



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO 3561 OF 2003**

**IN THE MATTER OF THE ESTATE OF NAHASHON KIHARA WAWERU (DECEASED)**

**JOEL WAWERU**  
**KIHARA**

**PAULINE NJERI**  
**KIHARA**

**ALICE WAMBUI**  
**KIHARA.....ADMINISTRATORS**

**VERSUS**

**AND**

**LYDIA WANJIKU**  
**NJOROGE.....APPLICANT/OBJECTOR/PROTESTOR**

**JUDGMENT**

**PLEADINGS**

By an application of summons for confirmation of grant the Applicants JOEL WAWERU KIHARA, PAULINE NJERI KIHARA and ALICE WAMBUI KIHARA administrators of the deceased's estate sought confirmation of the grant issued on 26<sup>th</sup> April, 2004.

The application consists in paragraph 2 of the supporting affidavit the beneficiaries, children of the deceased and the remaining widow of the deceased. It also has the list of assets paragraph 4 (a) (b) of the affidavit that comprises of the estate of the deceased. There is proposed mode of distribution outlined in paragraph 4(c) of the affidavit.

On 4<sup>th</sup> November, 2010 the Applicant/Protector LYDIA WANJIRU NJOROGE one of the beneficiaries

objected to the confirmation of the grant application. The Applicant brought the summons for revocation and annulment of the grant under **Rule 44(1) of Probate and Administrator Rules and Section 76 of Law of Succession Act Cap 160**. The Applicant/Protestor relied on the following grounds;

- a. The grant became useless and inoperative after the death of one of the administrators JOEL WAWERU KIHARA in October, 2010.
- b. The grant was obtained fraudulently by fraudulent statement or by concealment of material facts. The administrators did not disclose all the beneficiaries of the estate and did not consult and obtain consents from all beneficiaries.
- c. The administrators have intermeddled with the estate and taken undue advantage over others.

## **HEARING**

On 6<sup>th</sup> July, 2015 the Petitioner/administrator ALICE WAMBUI KIHARA relying on the Further Affidavit filed on 7<sup>TH</sup> August, 2014 and the attached mode of distribution in line with affidavit in support to the summons for confirmation application stated as follows;

- a. There were shares that had been left out in the list of assets in the affidavit in support to the application for confirmation of grant;
  - i. 400 shares – Express Kenya Limited
  - ii. 5,330 shares – Kenya Commercial Bank which she proposed to be held by the widow of the deceased, PAULINE NJERI KIHARA (2<sup>nd</sup> administrator)
- b. Harambee Estate House No. HL9 is where the Petitioner lives in. She helped the deceased pay off the monthly mortgage repayments to HFCK until 1997 when she got the title over the house.
- c. She developed and refurbished the house and put up a permanent fence and repaired the roof tiles and painted the house at her own cost.
- d. The administrator has resided in the house with her 18 year old daughter. She is not employed and has nowhere to go. She cannot share the house with the Protestor as she was left the house by their late father and she paid his medical bills. She ought to have the house exclusively.
- e. The Petitioner/Administrator attached to the Further Affidavit the mode of distribution and proposed as follows;
  - i. L. R. NO. LOC. 3 Mukuria/447- 1.90 hectares for Pauline Njeri (widow) and 5 children
  - ii. L. R. NO. LOC. 3 Gichagini /114 – 2.63 hectares for Mary Wanjiru Mwangi (widow) of administrator Joel Waweru Kihara and 5 children
  - iii. L. R. NO. LOC. 3 Githumu/344 – 5.58 hectares to be held in equal shares by the children of the deceased by the 1<sup>st</sup> wife (deceased)

- |                          |   |                                  |
|--------------------------|---|----------------------------------|
| 1. Pauline Njeri Kihara  | - | 0.93(2 <sup>nd</sup> wife/widow) |
| 2. Peris Wandia Masuku   | - | 0.93                             |
| 3. David Wainaina Kihara | - | 0.93                             |
| 4. Lydia Wanjiku Njoroge | - | 0.93                             |
| 5. Alice Wambui Kihara   | - | 0.93                             |

Children of late Jane Wangui – Peris Wandia Wangui

John Kihara Wangui

Joy Wanjiku 0.93

Monica Waithera

- f. L. R. NO. LOC. 3 Githumu/565/18- Githumu Market held by the widow Pauline Njeri Kihara for

herself and 5 children  
g. L. R. NO. LOC 3 Mukuria/554/14 – David Wainaina – ½ share

Children of Jane Wangui Kihara – Peris Wandia Wangui

John Kihara Wangui ½ share

Joy Wanjiku

Monica Waithera

h. L. R. NO. Nairobi/Block 62/687 – to be held by Mary Wanjiku Mwangi widow of Joel Waweru Kihara and 5 children

i. L. R. NO. 209/7196/149 – Alice Wambui Kihara – Absolutely

Pauline Njeri Kihara 2<sup>nd</sup> wife and widow of the deceased filed further affidavit on 7<sup>th</sup> August 2014 and she supported the distribution of the petition by Alice Wambui and accepted proportion of the deceased's estate allocated for her and her children.

The Protestor by a Further Affidavit filed on 28<sup>th</sup> July, 2014 stated that the mode of distribution should be adjusted as follows;

- a. L. R. 209/7196/149 - Alice Wambui Kihara,  
Lydiah Wanjiku Njoroge Equally  
Peris Wandia Masuku
- b. The Kihara Plot - Joel Waweru Kihara family  
David Wainaina Equally  
Jane Wangui Kihara family
- c. L. R. NO. LOC 3 Gichagini/114 - Jane Waweru family  
Monicah Wangui Kihara family  
David Wainaina
- d. L. R. LOC. 3 Mukuria/447 – be distributed  
Joel Waweru family  
Wangui Kihara family  
David Wainaina

Peris Wandia Masuku filed an affidavit in support of the Protestor on 21<sup>st</sup> July, 2015.

The Court has considered the evidence on record the pleadings filed and more so both proposed modes of distribution. Taking into account all the submissions the Court proposes the following mode of distribution under **Section 71 of the Law of Succession Act Cap 160. The Court distributes the estate as follows;**

1. Express Kenya Ltd 400 shares – 1<sup>st</sup> Family held jointly and share equally. Namely;
  - a. Peris Wandia Masuku
  - b. David Wainaina Kihara
  - c. Lydia Wanjiku Njoroge
  - d. Alice Wambui Kihara
  
2. Kenya Commercial Bank 5,330 shares – 2<sup>nd</sup> Family held jointly and share equally.
  - a. Josephat Ng’ang’a Kihara
  - b. Monicah Wangui Kihara
  - c. Joel Waweru Kihara
  - d. Mary Wanjiku Kihara
  - e. Peris Wandia Kihara
  
3. LOC 3 Mukuria 447 – 1.90 hectares – 2<sup>nd</sup> Family Pauline Njeri Kihara widow plus 5 children jointly and equally. Namely;
  - a. Josephat Ng’ang’a Kihara
  - b. Monicah Wangui Kihara
  - c. Joel Waweru Kihara
  - d. Mary Wanjiku Kihara
  - e. Peris Wandia Kihara
  
4. L. R. LOC 3 Gichagini/114                      - Joel Waweru Kihara (deceased) family Mary Wanjiku plus 6 children. Namely;
  - a. Catherine Njeri Mwangi
  - b. Emmah Wambui Waweru
  - c. Caroline Waithira Waweru
  - d. Patrick Kihara Waweru
  - e. Michael Mwangi Waweru
  - f. Susan Wangui Waweru
  
5. L. R. NO. LOC Githumu/344 – Peris Wandia Masuku      – 0.93
 

David Wainaina Kihara      – 0.93

Lydia Wanjiku Njoroge      – 0.93

Pauline Njeri Kihara        - 0.93

Alice Wambui Kihara

Lydia Wanjiku Njoroge      - 0.93

Peris Wandia Masuku

Children of Jane Wangui                      – Peris Wandia Wangui

John Kihara Wangui                      - 0.93

Joy Wanjiku

Monica Waithera

6. L. R. NO. LOC 3 Githumu/565/18 Githumu Market – 2<sup>nd</sup> family jointly & equally

- a. Josephat Ng'ang'a Kihara
- b. Monicah Wangui Kihara
- c. Joel Waweru Kihara
- d. Mary Wanjiku Kihara
- e. Peris Wandia Kihara

7. L. R. LOC. 3 Mukuria/554/14 – Wainaina ½ share

Jane Wangui's family jointly and equally – Peris Wandia Wangui

John Kihara Wangui ½ share

Joy Wanjiku

Monicah Waithera

8. L. R. NO. Nairobi/Block 62/687

Kihara house – held by Mary Wanjiku Mwangi plus 6 children

- a. Catherine Njeri Mwangi
- b. Emmah Wambui Waweru
- c. Caroline Waithira Waweru
- d. Patrick Kihara Waweru
- e. Michael Mwangi Waweru
- f. Susan Wangui Waweru

9. L. R. NO. 209/7196/149 – Alice Wambui Kihara- Absolutely

**NOTE:** Pauline Njeri Kihara 2<sup>nd</sup> wife of the deceased has other properties. Proceeds from bank accounts of the deceased and Thika houses, Githunguri and the above mentioned properties for her and her children

The 2<sup>nd</sup> widow will forfeit 400 share of Express Kenya Ltd to the first family.

She will also forfeit part of 0.93 ha of LOC 3 Githumu/344 and share with Alice Wambui Kihara.

Alice Wambui Kihara will forfeit her 0.93 of LOC 3 Githumu/344 share to be shared by Lydiah Wanjiku Njoroge and Peris Wandia Masuku to compensate them their share in the home L. R. NO. 209/7196/149 which is to be held and occupied by Alice Wambui Kihara exclusively. She has lived through with her child, she looked after her father and paid medical bills and she renovated the house with her cost and paid the mortgage payments. This evidence was not controverted by the Objector. The Objector is married and Peris Wandia Masuku lives out of the country. They cannot share the house with Alice Kihara.

### **FINAL ORDERS**

1. **The Application for summons for confirmation of grant of 11<sup>th</sup> June, 2007 and summons for revocation/annulment application of 4<sup>th</sup> November, 2010 are both confirmed in terms of the mode of distribution outlined by the Court in the ruling of the Court.**
2. **The Court confirms the grant of 26<sup>th</sup> April, 2004 in terms of mode of distribution indicated above under Section 71 of the Law of Succession Act Cap 160.**
3. **There will be no costs of the Court.**

4. Any party is at liberty to apply.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 1<sup>ST</sup> DAY OF DECEMBER, 2015

M. W. MUIGAI

JUDGE