



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**(MILIMANI LAW COURTS)**  
**SUCCESSION CAUSE NO. 2686 OF 2005**  
**IN THE MATTER OF THE ESTATE OF GIDEON THAIRU KEIYA**

**RULING**

1. The succession cause relates to Gideon Thairu Keiya who died on 31st December, 2004. The widow Grace Muthoni petitioned for grant of letters of administration intestate to the deceased estate listing herself and five of her children as the only beneficiaries of the deceased. She listed *Ngong/Ngong/4580* as the only assets surviving the deceased. Via a supplementary affidavit dated 16/9/2008, Grace Muthoni the deceased's widow added the assets of the deceased to include Kshs. 450,000/- compensation fatal injuries and Land parcel no. *Kajiado/Olchoro Onyore/3085*.
2. James Gathu Keiya has raised an objection to the said petition to making a grant and claiming interest on parcel *Ngong/Ngong/4580*, which he claims was bought by her mother and was registered in the deceased name as he was still a minor. On the other hand the 2<sup>nd</sup> objector claims that she was a former wife to the deceased and had sired 7 children with him and claimed a stake in the deceased's estate. The respondent Grace Muthoni through her replying affidavit dated 1/2/2006 in reply to the said objection denied the 1<sup>st</sup> objectors claim on the said parcel of land and further disputes the 2<sup>nd</sup> objector's claim that she was a former wife to the deceased.
3. Justice Lenaola heard the 1<sup>st</sup> objector's evidence and gave his ruling of 27/6/2012. He ordered that Grace Muthoni, Hellena Wamaitha and James Gathu Kieya be made co-administrators of the deceased's estate and further evidence be taken with a view to making a decision on distribution. The legal counsels for both parties Miss. Murungu and Mr. Matwere agreed that the issue left for determination was to determine who were the beneficiaries and the distribution of the estate of the deceased. The parties on the same date recorded a consent transmitting 0.042 Hectares to James Gathu Kieya with the hearing proceeding with Hellena Wamaitha's claim.
4. Hellena Wamaitha the objector in her testimony testified that she got married to the deceased under Kikuyu customary law in 1967 and dowry was paid. That after marriage they lived and cohabited at Ngorori in Ngong between 1967 to 1976 and they were blessed with 7 children. That she left her matrimonial home in October 1976 as her husband had become a drunkard and she was seeking intervention from the elders. She however never went back until she learnt of the demise of the deceased in 2006. She testified that when she left the deceased married another wife, Grace Muthoni. That though she had left with her children they later went back to their home and stayed there. It was her wish that her children to inherit her late husband's land.
5. On cross-examination she stated that she got married at the age of 18 years, dowry was paid and a ram was slaughtered. She took the court through the naming of her children claiming the same was done as per the kikuyu custom. That when she left the deceased she had 4 children but 3 were sired at her home as the deceased used to visit her once or twice a year. She stated that the deceased had promised to subdivide the land to her at Olgeri Ngong and her sister in law had showed her the land at Ruirwe Ngong which the deceased bought after selling his father's cows.

- Further, that she never went back to her matrimonial home because he failed to construct for her a house despite making her promises to do so.
6. James Gathu Kieya, a brother to the deceased testified that the deceased had two wives Helena Wamaitha and Grace Muthoni. He stated that Helena married the deceased in the 60's and got 4 children but they fell out with the deceased and she left the matrimonial home sometime in 1977 and the deceased subsequently in the same year married Grace Muthoni. He testified that he had an interest in the parcel of land known as **Ngong/Ngong/4580** located at Olkeri area as the money that bought the same emanated from the sale of cows that were to be shared out between the deceased's seven houses and he had since registered a caution on the same. That when the deceased was sent to collect the title from Kajiado sometime in 1983 he registered the title solely in his names but the deceased had agreed to transfer to him his portion of land and he continued staying there until his mother died in 1988. Later on in 2000 they sat down with an elder who created boundaries and they even got a surveyor and filed the necessary forms. However, in 2004 the deceased who was working at Ngong Sanctuary forest was shot and at the time they had not finalized the transfer. Subsequently his widow Grace Muthoni filed this succession cause and he filed the objection. They had a sitting with the elders and surveyor and they agreed that a mutation be done whereby she was apportioned 0.082 hectares and him 0.042 hectares. Everyone signed the minutes but the transfer was never concluded and it was his view the share awarded to Grace should go to be shared by the deceased's house. He stated that Helena's 4 sons that she bore with the deceased before leaving him should be given a share of the said parcel of land.
  7. On cross examination he stated that he saw the father and deceased taking dowry to Hellena's father but could not remember how many cows were taken as he was young and in school then. He stated that his mother bought land in Olkari near Matasia but the same was sold by Ole Siarara he however, could not adduce any sale agreement to support the same.
  8. Mary Njeri Josiah Mweke a sister to the deceased testified that Grace Muthoni was the deceased's 2<sup>nd</sup> wife. On cross-examination she testified that she could not recall when Hellena was married to the deceased but added that Hellena got pregnant while in school and her father called her but no ceremony was held to show marriage. That her mother lived in Olkeri in a parcel of land she bought after selling 6 cows and the same was approximately ½ an acre.
  9. Grace Muthoni Thairu, a widow to the deceased testified that she got married to the deceased under customary law in 1978 and solemnized their marriage on 26/3/86. She stated that the deceased did not tell her he had another wife but claims that when she went to the village she found the deceased's mother with the 2<sup>nd</sup> objector's children but there was no wife. That the shamba **L.R. Ngong/Ngong 4580** they were living in had been bought by the deceased and he was paying for it in installments and finished paying for it in 1980 and later obtained a title in 1981. All this while, she claimed not to have heard of Helena Waithera. She testified that the 2<sup>nd</sup> objector was never involved in the deceased's burial arrangements nor was she mentioned in the family history. That since the deceased's brother, James Gathua did not have a job the deceased sympathized with him and gave him a small portion of land. She testified that as per the kikuyu customs children's names are the same and they are named as per the in laws. She testified that she never at any time saw the 2<sup>nd</sup> objector in the said homestead adding that the mother in law fell ill and died and was never involved in a car accident as alleged. She pointed out various inconsistencies with the evidence as given by the applicant she denied that the deceased had a shamba at Matasia stating that the land in question was at Oliekesi in Ngong.
  10. On cross examination she testified that they purchased the said parcel of land with the deceased at a cost of Kshs. 1,750/- and the title issued to him was never challenged. That for the 30 years she was married to the deceased she never saw the 2<sup>nd</sup> objector and only saw her about 1 year and 7 months after the death of the deceased.
  11. Only the petitioner filed written submissions, which I have read and considered. The 2<sup>nd</sup> objector, the 1<sup>st</sup> objector and the deceased's sister testified that the 2<sup>nd</sup> objector was a wife to the deceased with whom they sired 4 children. The 1<sup>st</sup> objector corroborated her evidence that the deceased actually paid dowry as per the customs demanded. Going as per the evidence adduced by the 1<sup>st</sup> objector is it clear that the 2<sup>nd</sup> objector was actually a wife to the deceased having been married to him under Kikuyu customary law. From the evidence adduced nothing points to the 2<sup>nd</sup> objector having remarried after she separated from the deceased and as such she is qualified to succeed the

deceased as a former wife and her 4 children she sired with the deceased as dependants as provided under section 29 which list (a) **the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.** However, in regards to the children the 1<sup>st</sup> objector who was a brother to the deceased and also his sister testified that when the 2<sup>nd</sup> objector left the deceased's home she had only 4 children. The 2<sup>nd</sup> objector confirms this though claims that the deceased used to visit her and as a result she sired 3 more children. There is no evidence to support this and as such I find that her 4 children sired before she left the deceased's home are the ones who are to benefit from the deceased's estate.

12. On the question on whether the parcel of land **L.R. Ngong/Ngong/4580** registered in the names of the deceased was held in trust by the deceased on behalf of his brother? The 1<sup>st</sup> objector in his testimony stated that he said parcel of land was bought from the sale proceeds of cows inherited by them from their late father though it had be registered solely in the names of the deceased. The 1<sup>st</sup> objector testified that he and his brother sat with the elders in 2000 and agreed to have a surveyor place beacons on the land so that each one got to know their portion however the deceased died before the transfer was concluded. That after the death of the deceased he and the respondent followed up the issue with the elders and as per the minutes of the said meeting held on 14<sup>th</sup> April 2006 parties agreed that he gets 0.042 hectares and the respondent gets 0.082 hectares. Parties had even obtained a mutation form no. 194867 showing the portion of the said parcel of land. Counsels for both parties Miss. Mburungu and Mr. Matwere on 27/6/2011 informed this court that there was no dispute on the 1<sup>st</sup> objector's being given his share of the land and the court adopted the same which in essence transmitted 0.042 Hectares to James Gathu Kieya. From the foregoing, it emerged that the said parcel of land was held in trust by the deceased and after the 1<sup>st</sup> objector obtained his share only 0.082 hectares remaining on the said parcel of land is what forms part of the deceased's estate.
13. Who owns land parcel no. **Kajiado/Olchoro Onyore/3085** ?. The 1<sup>st</sup> objector in regards to the issue of ownership of the said parcel of land stated that the same was purchased by their late mother on 15<sup>th</sup> May 1986 and but did not adduce any evidence to support this. This matter was referred to the Kajiado Land Dispute Tribunal as case no. 457/05/08 and via a ruling dated 10<sup>th</sup> July 2008 the tribunal found in favor of the respondent holding that the said parcel was purchased by the deceased in 1983 and that he had paid for the same fully and further ordered that the title which had been fraudulently taken by the 1<sup>st</sup> objector and registered in his name be deregistered and registered in the names of the respondent. No appeal has been lodged to challenge the said decision and as it stands the said parcel of land having been purchased by the deceased forms part of the deceased's estate.
14. I find that the 2<sup>nd</sup> objector has proved her claim that she was a wife to the deceased ,she and the 4 children she sired with the deceased are entitled to benefit from the deceased's estate. From the evidence tendered it is clear that the deceased was polygamous and having died intestate his estate devolves under **Section 40** of the Law of Succession Act cap. 160 which provides that, ***“(1) Where an intestate 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.”***

As such the deceased's estate will be shared by the two houses. The house of **Grace Muthoni Thairu** and **Hellena Wamaitha Mwaura**.

### 1<sup>st</sup> House

- i. **Grace Muthoni Thairu**
- ii. Peter Nyoike,
- iii. Dorcas Wanjiku,
- iv. Emily Ngendo,
- v. James Gathu

vi. Mary Njeri

**2<sup>nd</sup> House**

- i. **Hellena Wamaitha Mwaura**
- ii. Benard Kiiya,
- iii. Simon Mwaura,
- iv. John Runye
- v. George Gathu

15.I further find that the 1<sup>st</sup> objector is entitled to 0.042 hectares of **L.R. Ngong/Ngong/4580** with the residual of 0.082 of the same going to the estate of the deceased. In regards to **Kajiado/Olchoro Onyore/3085**, the Kajiado District tribunal held that Land parcel no. **Kajiado/Olchoro Onyore/3085** also belongs to the deceased and as such the same forms part of the deceased's estate. For the avoidance of doubt the assets surviving the deceased are

- i. 0.082 Hectares of **L.R. Ngong/Ngong/4580**,
- ii. **Kajiado/Olchoro Onyore/3085** and
- iii. Kshs. 450,000/- being compensation

The administrators of the deceased's estate should meet and agree on mode of distribution of the assets surviving the deceased and finally conclude the administration of the deceased's estate. Costs in the cause It is so ordered..

Dated, signed and delivered this **5<sup>th</sup>** day of **February 2016**

**R. E. OUGO**

**JUDGE**

**In the presence of;**

.....**For the Applicant**

.....**For the Respondent**

**MS. Charity**

**Court Clerk**