



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO. 2733 OF 2011**  
**IN THE MATTER OF THE ESTATE OF MARY WANJIKU MUKINYA (DECEASED)**

**RULING**

1. The application dated 22<sup>nd</sup> February 2011 seeks confirmation of the grant made on 24<sup>th</sup> April 2012 and rectified on 27<sup>th</sup> January 2014.
2. The assets to be distributed are identified as-
  - a. **Half share of LR No. 209/7283**
  - b. **A/C No. 0240101447845 Equity Bank**
  - c. **Household goods**
  - d. **Plot along Thika road (near Kasarani) (reference number not indicated)**
  - e. **3 singer sewing machines (20U, 188U and a Butterfly)**
  - f. **Two-in-one interlocking diamond wedding and engagement rings**
  - g. **A/c with Kenya Women Fund Trust (KWFT) (account number not disclosed)**
3. The survivors of the deceased were identified as-
  - a. **John Geoffrey Mukinya – widower**
  - b. **Caroline Njeri Mukinya – daughter**
  - c. **Frankline Karanja Mukinya – son**
  - d. **Catherine Nyambura Mukinya – daughter**
  - e. **Anthony Gitau Mukinya – son**
  - f. **Brian Mukinya Wairimu – grandson**
4. In his affidavit of protest sworn on 14<sup>th</sup> June 2013, Anthony Gitau Mukinya avers that there are

outstanding debts, being outstanding Nairobi City Council rates and hospital bills.

5. The parties are in agreement regarding the distribution of four of the assets being the sewing machines, the wedding and engagement rings and the moneys in the two accounts.

6. They agree in principle that the half share of land in LR No. 209/7283 should be distributed equally among all the six (6) survivors, but whereas one administrator proposes that the property be sold and the proceeds of sale shared equally, the other administrator is against the sale. One administrator would like the plot along Thika Road to devolve upon him wholly on the basis that it belongs to him, while the other would like it shared equally amongst the survivors. The surviving widower would like to have the household goods devolve upon him, while the other administrator states the same should be retained for use of the entire family.

7. On LR No. 209/7283, the widower would like the property sold. He says he owns the other half, but he cannot enjoy the property because he has been driven out by the children. The children contest this and say that he left on his own volition. Yet there is evidence that there was an incident involving the widower and some of the children.

8. On the Thika Road plot, the widower has not provided any evidence that the same belongs to him and was held by the deceased in trust for him.

9. There are debts and liabilities. The administrators have not made any provision for the debts and liabilities in their proposals. Their averments in their affidavits are silent on the debts. Yet debts must be settled before the estate is distributed.

10. There is discord between the widower and his children. He has been living away from the home, which is in his joint name with his deceased wife. That is his matrimonial home. He owns half of it. I note that the children and grandchild are all adults. They should have by now moved out of their parents' home to make a living for themselves elsewhere. Their parents are not bound to provide for them forever. The legal obligation towards children ends when they turn eighteen (18).

11. According to Section 35 of the Law of Succession Act, the surviving spouse is entitled to personal and household goods absolutely.

12. I am disposed to make the following orders:-

a. **That the grant herein is hereby confirmed;**

b. **That the estate of the deceased shall be disposed of as follows:-**

i. **Half share in LR No. 209/7283 to be sold and the proceeds of sale applied as follows-**

a. **To settle the outstanding debts and liabilities; and**

b. **The balance to be shared out equally among the six (6) survivors of the deceased;**

ii. **Plot along Thika Road (near Kasarani) to be sold and the proceeds of sale to be distributed equally amongst the survivors of the deceased;**

iii. **The money sitting in A/c No. 024010144-7845 to be distributed equally amongst all the beneficiaries;**

iv. **The money sitting in the unnamed account with Kenya Women Fund Trust (KWFT) to be distributed equally amongst all the beneficiaries; and**

v. The personal and household goods, including the sewing machines and the wedding and engagement rings to the widower absolutely; and

c. That costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 9<sup>TH</sup> DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE