



**REPUBLIC OF KENYA**

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

**Succ Cause No: 669 Of 2006**

**IN THE MATTER OF THE ESTATE OF WILFRED KAMAU ITUGI – (DECEASED)**

**RULING**

The deceased, Wilfred Kamau Itugi, was a polygamist. He was survived by his two widows and their children. He died on 19th July 1999, and representation to his estate was on 29th April 2008 granted to his sons, Joseph Itugi Kamau and Peter Ng'ang'a Kamau, each representing their respective mother's house.

The joint administrators filed an application on 12th November 2009, dated 30th October 2009, asking that the grant made to them on 29th April 2008 be confirmed.

In their joint affidavit sworn on an unknown date, the administrators identified the survivors of the deceased as -

(a) widows – (i) Mary Njeri Kamau

(ii) Magdalina Watiri Kamau

(b) Children

(i) sons – (a) Joseph Itugi Kamau

(b) Peter Ng'ang'a Kamau

(c) Isaac Njenga Kamau

(d) Michael Mungai Kamau

(e) Samuel Waweru Kamau

(f) Gilbert Mucheru Kamau

(g) Patrick Mwangi Kamau

ii. Daughters

- (a) Margaret Wangari Kamau
- (b) Jacinta Njeri
- (c) Sofia Nyambura
- (d) Phylis Wangui

The assets that were to be distributed were identified as:-

- (a) Ng'enda/Nyamang'ara/475
- (b) Alli Juja A/C No. 7290 A386B.
- (c) ARM A/C No. 4092
- (d) TPS A/C No. D11647
- (e) Ng'enda New Farmers Co. No. 2013
- (f) HFCK A/C No: 74808
- (g) Ng'enda N.F.Co. 'B' No. 2068
- (h) Cooperative Bank Shares A/C No. 57504
- (I) Firestone A/C No. 15902
- (j) Gilgil/Karuga Block 5/181 Mukinyi -1.0570ha
- (k) Makuyu/Kariaini Block 11/1252 -0.1137ha
- (l) Kenya Airways Shares A/C No.0093019

The proposed distribution favoured only six of the thirteen survivors of the deceased. Those proposed to benefit from the estate are the two widows – Mary Njeri Kamau and Magdalina Watiri, three sons – Joseph Itugi Kamau, Gilbert Mucheru Kamau and Peter Ng'ang'a Kamau and one daughter – Margaret Wangui Kamau no explanation has been offered as to why this should be so.

It was proposed that the estate be distributed as follows:-

1. Landed property.

- (a) Ngenda/Nyamangara/475 -2.08 ha
  - To Joseph Itugi Kamau - 0.46ha
  - To Gilbert Mucheru Kamau - 0.815ha
  - To Magdaline Watiri - 0.815ha
- (b) Gilgil/Karuga block 5/181 – 1.0570ha

To Peter Ng'ang'a Kamau

(c) Makuyu/Kariani Block 11/1282 - 0.1137ha

To Mary Njeri Kamau

To Margaret Wangui Kamau

## 2. Shares

(a) To Mary Njeri Kamau

(i) Mary Njeri Kamau

(ii) ALLI JJuja A/C No: 4092

(iii) ARM A/C No. 011647

(iv) Ng'enda NFCO. A/C No. 2013

(b) To Magdalina Watiri Kamau

(i) HFCK A/C No. 74808

(ii) Ngenda NFCO A/C No. 'B' 2068

(iii) Cooperative Bank Shares A/c No: No. 57504

(iv) Firestone A/C No. 15902

c. To Joseph Itugi Kamau

(i) Kenya Airways shares A/C No. 0093019

It would appear that the administrators disagreed on the mode of distribution. This is evident from the further affidavit sworn by Joseph Itugi Kamau on 11th May, filed in court on 22nd May 2012. He swore in it that all the beneficiaries have consented to the mode of distribution in the application dated 30th October 2009, but his co-administrator, Peter Ng'ang'a had frustrated the exercise. He argued the court to confirm the distribution as proposed so that administration could be completed.

The other administrator reacted to this by filing his own affidavit sworn on 9th May 2013. In this affidavit he grouped the survivors of the deceased according to the two houses as follows:-

(1) The house of Magdalina Watiri: nine (9) members namely:

(a) Magdalina Watiri Kamau

(b) Peter Ng'ang'a Kamau

(c) Isaac Njenga Kamau

(d) Samuel Waweru Kamau (Deceased)

- (e) David Njoroge Kamau
- (f) Patrick Mwangi Kamau
- (g) Sofia Nyambura
- (h) Phillis Wangui married
- (i) Jacinta Njeri

(2) The house of Mary Njeri Kamau: eight (8) members namely:

- (a) Mary Njeri Kamau
- (b) Joseph Itugi Kamau
- (c) John Njuguna Kamau
- (d) Michael Mungai Kamau
- (e) Herman Ng'ang'a Kamau
- (f) Paul Gathira Kamau
- (g) Gilbert Mucheru Kamau
- (h) Margaret Wangui Kamau

He then came up with an alternative mode of distribution. He proposed that the assets be split up as follows:-

(1) Ng'enda/Nyamang'ara/475

- (a) Magdalina Watiri Kamau – 2.65 acres (0.837ha)
- (b) Mary Njeri Kamau            -2.65 acres (0.837ha)
- (c) Joseph Itugi Kamau        -2.65 acres (0.405ha)

(2) House of Magdalina Watiri Kamau

- (a) HFCK Shares A/C No. 74808
- (b) Ng'enda New Farmers (B) Account No. 2068
- (c) TPS Account No. 011647
- (d) Cooperative Bank A/C No. 57504
- (e) Kenya Airways A/C No. 0093019
- (f) Witeithie Plot No. 75.

(3) House of Mary Njeri Kamau

- (a) ARM A/C No. 4092

(b) Ngenda New Farmers Co. A/C No. 2013

(c) Firestone A/C No: 15902

(d) Athi Juja A/C. No. 7290

(e) Makuyu/Kariaini Block 11/1252

(f) Mau Mau shares

It emerges from the affidavit of Peter Ng'ang'a Kamau that the summons of confirmation of grant dated 30th October 2009 has not made a full disclosure of all the survivors of the deceased and of the assets. The names of the following four sons were omitted – David Njoroge Kamau, John Njuguna Kamau, Herman Ng'ang'a Kamau and Paul Gathua Kamau. I note that the names of these four appear in the petitions filed in the two consolidated causes. The two assets omitted are the Witeithie Plot No. 75 and the Mau Mau shares.

The deceased died on 19th July 1999. The Law of Succession Act came into force on 1st July 1981. His estate therefore falls for distribution in accordance with the provisions of the Law of Succession Act. He died intestate, consequently distribution shall follow Part V of the Law of Succession Act. The relevant provision is **Section 40** thereof, which provides for the distribution of the estate of a polygamist, such as the deceased. **Section 40** says:-

***“(1)Where an intestate has married more than once under any systems of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.***

**2. *The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in Sections 35 to 38”.***

The deceased had two wives, and therefore in the language of **Section 40** he had two houses. Each house represents a widow and her children. I take it Mary Njeri was the first widow which Magdaline Watiri was the second widow. The first house, of Mary Njeri, has seven (7) children in addition to the widow, it comprises of eight (8) units. The second house, of Magdalina Watiri has eight children, in addition to the widow, it comprises of nine (9) units. In terms of numbers it would appear that the two houses are roughly at a ratio 50:50, on basis of approximation. That being the case the estate of the deceased should be divided equally between the two houses.

Going by the provisions of **Section 40** of the Law of Succession Act the estate of Wilfred Kamau itugi shall be shared equally between the two widows.

Thereafter the widows shall share out the assets between their children in terms of **Section 35** of the Law of Succession Act. It should be noted that children for the purposes of the Law of Succession Act includes daughters and reference to daughters will include even those who are married. There is liberty though for the said married daughters to renounce or disclaim their right to a share in the estate. The disclaimer or renunciation could be affidavit, or by a deed of

disclaimer or renunciation which is properly registered. The final orders that I

will make in this matter are:-

1. That the grant of letters of administration to the estate of Wilfred Kamau Itugi made on 29th April 2008 to Joseph Itugi Kamau and Peter Ng'ang'a Kamau is hereby confirmed.
2. That the estate of Wilfred Kamau Itugi shall be divided equally between the two widows.
3. That thereafter each widow shall distribute the assets allotted to her house in terms of **Section 35** of the Law of Succession Act.
4. That there shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 5th DAY OF July, 2013.**

**W. M. MUSYOKA**

**JUDGE**