



**REPUBLIC OF KENYA**

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

**PROBATE AND ADMINISTRATION DIVISION**

**SUCCESSION CAUSE NO. 2647 OF 1997**

**IN THE MATTER OF THE ESTATE OF JAMES WAINAINA NG'ANG'A alias WAINAINA  
NG'ANG'A (DECEASED)**

**MARY WAITHERA MARI.....APPLICANT**

**VERUS**

**FRANCIS KAHUHO WAINAINA.....RESPONDENT**

**R U L I N G**

1. The deceased to whose Estate these proceedings relate is James Wainaina Nganga alias Wainaina Nganga. He died on 21<sup>st</sup> March 1989 intestate and was survived by three widows Salome Nyambo Wainaina, Serah Wanjiku Wainaina and Salome Wanjiru Wainaina. He was also survived by eight sons, who were all adults.
2. Upon application and with the consent of all the parties concerned, letters of Administration were granted on 28<sup>th</sup> July 1996 to the three widows. The grant was confirmed on 18<sup>th</sup> October 1999 to Serah Wanjiku and Salome Wanjiru, since Salome Nyambo had passed away on 14<sup>th</sup> June 1998.
3. In the affidavit of support of the application for letters of Administration dated 24<sup>th</sup> June 1997 sworn jointly by the three widows, only two assets of the estate were disclosed. These were Dagoretti/Ruthimitu/21 and Dagoretti/Waithaka/561. No liabilities of the Estate were indicated. In the schedule of distribution attached to the certificate of confirmation of grant two other assets were included being Gilgil/Karunga Block 2 Nuthu A (37) and Gilgil/Kabonde Nuthu B (19).
4. The distribution of the Estate does not appear to have been completed, thus provoking the application dated 18<sup>th</sup> July 2014. In the said application brought by way of Notice of Motion under **Rules 63 and 73 Probate and Administration Rules**, the Applicant Mary Waitthera Marii seeks orders that:
  1. The Land Registrar, Nairobi Land Registry be restrained from registering any dealings whatsoever in respect of L.R. No. Dagoretti/Ruthimitu/21 until this motion is heard and determined.
  2. Mary Waitthera Marii and Denham Thiongo Wainaina be appointed as administrators in place of Serah Wanjiku and Salome Wanjiru who are both deceased.
  3. Mary Waitthera Marii be appointed as the representative of the family of Njoroge Nyambura (with

their consent) while Denham Thiongo Wainaina is appointed representative of the house of Serah Wanjiku (with the consent of the widow of his deceased brother, Peter Kimani Wainaina known as Elizabeth Nyambura Kimani) from the house of Salome Wanjiru.

4. The family of Njoroge Nyambura be included in the list of names forwarded to the Land Registrar, Nairobi for registration and transfer of the land aforesaid in total 3.3 acres, while 4.2 acres be registered for the family of James Wainaina Nganga as follows: The family of Serah Wanjiku Wainaina 2.1 acres and the family of Salome Wanjiru Wainaina 2.1 acres.
5. In her supporting affidavit dated 18<sup>th</sup> July 2014, the Applicant deponed that she is the daughter of Njoroge Nyambura (deceased) who had three wives namely:
  1. Jane Njoki (senior) - first wife
  2. Unice Nyambura - second wife
  3. Jane Njoki - third wife

That the deceased, James Wainanina Ng'ang'a also had three wives namely:

1. Salome Nyambo) - first wife
2. Serah Wanjiku - second wife
3. Salome Wanjiru - third wife

That on confirmation of the grant in respect of the Estate of the deceased it was held that L.R. Dagoretti/Ruthimitu/21, registered in his name, was to be shared between his two houses and the three houses of Njoroge Nyambura as follows:

- i. Serah Wanjiku Wainaina - 2.1 acres
- ii. Salome Wanjiru Wainaina - 2.1 acres
- iii. Jane Njoki Njoroge - 1.1 acres
- iv. Unice Nyambura Njoroge - 1.1 acres
- v. Jane Njoki Njoroge - 1.1 acres

6. The Applicant further averred that the family of James Wainaina would, therefore, have 4.2 acres of the land while that of Njoroge Nyambura would get 3.3 acres of the land. That the widows of James Wainaina who have since died were appointed the administrators, while the family of Njoroge Nyambura was not represented. That there has never been substitution despite various applications and the family of Njoroge Nyambura has agreed that the Applicant be appointed a co-administrator of the Estate of the deceased.
7. The Applicant further avers that the family of Njoroge Nyambura and that of the second widow, Serah Wanjiku Wainaina have also agreed that Denham Thiongo Wainaina should represent Serah Wanjiku's house and thus be appointed a co-administrator of the deceased's Estate. She avers that the widow of his brother Peter Kimani Wainaina consented and swore an affidavit in support, further that the family of the deceased forwarded the names of the beneficiaries of the land, to the Land Registrar omitting the names of the three houses of Njoroge Nyambura.
8. The Applicant prays that the names of the dead administrators be deleted and the orders sought be granted, since the names of the beneficiaries are already before the Land Registrar awaiting the signature of one of James Wainaina's family members and that Njoroge's family will be disinherited.
9. The Respondent swore a Replying affidavit dated 2<sup>nd</sup> September 2014 in opposition and averred that he is the eldest surviving son of the deceased James Wainaina Nganga from the 3<sup>rd</sup> house of the late Salome Wanjiru Wainaina and the representative of her house. He also averred that he and other beneficiaries have no objection to Denham Thiongo Wainaina from the 2<sup>nd</sup> house, being

appointed as an administrator as far as the replacement of the deceased administrators is concerned. They however, have reservations and are opposed to the appointment of Mary Waithera Marii being appointed as an administrator of the deceased's Estate as prayed, since the family of Njoroge Nyambura was not related to the deceased and she is therefore a stranger to the deceased's family.

10. The Respondent averred that the information he gathered from his parents was that the parcel of land known as Dagoretti/Ruthimitu/21 was owned by his deceased father exclusively and the late Njoroge Nyambura did not have any rights over it. The Respondent deposed that he conducted an official search and ascertained that the parcel of land is registered in the sole name of his deceased father. That when the grant was confirmed on 18<sup>th</sup> October, 1999 to the 2<sup>nd</sup> and 3<sup>rd</sup> wives of the deceased and the family of Njoroge Nyambura were allocated 3.3 acres of land parcel Dagoretti/Ruthimitu/21, he was not a party to the proceedings and it is not clear how Njoroge's family was involved in the deceased's Estate.

11. The Respondent further averred that it is also clear as per the exhibits attached to the Applicant's affidavit that the certificate of confirmation of grant was subsequently rectified and the distribution to the family of Njoroge excluded on 12<sup>th</sup> October, 2004 and 23<sup>rd</sup> October, 2007 respectively. That the deceased family is a stranger to any previous applications for substitution of administrators since they were never served with or approached to give consents. That the Respondent's stepbrother Denham Thiongo Wainaina is acting in collusion with Njoroge's family to dispose of the Estate of the deceased and especially the 3.3 acres in which they have interest and it is not true that names of the beneficiaries have been taken to the Land Registrar.

12. The Respondent maintained that the family of the 3<sup>rd</sup> wife has no objection to the distribution of the Estate in as far as land parcels Dagoretti/Ruthimitu/561, Gilgil/Karunga Block 2 Nuthu A(37) and Gilgil/Kibonde Nuthu B(9) are concerned, but they are opposed to the mode of distribution of parcel Dagoretti/Ruthimitu/21 and especially the 3.3 acres said to be given to Njoroge's family. He therefore prays that the parcel of land should be shared equally amongst the two houses of Serah Wanjiku Wainaina and Salome Wanjiru Wainaina. The Respondent also pointed out that the widow of his late brother Joseph Kimani Wainaina is also entitled to a share in equality and that she should be appointed as a beneficiary in place of her late husband. That his brother Philip Nganga Wainaina (deceased) was not married and did not have a child.

13. I have perused the pleadings and note that the distribution schedule annexed to the certificate of confirmation of grant, is titled **"Distribution of L.R. No. Dagoretti/Ruthimitu/21** between the families of the late James Wainaina Ng'ang'a and the late Njoroge Nyambura (deceased)." The distribution schedule in the certificate of confirmation of grants is as follows:

**"1. (a) 1<sup>st</sup> Widow – Salome Nyambo Wainaina(deceased) Joseph Njau Wainaina to share 1 acre at Dagoretti/Waithaka/561**

**(b) 2<sup>nd</sup> Widow – Sera Wanjiku Wainaina (Alive) Peter Kimani Wainaina and Denham Thiongo to share 2.1 acres at Dagoretti/Ruthimitu Plot No. 21.**

**(c) 3<sup>rd</sup> Widow – Salome Wanjiru Wainaina (alive)**

**Joseph Kimani Wainaina**

**Francis Kahuho Wainaina**

**Philip Ng'ang'a Wainaina to share 2.1 acres at**

**Henry Mukuria Wainaina Dagoretti/Ruthimitu**

**Peter Mungai Wainaina Plot No. 21**

**GILGIL/KARUNGA BLOCK 2 NUTHU A (37)**

**James Wainaina Ng'ang'a (deceased)**

1. (a) 1<sup>st</sup> widow – Salome Nyambo Wainaina – (Deceased)

**Joseph Njau Wainaina to share 1.635 H.A**

2. (b) 2<sup>nd</sup> widow – Serah Wanjiku Wainaina (Alive)

**Peter Kimani Wainaina and Denham Thiongo Wainaina to share 1.635 HA  
GILGIL/KIBONDE NUTHU B(19)**

3. (c) 3<sup>rd</sup> widow – Salome Wanjiru Wainaina (Alive)

**Joseph Kimani Wainaina**

**Francis Kahuho Wainaina**

**Phillip Ng'ang'a Wainaina to share 6**

**Henry Mukuria Wainaina acres**

**Peter Mungai Wainaina**

**For the family of Njoroge Nyambura (Deceased)**

1. (a) 1<sup>st</sup> widow Jane Njoki Njoroge (Deceased) Njenga Njoroge Hunja Njoroge to share 1.1 Acres at Dagoretti/Ruthimitu/21
2. (b) 2<sup>nd</sup> widow – Eunice Nyambura Njoroge (Alive) Mbugua Njoroge Peter Ngugi Njoroge to share 1.1 Acres at Dagoretti/Ruthimitu/21
- (c) 3<sup>rd</sup> widow – Jane Njoki (deceased) Grace Watu Njoroge to share 1.1 acres at Dagoretti/Ruthimitu/21”

14. The distribution schedule therefore distributes the entire Estate to the family of James Wainaina Ng'ang'a in the main, and awards 1.1 acres out of Dagoretti/Ruthimitu/21 to each of the three houses of Njoroge Nyambura. The total acreage of land to which the family of Njoroge Nyambura is entitled therefore is 3.3 acres. This document forms an agreement which was entered into by the two surviving Administrators of the Estate herein and the son of the first widow who was already deceased on the one hand and the two widows of Njoroge Nyambura and the son of his third widow who was deceased on the other hand. It was executed before the District Officer, Western Division of Dagoretti and the Assistant Chief Uthiru Ruthimitu. The subsequent applications for rectifications done in the certificate of confirmation were made by persons who had not been appointed as administrators and without the consent of other beneficiaries.

15. That being the backdrop of this application it appears that the only outstanding matter in order for the distribution of the Estate to proceed in an orderly manner, is that of the appointment of an administrator or administrators in the Estate in this cause. It is my considered view first, that Mary Waithera Marii cannot purport to administer the Estate of James Wainaina Nganga as she lacks the locus standi to do so. Second that the property in issue is **Dagoretti/Ruthimitu/21** and it does not appear to touch on the first house of the deceased. It only concerns the 2<sup>nd</sup> and 3<sup>rd</sup>

houses, and the family of Njoroge Nyambura who appear to be interested parties.

16. The widow of Peter Kimani Wainaina from the 2<sup>nd</sup> house and the Respondent who comes from the 3<sup>rd</sup> house have consented to the appointment of Denham Thiongo Wainaina from the 2<sup>nd</sup> house to substitute the two widows as the administrator of the Estate. The court therefore, hereby appoints Denham Thiongo Wainaina, as administrator of the Estate of James Nganga Wainaina, to conclude the distribution of the remainder of the Estate.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this 7<sup>th</sup> day of **October 2015**.

**L. A. ACHODE**

**JUDGE**