



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 407 OF 1997

AND

**IN THE MATTER OF THE ESTATE OF THE LATE LAZARO KINUTHIA ICHIGO
(DECEASED)**

MARY WANGARI KIIHIKA

.....**APPLICANT**

VERSUS

**JOHN GICHUHI KINUTHIA1ST
RESPONDENT**

**PATRICK KAGOIYA KINUTHIA2ND
RESPONDENT**

**MARY WANYUA ICHIGO3RD
RESPONDENT**

JUDGMENT

1. The matter before this Court concerns the contested administration and distribution of the estate of the deceased, Lazaro Kinuthia Ichigo of Kiambu District, who died intestate on 24th September 1996. On 3rd March 1997, the two surviving widows of the deceased, Florence Njambi Kinuthia and Violet Wanjiru Kinuthia, having secured the consents of the other dependants of the deceased, petitioned the Court to be issued with a grant of letters of administration in respect of the estate of the deceased. In their petition, the widows of the deceased stated that they were both married to the deceased and at the time of his death he was survived by two widows and fifteen (15) children. The children of the deceased who were listed as his dependants and therefore beneficiaries of his estate are the following:

- a) Florence Njambi Kinuthia – Widow
- b) Violet Wanjiru Kinuthia – Widow
- c) Francis Ichigo Kinuthia – Adult – Son
- d) Daniel Murathe Kinuthia – Adult – Son
- e) Stephen Ichigo – Adult – Son

- f) Johnson Gichuhi Kinuthia – Adult – Son
- g) Patrick Waigwa – Adult – Son
- h) James Kamau Kinuthia – Adult – Son
- i) John Gichuhi Kinuthia – Adult – Son
- j) Francis Wainaina Kinuthia – Adult – Son
- k) George Kinuthia – Adult – Son
- l) Leonard Gathu Kinuthia – Adult – Son
- m) James Kamau Kinuthia – Adult – Son
- n) Robert Njoroge Kinuthia – Adult – Son
- o) Mary Wanyua Ichigo – Adult – Daughter
- p) David Kariuki Kinuthia – Adult – Son
- q) Bernard Mungai Kinuthia – Adult – Son

2. The petition of 3rd March 1997 for a grant of letters of administration also listed the assets comprising the estate of the deceased as follows:

- a) Plot No. 7304/28 Limuru/Kiambu
- b) Mai Mahiu Plot No. 43
- c) Murengeti/95/Kiambu
- d) Mai Mahiu – Block 1/2379 – Kijabe/Kijabe
- e) Nyandarua – 392/Muruaki Scheme

The grant was issued to the two surviving widows of the deceased on 29th April 1997.

3. The Applicant, Mary Wangari Kihika, is a daughter of the deceased whose mother died before the demise of the deceased. The Applicant together with her four (4) sisters, namely: i) Mary Wangari Kihika; ii) Mary Wairimu; iii) Teresia Mukuhi; iv) Rosemary Mukuhi (deceased with children); and v) Rahab Njeri were not listed as dependants of the deceased and therefore were not provided for in the grant of letters of administration intestate that was issued by the Court on 29th April 1997 and subsequently confirmed on 29th January 2013. The Applicant contends that the grant was procured and confirmed through fraud and non-disclosure of the interests of certain beneficiaries, including the Applicant.

4. The case for determination before the Court relates to an application by way of summons for revocation of grant in which the Applicant, on her own behalf and on behalf of her four (4) sisters, seeks to have the confirmed grant of letters of administration in respect of the deceased's estate revoked and the distribution of property per that grant amended and/or annulled and the distribution of **Plot No. 28 Limuru** be made equally to all beneficiaries. But it is useful to outline the judicial history of this case so as to clarify certain salient issues for determination by this Court.

5. On 16 August 2006, John Gichuhi Kinuthia and Patrick Kagoiya Kinuthia, the 1st and 2nd Respondent moved the Court by way of summons made pursuant to **Rule 43(1) of the Probate and Administration Rules** seeking to have the grant of letters of administration issued to the widows of the deceased rectified on the basis that the said grant contains errors capable of rectification. The affidavit in support of summons for rectification of grant specified that the widows of the deceased, Florence Njambi Kinuthia and Violet Wanjiru Kinuthia, to whom letters of administration had been granted, died on 11th September 1999 and 12th August 2002 respectively, and their Certificates of Death were attached to this affidavit. The 1st and 2nd Respondents sought to have the names of the two widows replaced with their names. They further stated that the said grant had not been confirmed and that it was desirable that the above errors be rectified by the Court. On 20th February 2007, the Court amended the letters of administration issued on 29th April 1997 and granted it to all the 1st and 2nd Respondents as well as Mary Wanyua Ichigo, the 3rd Respondent.

6. On 17 May 2010, Daniel Muratha Kinuthia, a son of the deceased and a beneficiary of the suit estate, moved the Court by summons and supporting affidavit made pursuant to **Section 76 (d), (i), (ii) and (iii) of the Law of Succession Act and Rule 44(1) and (2) of the Probate and Administration Rules** seeking to have the grant of letters of administration intestate made to the Respondents revoked on the grounds that:

- a) The Respondents had failed to apply for confirmation of the grant within one year from the date of their appointment as administrators of the deceased's estate;
- b) The Respondents had failed to account for or have misapplied Kshs. 3,315,000 deriving from two rental properties, namely Plot No. 7304/28 Limuru/Kiambu and Maai Mahiu Plot No. 43, that constitute part of the suit estate;
- c) Despite being a son of the deceased who is entitled to an equal share of the proceeds from the suit estate, the Respondents have not given him Kshs. 221,000 which sum is arrived at by dividing the Kshs. 3,315,000 among the fifteen (15) beneficiaries of the suit estate, or any other sum.

7. On 10 June 2010, the Respondents, having secured the consents from all the dependants of the deceased except one Daniel Muratha Kinuthia regarding the proposed confirmation of the grant and the proposed mode of distribution of the estate, moved the Court by way of summons for confirmation of the grant of letters of administration intestate. The Respondents listed the following fifteen (15) dependants as beneficiaries of the estate of the deceased:

- a) John Gichuhi Kinuthia – Adult – Son
- b) Mary Wanyua Ichigo – Adult – Daughter
- c) Francis Ichigo Kinuthia – Adult – Son
- d) Joseph Kimani Kinuthia – Adult – Son
- e) Patrick Kagoiya Kinuthia – Adult – Son
- f) Bernard Mungai Kinuthia – Adult – Son
- g) Robert Njoroge Kinuthia – Adult – Son
- h) Leonard Gathua Kinuthia – Adult – Son
- i) Francis Wainaina Kinuthia – Adult – Son

- j) James Kamau Kinuthia – Adult – Son
- k) James Kamau Lazaro – Adult – Son
- l) Daniel Murathe Kinuthia – Adult – Son
- m) Johnson Gichui Kinuthia – Adult – Son
- n) Josephine Wanjiru Ichigo – Adult – Daughter
- o) Joyce Wairimu Gichamba – Adult – Daughter

The Respondents did not list any other dependants as having survived the deceased. The Respondents also identified the assets that comprise the estate of the deceased and determined that they should be shared equally among the fifteen (15) dependants listed above. The list of assets is as follows:

- a) Muruaki/Settlement Scheme/255/392
- b) Limuru Town Plot No. 28
- c) Limuru/Bibirioni/95
- d) Kijabe/Kijabe-Block 1/2379
- e) Mai Mahiu Plot No. 43

8. On 18 February 2011, Daniel Muratha Kinuthia filed an affidavit of protest opposing the proposed confirmation of the grant and the proposed distribution of the suit estate on the following grounds:

- a) LR No. Muruaki/Settlement Scheme/255/392 is not registered in the name of the deceased but in the name of Ibrahim Mwangi Kanyoro, and is thus unavailable for distribution. A Certificate of Official Search verifying this fact is on the Court's record.
- b) The Respondents omitted from the list of assets money in Account Number 047000008677 held at Family Bank Ltd (Limuru Branch) totaling to Kshs. 4,335,000 as at the end of March 2011 and deriving from the deceased's rental properties, namely 7304/28 Limuru Town and Plot No. 43 Maai Mahiu.
- c) The Respondents caused themselves to be registered as the proprietors of Limuru/Bibirioni/95 before the confirmation by the Court of the grant of letters of administration to the suit estate.
- d) The Respondents' proposed mode of distribution of L.R. No. Limuru/Bibirioni/95 sets apart one portion of his entitlement from his homestead thereby making user of his share of the suit estate commercially/economically unattractive, and that if the estate is distributed thus he stands to suffer great prejudice.

9. On 22nd June 2011, the Respondents filed a further affidavit in response to the Affidavit of Protest of Daniel Muratha Ichigo in which they dismissed as lies the allegations by Daniel Muratha as full of falsehood and not based on facts. The Respondents traversed the allegations raised by Daniel Muratha Ichigo and stated, inter alia, the following important points:

- a) The deceased neither had an Account No. 047000008677 at Family Bank Limuru before his demise nor does the estate have any money in any account amounting to Kshs. 4,335,000.

- b) After the death of the deceased, the family members met and agreed to open Account No. 047482257 in Family Bank Limuru in the names of John Gichuhi, Josephine and Mary for the purpose of collecting all the rental income of the estate, and a statement of which is in the court record.
- c) All the rental income collected on behalf of the estate has been shared equally amongst all the fifteen (15) dependants, and a copy of the distribution is on the court record.
- d) When the deceased was alive he gifted each of the fifteen (15) dependants a portion of land in Limuru/Bibirioni/95 and they have all constructed their residential houses on the said portions gifted to them.
- e) After the demise of the deceased, the family members of the deceased agreed to ballot for the remaining portion of land in Limuru/Bibirioni/95 land that had not been gifted to anyone, and a map illustrating the agreed mode of distribution is in the court record.
- f) Each of the fifteen (15) dependants got a distinct parcel of land that is separate and away from the parcels initially gifted by the deceased. Therefore the proposed mode of distribution set forth in the Affidavit of Protest of Daniel Muratha Ichigo is unattainable as it will disorganize all the other family members who approved the resulting distribution by way of ballot as being consistent with the wishes of the deceased.
- g) The area Chief and area District Commissioner are well aware of the disputed subdivision of Land Parcel No. Limuru/Bibirioni/95 and they have both concluded that the objection raised by Daniel Muratha Ichigo is intended to buy time and is causing suffering to the other members of the family.
- h) The proposed mode of distribution is equitable as none of the fifteen (15) dependants is getting more than the other.

10. On 29 January 2013, pursuant to Section 71 of the Law of Succession Act, this Court issued the Respondents with a Certificate of Confirmation of Grant, and it directed that the deceased's estate be distributed as follows:

- a) **Muruaki/Settlement Scheme/255/392:** To be distributed equally among the following sons of the deceased, and where a son is deceased his portion devolves to his widow and children: i) John Gichuhi Kinuthia; ii) Francis Ichigo Kinuthia; iii) Joseph Kimani Kinuthia; iv) Patrick Kagoiya Kinuthia; v) Bernard Mungai Kinuthia; vi) Robert Njoroge Kinuthia; vii) Leonard Gathua Kinuthia; viii) Francis Wainaina Kinuthia; ix) James Kamau Kinuthia; x) James Kamau Lazaro; xi) Daniel Muratha Kinuthia; and xii) Johnson Gichuhi Kinuthia.
- b) **Plot No. 28 Limuru Town:** To be sold and the proceeds distributed equally among the sons (named above) and 3 daughters, namely i) Margaret Njeri Njenga; ii) Veronica Wambui Gichigo; and iii) Jane Wairimu Gichigo.
- c) **Limuru/Bibirioni/95:** To be distributed equally among the sons as per the mode of distribution agreed by the sons, which entails each of them having a plot close to the road close to Murungeti Centre measuring 100ft X 50ft and the rest of the land to be divided equally. Thus, the plot of Daniel Muratha Kinuthia, who had initially opposed the mode of subdivision of the land, was to be expanded so that it can also measure 100ft X 50ft.
- d) **Kijabe/Kijabe Block 1/2379:** To be distributed equally to: i) John Gichuhi Kinuthia;

ii) Francis Ichigo Kinuthia; iii) Joseph Kimeri Kinuthia; iv) Robert Njoroge Kinuthia; v) James Kamau Lazaro; vi) Daniel Murathe Kinuthia; and vii) the family of Leonard Gathua Kinuthia (deceased).

11. On 9th May 2013, the Applicant, Mary Wangari Kihika, moved the Court by way of summons for revocation of grant pursuant to **Section 76 of the Law of Succession Act and Rule 44 and Rule 73 of the Probate and Administration Rules** seeking orders to restrain the Respondents in their capacity as administrators of the estate from selling, distributing, or in any other way dealing with all the assets comprising the estate of the deceased, inter alia, on the grounds that the said grant was obtained fraudulently by making false statements and concealing from the Court materials relevant to the cause. The Applicant also stated that the grant was obtained by deliberately making untrue allegations on essential questions of law and fact to justify the grant.

The Applicant also sought to have the Court restrain the Respondents, who are the administrators of the suit estate, from selling or otherwise interfering with the properties of the estate until the matter is heard and determined. The Applicant further specified in paragraph 8 of her affidavit in support of the summons for revocation of the grant that the mode of distribution per the confirmed Certificate of Grant dated 24th January 2013 is unfair, unjust and constitutes a deliberate attempt by the administrators and beneficiaries of the deceased's estate to exclude and prejudice other rightfully entitled beneficiaries of the deceased's estate, including herself and her (4) sisters from inheriting **Plot No. 28 Limuru**. On the basis of the foregoing, the Applicant urged the Court to:

- a) revoke the confirmed grant of letters of administration of 29th January 2013;
- b) amend and/or annul the distribution of property per that grant; and
- c) cause the distribution of **Plot No. 28 Limuru** to be made equally to all beneficiaries.

12. On 13th August 2013, the Applicant filed a further affidavit stating that she was authorized to act on behalf of her four (4) sisters who were excluded from benefiting from the estate of the deceased and thus her presentations expressed the common position taken by all of them. In this affidavit, the Applicant expressed her apprehensiveness about the possibility that the land known as **Muruaki/Settlement Scheme/255/392** is not registered in the name of the deceased and may not be available for distribution. The Applicant also suggested that **Plot No. 28 Limuru** should be sold and the proceeds shared equally with each of the houses being considered as an independent unit. The Applicant further proposed that **Limuru/Bibirioni/95** should be subdivided into parcels measuring 100x50ft (0.125 acre) and each of the houses should get two plots with the option that any remaining land after the Applicant and her co-Applicants have been given two plots each should devolve to the administrators. The Applicant finally stated that the Respondents have already sold **Kijabe/Kijabe Block 1/2379** and that the parcel of land may not be available for sub-division, and thus the Respondents should declare the amount paid as consideration for that land and to have the same taken into account when distributing the net intestate estate.

13. On 22nd August 2013, a replying affidavit was filed by the 1st Respondent setting forth the common view of all the Respondents and countering the allegations made by the Applicant in her further affidavit of 13th August 2013. The Respondents dismissed the summons for revocation of the grant as uncalled for since the Applicants were allegedly involved in the case as it proceeded, and also because some of the Respondents were present in Court when the grant was confirmed. The Respondents averred that during the confirmation of the grant the Applicants indicated to the Court that they were not interested in any properties constituting the suit estate since they were married and it was the deceased's will to have the suit property distributed to his sons and unmarried daughters. As regards the Applicant's stated apprehension about the availability of the parcel of land known as **Muruaki/Settlement Scheme/255/392**, the Respondents stated that it is well known to the Applicants that there is a pending suit in relation to the ownership of that land. Moreover, the Respondents stated that they were agreeable

to having **Plot No. 28 Limuru** distributed and shared equally among the beneficiaries and not each house being considered as an independent unit.

14. The Applicant, Mary Wangari Kihika, filed her written submissions on 29th September 2014 in which she made the case for the revocation of the grant of letters of administration on the grounds that the grant was procured and confirmed through fraud and non-disclosure of the interest of certain known beneficiaries (married daughters of the deceased) whose names and particulars were set out in paragraph 9 of her affidavit in support of the summons for revocation of the grant. She stated that those left out include:

- a) Mary Wangari Kihika – Adult – Daughter
- b) Mary Wairimu – Adult – Daughter
- c) Teresia Mukuhi – Adult – Daughter
- d) Rosemary Mukuhi – Adult – Daughter (deceased with children)
- e) Rahab Njeri – Adult – Daughter

15. On 28th November 2014, the Respondents filed their written submissions in which they reiterated the content of their replying affidavit of 22nd August 2013. The central theme of the Respondents' written submissions is that the Applicants have all along been aware of the processes that culminated in the confirmation of the grant, have had knowledge of various dealings concerning the properties of the estate, and have conducted themselves at all material times in a manner that indicates they had waived their right to inherit from the estate of the deceased.

16. The historical development of this case presents a factual basis on which to evaluate the propriety of the competing claims of the Applicants and the Respondents. It is useful to set out some critical legal questions in order to guide the evaluation process and provide a just and equitable resolution of the impasse concerning the distribution of the estate of the deceased. The key questions to be answered are as follows:

- a) Do the applicants in this case have a right to inherit from the estate of the deceased, and if so under what circumstances can this right be waived?
- b) What would constitute a fair and equitable distribution of assets in the case where one of the houses has not benefited at all from the estate of the deceased while other beneficiaries have settled permanently on the only available parcel of land?
- c) What cause of action should the Court take in respect of a long-running contentious succession case in which some beneficiaries have been left out in the distribution of the estate per a confirmed grant?

17. As regards the issue whether the Applicants are beneficiaries of the estate of the deceased, the Court is guided by **Section 38 of the Law of Succession Act**, which provides that

where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

According to the above provision, the Applicants, whose status as daughters of the deceased has not been contested anywhere in the proceedings before this Court are beneficiaries entitled to inherit from the deceased's estate. The Court has also satisfied itself that given the fact that there is no oral or documentary evidence to suggest that the Applicants had renounced, as implied by the Respondents, their right to inherit from the deceased's estate, it can make a finding on a

balance of probabilities that the Applicants are still entitled to inherit from the estate of the deceased.

18. This Court has found it necessary to emphasize an important point that is related to the above point; that all children of the deceased, including the daughters who are married, are entitled to inherit. One of the grounds on which the Respondents relied on in seeking to dismiss the Applicant's summons for revocation of the grant was that the Applicant and her sisters were married and it was the deceased's will to have the suit property only distributed to his sons and unmarried daughters. It is therefore useful to clarify the fact that **Section 29 of the Law of Succession Act Cap 160** does not discriminate beneficiaries on any grounds, be it gender or marital status. On the contrary, it defines dependants as including the children of the deceased without any adverse distinction. This position is well established in our legal system and has consistently been restated in our jurisprudence. In the case of *Eliseus Mbura M'Thara v Harriet Ciambaka and Another* [2012] eKLR, Lesiit J stated that:

The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The Law of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.

More recently, the above position has been reaffirmed in the case of *Peter Karumbi Keingati & 4 Others v Dr Ann Nyokabi Nguithi* [2014] eKLR, where Kimaru J debunked much of the myth and disingenuous logic that underlies arguments that are typically advanced in a bid to disinherit unmarried daughters. He held as follows:

As regard to the argument by the Applicants that married daughters ought not to inherit their parent's property because to do so would amount to discrimination to the sons on account on the fact that the married daughters would also inherit property from their parent's in-laws, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. The issues that the court will grapple with during distribution are the issues anticipated by Section 28 of the Law of Succession Act. This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which have a tendency of once in a while rearing its ugly head to be forever buried. This ghost has long cast its shadow in our legal system despite of numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for these discriminative cultural practices against women be buried in history.

19. An examination of the proceedings in this case reveals that the Applicant and her four (4) sisters have not inherited any portion of the deceased's estates, and this fact has never been in dispute. Indeed, the initial petition of 3rd March 1997 for letters of administration intestate did not include the names of the Applicant and her sisters in the list of dependants. When the grant was issued by the Court on 29th April 1997 and later confirmed on 29th January 2013, the Applicant and her sisters were excluded from the distribution of the estate of the deceased. While the Respondents have argued that the Applicant and her sisters were well aware of the dealings with the deceased's estate, were present during the confirmation of the grant, and even elected to exclude themselves from inheriting any part of the suit

estate, no evidence has been produced to support this contention, nor is there anything in the Court record to support that claim. The Respondents did not make it known to the Court that there were other dependants (the 5 daughters of the deceased, including the Applicant) who had renounced their right to inherit or had otherwise lost their entitlement to the estate during the procurement and confirmation of the grant. On this basis, the Court finds that the grant was obtained by the concealment from the Court of something material to the case, or alternatively that the Respondents obtained the grant by way of an untrue allegation of a fact essential in point of law to justify the grant, which allegation was made in ignorance or inadvertently.

20. The above finding of concealment of material facts or untrue allegations of facts essential in point of law on the part of the Respondents would warrant a revocation by the Court of the confirmed. However, taking account of the fact that the present case has been ongoing since 1997 that would not be a just course of action. A revocation of the confirmed grant would cause the parties to return to the drawing board, and it could likely take a long time before the distribution of the suit estate is concluded. This Court finds that it would be more appropriate to have the confirmed grant amended to include one representative from each of the three (3) houses as co-Administrators of the deceased's estate. This Court therefore orders that the grant be amended to have the following as co-Administrators: i) the Applicant as the representative of her house; ii) the 1st Respondent as the representative; and iii) a representative to be nominated by members of the third house.

21. As regards the distribution of the deceased's estate, this Court will be guided by **Sections 40(1) and 42 of the Law of Succession Act**. Section 40(1) of the Law of Succession Act, which applies in the present case because the deceased had contracted polygamous marriages, provides that:

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.

Section 42 of the Law of Succession Act, which applies to the present case because the deceased had gifted part of his estate to certain dependants prior to his demise, provides that:

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.

Taking the above provisions of the law into consideration, the Court finds that the Applicant and four her sisters, whose mother (who predeceased the deceased) was married to the deceased under a system of law that permits polygamy, are entitled to the net intestate estate as one house comprising of five units. This is supported by the fact that the Respondents do not contest that these are the daughters of the deceased. The Court also finds that the Applicant and her sisters did not receive any previous gifts or benefits from the suit estate prior to the deceased's death. In contrast, the Respondents and other dependants, on their own admission and on the strength of the evidence on the Court's record, received portions of that parcel of land known as **Limuru Plot No. 28**. This property as well as other properties from which the Respondents and other dependants have been drawing rental income and other benefits needs to be taken into account in determining the share of the net intestate estate.

22. On the basis of the foregoing, this Court deems it fair and just to find as follows:

a) That the following mode of distribution of the estate of the deceased is fair and equitable, and should therefore be adopted in the amended grant of letters of administration in respect of the estate of Lazaro Kinuthia Ichigo, which will include the following as co-Administrators:

- (i) Mary Wangari Kihika
- (ii) John Gichuhi Kinuthia
- (iii) Mary Wanyua Ichigo
- (iv) Patrick Kagoiya Kinuthia

b) The Court order of 29th January 2013 by Kimaru J is amended in light of new facts that have since come to light, in particular the exclusion of the family of the Applicant from benefiting from the deceased's estate. This was due to the failure by the Respondents to disclose to the Court the fact that they are children of the deceased. That order is hereby amended to include the family of the Applicant as beneficiaries of the deceased's estate.

c) That parcel of land known as **Muruaki/Settlement Scheme/255/392**, which was to be distributed equally among the eight (8) sons of the deceased and which is the subject of a matter in court, shall, in the event of successful conclusion of that matter, be distributed equally among the eight (8) sons and the eight (8) daughters of the deceased. Where a beneficiary is deceased, their share will devolve to their children.

d) The parcel of land known as **Plot No. 28 Limuru Town** shall be surveyed within 30 days of this judgment, sold and the resulting proceeds distributed equally among the following eight (8) daughters of the deceased:

- 1. Mary Wangari Kihika
- 2. Mary Wairimu
- 3. Teresia Mukuhi
- 4. The children of Rosemary Mukuhi (deceased)
- 5. Rahab Njeri
- 6. Margaret Njeri Njenga
- 7. Veronica Wambui Gichigo
- 8. Jane Wairimu Gichigo

e) That parcel of land known as **Limuru/Bibirioni/95**, which has already been subdivided among the sons into plots measuring 50x100ft and which is currently occupied by the said sons shall remain as it is. This is because the said land has already been distributed in the manner set out in the Court order of 29th January 2013.

f) The parcel of land known as **Kijabe/Kijabe Block 1/2379** remains to be distributed equally among the eight (8) sons of the deceased, and where a son is deceased, their share will devolve to their respective beneficiaries.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2015

M. MUIGAI

JUDGE