfer of 1 acre of the land after their father died in 2002 as the same was jointly registered by their father and mother? Secondly, he claimed, their mother was diagnosed with cancer in 2014, the Objector was back from US why did he not pursue the transfer of 1 acre then and waited until she died 1 year later?

The Objector's claim that subdivision was done in order for him to get 1 acre, the witness rebutted this allegation by producing 7 letters, their mother wrote to KCB bank and the letters confirm, their mother pursued subdivision of the land for purposes of development. He admitted that subdivision was conducted on the land.

The witness confirmed that there was an oral agreement between his mother and the Objector, that since he was relocating back to Kenya after many years in US and had no job, he was allowed to build a house on the land and rent it out and after he recouped his investment; recovered what he spent to build the house through the rent receivables, then the house would revert to the deceased.

Victor Kirui (PW3) Land Surveyor confirmed the survey of LR 4894 was conducted by James Kamweru and was subdivide into 3 parts; namely, LR 4894/423/424/425 with road access. He produced the map as Exhibit 1 in Court.

Harrison Gicharu Nganga (DW2) testified and relied on his statement filed on 27th July 2017. He stated he knew the deceased as sister in law as husband to her sister and they were business partners. They bought property in Ngara and at Githurai/Tinganga Land Buying Company. In one property her name only featured and she gave him all relevant documents to effect transfer in his name to correct the error.

He said on 25th May 2015 he visited the deceased while she was sick and she asked him to give her Ksh. 300,000/- he did and she deposited in an account Ksh 90,000/- and he took the amount and gave her Ksh 201,000/-. He asked her if she wrote a Will she said everything was for her 2 sons. The deceased was very organized, a straight forward person and kept records and the deceased did not bequeath anything to anyone else.

The Objector did not tell the truth when stated that he was the one who built the foundation for the house on the land instead the deceased called him to check on the land as there was a swamp. He said he was not aware of the 1 acre allotted to the Objector by the deceased in exchange for the Mercedes Benz he imported KAC 502 P. He admitted that the objector, who lived in US for over 20 years, visited severally and was housed by the deceased. When he imported the vehicle he accompanied him to Mombasa to clear it. It was an old car left hand drive whose market value was very low, he refused to buy it it would not have been sufficient exchange for 1 acre of land in Garden Estate.

SUBMISSIONS

PETITIONERS' SUBMISSIONS

On 7th March 2018 counsel for the Petitioners filed his written submissions. He submitted that having carefully studied the Objector's pleadings and submissions, it is our humble submission that he has failed to raise any legal issues for determination however we note that the legal and factual issues for determination are as follows:-

- a) Whether the Objector has beneficiary interest in the Estate?
- b) Whether there was a valid sale of property transaction in the absence of a written contract between the Objector and the Deceased?
- c) Whether the deceased bought for the Objector KENGEN shares?

On whether the Objector has beneficiary interest in the Estate counsel submitted that the objector is not a beneficiary of the Estate within the meaning of **Section 29 of Law of Succession Act**. Moreover, he was not at any time maintained by the deceased prior to her death. Whereas he claims a beneficiary interest in the Estate (see paragraph 6 on page 2 of his submissions) he is unable to prove it. The Objector has also failed to plead or prove existence of any implied, resulting or constructive trust.

In **RE OF THE ESTATE OF JOSHUA ORWA ODEH (DECEASED) [2014]eKLR** Justice Musyoka in his Ruling states:-

“Going by the above provision, where a deceased person is survived by spouse and child or children, the other relatives are not entitled to a share in the intestate estate of such person. The spouse and child are entitled to the estate to the exclusion of all the other relatives. The excluded relatives include the parents of the deceased. Parents are only entitled where there is no surviving spouse or child. This is clear from the language of Section 3991) of the Act.”

In **JOHN GATHEE GITHAE –VS- ROSE WANJIRU MUTURI [2016]eKLR** the learned Judge R. E. Ougo reiterated the contents in the above mentioned case. The case was one where the Applicant, a brother of the deceased claimed a part of the deceased's net estate. It was stated:-

“Further, upon his return to Nairobi the applicant was housed by the deceased this I believe was to give him time to organize himself which he did by registering a mechanic business in 2009 which he runs to date. From his own testimony the applicant owns a parcel of land which he claims he purchased from his own savings. From the foregoing it is clear that the applicant who is aged 53 is earning a living is able to cater to his bills. The applicant owns a property registered as Kajiado/Kitengela 44844 which the respondent claim was purchased with some of the money realized from the sale of her motor vehicle Subaru which her son Timothy Mburu Muturi in his testimony avers belong to the respondent. In the case of Re of the Estate of Joshua Orwa Ojodehh – (Deceased) [2014]eKLR, it was held that, “The law ensures that widows and orphans are give first priority in terms of access to the property of a dead husband and father. The other relatives, including parents, are relegated to a secondary position, and only access the property in the event that there is no widow or child, or if they convince the court in a proper application that they were dependent on their dead child or sibling or other relative and that the court should then make provision for them out of the estate of the dead child. These provisions are designed to obviate the possibility of widows and orphaned children being rendered destitute, as they would be if they are forced to share their inheritance with the parents and siblings of the deceased. Quite clearly therefore under Succession Law, parents are not in the same footing with widows and children.”

He further submitted of properties he owns which he purchased through his other sisters, he earns a living and moreover the property he now claims is one that was initially owned by the Deceased and her husband. He is seeking to inherit from his deceased in-laws and this is contrary to the provisions of the Law of Succession Act and repugnant to Kikuyu traditions. There was also the question on whether there was a valid sale of property transaction in the absence of a written contract between the Objector and the Deceased.

The Petitioners submit that the Objector fails the legal and factual threshold for claiming that he entered into an agreement to sell the subject suit property with the deceased. This is because he has failed to show documentary evidence of the same. The **Law of Contract Act Cap 23. Section 3(3)** expressly states about contracts that deal with land and are not in writing. It states that-

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

a) The contract upon which the suit is founded-

i) is in writing

ii) is signed by all the parties thereto; and

the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

Counsel further submitted that the Objector has also failed to plead or prove existence of any implied, resulting or constructive trust. The Petitioner would like to draw court’s attention that the Objector, being in possession at whatever instance of the deceased’s property was him being a mere licensee to the property and not an owner of the property.

Counsel referred the court to the case of Abraham Gina Adams (suing as the Administrator of the **ESTATE OF THE LATE GEOFFREY ADAMS OGWA V JAMES OUMA NATOLIO [2015]eKLR**, Justice S. M. Kibunja stated:-

“That possession of the suit land by the late Godfrey was with the Defendant’s license and therefore did not confer any proprietary interest on him. Furthermore, the entire period of possession was not enough to confer the late Geoffrey with prescription rights over the suit land.”

Counsel went further to submit that it is clear from the decision in the case of **DAUDI LEDAMA MORINTAT V MARY CHRISTINE KARIE & 2 OTHERS [2017]eKLR** the alleged oral agreement for sale having not been in writing contravened **Section 3(3) of the Law of Contract Act** and cannot be relied upon to sustain the present suit by the Plaintiff. The alleged contract is unenforceable as it related to a disposition of an interest in land and such a contract has to have been in writing and signed by the parties to it and witnessed as required under **Section 3(3) of the Law of Contract Act**.

Counsel stated that it should not be forgotten that the Objector has had two contradictory versions or narrative on this issue. Initially, immediately after the deceased’s burial, the Objector had advised the Petitioners that he had bought the subject land in cash while he was working abroad. This version of events was thereafter abandoned to the current exchange story. As such, it appears that he Objector is a pathological liar or a fraud who is unfortunately trying to disinherit the Petitioners by taking advantage of the absence of the deceased in order to twist the facts for his personal gain. Despite this unfortunate state of affairs, the aforesaid incontrovertible facts irresistibly point to the following:-

- That is no enforceable agreement for sale or exchange of land and motor vehicle between the deceased and the Objector;
- Even if there were some discussions on the matter, which is denied, there was no meeting of minds between the Objector and the deceased on the issue of exchange of the subject land and the motor vehicle; and
- Since the Mercedes Benz Registration No. KAC 502P is still registered in the name of the Objector, the Objector did not offer any consideration for the disputed property which he is now claiming to have bought in exchange for the motor vehicle.

He stated that the Objector’s objection, Answer to Petition and Objector’s Cross Petition lacks merit and is otherwise an abuse of court process. In conclusion, the Objector has failed deliberately or refused to disclose material and/or distorted material facts in order to mislead this court. At the basis of the objection is a mere attempt to deny the beneficiaries of their inheritance. On the basis of the above grounds, the Petitioners pray that the Objector’s Objection, Answer to Petition, Cross Petition and Caveat be dismissed with costs to the Petitioners.

OBJECTORS SUBMISSIONS

The Objector filed his written submissions on 7th December 2017 where he submitted that there had been a sale and grant of possession of the equivalent of one [1] acre from the Land Parcel No. 4894/9 [situate at Garden Estate] by the deceased to the Objector and the only pending issue was the execution of a transfer thereof prior to the demise of the deceased. He avers that the beneficial Title ownership to Land Reference NO. 4894/9 having been registered in the names of the deceased herein and James Peterson Muhuni as joint tenants, the Title devolved to the deceased herein when James Peterson Muhuni predeceased the deceased herein.

He stated that funds were transferred from United States of America for purchase of Kenya Energy Generating Company Limited [KENGEN] but the deceased purchased the whole lot intended shares in her name. There was no sufficient time for the transfer of the interests in the above mentioned properties between the return of the Objector into the country and the falling sick and ultimate demise of the deceased. Subsequently, parcel No. 4894/9 in Garden Estate was subdivided into three [3] parcels and given new numbers; L.R. No. 4894/423; L.R. No. 4894/424 & L.R. No. 4894/425.

He avers that there is an apparent scheme by the Petitioners (who are the Objector’s nephews) to deny the Objector the right to the properties. He state that there had been mutual trust between the Objector and the deceased and indeed the lady had prior to her sickness had a file clearly marked in the Objector’s name of all pending commercial matters between them; and further details to obtain in the answer to

Petition for grant of letters of administration.

Counsel stated that Objection proceedings to the making of grant have been filed pursuant to **Rule 17[1] of Law of Succession Act Cap 160**. A trust arises as a result of a manifestation of an intention by the parties to create it. Beyond per-adventure, the Objector has demonstrated by clear and convincing evidence existence of trusteeship, with respect to the subject matter.

Counsel submitted that the Objector's claim is the beneficial interest of the following properties:-

- i) One [1] acre plot which is developed and hived from all that property known as Land Reference No. 4894/9, jointly registered in the names of Grace Jeanie Njeri Muhuni and James Peterson Muhuni (both deceased).
- ii) 1,436 [KENGEN] shares, held in trust by the late Grace Jeanie Njeri Muhuni.

Counsel submitted that Objector purchased the one [1] acre plot from his maternal sister, the late Grace Jeanie Njeri Muhuni in the year 1992 vide an agreement for sale. The Objector subsequently purchased 1436 KENGEN shares in the year 2006 at the request and instance of the late Grace Jeanie Njeri Muhuni.

He further said that it is instructive to note, in 1992 the Objector, with the full knowledge and consent of the deceased, commenced construction of the permanent stone house within Parcel No. 4894/9 on a demarcated portion measuring one [1] acre. He stated that the privity of contract between the Objector and the deceased, Grace Jeanie Njeri Muhuni and existence of the purported agreement for sale are matters the Petitioners, who were of tender age then [Eliezer James Njoroge Muhuni – 4 years & Joseph Kahunyo Muhuni – 13 years] can vouch for or discard. The Objector categorically stated that he migrated to the United States of America in 1977. He made intermittent trips to Kenya from the year 1992 before returning in the year 2014 to settle down in Kenya. During his sojourn in Kenya, he always put up at the deceased residence at Garden Estate.

DETERMINATION

The issues for determination by the Court are;

- a) Whether the Objector has beneficiary interest in the Estate?
- b) Whether there was a valid sale of property transaction and if the 1 acre is part of the deceased's estate available for distribution?
- c) Whether the deceased bought for the Objector KENGEN shares and if the said shares are part of the deceased's estate available for distribution?
- d) Who should obtain grant of letters of administration of the estate of the deceased?

The beneficiaries of the deceased's estate are the immediate family of the deceased that is the nuclear family; surviving spouse(s) and children. The Petitioners, children of the deceased are beneficiaries of her estate. The Objector, a brother of the deceased is not part of the immediate family of deceased and hence he is not a beneficiary of deceased's estate. From the beneficiaries the administrator (s) is/are appointed to administer and distribute the estate of the deceased. The appointment of administrators(s) is provided by **Section 66 of Law of Succession Act Cap 160**; appointment is from surviving spouse (s) and/or child /children of deceased, parents of deceased, siblings of deceased or their children etc. In the instant case here is no surviving spouse except 2 sons of the deceased who should and are appointed administrators of their mother's estate.

The alleged sale /exchange transaction between the deceased and her brother, the Objector of 1 acre from Parcel No. 4894/9 in exchange of motor vehicle Mercedes Benz Registration No. KAC 502P is not borne out by any proof. The Objector stated that there was an Agreement for sale and/or exchange but it was not produced in Court, he alleged it was lost /stolen from/with his briefcase from deceased's house when he left. Curiously, even after he reported the matter to the Police, he did not get an abstract to produce in Court, or produce the OB number as proof of report made to Police. Secondly, surely, the said Agreement was not a secret affair, even if it is lost it was a document drawn in the presence of Witnesses. At least a witness ought to confirm to the Court that such an agreement was drawn. Thirdly, there was verbal communication when the alleged exchange for the Objector's car with 1 acre of deceased's land was proposed and agreed upon, again since it was not in secret, someone may have heard and could have testified in Court. PW2 who said that she heard of the said transaction, was declared untrustworthy as she was in US for a while and had strained relationship with the deceased. DW2 brother in law and business partner said he never heard of this until after deceased's death.

DW1 confirmed that subdivision of the suit property parcel No. 4894/9 in Garden Estate was subdivided into three [3] parcels and given new numbers; L.R. No. 4894/423; L.R. No. 4894/424 & L.R. No. 4894/425 was not to transfer 1 acre to Objector as alleged but the deceased wanted to develop the land as shown by several letters to KCB bank.

The exchange of the car for land if true then it would have necessitated transfer of ownership of motor vehicle from the Objector's name which it is still in to date to the deceased's name and the 1 acre transferred to the Objector as he was already building of the land to his name.

This Court noted that in the Petition, in the list of properties there were properties co owned by the deceased and her late husband and by deceased and DW2 her brother in law and business partner. If truly she gave the Objector 1 acre; the after her late husband's death in 2002, she would have either transferred the 1 acre to the Objector or co owned the property but in different ratios.

There is no evidence on record to support the Objector's claim of 1 acre of Parcel No. 4894/9 in Garden Estate in exchange for motor vehicle

Mercedes Benz Registration No. KAC 502P. The Objector unless/until shows proof 1 acre of Parcel No. 4894/9 in Garden Estate does not belong to him.

However, it is noted that all witnesses confirm that the deceased built a house on the suit property during the deceased's life and her late husband's life. The arrangement is not quite clear but it is not contested also that he used his own funds to build the house. What is strange is that the Objector stated that he built the house from 1992, PW2 said from 1995 and DW2 he house built from 1997. Be that as it may the house took 23 years or so to build and completed in 2014 and the Objector rented it out and receives rent. The allegation that he was allowed to build the house by the deceased on her land and collect rent and after recouping his investment for 3 years vacate and the house reverts to the deceased as alluded to by DW1 is not plausible, the house belongs to the Objector. So the Objector shall retain the house and possibly ½ acre the parties proposed in the various family meetings if proposal is still on and available to the Objector.

With regard to purchase of KENGEN shares, again in spite of the Objector producing Money gram of Ksh 14,000/- he sent to the deceased; there is communication, proof or document confirming that the funds were for purchase of shares; that the deceased bought him Kengen shares and not others and they were 1436 shares and not 150 shares as shown in the petition.

DISPOSITION

- 1. The grant of letters of administration is to be issued to the sons of the deceased namely Joseph Kahunyo Muhuni and Eliezer James Njoroge Muhuni jointly and equally as administrators of deceased's estate and beneficiaries of deceased estate.**
- 2. The Objector has not proved on a balance of probabilities that he bought from the deceased and/or through exchange of motor vehicle Mercedes Benz Registration No. KAC 502P in exchange for 1 acre of Parcel No. 4894/9 in Garden Estate.**
- 3. The Objector has not proved that the deceased bought him 1436 KENGEN shares with Ksh 14,000/- he sent her in 2006.**
- 4. The administrators shall file summons for confirmation of grant and if the Objector has proof them he may file Protest to the Summons to be determined by Court.**
- 5. The Objector's objection, Answer to Petition and Cross Petition are dismissed.**
- 6. Each party to bear own costs.**
- 7. Any aggrieved party to lodge appeal.**

DELIVERED DATED & SIGNED IN OPEN COURT ON 10TH DECEMBER 2018.

M.W.MUIGAI

JUDGE FAMILY DIVISION –HIGH COURT

IN THE PRESENCE OF;

CYRUS MAINA ADVOCATE- PETITIONERS

MUNGA WANJAU ADVOCATE- OBJECTOR