



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE NO. 273 OF 2013

In the Matter of the Estate of Solomon KunganiaMurugu (deceased)

EMILY WANJA MURUGU.....PETITIONER

VERSUS

ANDREW KIMATHI MURUGU.....PROTESTOR

JUDGMENT

Protest and confirmation of grant

[1] Before me is a Summons for Confirmation of Grant dated 9th February, 2018 brought under section 71 of the Law of Succession Act. The summons seeks confirmation of grant issued herein.

[2] The application is premised upon grounds set out in the summons, and the affidavit of Fredah Eddy Kananu, holder of power of attorney from the Petitioner. According to the summons, the dependants of the deceased are:-

- a. Emily Wanja Murugu
- b. Kathleen Nkatha Murugu
- c. Fredah Kinanu Murugu
- d. Andrew Kimathi Murugu
- e. Fredah Eddy Kananu Murugu
- f. Juliette Makandi Murugu
- g. Jane Ann Kagwiria Murugu
- h. June Carolyn Gacheri Murugu
- i. Yvonne Kathambi Murugu
- j. Filbert Kendi
- k. Wilson Mugambi

[3] The estate comprises of:-

- a. NAIROBI BLOCK 32/528- 0.06 Ha**
- b. LR. NO NTIMA/IGOKI/391- 2.40 Ha**
- c. LR. NO KIIRUA/NAARI/1751- 0.07 Ha**

- d. LR. NO KIIRUA/NAARI/1756- 0.07 Ha
- e. LR. NO KIIRUA/NAARI/1758- 0.07 Ha
- f. LR. NO KIIRUA/NAARI/1759- 0.07 Ha
- g. LR. NO KIIRUA/NAARI/1760- 0.07 Ha
- h. LR. NO KIIRUA/NAARI/1761- 0.07 Ha
- i. LR. NO KIIRUA/NAARI/1762- 0.07 Ha
- j. LR. NO KIIRUA/NAARI/1763- 0.28 Ha
- k. LR. NO KIIRUA/NAARI/1764- 1.16 Ha
- l. LR. NO KIIRUA/NAARI/1765- 0.52 Ha
- m. LR. NO KIIRUA/NAARI/1766- 1.23 Ha
- n. LR. NO KIIRUA/NAARI/1768- 1.53 Ha
- o. LR. NO KIIRUA/NAARI/3123- 0.82 Ha
- p. LR. NO KIIRUA/NAARI/3124- 0.93 Ha
- q. LR. NO KIIRUA/NAARI/3313- 0.04 Ha
- r. LR. NO KIIRUA/NAARI/408- 8.08 Ha
- s. LR. NO KIIRUA/NAARI/716
- t. LR. NO KIIRUA/NAARI/717
- u. LR. NO KIIRUA/NAARI/944- 2.5 Ha

[4] The Petitioner proposes the estate to be distributed as follows:-

- a. NAIROBI BLOCK 32/528- 0.06 Hato go to Emily Wanja Murugu
- b. LR. NO NTIMA/IGOKI/391- 2.40 Hato go to Emily Wanja Murugu
- c. LR. NO KIIRUA/NAARI/1751- 0.07 Ha to go to Mercy Kathira to hold in trust for Filbert Kendi and Wilson Mugambi
- d. LR. NO KIIRUA/NAARI/1756- 0.07 Ha to go to Emily Wanja Murugu
- e. LR. NO KIIRUA/NAARI/1758- 0.07 Ha to go to Katheleen Nkatha Murugu
- f. LR. NO KIIRUA/NAARI/1759- 0.07 Ha to go to Yvonne Kathambi Murugu
- g. LR. NO KIIRUA/NAARI/1760- 0.07 Ha to go to June Corolyne Gacheri Murugu
- h. LR. NO KIIRUA/NAARI/1761- 0.07 Ha to go to Jane Ann KagwiriaMurugu
- i. LR. NO KIIRUA/NAARI/1762- 0.07 Ha to go to Fredah Eddy Kananu Murugu
- j. LR. NO KIIRUA/NAARI/1763- 0.28 Ha to go to Katheleen Nkatha Murugu
- k. LR. NO KIIRUA/NAARI/1764- 1.16 Ha – to go to Fredah Eddy Kananu Murugu
- l. LR. NO KIIRUA/NAARI/1765- 0.52 Ha to go to Fredah Kananu Murugu
- m. LR. NO KIIRUA/NAARI/1766- 1.90 Ha to go to Fredah Eddy Kananu Murugu – 1.23 HA and Katheleen Nkatha Murugu – 0.67 Ha

n. LR. NO KIIRUA/NAARI/1768- 1.53 Ha to go to Emily Wanja Murugu

o. LR. NO KIIRUA/NAARI/3123- 0.82 Ha to go to Juliette Makandi Murugu

p. LR. NO KIIRUA/NAARI/3124- 0.93 Ha to go to Fredah Kinanu Murugu

q. LR. NO KIIRUA/NAARI/3313- 0.04 Ha to go to Emily Wanja Murugu

r. LR. NO KIIRUA/NAARI/408- 8.08 Ha to go to Emily Wanja Murugu

s. LR. NO KIIRUA/NAARI/716–5.0 Ha to go to

(a) June Carlyne Gacheri Murugu – 2.39 ha.

(b) Yvonne Kathambi Murugu – 2.39 Ha

(c) Kathleen Nkatha Murugu - 0.22 Ha

t. LR. NO KIIRUA/NAARI/717 – 6.23 Ha

(a) Fredah Kinanu Murugu 1.01 Ha

(b) Juliette Makandi Murugu – 1.64 Ha

(c) Jane Ann Kagwiria Murugu – 2.39 Ha

(d) Kathleen Nkatha Murugu - 1.19 Ha

u. LR Kiirua/Naari/944 - 2.5 Ha – to be held by Mercy Kithira in trust for Filbert Kendi Murugu and Wilson Mugambi Murugu.

v. Motor Vehicle Registration No. KAA 627Z to go to Emily Wanja Murugu.

w. Shares with cooperative Bank, Safari com and KCB to go to Emily Wanja Murugu.

x. Bank Account in Standard Chartered Bank to go to Emily Wanja Murugu

[5] The Protestor in her affidavit of protest proposed the estate of the deceased to be distributed as follows:-

(a) L.R Kiirua/Naari/408 -

I. Andrew KimathiMurugu - shall get portion with his home only and an access road.

II. Emily WanjaMurugu

III. Kathleen NkathaMurugu

IV. FredahKinanu Murugu Share

V. Fredah Eddy Kananu Murugu the

VI. Julietta Makandi Murugu balance

VII. Jane Ann Kagwiria Murugu Equally

VIII. June Carlyne Gacheri Murugu

IX. Yvonne Kathambi Murugu

(b) KIIRUA/Naari/716

Kiirua/Naari /717

Kiirua/Naari 1763

Kiirua/Naari/1764

Kiirua/Naari 1765

Kiirua/Naari/1766

Kiirua/Naari/3123

Kiirua/Nari/3124

Kiirua/Naari/1762

Kiirua/Naari 1768 – all to Andrew Kimathi Murugu.

(c) Kiirua/Naari/1751

Kiirua /Naari/1758

Kiiru /Naari/1759

Kiirua/ Naari/ 1760

Kiirua/Naari/1761 – Shall be shared among all the daughters.

(d) Kiirua/Naari/944 – Mercy Kithira to hold in trust for her children namely Filbert Kendi Murugu (daughter and Wilson Mugambi Murugu (son).

(e) Nairobi Block 32/528 - To sell and proceeds shared among i. Cathleen Nkatha Murugu

ii. Andrew Kimathi Murugu

iii. Fredah Kinanu Murugu,

iv. Edith Kaimuri Murugu

v. Juliet Makandi Murugu,

vi. Jane Ann Kagwiria Murugu

vii. June Caroline Gacheri Murugu

viii. Yvonne Kathambi Murugu

(f) NTIMA/IGOKI/391 – 240 Ha

i. Andrew Kimathi Murugu **to be owned**

ii. EmilyWanjaMurugu **jointly**

(g) Motor Vehicles

i. Registration KAA627Z- Mitsubishi Pajero - Emily WanjMurugu

ii. Registration KAJ 881f Toyota Hilux - Andrew KimathiMurugu.

(h) Shares

i. Co-operative Bank

ii. KCB Shares Andrew KimathiMurugu

iii. Safaricom shares and Emily Wanja Murugu

I. Standard Chartered Bank Account- Andrew Kimathi Murugu and Emily Wanja Murugu

ANALYSIS AND DETERMINATION

Mercy's children provided for

[6] Mercy Kithira had applied through application dated 7th December 2015 for provision in the estate of her two children, FILBER KENDI MURUGU and WILSON MUGAMBI MURUGU. It seems agreed to make the provision for the two children in number 944. She stated that she and her children reside in No 944. Accordingly, I find the provision to be adequate. Therefore, I direct that

(a) Kiirua/Naari/944 – Shall be registered to Mercy Kithira to hold in trust for her children namely Filbert Kendi Murugu (daughter and Wilson Mugambi Murugu (son).

Gift inter vivos

[7] Another matter which I should determine in limine; alleged gift inter vivos to Andrew Kimathi. Fredah Kananu stated in her affidavit that the deceased bequeathed to Andrew the following properties:

a. **LR. NO. KIIRUA/NKANDO/506 approx. 30 acre**

b. **LR. NO KIIRUA/NAARI/1754 approx. 0.07 Ha**

c. **LR. NO.KIIRUA/NAARI/1769 approx. 1 acre**

[8] The facts as presented were not denied by Andrew. Of pointed relevance also, these lands appear in the same catalogue as the estate property; and Andrew stated that he came back to help his father in the administration of his properties. These facts suggest that the properties above were gifts inter vivos. Such bequests are taken into account when determining the ultimate entitlement of the donee beneficiary under section 42 of the Law of Succession Act which provides as follows:-

42. Previous benefits to be brought into account

Where

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house

[9] I will therefore take that fact into consideration as provided for under section 28 of the Law of Succession Act when making final orders on distribution. Pending that for a while.

[10] I have looked at the proposal by Andrew; it is just too selfish for he has allocated to himself substantial portion of the estate. From the tone set in the affidavit by Andrew it seems he has been influenced by three things: (1) the odour of patriarchy- he is a son and the other beneficiaries are daughters; (2) unfounded fears that the daughters intend to sell the shares they are asking for; and (3) contempt of the surviving widow, who has right over the property of her marriage as well as in the estate of her late spouse. The law is clear now that all children of the deceased are entitled to equal sharing of the estate unless otherwise provided for in a will or permitted in law. Again, once you receive a share of the estate it becomes yours absolutely unless there is a trust thereto, and you may in respect thereto, do what an owner can lawfully do with the property. The widow is also entitled to a distinct share. And, Fredah has provided for the widow. For those reasons, I reject the proposal by Andrew. The proposal by Fredah seems fair as it takes into account the bequests except it requires some few adjustments which I shall spell out specifically. I note that Andrew has over 33 acres already of land through gift inter vivos. I have said before that Section 42 of the Law of Succession Act acts as a stabilizer of equity in distribution of the estate. Therefore, after taking into account what Andrew already has, the estate of the deceased shall be shared as follows:-

a. **NAIROBI BLOCK 32/528- 0.06 Ha** to go to Emily Wanja Murugu

b. **LR. NO NTIMA/IGOKI/391- 2.40 Ha** to go to Emily Wanja Murugu

c. **LR. NO KIIRUA/NAARI/1751- 0.07 Ha** to go to Mercy Kathira to hold in trust for Filbert Kendi and Wilson Mugambi

d. **LR. NO KIIRUA/NAARI/1756- 0.07 Ha** to go to Emily Wanja Murugu

e. **LR. NO KIIRUA/NAARI/1758- 0.07 Ha** to go to Kathleen Nkatha Murugu

- f. LR. NO KIIRUA/NAARI/1759- 0.07 Ha to go to Yvonne Kathambi Murugu
- g. LR. NO KIIRUA/NAARI/1760- 0.07 Ha to go to June Carolyne Gacheri Murugu
- h. LR. NO KIIRUA/NAARI/1761- 0.07 Ha to go to Jane Ann Kagwiria Murugu
- i. LR. NO KIIRUA/NAARI/1762- 0.07 Ha to go to Fredah Eddy Kananu Murugu
- j. LR. NO KIIRUA/NAARI/1763- 0.28 Ha to go to Katheleen Nkatha Murugu
- k. LR. NO KIIRUA/NAARI/1764- 1.16 Ha – to go to Fredah Eddy Kananu Murugu
- l. LR. NO KIIRUA/NAARI/1765- 0.52 Ha to go to Fredah Kananu Murugu
- m. LR. NO KIIRUA/NAARI/1766- 1.90 Ha to go to Fredah Eddy Kananu Murugu – 1.23 HA and Katheleen Nkatha Murugu – 0.67 Ha
- n. LR. NO KIIRUA/NAARI/1768- 1.53 Ha to go to Emily Wanja Murugu
- o. LR. NO KIIRUA/NAARI/3123- 0.82 Ha to go to Juliette Makandi Murugu
- p. LR. NO KIIRUA/NAARI/3124- 0.93 Ha to go to Fredah Kinanu Murugu
- q. LR. NO KIIRUA/NAARI/3313- 0.04 Ha to go to Emily Wanja Murugu
- r. LR. NO KIIRUA/NAARI/408- 8.08 Ha to remain as family homestead to be registered to Emily Wanja Murugu to hold it on her own behalf and that of all the children of the deceased. Andrew's house shall remain on the land as is.
- s. LR. NO KIIRUA/NAARI/716–5.0 Ha to go to
- (a) June Carolyne Gacheri Murugu – 2.39 ha.
- (b) Yvonne Kathambi Murugu – 2.39 Ha
- (c) Kathleen Nkatha Murugu - 0.22 Ha
- t. LR. NO KIIRUA/NAARI/717 – 6.23 Ha
- (a) Fredah Kinanu Murugu 1.01 Ha
- (b) Juliette Makandi Murugu – 1.64 Ha
- (c) Jane Ann Kagwiria Murugu – 2.39 Ha
- (d) Kathleen Nkatha Murugu - 1.19 Ha
- u. LR Kiiirua/Naari/944 - 2.5 Ha – to be held by Mercy Kithira in trust for Filbert Kendi Murugu and Wilson Mugambi Murugu.
- v. Motor Vehicle Registration No. KAA 627Z to go to Emily Wanja Murugu.
- w. Motor Vehicle Registration No. KAJ 881F to go to Andrew Kimathi Murugu
- x. Shares with cooperative Bank, Safari com and KCB to go to Emily Wanja Murugu.
- y. Bank Account in Standard Chartered Bank to go to Emily Wanja Murugu

[11] The grant herein is now confirmed upon the foregoing terms.

Dated, signed and delivered in open court at Meru this 3rd day of December 2018

F. GIKONYO

JUDGE

In presence of

Kithinji for protestor

Gikunda Anampiu for petitioner – absent

F. GIKONYO

JUDGE