

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 218 OF 2011

**IN THE MATTER OF THE ESTATE OF JOSEPH MUGUONGO alias JOSEPH
M'MUKETHA alias JOSEPH M'MUKETHA MUNGI (DECEASED)**

**JOSHUA MWORIA M'MUKETHA.....1ST
PETITIONER**

**ROSE KARWITHIA OBAE.....2ND
PETITIONER**

VERSUS

**MARY MWENDWA MUKETHA.....
OBJECTOR**

JUDGMENT

1. For determination is the summons for confirmation of grant dated 7/12/2020 under section 71 of the Law of Succession Act, seeking that:

1. The grant of letters of Administration made to ROSE KARWITHIA OBAE and JOSHUA MWORIA JOSEPH on 18th March 2014 be now confirmed.
2. The estate of the deceased be distributed as per paragraph 6 of the supporting affidavit.
3. The costs of this application be in the cause.

2. The application is supported by an affidavit sworn by the petitioners on even date. They have at paragraph 6 thereof proposed how **Plot No. 31A Kangeta, Plot No. 31B Kangeta, L.R No. Nyaki/Giaki/104, L.R No.**

Nyaki/Giaki-Kibuurine/218, Breweries shares and Coffee shares (hereinafter referred to as the estate properties) ought to be distributed.

3. The objector herein, the widow to the deceased filed an affidavit of protest on 15/11/2021 in opposition to the proposed mode of distribution. According to her, the deceased had 3 wives namely Sarah Kanuu (deceased), Rael Karambu Muketha (deceased) and her and the estate properties ought to be distributed as proposed at paragraph 5 thereof.
4. The 2nd petitioner filed her witness statement dated 14/2/2023 in support of the summons for confirmation of grant.
5. The objector filed her witness statement dated 9/11/2022 in support of her protest. She stated that the 1st house lived on L.R No. Nyaki/Mulathankari/69, the 2nd house on L.R No. Nyaki/Giaki-Kiburine/218 and the 3rd house on L.R No. Nyaki/Giaki-Mbeu/104. Her sentiments were echoed by her daughter, Betha Gacheri, vide her statement dated 9/5/2022.

Oral Evidence

6. **OW1 Mary Mwendwa Muketha**, the objector herein, adopted her statement dated 9/11/2022 as her evidence in chief. She told the court that the 1st wife of the deceased namely Sarah Kananu lived at

Mulathakari, the 2nd wife namely Real Karambu lived at Kiburine while she lived at Giaki, Mbeu. The 1st petitioner lived at Mulathankari while the 2nd petitioner lived at Kiburine, and while she was amenable to the distribution of Plot No. 31 Kangeta together with the coffee and Kenya Breweries shares to all the children of the deceased, she insisted that the deceased had settled his 3 wives in their respective parcels of land.

7. **OW2 Betha Gacheri**, adopted her statement dated 9/5/2022 as her evidence in chief and produced the list of documents dated 9/11/2022 as exhibits.

She told the court that L.R No. Nyaki/Mulathakari/2394, which initially belonged to the deceased, was now registered in the name of her brother, the 1st petitioner herein.

8. According to her, the children of Susan Kananu and Rael Karambu ought to get part B of Plot 31 Kangeta while the objector and her children retain part A thereof. Nyaki/Giaki/104 was occupied by her mother, the objector herein while Nyaki/Giaki/218 was given to Kinanu by the deceased, but she was agreeable to an equal distribution of the estate properties, as proposed by the petitioners.

9. **PW1 Rose Obae**, the 2nd petitioner herein, adopted her statement dated 14/2/2023 as her evidence in chief. She told the court that they lived on Nyaki/Giaki/104 when they were children and their mother lived on Mulathankari all her life, which is where she was buried. Her step mother is the one who lived at Giaki with her children and although the title to Nyaki/Giaki/218 measuring 32 acres, was given to her mother for safe

keeping, nobody lived there as it was unsafe. Both Plots 31A and 31B Kangeta were occupied by the objector's house and she prayed for the unconstructed portion of Nyaki/Giaki/104 to be given to them.

10. The application was canvassed by way of written submissions, which were duly filed.

Analysis and Determination

11. The issue for determination is how the estate properties ought to be distributed.

12. Whereas the objector contends that the deceased had settled his 3 wives in their respective parcels of land, the petitioners pray for an equal distribution of the estate properties among the children of the deceased, while the objector enjoys a life interest thereon.

13. The deceased herein died intestate on 4/9/1985 survived by 3 wives namely Sarah Kananu (deceased), Rael Karambu Muketha (deceased), Mary Mwendwa Muketha, the objector herein and 22 children namely Joshua Mworia Joseph, Hellen Karambu Charles, Rebecca Mpinda, Reuben Mutwiri (deceased), Jane Karamuta (deceased), Cecilia Kathure (deceased), Vera M'Rimbere (deceased), Makena Charles (deceased), Meme Samuel (deceased), Geoffrey Kaimenyi Joseph, Julia Nkatha

M'rukwaru, Alice Naitore Muketha, Rose Karwitha Obae, Susan Mwari (deceased), David Kiambi, Solomon Mutua, Richard Marete Muketha, Betha Gacheri Alexander, Dorcas Kanario, Ruth Kanugu Muketha, John Gitonga Muketha and Ibrahim Mutuma (deceased).

14. Ideally, the distribution of the estate of the deceased herein who was a polygamist, would have been, as expressly provided for under **Section 40 of the Law of Succession Act**, in accordance with the children in each house, with the surviving spouse being treated as an additional unit.

15. There is concurrence by the witnesses that the 1st house resided at Mulathankari, the 2nd house at Kiburine and the 3rd house at Giaki. The objector has expressed her willingness to have the Coffee and Kenya Breweries shares distributed equally among the children of the deceased.

16. It has likewise been established that L.R No. Nyaki/Mulathankari/69 does not form part of the estate of the deceased, and is therefore unavailable for distribution. There is also concurrence that L.R No. Nyaki/Giaki-Kiburine/218 is uninhabitable due to volatility in the area. Accordingly, that property shall be sold and the proceeds therefrom shared equally among the children of the deceased.

17.

I am satisfied, on

the basis of the corroborated evidence led by the witnesses that the objector and her children are in occupation of L.R No. Nyaki/Giaki/104. In the interest of equality and fairness, Plot No. 31 A Kangeta shall devolve upon the 2nd house, while Plot 31 B Kangeta shall devolve upon the 1st house.

18.

Consequently,

the grant issued to Rose Karwitha Obae, Joshua Mworio Joseph and Betha Gacheri Alexander on 19/5/2015 is hereby confirmed in the following terms:

- a. PLOT NO. 31B KANGETA shall go to the 1st house.
- b. PLOT NO. 31A KANGETA shall go to the 2nd house.
- c. L.R NO. NYAKI/GIAKI/104 shall go to the 3rd house.

- d. L.R NO. NYAKI/GIAKI-KIBUURINE/218 shall be sold and the proceeds therefrom distributed equally among the children of the deceased.
- e. The coffee and Breweries shares shall be distributed equally among the children of the deceased.

Judgment read and signed in the open Court this 19th day of March 2026.

**S.M. GITHINJI
JUDGE**

In the presence of:-

1. Miss Mutema for the Petitioner
2. Miss Muriuki for the Objector