



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 284 OF 2012**

**IN THE MATTER OF THE ESTATE OF LEAH WANJIRU WAWERU (DECEASED)**

**RULING**

1. The application dated 5<sup>th</sup> February 2013 is for confirmation of the grant made on 18<sup>th</sup> June 2012.
2. The deceased, Leah Wanjiru Waweru, died on 4<sup>th</sup> December 2008. A letter from the Chief of Kawangware Location, Nairobi, shows that the deceased was survived by six (6) children, namely – Lucy Njeri Kamau, Elizabeth Muthoni Kamau, Ann Nyambura Gichuhi, Daniel Waweru Gichuhi, Felister Nyokabi Waweru and Raphael Karuga Gichuki. She is expressed to have died possessed of two assets, being Dagoretti/Riruta/5368 and Plot No. 581/Mwihoko Housing Company Limited.
3. The petition for grant was at the instance of three (3) of the children: Daniel Waweru, Lucy Njeri and Elizabeth Muthoni. The other three (3) children – Ann Nyambura, Felister Nyokabi and Raphael Karuga – executed papers consenting to the making of the grant to the three (3) petitioners.
4. The administrators propose in their application dated 5<sup>th</sup> February 2013 to have the two (2) assets registered in their names in their capacity as administrators to hold in trust for themselves and for their three (3) siblings – Ann Nyambura, Felister Nyokabi and Raphael Karuga. The affidavit in support is sworn by all the administrators.
5. There is a further affidavit sworn on 7<sup>th</sup> June 2013 by one administrator, Lucy Njeri. The further affidavit proposes to vary the distribution proposed in the joint administrators affidavit of 5<sup>th</sup> February 2013. The applicant proposes that Dagoretti/Riruta/5368 be divided equally among all the six (6) children of the deceased in accord with the chart marked as annexure LNK-2. She proposes that Ruiru/Kiu Block 13/617 be sold and the proceeds of sale be shared equally.
6. To this second proposal the other administrators – David Waweru and Elizabeth Muthoni – swore an affidavit of protest on 10<sup>th</sup> July 2013. They complain that they were not consulted over the proposed subdivision and that they find the proposal in the affidavit of 7<sup>th</sup> June 2013 unreasonable. They argue that the proposed distribution of Dagoretti/Riruta/5368 does not take into account that the deceased during her lifetime, had pointed out the portions that each of the children was entitled to. They have come up with their own proposed distribution in the annexure marked DW1. Regarding Plot No. 581/Mwihoko Housing Company Limited and Ruiru/Kiu Block 13/617, they say that the deceased during her lifetime had given them to Daniel Waweru and Felister Nyokabi, and that the said Felister Nyokabi had agreed to Ruiru/Kiu Block 13/617 being sold and its proceeds shared equally.
7. Felister Nyokabi swore her own affidavit on 2<sup>nd</sup> January 2014 in response to the application and the affidavits filed in the matter. She lends support to the distribution proposed in the affidavit of Lucy Njeri

of 7<sup>th</sup> June 2013. She denies that their deceased mother had pointed out portions of the estate to any of the children as alleged in the affidavit of 10<sup>th</sup> July 2013 and denies having been party to the alleged “pointing out”. She proposes that the estate be divided equally among all the children. She states that the deceased did not leave a will. She also states that she was not given Ruiru/Kiu Block 13/617 by her mother during lifetime as alleged, neither was Plot No. 581 Mwihoko given to Daniel Waweru.

8. Raphael Karuga swore an affidavit on 28<sup>th</sup> January 2014. He denounces the consent to the distribution proposed in the summons herein. He states that he was never consulted and did not sign the consent. On the affidavit of 7<sup>th</sup> June 2013, he states that the distribution proposed in that affidavit does not take into account the developments on the ground. He says that the deceased did point out certain portions on the ground to the children, and he says he was present when that happened. The rest of the affidavit of 28<sup>th</sup> January 2014 is word for word that of 10<sup>th</sup> July 2013 by Daniel Waweru and Elizabeth Muthoni.

9. I directed on 31<sup>st</sup> March 2014 that the application dated 5<sup>th</sup> February 2013 be disposed of by way of written submissions. The 2<sup>nd</sup> administrator filed her submissions on 28<sup>th</sup> March 2014 while the other administrators filed theirs on 31<sup>st</sup> March 2014. Both sides have in the written submissions articulated their respective positions.

10. To my mind the principal contention in this matter is whether the deceased had apportioned portions of Dagoretti/Riruta/5363 to the children and whether the children proceeded to develop the portions by putting up permanent structures on the ground. The proposals by the 1<sup>st</sup> and 3<sup>rd</sup> administrators have taken into account the said developments, while the proposal by the 2<sup>nd</sup> administrator is said to have ignored those developments on the ground. I note that the 2<sup>nd</sup> administrator and Felister Nyokabi Waweru have not contested that there are permanent developments on the ground, although they deny the alleged lifetime apportionments. I am therefore inclined to accept that there are permanent structures on the ground which are associated with particular heirs. I am persuaded that the said developments were done with the concurrence of the deceased and distribution of the estate should therefore take them into account.

11. The record discloses that the deceased died possessed of three assets being – Dagoretti/Riruta/5363, Ruiru/Kiu Block 13/617 and Plot No. 581/Mwihoko Housing Company Limited. The 1<sup>st</sup> and 3<sup>rd</sup> administrators propose distribution of only one asset – Dagoretti/Riruta/5363: they say that the other two were gifted *inter vivos*. The 2<sup>nd</sup> administrator proposes the distribution of Dagoretti/Riruta/5363 and Ruiru/Kiu Block 13/617, she is silent on the fate of Plot No. 581/Mwihoko.

12. The 1<sup>st</sup> and 3<sup>rd</sup> administrators’ case is that Ruiru/Kiu Block 13/617 was gifted to Felister Nyokabi during the deceased’s lifetime, while Plot No. 581/Mwihoko was gifted to Daniel Waweru. This is confirmed by Raphael Karuga. Felister Nyokabi denies that the said property was ever gifted to her and denies that Plot No. 581/Mwihoko was ever given to Daniel Waweru. On her part the 2<sup>nd</sup> administrator is silent on the *intervivos* gifts.

13. I have weighed the material before me and I am inclined to accept the evidence by the 1<sup>st</sup> and 3<sup>rd</sup> administrators and Raphael Karuga. I find that Ruiru/Kiu Block 13/617 was gifted to Felister Nyokabi and Plot No. 581/Mwihoko to Daniel Waweru. It would appear that Felister Nyokabi has renounced the gift, and the 2<sup>nd</sup> administrator appears to have acknowledged that fact and taken it into account in her proposals.

14. I do hereby confirm the grant made on 18<sup>th</sup> June 2012 to Daniel Waweru Gichuhi, Lucy Njeri Kamau and Elizabeth Muthoni Kamau in the following terms:-

(a) that Dagoretti/Riruta/5363 shall devolve equally to all the six children of the deceased as per the drawings in the annexure marked DW1 in paragraph 7 of the affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> administrators sworn on 10<sup>th</sup> July 2013;

(b) that Plot No. 581/Mwihoko Housing Company Limited shall devolve wholly upon Daniel Waweru Gichuhi; and

(c) that Ruiru/Kiu Block 13/617 shall devolve wholly upon Felister Nyokabi Waweru.

15. Costs shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>rd</sup> DAY OF October 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mrs Kiarie advocate for the 1<sup>st</sup> & 3<sup>rd</sup> administrators**