



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**IN THE MATTER OF THE ESTATE OF M'NKABU MARETE**

**SUCCESSION CAUSE NO. 276 OF 1998**

**JULIUS KIRIMI N'KABU.....PETITIONER**

**VERSUS**

**WILFRED KANGANGI.....1<sup>ST</sup> OBJECTOR**

**GRACE GAUKU NKABU.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. This cause relates to the estate M'Nkabu Marete (deceased) who died on 19th February 1997. At the time of his death he was domiciled at Kithangari location as can be confirmed from the letter of the Chief dated 18<sup>th</sup> March 1998.

2. The deceased as equally confirmed by the letter from the Chief dated 18<sup>th</sup> March 1998 and the letter from the District Commissioner, Meru, dated 7<sup>th</sup> April 1998 left behind the following survivors;

**a. First House**

- 1. Elizabeth Kithiru Nkabu- Wife**
- 2. Julius Kirim iM'Nkabu-Son**
- 3. Wilfred Kanganagi Nkabu- Son**

**b. Second House**

- 1. Kajuju Nkabu- 2<sup>nd</sup> Wife**
- 2. Patricia Kimathi Nkabu- Son**
- 3. Grace Gauku Nkabu- Daughter**
- 4. Nancy Karoki Nkabu- Daughter**
- 5. Margaret Mugure Nkabu- Daughter**
- 6. Frola Kathambi Nkabu- Daughter**
- 7. Moses Kabiti Nkabu- Son**

**c. Harriet Gatwiri Magiri (married) and Kithinji Nkabu, daughter and son respectively and of different mothers**

3. However and as revealed by the Petitioner's Affidavit dated 30<sup>th</sup> May 2017 The 1<sup>st</sup> Objector and the 1<sup>st</sup> Wife are now deceased.

4. The Deceased also left the following list of Assets;

**i. Abogeta/U-Chure/441 Measuring 1.35 Acres**

**ii. Abogeta/U-Kithangari/57**

**iii. Monies In Barclays Account No. 4932643**

**iv. K.T.D.A Imenti Tea Shares- 580**

**v. K.T.D.A Farmers Shares-158**

5. On 16<sup>th</sup> November 1998 Julius KarimiN’Nkabu petitioned for letters of Administration and the same was confirmed on 14<sup>th</sup> December 1999 albeit Confirmed by the Deputy Registrar.

6. The Confirmed grant Distributed the estate as hereunder;

**L.R. Abogeta/U-Chure/441**

**1. Wilfred Kangangi Nkabu “**

**2. Moses Kibiti Nkabu “ To be shared Equally**

**3. Patrick Kimathi Nkabu “**

**4. Kithinji Nkabu “**

**5. Julius Kirim iNkabu “**

**L.r.No. U-Kithangari/57**

**1. Julius Kirimi Nkabu “**

**2. Wilfred Kangangini “ To be shared Equally**

**3. Moses Kirimi Nkabu “**

**4. Kithinji Nkabu “**

**5. Patrick Nkabu “**

**A/c No. 4932643 Barclays Bank – Kirimi Nkabu**

6. Initially there was an Application for revocation of grant dated 23<sup>rd</sup> March 2009 by Wilfred Kang’ang’iNkabu(now *Deceased*)but the same was compromised by the Consent dated 8<sup>th</sup> June 2000.

7. The Objector, Grace GaukuNkubu however filed for the Revocation of the Grant on 2<sup>nd</sup> October 2000 and on the premise that the estate had not considered her and her mother in the distribution of the estate and that the petitioner had not equally distributed the monies held in the Barclays Account of the deceased.

8. She also took issue with the manner in which the Certificate of Confirmation of Grant was Granted and averred that the same was defective in form and substance.

9. Ina Ruling dated 18th October 2004 by Honourable Ruth. N.Sitati the Learned Judge allowed the Application by the Objector and revoked the Confirmed Grant issued on 14th December 1999. She also appointed Julius Kirimi M’Nkabu, Wilfred Kangangi M’Nkabu and Grace Gauku M’NKabu as Joint Administrators of the Estate.

10. What has therefore been left for this Court’s Determination is the Distribution of the estate of the deceased.

#### **DISTRIBUTION OF THE ESTATE**

11. The 2<sup>nd</sup> Objector now appointed Administrator Applied for Confirmation of Grant on 21<sup>st</sup> January 2017 proposing distribution of the estate as hereunder;

**L.R.NO. U-KITHANGARI/57 (16.78 ACRES)**

(i) Harriet GatwiriMagiri 0.25 Acres

(ii) Balance to be shared equally To

1. Julius KirimiNkabu
2. Wilfred Kangangini
3. MosesKirimiNkabu
4. KithinjiNkabu
5. Patrick Nkabu
6. Collin KarukiNkabu
7. Japheth KithinjiNkabu
8. Nancy KariukiMurithi
9. Margaret MugureNkabu
10. Flora KathambiNkabu

**L.R. ABOGETA/U-CHURE/441 (1.359 Acres) Whole- Harriet Gatwiri Magiri**

12. The proposed mode of distribution was consented by Harriet Gatwiri, Nancy Kariuki, Flora Kathambi and Margaret Mugure.

13. The petitioner in her Affidavit dated 13th April 2017 and 30<sup>th</sup> May 2017 aver that the deceased at the time of his death had already given each of the sons their specific portions. That each of the sons currently reside in their specific portions in L.R.NO. U-KITHANGARI/57 and that each have already developed semi-permanent structures in their properties.

14. That the Sisters Harriet Gatwiri and Margaret Mugure are married and live with their husbands in their parcels of land. That Grace Gauku Nkabu and Margaret Mugure Nkabu were married but abandoned their children and husbands. That the daughters still collect tea from the deceased mother over 1000 tea bushes in the estate and get paid though KU 57/144.

15. That they are in agreement with the brothers that they give the sisters ¼ acre each and they divide the balance of the estate.

16. The objection to the mode of distribution and the petitioners position was supported by Wilfred Kangangi, Wilberforce Mithini Kangangi (son of 1<sup>st</sup> Objector), Kithinji Nkabu.

**ANALYSIS AND DETERMINATION**

17. This is a clear case of sisters pitting against the brothers each demanding their own as the beneficiaries of the estate of the deceased.

18. The deceased left behind five sons and five daughters divided amongst two houses. The law therefore applicable is section 40 of the Law of succession Act the same provides;

**40.** (1) Where an interstate 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.

19. The Kenyan jurisprudence has clearly shifted from the time when the daughters of the estate of the deceased were discriminated against, Indeed section 40,35 and 38 of the Law of Succession act as read together with Article 27 of the Constitution behoves discrimination.

20. The proposal of both the petitioner and the objector as to the mode of distribution however lack in form and substance. The petitioner proposed to distribute the estate to beneficiaries who are not accounted for i.e. Collin Kariuki Nkabu and Japheth Kithinji Nkabu whereas the petitioner's mode of distribution is not equal.

21. Section 40 as read with Section 35 and 38 of the Law of Succession Act denotes equal Distribution. Taking into account that the beneficiaries of the estate have already settled and built semi-permanent structures in the estate I shall distribute the estate as hereunder;

**L.R.NO. U-KITHANGARI/57 (16.78 ACRES)**

a. First House

- |                                 |  |
|---------------------------------|--|
| 1. Julius Kirimi M'Nkabu-Son    | 1.6 Acres  |
| 2. Wilfred Kanganagi Nkabu- Son | 1.6 Acres ( <i>distributed among the beneficiaries of his estate</i> ) |

b. Second House

- |                                    |           |
|------------------------------------|-----------|
| 1. Kajuju Nkabu- 2nd Wife          | 1.6 Acres |
| 2. Patricia Kimathi Nkabu- Son     | 1.6 Acres |
| 3. Grace Gauku Nkabu- Daughter     | 1.6 Acres |
| 4. Nancy Karoki Nkabu- Daughter    | 1.6 Acres |
| 5. Margaret Mugure Nkabu- Daughter | 1.6 Acres |
| 6. Frola Kathambi Nkabu- Daughter  | 1.6 Acres |
| 7. Moses Kabiti Nkabu- Son         | 1.6 Acres |

&

- |                                     |        |
|-------------------------------------|--------|
| 1. Kithinji Nkabu-Son               | 1 Acre |
| 2. Harriet Gatwiri Magiri- Daughter | 1 Acre |

Nb. Distribution will factor in where each of the beneficiaries reside.

**L.R. ABOGETA/U-CHURE/441 (1.359 Acres)**

- |                                     |           |
|-------------------------------------|-----------|
| 1. Kithinji Nkabu-Son               | 0.6 Acres |
| 2. Harriet Gatwiri Magiri- Daughter | 0.6 Acres |

**K.T.D.A Imenti Tea Shares- 580**

To be shared equally between 2<sup>nd</sup> House Kithinji Nkabu & Harriet Gatwiri Magiri

**K.T.D.A Farmers Shares-158**

To be shared equally by the 1<sup>st</sup> House

Costs to be borne by each party.

**HON. A. ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 6<sup>th</sup> DAY OF DECEMBER 2018.**

**In the presence of:**

C/A: Kinoti

Mr Wambugu for 1<sup>st</sup> objector

Mr Gikunda Anampiu for Petitioner

Mr Thangicia holding brief for Menye & Kirima for 2<sup>nd</sup> Objector.

**HON. A.ONG'INJO**

**JUDGE**