



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION
SUCCESSION CAUSE NO. 629 OF 1993

IN THE MATTER OF THE ESTATE OF KIGATHI NG'ANG'A (DECEASED)

JAMES KINYURU KIGATHI.....ADMINISTRATOR/APPLICANT

VERSUS

CHARLES NG'ANG'A KIGATHI.....ADMINISTRATOR/RESPONDENT
MARY WARUGURU NJONJO.....ADMINISTRATOR/RESPONDENT

RULING

1. This court hopes that the family left by the deceased Kigathi Ng'ang'a will cooperate to bring this dispute to an end by agreeing to share the estate that he left. Since 1993 the family has been litigating over the estate. What pleasure they derive from this fight over what their father painstakingly made and graciously left to them is not at all understandable.

2. The deceased died intestate on 17th February 1993. He left a widow Holidayah Wanjiku Kigathi and several children, who include the present disputants. At the time, his estate comprised Muguga/Gitaru/T.24, Muguga/Gitaru/726, Plot No. 8 Gitaru Market and 2 shares at Embakasi Ranching Company Ltd. A grant of letters of administration was issued to Holidayah Wanjiku Kigathi on 13th July 1994. The grant was confirmed on 28th April 1995 and certificate issued wherein the entire estate was registered in her names as trustee for her children in equal shares.

3. In the petition and application for confirmation, Holidayah Wanjiku Kigathi had omitted some of her children. This was one of the reasons why Charles Ng'ang'a Kigathi (one of her children) sought in the application dated 15th June 2005 to have the grant revoked. In the decision dated 4th May 2009, the court revoked the certificate of confirmation and, with the consent of all the parties, Holidayah Wanjiku Kigathi was to have a life interest in the estate and to hold it in trust for all the children in equal shares. The court declared null and void all acts and actions that had been taken pursuant to the revoked certificate of confirmation. The court then directed that when it comes to sharing, presumably after the death of Holidayah Wanjiku Kigathi –

“the family to meet and agree on subdivision.”

4. There was an application dated 25th January 2010 by Holidayah Wanjiku Kigathi that substantially sought the subdivision of the estate to the respective beneficiaries. At the end of the hearing, the court directed that Gitaru/Muguga/T24 be inherited by Holidayah Wanjiku Kigathi, the 2 shares at Embakasi Ranching Company Ltd be inherited by Charles Ng'ang'a Kigathi, Plot No. 8 Gitaru Market be inherited by Holidayah Wanjiku Kigathi and Muguga/Gitaru/726 be shared as follows: -

- a) Holidayah Wanjiku Kigathi - 0.13 Ha;
- b) Charles Ng'ang'a Kigathi - 0.13 Ha;
- c) James Kinyuru Kigathi - 0.13 Ha;
- d) Kevin Kigathi - 0.13 Ha;
- e) Pauline Wambui Mathenge - 0.13 Ha;
- f) Susan Wanjiru Kimani - 0.13 Ha;

g) Katherine Wangari Kigathi - 0.13 Ha;

h) Mary Waruguru Njonjo - 0.13 Ha; and

i) Jerusha Njeri Thuku - 0.13 Ha;

The judgment was on 12th July 2011. A certificate of confirmation was to issue in those terms.

5. When Holiday Wanjiku Kigathi got her certificate of confirmation, she subdivided Muguga/Gitaru/726 into Muguga/Gitaru/1812, 1813, 1814, 1815 and 1816. Upon amalgamation following the subsequent orders of the court the parcel became Muguga/Gitaru/3326. A rectified certificate of confirmation was issued on 19th October 2018 to reflect the new parcel. On 29th January 2020 there was further rectification to show that each beneficiary would get 0.13 Ha and that Muguga/Gitaru/T.24 would go to Miriam Ngendo Stone. Holiday Wanjiku Kigathi had passed on.

6. Following application dated 17th April 2014 by Charles Ng'ang'a Kigathi against Holiday Wanjiku Kigathi and James Kinyuru Kigathi which complained that the two had broken his gate, entered his compound and erected a permanent fence across his compound, the court ordered that-

“No new structures should be erected on the ground, neither should any structure that has been on the ground be knocked down or pulled down”

now that the process of distribution had begun.

7. Charles Ng'ang'a Kigathi filed another application dated 13th September 2016 against Holiday Wanjiku Kigathi and James Kinyuru Kigathi complaining that Holiday Wanjiku Kigathi had vowed not to distribute the land, and that the two had commenced construction on his portion that they had fenced out and had caused damage to his property to the value of Kshs.120,000/= in the course of construction of the fence. The family had caused a meeting on 9th August 2015 to discuss the distribution and agree on who would neighbor who, but that the two had refused to attend. These who had attended had agreed on how to share and had come up with a sketch drawing of how the distribution would be and who would neighbor who. Charles Ng'ang'a Kigathi wanted the parcel to be shared as agreed. On 15th February 2019 the court ruled that the estate be shared in accordance with the certificate of confirmation. It ruled that the gate and fence erected following the order of 2014 be removed or demolished, and this was to be overseen by the OCS Kikuyu Police Station and Assistant Chief of Gitaru Sub-location. The administrators were ordered to distribute the estate within 90 days, in default the grant would be revoked and the administration handed over to new administrators.

8. On 23rd October 2019, the parties agreed that the new administrators would be Charles Ng'ang'a Kigathi, James Kinyuru Kigathi and Mary Waruguru Njonjo. A fresh grant was issued on 29th January 2020.

9. The order by the Deputy Registrar issued on 21st May 2010 following a letter dated 5th February 2020 by Charles Ng'ang'a Kigathi and Mary Waruguru Njonjo was not valid for several reasons. First, it was not sanctioned by the third administrator James Kinyuru Kigathi. Secondly, many things had happened since 12th July 2011. At the time there was only one administrator. Lastly, the enduring solution to this nagging dispute is for each beneficiary to get his or her benefit and to move on. It has to be recalled that under **section 83(g) of the Law of Succession Act (Cap 160)**, the administrators were required to have completed the distribution of the estate of the deceased within six (6) months of the confirmation of the grant and issuance of the certificate of confirmation to them. This they have not done. I recall and discharge the order by the Deputy Registrar.

10. The beneficiaries are not able to agree on how to share the parcel Muguga/Gitaru/3326 on the ground. It must be understood that this is going to entail a give and take. Parties have to agree to sacrifice for the larger good. What is important is for each beneficiary to have access to his or her plot from the main road, and for each to have access to the river or water point.

11. Charles Ng'ang'a Kigathi and Mary Waruguru Njonjo brought a registered surveyor to the parcel on 7th August 2020. James Kinyuru Kigathi was invited but did not come. A survey was conducted. When the surveyor took all parameters into consideration, he came up with a sketch and mutation plan which was agreed on by all the beneficiaries except James Kinyuru Kigathi. In the proposed scheme the sharing was as follows:

a) Mary Waruguru Njonjo - 0.103 Ha;

b) Pauline Wambui Mathenge - 0.103 Ha;

c) Susan Wanjiru Kimani - 0.103 Ha;

d) Katherine Wangari Kigathi - 0.103 Ha;

e) James Kinyuru Kigathi - 0.13 Ha;

f) Holiday Wanjiku Kigathi - 0.103 Ha;

g) Charles Ng'ang'a Kigathi - 0.13 Ha;

h) Jerusha Njeri Thuku - 0.12 Ha;

i) Kevin Kigathi - 0.12 Ha;

In the Scheme, Mary, Pauline, Susan, Katherine, Holiday, Jerusha and Kevin took a reduced share each. James Kinyuru Kigathi has not been impressed by this. He wants the parcel to be shared strictly in accordance with the certificate of confirmation being held by the administrators.

12. When the certificate of confirmation asked that each beneficiary gets 0.13 Ha of Muguga/Gitaru/3326, it did not provide for roads of access amongst the portions and leading to the river or main road, for instance. The roads were going to reduce the acreage available for sharing. It did not take into consideration the terrain. It did not take into consideration the gravesides. What is going to work is to combine equality and equity, so that all beneficiaries equally share the reduced and/or available acreage. Basically, the beneficiaries may not impose the survey plan on James Kinyuru Kigathi, however fair it may seem. However, James Kinyuru Kigathi cannot be allowed to be unendingly unreasonable in his demand.

13. Under **section 47** of the **Act** and **rule 73** of the **Probate and Administration Rules**, I make the following orders:-

(a) on 17th March 2022 the Kiambu Country Surveyor, or his appointee, shall visit Muguga/Gitaru/3326 at 10.00am to survey the land and share it to be beneficiaries in accordance with the certificate of confirmation and in accordance with the law governing land subdivisions, bearing in mind both equality and equity;

(b) each beneficiary shall attend the survey, or be represented by his or her agent;

(c) the survey shall be valid if the majority of the beneficiaries do attend and sign the sketch plan and mutation form;

(d) such signed mutation form shall form the basis for the registration of the new titles;

(e) the Kiambu County Police Commander or his assigned officers shall provide security during the survey;

(f) the beneficiaries shall equally share the costs of the survey and transmission; and

(g) any fence, road, tree, erection, or structure that will not be sanctioned by the mutation shall be removed and/or demolished;

(h) these orders finally resolve the application dated 12th August 2020 by James Kinyuru Kigathi and the application dated 31st August 2020 by Charles Nganga Kigathi and Mary Waruguru Njonjo;

(i) any party aggrieved by these orders, or any of them, has 28 days to appeal to the Court of Appeal.

DATED AND DELIVERED NAIROBI THIS 26TH DAY OF JANUARY 2022.

A.O. MUCHELULE

JUDGE