



REPUBLIC OF KENYA



In re Estate of Wagachira Waithake (Deceased) (Succession Cause 200 of 2014) [2024] KEHC 7585 (KLR) (25 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 200 OF 2014**

J WAKIAGA, J

JUNE 25, 2024

IN THE MATTER OF THE ESTATE OF WAGACHIRA WAITHAKA (DECEASED)

BETWEEN

GITIGI WAGACHIRA WAITHAKA PETITIONER

AND

WAGACHIRA KURIA WAGACHIRA 1ST OBJECTOR

PAUL WAITHAKA KURIA 2ND OBJECTOR

PAUL K AMAU WAITHAKA 3RD OBJECTOR

PHYLIS WANJIRU WAITHAKA 4TH OBJECTOR

JUDGMENT

Introduction

1. On the 27th March 2014 the Petitioner applied for grant of letters of administration in respect of the estate of the deceased herein and named the following as the beneficiary of the estate
 - A. Gitigi Wachira Waithaka Son
 - B. Wanjiku muriithi Daughter in law
 - C. Phyliss Wanjiru Waithaka Daughter in law
 - D. Paul Waithaka KuriaGrandson
 - E. Wagachira Kuria Grand son
 - F. Njoroge Kuria Grandson



2. The assets of the estate were named as land parcel No LOC 19/ Kiawambogo/947 valued at Kenya Shillings One Million (Kshs 1,000,000)
3. He simultaneously took out citation to the objectors herein and on 22nd day of September 2014 the certificate of grant was issued in favour of the Petitioner who on 27th day of April 2015 took out summons for the confirmation of grant wherein he proposed the following mode of distribution:
 - A. Gitigi Wagachira Waithaka ----- 1.85 acres absolutely
 - B. Wanjiku Muriithi -----1.85 acres
 - C.
 1. Phyllis Wanjiru waithaka -----0.925 acres
 2. Paul Kamau Waithaka -----0.925
 - D)
 1. Paul Waithaka Kuria
 2. Wanachira Kuria
 3. Regina Wanjiku Kimomo -----1.85 acres in equal shares.
4. On the 3rd day of August 2015, the objectors took out an affidavit of protest to on their capacity as grandsons and daughter in law on the ground that the Petitioner did not obtain their consent and made the following proposal to the mode of distribution:
 - A) Samson Waithaka Wangachira 2.22 acres
 - B) Paul Waithaka Kuria1.19 acres
 - C) Mureithi Kamau 0.8 acres
 - D) Wagachira Kuria Wagachira1.2 acres
 - E) Gitigi Wagachira Waithaka 0.8 acres
 - F) Stephen Njoroge1.19 acres
5. On the 1st April 2016 the objectors filed supplementary affidavit of protest wherein they contended that two of the beneficiaries namely Samson Waithaka Wagachira and Stephen Njoroge Kuria had since died and should therefore be substituted.
6. On the 5th of October 2015, directions were issued on the hearing of the protest by way of oral evidence and on the 11th day of April 2016 the hearing of the protest commenced before Waweru J who heard and recorded the evidence of the Petitioner as PW1 and three Protestors witnesses that is to say DW1, DW2 and DW3 and on the 5th December 2022 the matter proceeded for further hearing before me within the last witness DW4.
7. The Petitioner testified that the deceased had four sons namely Samson, Elijah, Muriithi and Himself. All his brothers were dead but survived by their spouses and children. His proposal was to ensure that each of the four sons get equal share of the land at 1.85 acres in line with the wishes of the deceased who before his death had called elders who informally sub-divided the into four equal portions to which each son was shown and that all the three sons save for Muriithi had taken physical possession thereof by building houses and planting crops.



8. It was his further evidence that the protestors were entitled to take the portion for their respective fathers and that in the lifetime of the deceased he never heard any of the sons seeking any land from him which they had allegedly bought from him and that none of them objected to the sub-division. In cross-examination he confirmed that he was present during consolidation and never heard that any of his brothers who were older than him had bought any land for themselves.
9. DW1 Phyllis Wanjiru Waithaka stated that the Administrator was her brother-in-law and that her husband Samson Waithaka Wagachira had bought lands from his uncle's wife called Wangui Kinyoro at Iganjo before she was married to him but upon his death she paid the last sheep. She did not know the cost of the land. Her husband bought another parcel from Mbari ya Wanderi, from Karanja Mbatia before she was married to him but she saw when the last two sheep were paid and that both the sellers were dead.
10. It was her further evidence that she by the time of land consolidation and registration when her husband's portions were registered in his father's name, she was already married to him and that what her husband had bought should be considered on distribution of the estate. In cross-examination she stated that her husband was living in Nairobi during the period of consolidation and registration and that she represented him during the exercise as his first wife had already died. She stated that the deceased did not sub-divide his land, but each of the sons are occupying their respective portions where they have tea plants.
11. DW2 Wanderi Maina stated that he knew the Administrator since birth. It was his evidence that the husband of the protestors bought land from one Karanja Mbatia between 1958 and 1959 at Nyagatugu measuring about two acres and that he is the one who slaughtered the ram to complete the sale. In cross-examination he stated that there was no written agreement.
12. DW3 Paul Kamau Waithaka stated that the deceased was his grandfather being the son of Samson Waithaka Wagachira and that in 1962 Kuria Wagachira his younger uncle was buying land and he requested him to assist him to take the goats to the owner of the land and that land which was bought was included in the deceased parcel. He did not know whether the Administrator also bought land which was included to that of the deceased. In cross-examination, he stated he testified in Kangema Succession Cause No 7 of 2004 where it was his evidence that Paul Kuria is the one who gave instructions on the subdivision of the land and that he could not remember the total acreage of his father's land.
13. DW4 Jeremiah Kamau Wagitiga identified the five beneficiaries of the estate and stated that consolidation was done in his absence so he did not know whether the objectors' land was consolidated with those of the deceased. In cross-examination he confirmed that Elijah Waithaka and Wategi were in occupation of the land.

Submissions

14. On behalf of the protestors, it was submitted that this succession cause was originally filed at Kangema Law Courts under Succession Cause No 7 of 2004 which was later on transferred to Nyeri High Court when the dispute herein arose as Succession Cause No 152 of 2010 before being transferred to this Court challenging the mode of distribution as proposed by the administrator herein.
15. It was contended that the Administrator did not support his contention that the deceased herein had in the presence of Elders subdivided the subject property into four equal portions contrary to the protestors' case that the husband of the 1st protestor had bought land which was later on consolidated with the deceased's land. It was the protestors' case that the distribution should consider what the



Protestor's husband and father had bought and therefore their mode of distribution was the correct position.

16. On behalf of the Petitioner it was submitted the suit land belonged to the deceased absolutely which he had divided in his life time to his children in the presence of the elders and that his mode of division was in conformity with Section 83 of the Law of Succession as the Protestors did not ask the deceased to take their interest in to consideration when he settled his children on the suit property.

Determination

17. From the proceedings herein, the following facts are not disputed: The Beneficiaries of the estate, the fact that the subject property was and is still registered in the name of the deceased and that the deceased in his life time had settled the said beneficiaries on the land and each had carried developments on their respect portions.
18. The Protestor's case as stated is that the husband of the 1st Protestor and the father of the 2nd to 4th Respondents had bought land which was consolidated with the deceased's land and to which they are entitled to. However, the Protestors save for allegation to that extent did not produce evidence to support the claim.
19. From their testimony it is clear that their claim is founded on the doctrine of trust which belongs to the jurisdiction of the Environment and Land Court and having found as a fact that the subject land herein is registered in the name of the deceased free from any encumbrances and that the deceased had in his life time expressed his wife on the mode of distribution which the Administrator is effecting through his proposed mode of distribution, I find no merit on the objection and protest herein which I hereby dismiss.
20. In view of the age of this matter, I hereby confirm the mode of distribution as proposed by the Petitioner.
21. This being a family matter each party shall bear their own cost and it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 25TH DAY OF JUNE 2024

J. WAKIAGA

JUDGE

In the presence of;

No appearance by the parties

Jackline – Court Assistant

