



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2432 OF 2012**

**IN THE MATTER OF THE ESTATE OF PETER NDUNG’U WAINAINA (DECEASED)**

**RULING**

1. This matter relates to the estate of Peter Ndungu Wainaina. On the 31/12/2014 the administrators namely Michael Wainaina Ndungu, Mercy Njeri Wainaina, Priscillah Wambui Wainaina and Alice Njeri Kamau sought to have the grant of letters of administration intestate made to them on the 24/6/2013 confirmed. In support of the said application Mercy Njeri Wainaina, Priscillah Wambui Wainaina and Alice Njeri Kamau filed an affidavit dated the 31<sup>st</sup> of December 2014 and have listed the names of the deceased’s dependants as follows:

- i. Michael Wainaina Ndung’u – 1<sup>st</sup> Co-Administrator/Son**
- ii. Alice Njeri Kamau - 4<sup>th</sup> Co-administratix/Daughter**
- iii. Mercy Njeri Wainaina 2<sup>nd</sup> Co- administratix/Daughter**
- iv. Priscillah Wambui Wainaina 3<sup>rd</sup> Co-Administratix /Daughter**
- v. Stephen Mburu Wainaina – Beneficiary/Son**
- vi. Gladwell Wairimu Muthee wife of Paul Muthee Ndungu -(Deceased)/Beneficiary**
- vii. Elizabeth Waithira Ndung’u & Rosemary Mwihaki Ndung’u Jointly on behalf of Nancy Gathoni Ndung’u (Deceased daughter)/Beneficiaries.**

2. At Paragraph 4 of the said affidavit they have a schedule of the description of the properties the beneficiaries and the shares.

3. On the 2/4/2014 Michael Wainaina Ndung’u one of the administrators filed a replying affidavit opposing the mode of distribution stating that they have never discussed the mode of distribution and agreed. That their late father had intended and severally expressed his intentions that a company be registered to take overall assets of the estate and all the beneficiaries be shareholders in the intended company. At paragraph 10 of his affidavit he proposes the mode of distribution as follows:

- i. Kabete/Nyathuna/155, to be shared equally between Michael Wainaina Ndungu, Gladwell Wairimu Muthee (for herself and her children Sylvia Mwihaki Muthee and Peter Ndungu Muthee), Stephen Mburu Wainaina and Elizabeth Waithera Ndungu and Rosemary Mwihaki Ndungu (Jointly).This property is their father’ homestead he proposes that the same be shared out between the three sons (resident thereat and/or with their families) and the last two girls, the daughters of our deceased sister, Nancy Gathoni:**
- ii. L. R. No. 36/111/1169 (Eastleigh), be distributed as per i) above;**

- iii. **L. R. No 36/111/1170(Eastleigh)**, be distributed as per (i) above.
- iv. **Plot No. 328** Kariobangi Light Industries, to their three married sister, Alice Njeri Kamau, Mercy Njeri Wainaina and Pricillah Wambui Wainaina to equally share;
- v. Plot No. 329, Kariobangi Light Industries, to be distributed to Michael Wainaina Ndungu
- vi. Plot No. 29, Umoja Infill, to be distributed as in (iv) above
- vii. **Nairobi/Block 116/659** Zimmerman, to be distributed as in (iv) and (vi) above.
- viii. **Kabete/Kibichiku/670**, to be distributed as in i) above
- ix. **Kabete/Lower Kabete/696**, to also be distributed as in i) above.
- x. Funds in Equity, Bank Account No. 032029774095 to be utilized to settle any administration costs and expenses and balance if any be distributed equally amongst the seven (7) beneficiaries.
- xi. Motor Vehicle KAE 059B, as proposed, may be sold and proceeds shared equally amongst the beneficiaries.

4. In response the 3 sisters filed an affidavit dated the 28/4/2015. They challenge Michael on his proposal and aver that their brother appears to think that married daughters do not have equal rights to share equally with sons. That Michael proposed distribution is unconstitutional and contrary to the letter and spirit of the law of succession. That Michael has from 1/4/15 deterred Gladwell Wairimu Muthee the widow of their late brother Paul Muthee Ndungu from further farming use and cultivation of her portion of the family shamba Kabete/Nyathuna/155 3.16 Ha) and that he has threatened Gladwell and Alice Nyeri Kamau hence the need to urgently settle the matter.

5. Parties filed written submissions on the mode of distribution on the 20/7/2015. Parties recorded the following consent in Court on the 20<sup>th</sup> of July 2015.

- i. That the property known as Kariobangi Light Industrial site plot No. 329 worth Kshs Thirty Million whole goes to Michael Wainaina Ndungu.**
- ii. That Kariobangi Light Industrial Plot No. 328 (in no 8) will go to Alice Njeri Kamau, Mercy Njeri Wainaina, Priscilla Wambui Wainaina, Gladwell Wairimu Muthee, Stephen Mburu Wainaina, Elizabeth Waithera Ndungu and Rosemary Mwihaki Ndungu and will share one share jointly within the said property.**
- iii. That Plot No. 328 to be sold by beneficiaries of the said property and the proceeds to be shared in six equal shares amongst the said six beneficiaries.**

6. Mercy, Priscillah and Alice in their affidavit dated the 31<sup>st</sup> December 2014, proposed as follows:

Beneficiaries	Description Property	Shares
Michael Wainaina Ndung'u, Alice Njeri Kamau, Mercy Njeri Wainaina, Priscillah Wambui Wainaina	L. R. No. 36/111/1169 (0.0409 HA) (Eastleigh) <b>worth Kshs 70M)</b>	proceeds to be shared equally amongst the 7 beneficiaries
And also in trust for		
Stephen Mburu Wainaina		

<p>Gladwell Wairimu Muthee</p> <p>Elizabeth Waithira Ndung’u</p> <p>Rosemary Mwihaki Ndung’u jointly.</p>		
<p>Michael Wainaina Ndung’u ,Alice Njeri Kamau ,Mercy Njeri Wainaina ,Priscillah Wambui Wainaina</p> <p>And also in trust for</p> <p>Stephen Mburu Wainaina</p> <p>Gladwell Wairimu Muthee, Elizabeth Waithira Ndung’u</p> <p>Rosemary Mwihaki Ndung’u jointly.</p>	<p>L. R. No. 36/111/1170 (0.0409 HA) (Eastleigh) <b>(worth Kshs. 30M)</b></p>	<p>To be sold and proceeds shared equally and jointly amongst the 6 beneficiaries.</p>
<p>Michael Wainaina Ndung’u, Alice Njeri Kamau, Mercy Njeri Wainaina ,Priscillah Wambui Wainaina</p> <p>And also in trust for</p> <p>Stephen Mburu Wainaina</p> <p>Gladwell Wairimu Muthee, Elizabeth Waithira Ndung’u</p> <p>Rosemary Mwihaki Ndung’u jointly.</p>	<p>Title No. Nairobi/Block 116/659 (0.0427 HA) (Zimmerman undeveloped) <b>(worth Kshs.10M)</b></p>	<p>To be sold and proceeds shared equally among the 6 beneficiaries.</p>
<p>Michael Wainaina Ndung’u, Alice Njeri Kamau, Priscillah Wambui Wainaina, Stephen Mburu Wainaina, Gladwell Wairimu Muthee</p> <p>Elizabeth Waithira Ndung’u, Rosemary Mwihaki Ndung’u Jointly</p>	<p>Title No. Kabete/Nyathuna/155 (3.16 Ha) (Family shamba) <b>(worth Kshs. 70M)</b></p>	<p>To be subdivided into 7 equal plots &amp; registered in the name of each beneficiary.</p>
<p>Alice Njeri Kamau, Mercy Njeri Wainaina,Priscillah Wambui Wainaina, Gladwell Wairimu Muthee, Stephen Mburu Wainaina, Elizabeth Waithira Ndung’u</p> <p>Rosemary Mwihaki Ndung’u Jointly.</p>	<p>Title No. Kabete/Lower Kabete/696 (0.59 Ha) <b>(worth Kshs.72m).</b></p>	<p>To be subdivided into 6 equal plot &amp; registered in the name of each beneficiary.</p>
<p>Alice Njeri Kamau</p> <p>Mercy Njeri Wainaina</p> <p>Priscillah Wambui Wainaina ,Gladwell Wairimu Muthee ,Stephen Mburu Wainaina ,Elizabeth</p>	<p>Title No. <b>Kabete/Kibichiku/670</b> (0.4 Ha) <b>(worth Kshs. 36M)</b></p>	<p>To be subdivided into 6 equal plots &amp; registered in the name of each Beneficiary</p>

Waithira Ndung'u Rosemary Mwihaki Ndung'u Jointly		
Michael Wainaina Ndung'u	Kariobangi Light Industrial site Plot No329 ( <b>worth Kshs. 30M</b> )	whole to Michael Wainaina Ndungu
Alice Njeri Kamau Mercy Njeri Wainaina Priscillah Wambui Wainaina ,Gladwell Wairimu Muthee Stephen Mburu Wainaina Elizabeth Waithira Ndung'u ,Rosemary Mwihaki Ndung'u Jointly	Kariobangi Light Industrial site plot no. 328 ( <b>worth Kshs. 30M</b> )	To be sold and the Proceeds to be shared equally among the 6 beneficiaries.
Michael Wainaina Ndung'u ,Alice Njeri Kamau, Mercy Njeri Wainaina ,Priscillah Wambui Wainaina & in Trust for Stephen Mburu Wainaina, Gladwell Wairimu Muthee, Elizabeth Waithira Ndung'u & Rosemary Mwihaki Ndung'u Jointly.	Umoja 1 Infill plot no. 29 (3 Storey Flat <b>worth Kshs.30M</b> )	To be let to Tenants and proceeds to be shared monthly equally among the 7 beneficiaries.
Michael Wainaina Ndung'u Alice Njeri Kamau Mercy Njeri Wainaina Priscillah Wambui Wainaina And also in trust for Stephen Mburu Wainaina Gladwell wairimu Muthee Elizabeth Waithira Ndung'u Rosemary Mwihaki Ndung'u Jointly.	Lorry TATA 608 KAE 059B worth Kshs. 150,000/-	To be sold and proceeds to be shared equally amongst the 7 Beneficiaries.
Michael Wainaina Ndung'u Alice Njeri Kamau Mercy Njeri Wainaina Priscillah Wambui Wainaina And also in trust for	Funds in Equity Bank Account No. <b>0320297742095</b>	To be shared equally amongst the 7 beneficiaries.

Stephen Mburu Wainaina		
Gladwell wairimu Muthee		
Elizabeth Waithira Ndung'u		
Rosemary Mwihaki Ndung'u Jointly		

7. Michael's submission were as follows; It is not disputed that Michael Wainaina Ndungu, Stephen Mburu Wainaina, Paul Muthee Ndung'u (Deceased) and Nancy Gathoni Ndung'u (Deceased) were at all times the residents at the matrimonial home known as **Kabete/Nyathuna/155**. Gladwell Wairimu Muthee now represents Paul Muthee Ndungu for herself and her children Sylvia Mwihaki Muthee and Peter Ndungu Muthee. Elizabeth Waithera Ndungu and Rosemary Mwihaki Ndungu represent Nancy Gathoni Ndung'u. Their residency was with the consent and blessings of their late father and grandfather. The other beneficiaries were not so benefitting from this matrimonial property. The deceased had not provided for the other beneficiaries. That the inference would be that he intended only the residents thereof to so benefit. He proposes that these assets be distributed to the above four equally and that he does not discriminate on the basis of sex or at all. The said position should also carry the day in respect of the following assets;- **L. R. No. 36/111/1169, Eastleigh L.R. No. 36/111/1170, Eastleigh, L.R. No. Kabete/Kibichiku/670, L.R. No. Kabete/Lower Kabete/696**. To the other beneficiaries, namely Alice Njeri Kamau, Mercy Njeri Wainaina and Priscillah Wambui Wainaina, he proposes that they benefit from the following assets; Plot No. 328 (and not 329) Kariobangi Light Industries, Plot No. 29, Umoja Infill and **Nairobi/Block 116/659**, Zimmerman. He proposes that after settlement of any administration costs and expenses, balance in A/C No. 0320297742095 may be shared equally amongst the beneficiaries. He also proposes that sale of motor vehicle registration no. KAE 059B and equal sharing by all of the proceeds thereof is agreed upon.

8. I have considered the proposals made on the mode of distribution; the parties have agreed as follows on the following properties; that the property Kariobangi Light Industries site No. 329 worth 30 million goes to Michael Wainaina Ndungu, Kariobangi Light Industries plot No. 328 will go to Alice Nyeri Kamau, Mercy Nyeri Wainaina, Priscillah Wambui Wainaina, Gladwell Wairimu Muthee, Stephen Mburu Wainaina, Elizabeth Waithera Ndungu and Rosemary Mwihaki Ndungu they will share one share jointly within the said plot. That plot No. 328 to be sold by the beneficiaries of the said property and the proceeds to be shared in six equal shares amongst the said six beneficiaries. That Umoja 1 Infill Plot No. 29 (3 Storey Flat worth Kshs. 30 million) to be let to tenants and the proceeds shared monthly amongst the 6 beneficiaries. Title No. Nairobi/Block 116/659 (0.0427 HA) Zimmerman undeveloped worth Kshs. 10 million, to be sold and the proceeds shared equally amongst the 6 beneficiaries. That the Lorry TATA 608 KAE 059B worth 150,000/- be sold and the proceeds to be shared equally amongst the 7 beneficiaries. That the funds in Equity Bank Account No. 0320297742095 to be shared equally amongst the 7 beneficiaries.

9. The properties in contention are; L. R No. 36/111/1169 (0.0409HA) Eastleigh worth Kshs. 70 million, **L. R No. 360/111/1170** (0.0409 HA) Eastleigh worth Kshs. 30 million, Title No. **Kabete Nyathuna/155** (3.16 HA Family shamba) worth Kshs. 70 million, Title No. Kabete/Lower/696 (0.59 HA) worth Kshs. 72 million and Title No. **Kabete/Kibichiku/670 (0.59HA)** worth 36 million. The applicants seek to have 4 properties namely plot Nos. **L.R. No. 36/111/1170** (30M) and Nairobi Block 116/659(10M) to be sold and the proceeds shared equally amongst the 6 beneficiaries; Title No. **Kabete/Lower Kabete/696 (72M)** and Title No. **Kabete/Kibichiku/6 70 (36M)** to be subdivided into equal plots and registered in the name of each beneficiary. This proposal leaves out Michael Wainaina Ndungu who on the other hand proposes that the 2 properties in Eastleigh **L.R. No. 36/111/1169** and **1170** and the 2 properties in Kabete 189 and 696 and the family shamba **Kabete/Nyathuna/155** be distributed amongst the four beneficiaries namely himself, Stephen Wainaina, Paul Muthee Ndungu (Deceased) and Nancy Gathoni Ndungu (Deceased). The values of these properties are not in dispute.

10. It is evident that Michael, Stephen, Paul Muthee's family and Nancy Gathoni's family reside in the family land. This was the situation when their deceased father was alive. I do not see the need of disturbing the said arrangement. I therefore find that **Kabete/Nyathuna/155** shall be distributed amongst the four equally. The property in Eastleigh **L.R. No. 36/111/1169** has building on it and thus I agree with the proposal of the applicants that it be let to tenants and the proceeds to be shared equally amongst the 7 beneficiaries. **L.R. 36/111/1170** in Eastleigh shall be sold and proceeds shared equally amongst the 6 beneficiaries. **L.R. Kabete/Kibichiku/670** measuring (0.4 HA) and **L.R. Kabete/Lower Kabete/696** measuring (0.59HA) but with different values maybe subdivided into 6 equal plots and register in the name of each beneficiary in the alternative the beneficiaries can register a company upon agreeing who shall be the directors and have the two properties registered in the name of the said company in order to preserve the property for their benefit. This being a family matter each party to bear its own cost. It is so ordered.

Dated, signed and delivered this **2<sup>nd</sup>** Day of **October** 2015

**R. E. OUGO**

**JUDGE**

**In the presence of:**

.....**For the Applicants**

.....**For the Respondents**

**Charity Court clerk**