



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1051 OF 2013**

**IN THE MATTER OF THE ESTATE OF JOHN KAGWI GEORGE MBUGUA (DECEASED)**

**GEORGE MBUGUA NJOKI**

**SARAH WAIRIMU WANJIRU.....APPLICANTS**

**AND**

**SIMON NDUNGU NJOKI**

**JACKSON KAMUYU MBUGUA**

**MARY WANJIKU MBUGUA.....RESPONDENTS**

**RULING**

1. John Kagwi George Mbugua whose Estate is in issue died on 4<sup>th</sup> May, 1997. Elizabeth Muthoni Mbugua, Simon Ndung'u Mbugua and Jackson Kamuyu Mbugua, successfully petitioned the court and were issued with letters of Administration intestate. The deceased was indicated to have been survived by the following:

- 1) Elizabeth Muthoni Mbugua - Mother (deceased)
- 2) Simon Ndung'u Mbugua - Brother
- 3) Jackson Kamuyu Mbugua - Brother
- 4) Mary Wanjiku Mbugua - Sister
- 5) Salome Wanjiru Mbugua - Sister (deceased)
- 6) Christine Njoki Mbugua - Sister (deceased)
- 7) Sarah Wairimu Wanjiru - Niece
- 8) George Mbugua Njoki - Nephew

2. The Letters of Administration intestate were later amended on 16<sup>th</sup> March, 2015 after the demise of one of the Administrators, Elizabeth Muthoni Mbugua, mother of the deceased. She was substituted with Sarah Wairimu Wanjiru a niece to the deceased.

3. On 24<sup>th</sup> August, 2015 summons for confirmation of grant was filed in court on behalf of a beneficiary, George Mbugua Njoki. It was supported by the affidavit of Sarah Wairimu Wanjiru one of the Administrators. The Applicant proposed a mode of distribution of the estate in which the three properties comprising the estate of the deceased would be shared equally among the five beneficiaries.

4. In the supporting affidavit it was deposed that after the Letters of Administration was issued, the co - Administrators have been reluctant to have the grant confirmed, even after the intervention of the area chief to have them sign the application for confirmation of grant. The reasons they advance are that they do not want some of the beneficiaries to get a share of the deceased's estate.

5. On 5<sup>th</sup> October 2015, Simon Ndung'u Mbugua, Jackson Kamuyu Mbugua, Sarah Wairimu Wanjiru and Mary Wanjiku (hereinafter the Administrators), filed an application dated 28<sup>th</sup> September, 2015 for confirmation of grant. This application was consented to by all the beneficiaries except George Mbugua Njoki. The Administrators swore a supporting affidavit date 28<sup>th</sup> September, 2015 in which they prayed that the court do vest the beneficiaries as follows:

List of properties	Who to inherit	share
Dagoretti/Riruta/S.287	Simon Ndung'u Mbugua Jackson Kamuyu Mbugua	to hold in trust for all the beneficiaries
L.R. No. Ngong 938	Mary Wanjiku	0.1013 acres
	Simon Ndung'u Mbugua Jackson Kamuyu Mbugua	The remaining part
L.R. Dagoretti/Mutuini/1117	George Mbugua Njoki	0.1013 acres
	Sarah Wairimu Wanjiru	0.1013 acres
	Mary Wanjiku Mbugua	0.1013 acres
	Jackson Kamuyu Mbugua	
	Simon Ndung'u Mbugua	Remaining part

6. M/s Muchira learned counsel, for George Mbugua Njoki filed written submissions in which she stated that the Applicants' application dated 21<sup>st</sup> August 2015 signed only by the Applicants, seeks that all the beneficiaries share the estate of the deceased equally. The Respondent's affidavit on the other hand seeks that the brothers of the deceased get larger shares, while the sisters of the deceased should be entitled to one ? of an acre, in each parcel of land.

7. Counsel submitted that Christine Njoki Mbugua and Salome Wanjiru Mbugua (deceased) are the mothers of George Mbugua Njoki and Sarah Wairimu Wanjiru respectively. That in the initial petition of 14<sup>th</sup> May 2013, three beneficiaries herein; Mary Wanjiku Mbugua , Sarah Wairimu Wanjiru and George Mbugua Njoki had been excluded, and had not been informed of the on-going succession process. That it was during the rectification of the Grant of Letters of Administration dated 22<sup>nd</sup> February 2015 that they were included and notified of the on-going succession cause.

8. Mr. Mulekyo, Learned Counsel for the Respondents submitted that the point of departure between the Administrator's application dated 28<sup>th</sup> September, 2015 and the application brought on behalf of George Mbugua Njoki, is in the mode of sharing of the assets of the estate. That following directions of the court

and several family meetings, a reviewed schedule of distribution of the assets of the estate was filed in court on 26<sup>th</sup> February 2016.

9. Counsel urged that after consultations and putting into consideration a fair and equitable distribution and the status of each beneficiary, the parties agreed to have the assets distributed as follows:

(1) ? acre out of 0.2 acres in Dagoretti/Riruta/5.287 to be sold and its proceeds to be utilized for administration of the estates and more specifically for surveyor's fees and the cost of transferring the properties to the beneficiaries. The balance thereof if any to be shared equally among all the beneficiaries.

(ii) L.R. Ngong 938 which is a third of the total acreage to be divided into seven equal plots and be shared as follows:

- a) Sarah Wairimu Wanjiru – 1 plot
- b) Simon Ndungu Mbugua – 2 plots
- c) Mary Wanjiku Mbugua – 1 plot
- d) Jackson Kamuyu Mbugua – 2 plots
- e) George Mbugua Njoki – 1 plot

(iii) Dagoretti/Mutuini L.R. No. 20 in which the share of the deceased is  $\frac{1}{4}$  of the total acreage to be divided into seven equal portions with each beneficiary to getting:

- a) Sarah Wairimu Wanjiru – 1 plot
- b) Simon Ndungu Mbugua – 2 plots
- c) Mary Wanjiku Mbugua – 1 plot
- d) Jackson Kamuyu Mbugua – 2 plots
- e) George Mbugua Njoki – 1 plot

10. Counsel contended that in arriving at the above mode of distribution the beneficiaries considered the present circumstances of each of the beneficiaries and the number of dependants under each beneficiary and were thus guided by fairness and equity. That the Applicant's contention that the mode adopted by the Respondents is discriminatory is far-fetched since all beneficiaries are taken care of.

11. I have considered the rival arguments and find that the contention is indeed in the manner of distribution of the estate. The Respondents have proposed distribution in an unequal share such that the daughters of the deceased will get smaller shares compared to the sons. The Respondents proposed that the sisters of the deceased who number five, should get an ? of an acre each, out of the three parcels of land in equal shares, while the two brothers would distribute the remainder amongst themselves also in equal shares.

12. There is no dispute that the Applicants are beneficiaries of the estate of the deceased. Under the law of Succession Act Part V, children are entitled to inherit from their deceased parents. The Applicants are inheriting the estate of their deceased grandfather, through their mothers who are deceased. All parties are in agreement that the Applicants are so entitled to share in the estate.

13. In the decision of the Estate of **John Musambayi Katumanga – (Deceased)[2014] eKLR** to which Mrs. Muchira referred this court Musyoka J addressed this issue as follows:

**“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Section 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ...be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”**

There should therefore, be no form of discrimination in sharing the estate based on gender. All the beneficiaries in the estate are entitled to equal shares.

14. It should be remembered that the estate under distribution belonged to the father of the five beneficiaries, two of whom are since deceased and are now represented by their children the Applicants. It has not been stated that the sons contributed to the acquisition of the said property and even if they had, the property now belongs to the deceased’s estate and is to be shared equally among the beneficiaries unless the deceased left behind express wishes to the contrary. In this case no such wishes were left behind.

15. The number of dependants or children any of the beneficiaries has, is not a determinant factor as to the share they should get. Their dependants will inherit through the respective beneficiaries. Those beneficiaries are required to work hard so as to leave an inheritance for their dependants when the time comes for them to exit the stage of life, instead of trying to deprive their father’s beneficiaries of their rightful share to accommodate their own dependants.

16. After a careful consideration of the averments in the two proposals on the mode of distribution and the submissions of the counsel I find that the mode of distribution which lends itself to this cause and which accords with the interests of justice is the one dated 21<sup>st</sup> August 2015 and filed in court on 24<sup>th</sup> August 2015.

17. In the premise the application dated 21<sup>st</sup> August 2015 and filed on 24<sup>th</sup> August, 2015 is found to have merit and is allowed. The estate of the deceased is hereby distributed as set out by Mr. Mulekyo for the Respondents but **with modifications** as follows:

(i) ? acre out of **Dagoretti/Riruta/S.287** to be sold and its proceeds to be utilized for administration of the estates and more specifically for surveyor’s fees and the cost of transferring the properties to the beneficiaries. The balance thereof, if any to be shared equally among all the beneficiaries.

(ii) In the alternative to number (i) above, if all the beneficiaries are able to contribute in equal share to raise the surveyor’s fees and the cost of transferring the property they should do so, whereupon the property that is Dagoretti/Riruta/5.287 shall be shared equally among all five beneficiaries.

(iii) **L.R. Ngong 938** to be divided into five equal plots and be shared among the five beneficiaries with each beneficiary getting a plot each.

(iv) **L.R. Dagoretti/Mutuini/1117** in which the share of the deceased is ¼ of the total acreage, to be divided into five equal portions and be shared among the five beneficiaries, with the beneficiaries getting a plot each.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **6<sup>th</sup>** of **February 2017**.

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**L. A. ACHODE**

**JUDGE**