



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO.1627 OF 2009**

**IN THE MATTER OF THE ESTATE OF MARY WANGARI KAMUYU (DECEASED)**

**LUCY WANJIRU KAMUYU.....1<sup>ST</sup> APPLICANT**

**MONICA WANJIKU KAMUYU.....2<sup>ND</sup> APPLICANT**

**JANE WAMBUI KAMUYU.....3<sup>RD</sup> APPLICANT**

**MARGARET NJAMBI KAMUYU.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**SIMON NJUGUNA KAMUYU.....RESPONDENT**

**JUDGMENT**

Mary Wangari Kamuyu, the deceased to whose estate these proceedings relate died on 26<sup>th</sup> June 2002. The Respondent petitioned the court to be issued with a grant of letters of administration intestate. He listed the dependants of the deceased as: Simon Njuguna Kamuyu, Margaret Njambi Kamuyu, Jane Wambui Kamuyu, Lucy Wanjiru Kamuyu and Monicah Wanjiku Kamuyu. A dispute has arisen in regard to how the properties that comprise the estate of the deceased are to be distributed to the beneficiaries. The deceased was alleged to have written a Will distributing her estate to the beneficiaries. However, both the Applicants and the Respondent agreed by consent for the court to distribute the said estate to the dependants. This court, on several occasions encouraged the parties herein to amicably resolve the issue of distribution. Unfortunately, the parties were unable to agree. This court directed the parties to file their proposals on how the properties that comprise the estate of the deceased should be distributed. The Applicants filed their proposal essentially indicating that the properties that comprise the estate of the deceased, save for one property which had been sold, should be distributed equally among the five (5) beneficiaries. On his part, the Respondent also filed his proposal suggesting that the properties should be divided, firstly, in accordance with the wishes of the deceased before her death (it was his case that the deceased had given certain properties to him as gifts during her lifetime) and secondly in accordance with his proposal. In essence, the Respondent's proposal skews the distribution in his favour. This is most probably due to the fact that the Respondent considers himself the only son of the deceased.

Having evaluated the two proposals, the issue for determination by this court is which of the two proposals the court should adopt in the distribution of the estate of the deceased. First things first. There is consensus between the Applicants and the Respondent regarding how certain properties shall be distributed. Both the Applicants and the Respondent are in agreement that the deceased disposed of a

property registered as LR. No. Dagoretti/Riruta/5053 to one John Kingatua. That property shall be inherited by the said John Kingatua. As regard funds in Barclays Bank of Kenya Limited Account No. **[Particulars withheld]** Lavington Branch Nairobi, the same shall be distributed equally between the five beneficiaries. Similarly too, the shares in Thome Farmers (Certificate No. **[Particulars withheld]**) shall be liquidated and the proceeds therefrom distributed equally to the five beneficiaries.

It was evident from the proposal made by the Respondent that the parcel of land formerly registered as LR. No. Dagoretti/Riruta/4367 was subdivided by the deceased prior to her death. This court saw the application that was made by the deceased to the Land Control Board have the said parcel of land subdivided. The consent was duly granted. The subdivided parcels of land are: LR. Nos. Dagoretti/Riruta/5054, Dagoretti/Riruta/5055, Dagoretti/Riruta/5056 and Dagoretti/Riruta/5057. As stated earlier in this Judgment, the parcel of land registered as LR. No. Dagoretti/Riruta/5053 was sold by the deceased to one John Kingatua. The Applicants propose that the four (4) subdivided portions of land be inherited equally between the five (5) beneficiaries. On his part, the Respondent stated that the deceased had given to him as gifts LR. No. Dagoretti/Riruta/5054 and LR. No. Dagoretti/Riruta/5055. In that regard, the Respondent relied on **Section 31** of the **Law of Succession Act** in support of his proposal. He proposed that LR. No. Dagoretti/Riruta/5055 be inherited jointly by Margaret Njambi, Jane Wambui, Lucy Wanjiru and Damaris Wanjiku. He suggests that LR. No. Dagoretti/Riruta/5056 be inherited by the deceased herself and Jane Wambui. It was his suggestion that this parcel of land, because it contains the homestead where the deceased lived, should remain as family property which should be available for use by all the beneficiaries. Having evaluated the evidence in that regard, this court was not persuaded by the argument put forward by the Respondent that the deceased had given him the two portions of land at Riruta as gifts in contemplation of death. If that was the case, nothing would have been easier than for the deceased to transfer the two parcels of land to the Respondent during her lifetime. The fact that the deceased did not transfer the two parcels of land to the Respondent meant that she recognized that the said parcels of land should be equitably distributed among her dependants.

This court will therefore distribute the properties that comprise the estate of the deceased in so far as possible in accordance with **Section 38** of the **Law of Succession Act** that requires this court to distribute the said estate equally to the dependants. This court shall therefore distribute the said portion of the estate of the deceased as follows:

- I. LR. No. Dagoretti/Riruta/5054 – Simon Njuguna
- II. LR. No. Dagoretti/Riruta/5055 – Margaret Njambi and Lucy Wanjiru
- III. LR. No. Dagoretti/Riruta/5056 – Jane Wambui and Damaris Wanjiku
- IV. LR. No. Dagoretti/Riruta/5057 – Simon Njuguna

As regard Plot No.202D New Roysambu Housing Company Phase II, the same shall be inherited jointly by Margaret Njambi, Lucy Wanjiru, Jane Wambui and Damaris Wanjiku. The parties are at liberty to obtain certificate of confirmation of grant on the basis of this decision. There shall be no orders as to costs as this is a family dispute. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2014**

**L. KIMARU**

**JUDGE**