

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2010 OF 2001

IN THE MATTER OF THE ESTATE OF MAINA GATHUNGU (DECEASED)

PUBLIC TRUSTEE.....APPLICANT

VERSUS

NEWTON NJENGA MAINA.....RESPONDENT

RULING

1. The history of this case is that the deceased Maina Gathungu died intestate on 4th April 2001. During his life he had 3 wives:- Damaris Wairimu Maina who had eight (8) children; Serah Wangui Maina who had nine (9) children; and Jennifer Wangui Maina who had nine (9) children.
2. According to the order made on 14th May 2002, a joint grant was issued to Philip Muthanji Maina (1st house), John Mungai Maina (2nd house) and Elizabeth Wambui Maina (3rd house).
3. The estate of the deceased comprised LR No. Kabete/Kabete/106 measuring 11.24 Hectares and 45 shares in Langata Development Company Limited for plot No. G283 Langata.
4. In the ruling dated 20th May 2009 by Justice K.H. Rawal (as she then was) it was ordered that the estate be shared equally among the three houses. She did this under **section 38** as read with **section 40** of the **Law of Succession Act**, and because each household had nine (9) beneficiaries. The certificate of confirmation that was issued indicated that LR No. Kabete/Kabete/106 was to be shared in such way that each house got 3.844 Hectares. The beneficiaries of the 1st and 2nd houses got varying portions of what was allocated to the respective houses. Elizabeth Wambui Maina was registered to hold the entitlement of the 3rd house in trust to the members of her house in equal shares. The shares in Langata Development Company Limited 1978 Block G 283 was registered in the names of the three administrators to hold in trust for themselves and on behalf of all the beneficiaries in equal shares.
5. It was found out by Justice W.M. Musyoka in his ruling of 31st January 2014 that the reason why the beneficiaries of the 1st and the 2nd houses had not got equal shares from LR No. Kabete/Kabete/106 was because the 1st administrator Philip Muthanji Maina had resorted to buying out some of the shares of these beneficiaries. This was done before the finalisation of the administration and before each beneficiary had got his/her title. The court nullified the buyout because it was before the allotted shares had been vested and transferred to the respective beneficiaries. It was found that the certificate of confirmation did not reflect the distribution by Justice K.H. Rawal. The court ordered the certificate of confirmation to be amended to accord with the ruling of 20th May 2009 by Justice K.H. Rawal. Secondly, the court noted that the administrators had failed the trust and confidence test in allowing the buyout. It revoked the grant to them, and asked the family to propose fresh administrators.
6. It does appear that there was no agreement on who should administer the estate. The court on 30th September 2015 appointed the Public Trustee as the new administrator.
7. On 5th February 2020 the Public Trustee applied for the confirmation of the grant. He stated that the estate had been distributed to the beneficiaries of the 1st and 2nd house, and that what was left was LR No. Kabete/Lower Kabete/2658 measuring about 3.844 Hectares, and which was the remnant of LR No Kabete/Kabete/106. The members of the 3rd house had agreed on how to share the portion and it was in respect of the agreement that Public Trustee sought to confirm the shares.
8. Newton Njenga Maina of the 1st house filed an affidavit to oppose the application saying that the distribution was discriminatory and disadvantageous to his household as they had received smaller portions from the initial certificate of confirmation. Peter Gathungu Maina of the 3rd household swore an affidavit to explain that LR No. Kabete/Kabete/106 was ordered to be shared equally among the three houses, and that the 1st and 2nd houses had already inherited their portions. LR No. Kabete/Lower Kabete/2658 belonged to the 3rd household and the members had agreed on how to share it.
9. Newton Njenga Maina's other objection was that the proposed distribution of the estate did not take into consideration common areas such as graves and roads. His case was that when Justice W.M. Musyoka rendered his ruling, he revoked the certificate of confirmation and therefore there should be fresh sharing.
10. It should be noted that when Justice W.M. Musyoka delivered his ruling, he reiterated the orders of Justice K.H. Rawal who had shared

the estate equally to the beneficiaries. When he found that the 1st and 2nd houses had not shared their portions as ordered because of the buyout, he asked that the buyout be ignored as it was illegal. If the members of the 1st and 2nd household felt aggrieved because of the actions of the buyer, they were entitled to pursue him to recover the portions. This did not affect the beneficiaries of the 3rd house or their portion LR No. Kabete/Lower Kabete/2658. The Public Trustee swore in the affidavit supporting the summons for confirmation that the transfers of the portions of the beneficiaries in the 1st and 2nd houses had long been effected. Only the beneficiaries of the 3rd house were yet to get their portions. Indeed, Mr. Gachoka for the 1st house substantially supported the application.

11. The consent to the confirmation as provided by the members of the 3rd house shows how they want to share the parcel of land. It is clear that the sharing is unequal, but that is their wish.

12. In conclusion, I allow the distribution as proposed. The certificate of confirmation amended by Justice W.M. Musyoka is hereby further amended to reflect the distribution in the summons dated 5th February 2020 and the consent to confirmation dated 22nd March 2021. The application dated 9th June 2021 by Newton Njenga Maina to revoke the distribution of the estate of the deceased is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL 2022.

A.O. MUCHELULE

JUDGE