



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 984 OF 2007**

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN KENYA  
NJIRU (DECEASED)**

**WILFRED MWENDIA KENYA ...PETITIONER/1<sup>ST</sup>  
ADMINISTRATOR**

**VERSES**

**NAOMI NJERI KIARIE ..... OBJECTOR/2<sup>ND</sup>  
ADMINISTRATOR**

**JUDGEMENT**

1. The deceased herein passed away on 9<sup>th</sup> January 2007. During his life time he married two women. The first woman Pauline Ndunguru Kenya who is also deceased had the following children with him namely:-
  - (a) Wilfred Mwenda Kenya
  - (b) Paul Murithi Kenya
  - (c) Michael Munene Kenya
  - (d) James Muchira kenya
2. They are all adults.
3. After he passed on, in 1998, he married Naomi Njeri Kiarie, the Objector herein who was already having her own young

daughter. They stayed with her for close to 9 years or thereabouts before he died.

4. It is also on record that the deceased prior to marrying Naomi who was later made a co administrator vide a consent of the parties acquired several properties as hereunder:-

- (a) LR No. 57/1405 - Kasarani Clay Works.
- (b) LR No. 15887(Plot No 1089) Kasarani Mirigo registered in the name of the deceased and Naomi.
- (c) Kirinyaga/Gathigiriri/919
- (d) Kirinyaga/Gathigiriri/1116
- (e) Mwea/Teberere/1387
- (f) Land at Kamwendei - Embu
- (g) ½ acre plot at Kutus Town
- (h) Plot No C354 Wanguru -Ngurubaini Town.
- (i) Plot No C328 Wanguru -Ngurubaini town.

5. The substantive contention between the deceased two houses is essentially how to divide the estate. The first house is of the view that the since the properties were acquired during the marriage between the deceased and their mother the same ought to remain so.

6. The parties agreed by consent to file their written submissions to dispose this cause. They have both duly complied and I have perused the same extensively together with the supporting authorities.

7. What they agree of course is the deceased marriage to the two wives. Although the first house suggests that there was

no marriage between the deceased and the Objector, the evidence before the court suggest otherwise.

8. This for example is the purchase of one of the properties which was registered in their joint names. I doubt if the deceased did this without considering her as his wife.
9. The argument of the first house is that the deceased did not recognize the Objector's daughter and therefore she cannot benefit from the estate.
10. What is not in dispute as well is that LR No. 15887 (Plot 1089) was jointly registered in the names of the deceased and Naomi and by operation of law she is entitled to succeed the same.
11. The main contention in my view is on the Clay Works Kasarani property. This property is developed and it appears it is the one that brings income to the family.
12. The same was purchased before the deceased married Naomi and developed during the existence of their marriage. It is the submissions of the first house that it ought to be shared equally between the two houses in line with the provisions of Section 35,38 and 40 of the Succession Act.

### **ANALYSIS AND DETERMINATION**

13. Section 40 of the Act specifically directs on how an estate of a polygamous person ought to be shared out among the dependants. The same states as hereunder.

***“Where intestate was polygamous***

***(1) Where an intestate has married more than once under any system 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.”***

14. Before looking at this however I think it is imperative to note that the deceased stayed with his second wife for close to 9 years before he passed on.
15. There is no evidence other than plot No. 15887 (plot 1089) that he purchased any other property with her.
16. It is conceded that she participated in the development of the Kasarani Clay Works property together with the deceased although by the time she married the deceased had already purchased it.
17. The rest of the properties, except the motor vehicle KAS 942 Toyota Carib, were purchased and developed by the deceased with his first wife.

18. It is therefore fair to conclude that her contribution remained as much and nothing more except perhaps taking care of the deceased.
19. It is true that the deceased accepted Lena Wanjiru Kenya as her daughter but I do not find any evidence to suggest the manner in which he supported her for that period.
20. Taking wholesomely the evidence before me as well as the rival submissions the estate ought to be shared out taking into consideration the contribution by the Objector Naomi.
21. The Act of course specifies the manner in which the polygamous estate needs to be distributed namely according to the houses.
22. The first house will share out their portion in the manner they desire.
23. What the Objector will get in my view will be sufficient between her and her daughter and whom as stated above there was no evidence that the deceased accepted her as her child and or dependant.
24. **I therefore direct that the estate herein be distributed as hereunder.**

**(i) First house of Pauline Ndunguru Kenya**

**(a) Half of LR No. 57/1405 Kasarani Clay Works**

**(b) Kirinyaga/Gathigiriri/919 and 1116**

**respectively**

**(c) Mwea/Tebere/1387**

**(d) Kamwende - Embu property**

- (e) **½ acre plot at Kutus Town**
  - (f) **Plots numbers C354 and C328 Wanguru -  
Ngurubaini Town**
  - (ii) **Second house of Naomi Njeri Kiarie**
    - (a) **Half of LR No. 57/1405 Kasarani Clay Works.**
    - (b) **Whole of LR No. 15887 (Plot No 1089)  
Kasarani -Muirigo**
    - (c) **Motor vehicle registration number KAS 942  
Toyota Carib.**
    - (d) **All house hold items, if any.**
25. **Each party shall bear its own costs.**

**Dated signed and delivered at Nairobi via video link  
this 19<sup>th</sup> day of March 2026.**

**H K CHEMITEI  
JUDGE**