



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Prob & Admin Cause 376 of 1983**

**IN THE MATTER OF THE ESTATE OF PETER GICHERU KAGOTHO**  
**(DECEASED)**

**RULING**

Deceased died on 29.4.79 before the law of Succession Act (Cap160) came in operative on 1.7.81.

The Grant of Letters of Administration has been given to his two widows on 25.4.91. Shields J. directed that the estate of the deceased be shared equally between Susan's home and Karen's house in accordance with the relevant customary law.

The two houses have agreed to share it estate equally and they have identified the assets which will go to each house. However there is a dispute on three assets viz:-

(a) Land title No. Ndumberi/Tinganga/339 measuring 8.24 HA or approximately 20.5 acres (according to my arithmetic.)The abstract to title shows that the land was registered in the name of the deceased on 12.6.58 but transferred into the name of Wairimu Gicheru on 11.9.59.

(b) Plot No. Ndumberi/Tinganga/T.248 measuring 0.25acres, it was registered in the name of deceased on 29.5.59 but transferred to the name of Wairimu wife of Gicheru on 8.9.59.

The name was corrected on 14.6.79 to read Susan Wairimu Gicheru.

(c) 50 cows and one bull.

Susan Wairimu the registered owner of the land and plot is deceased first wife. She claims that the two properties do not belong to the estate as they are registered in her name. But Karen Wambui the second wife, married in 1952, claims that she is entitled to half share of the two properties.

It is a common ground that the land parcel No. 339 was obtained after consolidation of different pieces of land belonging to the deceased during land consolidation. It is also a common ground that plot No. 248 was created from deceased's land No.339.

The whole of land No.339 except the unusable part is planted with coffee. Susan Wairimu testified in her evidence in cross examination inter alia, that:-

(a) Deceased planted half of the coffee, but half of the coffee was planted by her and Karen Wambui and

that coffee seedlings came from a coffee nursery that Karen Wambui was tending.

- (b) She was running deceased's shop at Tinganga while Karen Wambui was working on the land No.339 but that both were living in a big house in the land and cooking from one pot.
- (c) That coffee from the farm was being sold in the deceased's number and that deceased was collecting the proceeds of sale of coffee and giving each of them a share.
- (d) That deceased had obtained as AFC loan using land No.339 as security and that after his death both Susan and Karen sold trees on land No.339 and paid the balance of the loan.
- (e) Deceased was keeping Title Deeds for both properties and Susan collected them after death of her husband from lands office.
- (f) Deceased thereafter bought land in Limuru which had two houses and transferred both of his wives there but that after death of her husband she returned to the land No.339.
- (g) Deceased did not transfer any property to Karen Wambui in his life time.
- (h) She and Karen were working on the Limuru land but milk was being sold in the name of the deceased and deceased's alone used to get the proceeds from milk.
- (i) Deceased loved her and Karen equally.
- (j) That it is after death of their husband that Karen came to know that the land and plot were registered in the name of Susan.

I have considered both the evidence of Susan and Karen and the written submissions.

The evidence of Susan and Karen is substantially similar as to how deceased acquired land No.339 and as to how the land was utilised before deceased bought the Limuru land. The evidence shows that deceased acquired the disputed land and plot when he was already married to both Susan and Karen and that both contributed to the development of land No.339. Matrimonial home was also established in land No.339. According to Karen Wambui, deceased, Susan, herself and their children lived in land No.339 for about twenty years before deceased bought the Limuru land.

The evidence also show that after the Limuru land was bought deceased shifted his family to the Limuru land where a matrimonial home was established and both his wives worked on the land.

It is apparent that deceased in his life time did not allocate a portion of either Limuru land or land No.339 to any of his two wives. He did not also allocate a portion of either of two pieces of land to any of his two wives for exclusive use.

It is also apparent that deceased was exclusively receiving the proceeds from farming activities from both the Limuru land and land No.339.

Although land No.339 and the Plot No.T248 were registered in the name of Susan deceased utilised the land on his own. Coffee was planted in his own name. He was receiving the proceeds of coffee sales. He was keeping the title deeds. He used to charge the land as security for loans without consulting Susan. He used to give Karen proceeds of sale of coffee from the land. The coffee was his. It is apparent that before deceased died and even before deceased bought the Limuru land, there is no time that Susan exclusively used land No.339 and Plot NoT.248 as her own or exercised any right of proprietor over the land and Plot. The land and Plot belonged to Susan in paper only.

Although there is a presumption that property bought by the husband in the sole name of his wife is a gift to her such presumption can be rebutted by evidence to the contrary. The evidence in this case and the

circumstances of the case including the circumstance that deceased had two wives at the time of transfer rebut that presumption and clearly show that the intention of the deceased was that Susan should hold the two pieces of land on trust for the deceased. I hold therefore that land No.339 and Plot No.T.248 are held by Susan on trust for the deceased and therefore the two properties form part of the estate of the deceased and should be shared equally by the two wives.

As for the 50 cows, there is no certainty that Karen sold them. There is no evidence to rebut her explanation that the cattle died due to lack of water. Even if she sold the cattle, and used the money Susan has also been selling the coffee in land No.339 and using the proceeds without giving a share to Karen. In the circumstances, Susan claim that Karen should give account of the 50 cows in frivolous.

The result is that, and i order that, land title No. Ndumberi/Tinganga/339 and plot No. Ndumberi/Tinganga/T.248 are part of the deceased estate and that the two properties be shared equally by the two houses. Susan's claim is therefore dismissed. The costs of these proceedings to be paid from the estate.

*EM. GITHINJI*

JUDGE

24.3.99 Mr. Ngwiri for Susan present Mr. Mbere for Karen absent. Susan present.

John Kagunya - son of Karen present. Mr. Gwiri: I apply for copy of the ruling.

Order: Ruling to be typed and copy be supplied to Mr. Ngwiri as prayed.

*E.M. GITHINJI*

JUDGE

Order: Leave to appeal is given to Susan as prayed by Mr. Ngwiri.

*E.M. GITHINJI JUDGE*