



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 714 OF 2014

RE ESTATE OF GAKINYA KINGEE (DECEASED)

PAUL KARIANJAH MAINA.....ADMINISTRATOR

VERSUS

ANGELINA WANGARI MWANGI.....PROTESTOR

JUDGMENT

1. Gakinya Kingee (hereafter *the deceased*) died intestate on 10th February 2000.
2. His son, Paul Karianjahi Maina (hereafter *the administrator*) obtained a grant on 31st March 2015. He then took out a summons for confirmation of grant in which he proposed that the sole property, Loc.8/Kandegenye/938, (hereafter *the suit property*) be shared *equally* between him, his brother Peter Mwangi Gakinya and their sister Angelina Wangari Mwangi (hereafter *the protestor*).
3. The protestor filed an affidavit of protest on 16th March 2018. Her protest is two-pronged: firstly, that the cause was lodged in secret; and, secondly, that the deceased bequeathed her the *entire* property.
4. In that affidavit, the protestor deposed that she was the *only* daughter of the deceased. It is however common ground that there is another daughter, *Joyce Njeri Maina*, but who has not laid any claim to the deceased's estate.
5. On 22nd July 2020, the court directed that *viva voce* evidence be taken. The administrator and protestor testified in the matter.
6. The administrator (PW1) stated that after the death of the deceased, their mother, Mary Gathirwa Gakinya, gave him 0.45 acres whereas her brother and the petitioner got 0.5 acres each. He claimed that their mother warned them against wrangling over the property. He conceded in cross examination that their mother's instructions were not documented. He also said that attempts to resolve the matter before the local administration came to naught.
7. The protestor (DW1) testified that she single-handedly took care of the deceased from about 1975. For a period of twelve years, she fed him, bought him medicines and even had to bathe him. The latter task was complicated because she had to avoid looking at his privates. She was finally forced to employ two men, Irungu and Kamau, to clean the old man.
8. The protestor testified that as a result of the help she accorded the deceased, he gave her all his household goods and the title deed to suit property. She said that John Kihui Kabogo was a witness. The latter never took to the stand. DW1 said that she farms the land. In a synopsis, she is not willing to share the land with her two brothers.
9. I take the following view of the matter. The disputants are all children of the deceased. There is no written will or a valid oral will. There is no clear cut evidence on the dates when the deceased made his wishes to the protestor or to any other witness. I equally find that the administrator has not proved that his mother directed that all the three disputants should get equal shares.
10. Furthermore, the deceased died on 10th February 2000 *before* his wife, Mary Gathirwa Gakinya, who died ten years *later* on 11th June 2011. This is clear from the two death certificates attached to the petition. Under the **Law of Succession Act**, the widow had a *life interest* on the land for the ultimate benefit of the children. I thus find that it is highly improbable that the deceased could have given the protestor the land exclusively when her mother was still alive. Never mind that they were estranged.
11. I agree that the protestor took care of the deceased for many years. It was an arduous task. I do not take those duties lightly. But that does not entitle her to a larger share. I did not receive any cogent evidence that the administrator or his brother have inherited other properties from their father (the deceased). The administrator conceded in cross examination that there was a case at Machakos. However, the details of that dispute were not forthcoming.

12. Sections 26, 27, 28 and 29 of the **Law of Succession Act** as read together with Rule 73 of the **Probate and Administration Rules** donate *complete discretion* to this court to order a specific share to a dependant. See generally **Re Estate of Morgan Njoroge Gakuo (Deceased)**, Nairobi High Court Cause No. 591 of 2007 [2016] eKLR; **Re Estate of Manasseh Mwea Kariuki (Deceased)**, Murang'a High Court Cause No. 57 of 2014 [2021] eKLR;

13. The justice of this case is that none of the children should be discriminated. Like I stated earlier, there is another daughter, Joyce Njeri Maina, but she has not staked any claim to the deceased's estate. The estate should thus be shared equally between the three disputants.

14. My final orders are thus that *Loc.8/Kandegenye/938* shall be distributed in *three equal shares* to Paul Karianjahi Maina (son), Peter Mwangi Gakinya (son) and Angelina Wangari Mwangi (daughter). The grant shall be confirmed in terms of this judgment.

15. I order that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 19th day of April 2022.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Administrator (in person).

Protestor (in person).

Ms. Susan Waiganjo, Court Assistant.